

CONSUMER WATCHDOG
Harvey Rosenfield (SBN: 12308)
Pamela Pressley (SBN: 180362)
Jerry Flanagan (SBN: 271272)
2701 Ocean Park Blvd., Suite 112
Santa Monica, CA 90405
Tel: (310) 392-0522

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOHN DOE, on behalf of himself and all others
similarly situated

PLAINTIFF(S)

UNITED HEALTHCARE INSURANCE COMPANY,
OPTUMRX, INC., PACIFICARE LIFE AND HEALTH
INSURANCE COMPANY, UNITEDHEALTH
GROUP; and DOES 1-10, inclusive,

DEFENDANT(S).

CASE NUMBER

SACV 13 - 00864 DOC (JPRx)

SUMMONS

TO: DEFENDANT(S):

A lawsuit has been filed against you.

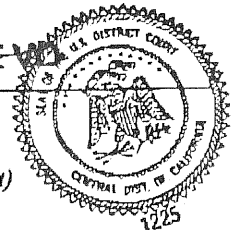
Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint _____ amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, _____, whose address is 2701 Ocean Park Blvd., Suite 112, Santa Monica, California 90405. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: June 7, 2013

By: Denise W. DENISE W.
Deputy Clerk

(Seal of the Court)



[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

I. (a) PLAINTIFFS (Check box if you are representing yourself)

JOHN DOE, on behalf of himself and all others similarly situated

DEFENDANTS (Check box if you are representing yourself)

UNITED HEALTHCARE INSURANCE COMPANY, OPTUMRX, INC., PACIFICARE LIFE AND HEALTH INSURANCE COMPANY, UNITEDHEALTH GROUP; and DOES 1-10, inclusive, **See Attachment -2

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

See Attachment -1

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)

Unkown

II. BASIS OF JURISDICTION (Place an X in one box only.)

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

III. CITIZENSHIP OF PRINCIPAL PARTIES-For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF 1 1, 2 2, 3 3, 4 4, 5 5, 6 6

IV. 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. Multi-District Litigation

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.Cv.P. 23: Yes No MONEY DEMANDED IN COMPLAINT: \$

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Class Action arising under Class Action Fairness Act (28 U.S.C § (d)) and allegeing California law causes of action.

VII. NATURE OF SUIT (Place an X in one box only.)

Table with 6 columns: OTHER STATUTES, CONTRACT, REAL PROPERTY CONT., IMMIGRATION, PRISONER PETITIONS, PROPERTY RIGHTS. Includes sub-sections like TORTS, PERSONAL INJURY, CIVIL RIGHTS, LABOR, and FEDERAL TAX SUITS.

FOR OFFICE USE ONLY: Case Number:

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? NO YES

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? NO YES

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles Co.	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange Co.	Minnesota, Connecticut

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
NOTE: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange Co., and other counties in California	

*Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR SELF-REPRESENTED LITIGANT):  DATE: 6/6/2013

Notice to Counsel/Parties: The CV-71 (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. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet).

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))

ATTACHMENT-1

Plaintiffs' 1(b) – Civil Cover Sheet

CONSUMER WATCHDOG

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Los Angeles, CA 90071
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ATTACHMENT-1

ATTACHMENT-2

Defendants' 1 (b) – Civil Cover Sheet

UnitedHealthCare Insurance Company
PacifiCare Life and Health Insurance Company
5701 Katella Ave., Cypress, CA, 90603
(714) 952-1121

OptumRx
2300 Main Street
Irvine, CA 92614
(949) 221-9974

UnitedHealth Group
185 Asylum Street
Hartford, CT 06103
(877)832-7734

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Fax: (888) 331-9633

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION

JOHN DOE, on behalf of himself and all others similarly situated,

Plaintiff v.

UNITED HEALTHCARE INSURANCE COMPANY, OPTUMRX, INC., PACIFICARE LIFE AND HEALTH INSURANCE COMPANY, UNITEDHEALTH GROUP; and DOES 1-10, inclusive,

Defendants.

Case No. SACV 13 - 00864 DOC (JPRx)

CLASS ACTION COMPLAINT

- (1) Violation of Unfair Competition Law, Business and Professions Code § 17200;
- (2) Common Counts and Assumpsit/Common Law Restitution;
- (3) Breach of the Implied Covenant of Good Faith and Fair Dealing;
- (4) Declaratory Relief;
- (5) Violation of Unruh Civil Rights Act, Cal. Civ. Code Section 51, *et seq.*

Jury Trial Demanded On All Claims So Triable

FILED
2013 JUN -7 AM 10:10
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
SANTA ANA

1 Plaintiff, by and through the undersigned attorneys, brings this action on behalf of himself
2 and all others similarly situated against Defendants United HealthCare Insurance Company
3 (“United”), OptumRx, Inc. (“OptumRx”), PacifiCare Life and Health Insurance Company
4 (“PacifiCare”), UnitedHealth Group (“UHG”), and DOES 1-10, inclusive (hereafter collectively
5 “Defendants”).¹ Plaintiff alleges the following on information and belief, except as to those
6 allegations which pertain to the named Plaintiff, which are alleged on personal knowledge:

7 **NATURE OF THE ACTION**

8 1. Plaintiff anonymously² brings this action to challenge United’s discriminatory
9 business practices targeting consumers enrolled in United health plans in California who suffer
10 from HIV/AIDS. In a change that is currently being implemented, United enrollees are being told
11 they must purchase their “specialty medications” to treat HIV/AIDS and other serious illnesses
12 from a mail order pharmacy of United’s choosing, its sister subsidiary OptumRx, or pay
13 thousands of dollars or more each month for their specialty medications at their local retail
14 pharmacy (hereafter, the “Program”). Enrollees purchasing prescription drugs that United does
15 not consider “specialty medications” will continue to purchase their medications at a retail
16 pharmacy without penalty. As a result of Defendants’ discriminatory behavior, HIV/AIDS
17 patients face a potentially life-threatening decision that also threatens their privacy: (1) forego
18 essential counseling from an expert pharmacist at a retail pharmacy who (i) knows their medical
19 history and who, working directly with patients in face-to-face interactions, (ii) is best positioned
20 to detect potentially life-threatening adverse drug interactions and dangerous side effects, as well
21 as immediately provide new drug regimens as their disease progresses and essential advice and
22 counseling that help HIV/AIDS patients and families navigate the challenges of living with a

23 ¹ United HealthCare Insurance Company and PacifiCare Life and Health Insurance Company are
24 subject to the California Insurance Code. Coverage sold by United and PacifiCare, and other
25 UHG subsidiaries, is referred to herein as “health plan” or “plan.” “Enrollees” and “members”
refer to individuals enrolled in United, PacifiCare, or other UHG subsidiary health plans.

26 ² Due to the sensitive nature of this action, Plaintiff has chosen to file under a fictitious name.
27 (See, e.g., *Doe v. Kaweah Delta Hosp.*, 2010 U.S. Dist. LEXIS 135808 (E.D. Cal., Dec. 22,
2010) [AIDS/HIV patient permitted to proceed anonymously.], *Does I thru XXIII v. Advanced*
28 *Textile Corp.* 214 F.3d 1058, 1067 (9th Cir. 2000) [holding that one of the grounds for
proceeding anonymously was that anonymity was necessary “to preserve privacy in a matter of
sensitive and highly personal nature.”].)

1 chronic and often debilitating condition, or (2) pay thousands of dollars out-of-pocket at their
2 retail pharmacy. For all but the wealthiest HIV/AIDS patients, such dramatic cost increases are
3 untenable and thus many Class members are left with no choice at all. Plaintiff brings this action
4 on behalf of himself and on behalf of a class of California residents who are currently enrolled in
5 a United health plan including an individual plan, governmental plan, or church plan with
6 prescription drug benefits and who have been prescribed medications to treat HIV/AIDS (the
7 “Class”).

8 2. Patients using a retail pharmacy will be considered going “out-of-network” and
9 will be subject to “non-Network Benefit” charges under the terms of their health plans. In a
10 February 2013 form letter (the “February Letter”) sent to some affected patients (see Ex. 1, which
11 is incorporated herein by reference), United wrote:

12 To continue receiving network benefit coverage for your specialty medication,
13 you will need to use OptumRx Specialty Pharmacy. You may continue to fill
14 your prescriptions for non-specialty medications at your retail or mail order
15 pharmacy under your pharmacy benefit If you choose to use a pharmacy
16 other than OptumRx for your specialty medication(s) you may pay more, and
17 will not have access to the comprehensive support our program provides.

18 (Emphasis added.) Some affected enrollees received a similar follow-up letter from United in
19 March 2013. Under the terms of United’s “Outpatient Prescription Drug Rider” (see Ex. 2, which
20 is incorporated herein by reference), which United unilaterally inserted into enrollee health plans
21 and attached at the end of Class members’ Certificates of Coverage (aka “Evidence of
22 Coverage”):

23 If you are directed to a Designated Pharmacy and you choose not to obtain your
24 Specialty Prescription Drug Product from a Designated Pharmacy, you will be
25 subject to the non-Network Benefit for that Specialty Prescription Drug Product.

26 3. In addition to the potentially life threatening health consequences of the Program
27 discussed below, Class members’ fundamental and inalienable right to privacy is also threatened.
28 For example, HIV/AIDS specialty medications often are delivered in refrigerated containers.
Class members who live in apartment buildings or have medications delivered to their work place
have expressed alarm that neighbors and co-workers, who do not know that the recipient has
HIV/AIDS, would come to suspect that they are seriously ill. Mail-order shipment also presents

1 the risk of lost or stolen medications. Alternatively, requiring the recipient to be present when the
2 package is delivered forces the patient to obtain needed medications on the schedule of the
3 delivery person as compared to their own, and raises further privacy concerns.

4 4. United enrollees with HIV/AIDS and other seriously ill consumers cannot seek
5 individual coverage from another health insurance company that provides access to retail
6 pharmacies offering these specialized medicines because those enrollees cannot pass “medical
7 underwriting,” the process through which a health insurance company evaluates a consumer’s
8 medical risk, and on that basis, determines whether to sell coverage to that individual at all, or
9 whether to provide some coverage but exclude certain “pre-existing health conditions.”³

10 5. The Program as currently being implemented constitutes a material change in
11 Class members’ coverage, a significant reduction in benefits, and a violation of the standards of
12 good health care and clinically appropriate care for HIV/AIDS patients. By implementing such
13 practices, United will thus reduce the quality of prescription drug care provided to thousands of
14 Class members by forcing enrollees to use their sister subsidiary and co-conspirator OptumRx.
15 As a result, many Class members have already expended resources in response to the Program,
16 and presently are threatened with substantial, imminent, and irreparable harm. This harm
17 includes a grave threat to their health and safety.

18 6. Since 1959 California law has barred exactly the type of discriminatory business
19 activity that United is engaged in. The Unruh Civil Rights Act (“Unruh” or “Act”) specifically
20 outlaws discrimination based on “sex, race, color, religion, ancestry, national origin, **disability**,
21 **medical condition**, **genetic information**, marital status, or **sexual orientation**” and provides that
22 all persons are “free and equal” and “entitled to the full and equal accommodations, advantages,
23 facilities, privileges, or services in all business establishments of every kind whatsoever.” (Civ.
24 Code § 51(b).) HIV/AIDS is a “medical condition” and a “disability” under Unruh. The Program
25 also violates numerous provisions of the Insurance Code and related regulatory provisions.

26 ³ Companies such as United use medical underwriting to deny coverage to consumers for even
27 very minor health problems—such as seasonal allergies and acne. Press Release, Consumer
28 Watchdog, Internal Documents Show Insurers Won’t Sell Health Policies to Cops, Firefighters,
Expectant Dads, Allergy & Acne Sufferers (Jan. 8, 2007), *available at*
<http://www.consumerwatchdog.org/patients/articles/?storyId=15166>.

1 United's conduct is unlawful, unfair and fraudulent, and therefore violates California Business &
2 Professions Code section 17200, *et seq.*, and the other laws detailed below, as well as privacy
3 rights provided by the California Constitution.

4 ***The Role of the Clinical Pharmacist and the Importance of Face-to-Face Interactions***

5 7. Many physicians specializing in HIV/AIDS treatment are unable to spend very
6 long with each patient. In fact, physician consultations are often limited to just 15 minutes in the
7 era of managed care. As a result, there is very limited time for the doctor to elicit extensive
8 information about the patient's complete medical history, including which non-HIV/AIDS
9 medications the patient is taking, and impart critical information about prescription drug regimens
10 and warnings about the high number of known adverse side effects and adverse drug interactions
11 associated with HIV and AIDS medications.

12 8. Moreover, for many Class members, HIV/AIDS is not their only medical
13 condition. Many patients have a history of cardiovascular disease, hypertension, diabetes, and
14 psychiatric issues, among other conditions. Medications that manage mental health issues, for
15 example, such as anti-depressants, anti-psychotics, and sleep agents, among others, are often not
16 prescribed by the physician managing the patient's HIV/AIDS.

17 9. A local HIV/AIDS pharmacist, however, is typically aware of the patient's entire
18 medical history, has a comprehensive view of the patient's medication load, and has ongoing
19 communication with physicians and patients regarding potential issues that may arise concerning
20 drug side effects, adverse drug interactions, and adherence to specialty medications. The ability
21 of local pharmacists to closely monitor HIV and AIDS patients in face-to-face encounters is life-
22 saving in many instances. In the case of a patient with a history of depression, for example, a
23 local HIV/AIDS specialist would work with the patient through regular "check-ins" as changes in
24 mood, attitudes or day-to-day function would change if an HIV/AIDS medication, such as Atripla
25 (with documented central nervous system side effects), were prescribed. Other side-effects
26 provide visual cues—for example, changes in skin color—that cannot be detected over the phone.

27 10. HIV/AIDS patients, therefore, rely on their pharmacists to remind them how and
28 when drugs must be taken, review potential side effects and strategies to avoid those side effects,

1 and other counseling including what to expect if a patient’s drug regimen changes. In fact
2 pharmacists, who serve patients prescribed medications by numerous doctors, have more
3 experience and information about potential adverse drug interactions and changes in drug
4 regimens than physicians themselves.

5 11. Conversely, mail order pharmacies providing only specialty medications lack the
6 ability to fully monitor adverse drug interactions since most HIV and AIDS patients are
7 prescribed both specialty and non-specialty medications, including over the counter medications
8 which do not require a prescription and therefore are not tracked in the same manner as
9 prescription medications. OptumRx will not have a full and accurate record of all the medications
10 the patient is prescribed and therefore cannot anticipate or warn against potential adverse drug
11 interactions. Thus, taking the local pharmacist, and the specialty pharmacy where they provide
12 their services, out of the treatment equation results in a loss and injury to Class members as well
13 as lessens the quality of care they receive.

14 12. This harm is not conjectural or speculative, but real, imminent and severe.
15 “Putting a label on the bottle — that’s the least of what we do,” Marva Brannum, a clinical
16 pharmacist at Edwin’s Prescription Pharmacy in North Hollywood, California, has explained.
17 Ms. Brannum, who has worked with HIV and AIDS patients for nearly 30 years, said working
18 with patients also includes knowing the psychological and social issues involved with their
19 disease states and providing a critical informed link between doctor and patient. Importantly,
20 working with patients directly allows pharmacists to monitor potential adverse drug interactions.
21 “We are an extension of the patient’s clinical team,” Brannum said. The Program thus reduces
22 the overall quality of care Class members receive, since it is not only just a question of knowing
23 the drugs the patient uses, but also knowing the patient and all of their medical needs. “The most
24 intricate part that leads to quality outcomes and leads to decreased costs for us is knowing the
25 patient in total,” Brannum said. Patients who need specialty medicines and suffer from complex
26 diseases require complex treatment. The pharmacist is an effective member of the treatment
27 team, who helps to closely monitor the patient’s condition. Pharmacists that provide HIV/AIDS
28 medications build strong personal and clinical relationships with their patients, making sure that

1 they receive the drugs they need when they need them and even providing them discounts for
2 these expensive medications.

3 13. Because there is no cure for HIV/AIDS, the virus continually mutates around the
4 medications prescribed to treat it, requiring constant monitoring and immediate provision of new
5 medication regimens to address changes in the disease. Periods of medication changes are
6 particularly sensitive times for HIV/AIDS patients. Doctors and pharmacists must review the
7 panoply of the patient's medication for potential new adverse drug interactions, and patients are
8 concerned about addressing new drug side effects. To avoid serious health consequences it is
9 imperative to discontinue the previous regimen of HIV/AIDS medications before adding or
10 dispensing new medications. In some instances, however, patients have reported new medication
11 orders being submitted to the mail order pharmacy by the patient's physician, but the mail order
12 pharmacy incorrectly dispensed *both* the new medication and the old medication or in the
13 incorrect dosage, creating confusion and the potential for the patient to take both medications,
14 resulting in serious health consequences.

15 14. Mail order providers such as OptumRx also run the very real risk of delayed, lost
16 or stolen shipments, resulting in dire consequences for many patients who must adhere to strict
17 medication regimes or face serious illness or death. Yet, Defendants appear to have no fail-safe
18 procedure in place to allow consumers to purchase medications at retail pharmacies in the event
19 that mail-order shipments are delayed, lost, or stolen.

20 15. United has replaced the present, on-going, close relationship between pharmacist
21 and patient with an 800 number that, as Plaintiff alleges below, does not provide the same or
22 similar level of service and benefits. OptumRx has no retail location and Class members are not
23 provided access to a pharmacist. Furthermore, the Program's requirement that Class members
24 must call-in *each month* to renew their prescription as explained below—and work their way
25 through automated messages and multiple call center staff—increases stress and fatigue for
26 patients who are literally fighting to stay alive.

27 16. One patient enrolled in a United health plan reports spending more than an hour
28 on the phone with United to set-up his OptumRx account so that he could start receiving his

1 HIV/AIDS medications by mail-order. He called the telephone number printed on his United
2 prescription drug card, then was transferred to OptumRx, and then forwarded to no less than two
3 OptumRx representatives. Upon being told that there was no alternative to the mail-order
4 program, the patient, concerned with the competency of OptumRx staff to administer his
5 prescription drug benefits, asked—“are you my pharmacist or are you my insurance company?”
6 to which he received the response from one representative: “It is not my problem, it is your
7 responsibility to make sure you get your lifesaving drugs on time.” He was told that even though
8 OptumRx had his address, he needed to call OptumRx each month to confirm his address before
9 OptumRx would ship any medication. He was told by OptumRx personnel that his only option if
10 he ran out of medication was to go a hospital emergency room. Such examples of callous
11 disregard for the needs of patients with such critical health needs shows the immediate harm and
12 discrimination they face by being forced to utilize a mandatory mail order program.

13 ***Defendants’ Discriminatory Business Practices Specifically Target HIV/AIDS Patients***

14 17. Due to the complex nature of their disease and medications, HIV/AIDS patients
15 are particularly hard hit and discriminated against by United’s unilateral decision that these
16 patients needing specialty medications to treat their conditions must buy them exclusively from
17 the mail-order pharmacy OptumRx.

18 18. The Program has specifically targeted, among others with chronic conditions,
19 individuals that are HIV-positive or have full-blown AIDS. The Program denies full and equal
20 access to utilize the drug delivery mechanism and pharmacies of their choice specifically
21 because of their illness, while at the same time permitting other non-HIV/AIDS enrollees to
22 enjoy full access to the pharmacies of their choice. This is an arbitrary and harmful distinction,
23 since in caring for HIV and AIDS patients in particular, pharmacists’ roles are even more
24 important.

25 19. While mail-order may be appropriate for some patients or some medications, it is
26 not for all patients with complex, chronic conditions like HIV/AIDS, for which pharmacists do
27 more than merely dispense specialty medications. The decision to use a mail-order pharmacy
28 should be a matter of informed enrollee choice, not insurance company mandate. United’s

1 change in policy creates a potential health risk for HIV/AIDS patients that require time sensitive
2 treatments if mail order drugs are delayed or mis-delivered.

3 20. When patients attempt to opt-out of the Program they are told they have no choice.
4 But secretly, Defendants have granted some enrollees who complain enough or threaten to take
5 action the ability to not participate in the Program. Plaintiff believes all similarly situated people
6 should be given that same opportunity.

7 21. Plaintiff seeks an order of this Court enjoining United's continued violations of
8 law. Plaintiff also seeks damages, restitution and disgorgement based on the profits generated
9 by Defendants' conduct that violates California law.

10 THE PARTIES

11 22. JOHN DOE is a resident of Los Angeles County, California. JOHN DOE has
12 been enrolled in a United health plan since approximately February, 2013. JOHN DOE has been
13 prescribed HIV/AIDS-related medications targeted by United's mail-order requirement and
14 previously purchased his HIV/AIDS medications from a retail pharmacy located in Los Angeles
15 County that specializes in serving HIV/AIDS patients. JOHN DOE's United health plan is
16 provided by his government employer, Los Angeles Department of Water and Power
17 ("LADWP"). As set forth below, he has already lost money or property and been injured in fact
18 as a result of the illegal acts and practices of Defendants. Attached as Ex. 3 is a true and correct
19 copy of the Evidence of Coverage for JOHN DOE's United health plan, which is incorporated
20 herein by reference. JOHN DOE has expended substantial resources attempting to resolve the
21 issues, and has expressly requested to not participate the Program. Despite numerous requests, he
22 has been told by Defendants' representative that his participation in the Program is mandatory.

23 23. Defendant OptumRx, Inc. is a corporation duly organized and existing under the
24 laws of the State of California with its principal place of business and administrative offices
25 located in Irvine, California and its main mail order pharmacy processing facilities located in San
26 Diego County, California. In August 2012, it announced its expansion of the pharmacy mail
27 order processing facilities at issue, which serve Plaintiff and all affected Class members and are
28 exclusively located in both Carlsbad and Mission Valley: "Between our mail service center here

1 in Carlsbad, our administrative offices in Irvine and our operations facilities in Cypress, Costa
2 Mesa and Mission Valley, California is critical to the success and future growth of OptumRx,”
3 said Dirk McMahon, CEO of OptumRx. OptumRx is a subsidiary of UHG.

4 24. Defendant United Healthcare Insurance Company is a corporation duly organized
5 and existing under the laws of the State of Minnesota, with one of their principal places of
6 business located in Cypress, California, and is authorized to transact and is transacting the
7 business of providing health plans in this state. United Healthcare Insurance Company is a
8 subsidiary of UHG.

9 25. Defendant PacifiCare Life and Health Insurance Company is a corporation duly
10 organized and existing under the laws of the State of California, with its principal place of
11 business located in Cypress, California, and is authorized to transact and is transacting the
12 business of providing health plans in this state. PacifiCare is a subsidiary of UHG Group.

13 26. Defendant UnitedHealth Group is a corporation duly organized and existing
14 under the laws of the State of Connecticut, with its principal place of business located in Hartford,
15 Connecticut. UHG is the parent company overseeing and controlling the actions of the other
16 Defendants and implementation of the Program at issue herein. UHG is responsible for the
17 actions of all of its subsidiaries operating in California that are requiring enrollees to obtain
18 any HIV/AIDS specialty medications exclusively through the Program.

19 27. The true names, roles and/or capacities of Defendants named as DOES 1 through
20 10, inclusive, are currently unknown to Plaintiff and, therefore, are named as Defendants under
21 fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff will
22 identify their true identities and their involvement in the wrongdoing at issue if and when they
23 become known. Their precise identities are unknown to Plaintiff at this time and are therefore
24 identified and designated herein as Does 1 through 10.

25 28. Defendants’ conduct described herein was undertaken or authorized by
26 Defendants’ officers or managing agents who were responsible for supervision and operations
27 decisions. The described conduct of said managing agents and individuals was therefore
28 undertaken on behalf of Defendants. Defendants further had advance knowledge of the actions

1 and conduct of said individuals whose actions and conduct were ratified, authorized, and
2 approved by such managing agents. By engaging in the conduct described herein, Defendants in
3 the last year agreed with each other to require Plaintiff and all Class members to have no realistic
4 option to use OptumRx as their captive mail order pharmacy, to the exclusion of their trusted
5 pharmacist, and unjustly and mutually profit as a result of this agreement in violation of the laws
6 set forth below. As a result of such agreements, Defendants conspired and aided and abetted each
7 other in violating the laws set forth herein, which conduct is on-going.

8 **JURISDICTION AND VENUE**

9 29. This Court has jurisdiction over the parties to this action. The named Plaintiff is a
10 resident of California, Defendants OptumRx and PacificCare's principal place of business is
11 located in California, and the members of the Class are all resident citizens of the State of
12 California.

13 30. Jurisdiction over Defendants is also proper because they have purposely availed
14 themselves of the privilege of conducting business activities in California and because they
15 currently maintain systematic and continuous business contacts with this State, and have many
16 thousands of affected enrollees who are residents of this State and who do business with United.

17 31. Venue is proper in this District under 28 U.S.C. section 1391 because Defendant
18 OptumRx maintains substantial operations in this District, many Class members either reside or
19 did business with Defendants in this District, Defendants engaged in business in this District, a
20 substantial part of the events or omissions giving rise to the claims at issue occurred in this
21 District as the mandatory pharmacy mail order processing operations undertaken by OptumRx
22 occur and take place in substantial part in this District, and Defendants entered into transactions
23 and received substantial profits from enrollees who reside in this District.

24 32. This Court has subject matter jurisdiction based on diversity of citizenship, and
25 the overall amount in controversy exceeds \$75,000. Plaintiff alleges subject matter jurisdiction
26 based on the Class Action Fairness Act (28 U.S.C. §1332(d)).
27
28

1 STATUTORY SCHEME

2 33. Article I, Section 1 of the California Constitution guarantees “all people” the right
3 to privacy:

4 All people are by nature free and independent and have inalienable rights. Among these
5 are enjoying and defending life and liberty, acquiring, possessing, and protecting property,
6 and pursuing and obtaining safety, happiness, and privacy.

7 34. The Unruh Civil Rights Act provides that, “[a]ll persons within the jurisdiction of
8 this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national
9 origin, *disability*, *medical condition*, genetic information, marital status, or *sexual orientation* are
10 entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all
11 business establishments of every kind whatsoever.” (Civ. Code § 51(b), emphasis added.)

12 35. Under the Unruh Act, “‘Disability’ means any mental or physical disability as
13 defined in Sections 12926 and 12926.1 of the Government Code.” (Civ. Code § 51(e)(1).)
14 “Physical and mental disabilities include, but are not limited to, chronic or episodic conditions
15 such as *HIV/AIDS*, hepatitis, epilepsy, seizure disorder, diabetes, clinical depression, bipolar
16 disorder, multiple sclerosis, and heart disease.” (Gov. Code § 12926.1 (c), emphasis added.)

17 36. Discrimination on the basis of a disease or disorder passed on from one
18 generation to the next generation—like HIV/AIDS (which can be passed from mother to fetus in
19 utero)—constitutes unlawful discrimination on the basis of “genetic information” which is
20 defined in part as “the manifestation of a disease or disorder in family members of the
21 individual.”⁴

22 _____
23 ⁴ “‘Genetic information’ means, with respect to any individual, information about any of the
24 following:

- 25 (i) The individual’s genetic tests.
26 (ii) The genetic tests of family members of the individual.
27 (iii) *The manifestation of a disease or disorder in family members of the individual.*

28 (B) ‘Genetic information’ includes any request for, or receipt of, genetic services, or
participation in clinical research that includes genetic services, by an individual or any family
member of the individual.

(C) ‘Genetic information’ does not include information about the sex or age of any individual.”
(Unruh, § 51(2)(A), emphasis added.)

1 37. Finally under the Unruh Act, unlawful discrimination on the basis of “‘Sexual
2 orientation’ has the same meaning as defined in subdivision (r) of section 12926 of the
3 Government Code.” (Civ. Code § 51(e)(7).) Under the Government Code, “‘Sexual orientation’
4 means heterosexuality, homosexuality, and bisexuality.” (Gov. Code § 12926(r).)

5 38. The Unruh Act prohibits business establishments from “engaging in any form of
6 arbitrary discrimination.” The Unruh Act addresses concerns “not only with access to business
7 establishments, but with *equal treatment of patrons in all aspects of the business.*” That Act is
8 given a liberal construction with a view to effectuating its purposes.

9 39. The California Legislature has declared that the State of California has an interest
10 in ensuring that all people have ready and reasonably available access to HIV medications:

11 (a) State-of-art knowledge regarding treatment of people infected with
12 the human immunodeficiency virus (HIV) indicates that active HIV infection
13 (AIDS) can be a manageable, though chronic, condition with the use of drugs
14 such as zidovudine (AZT), aerosolized pentamidine, and ganciclovir. AIDS
15 experts across the nation agree that early intervention with these drugs can
16 prolong life, minimize the related occurrences of more serious illnesses, reduce
17 more costly treatments, and maximize the HIV-infected person's vitality and
18 productivity.

19 (b) For reasons of compassion and cost effectiveness, *the State of
20 California has a compelling interest in ensuring that its citizens infected with
21 the HIV virus have access to these drugs.*

22 (Health & Saf. Code § 120950;emphasis added.)

23 40. The UHG health plans that are the subject of this class action are regulated under
24 the Insurance Code. In order to ensure seriously ill consumers receive the care they need,
25 Insurance Code section 10273.6 guarantees that a consumer may *renew* his or her health plan
26 *regardless of his health condition.* Insurance Code sections 10128.50, *et seq.* and 10901.8
27 similarly provide for renewability of coverage for those enrolled in COBRA coverage and other
28 federally-qualified programs. Therefore, United cannot directly refuse to renew coverage to
consumers with serious illnesses requiring ongoing treatment. However, Defendants, operating in
concert, appear to be violating the intent and spirit, if not the letter, of the law by targeting
expensive-to-treat consumers with serious illnesses and making the terms of their coverage
potentially unsustainable, by requiring them to either use a dangerous mail order system to obtain

1 their medication that they do not want to use under all circumstances, or requiring them to pay for
2 these medications entirely as an “out of network” payment, even though such payments have been
3 considered “in network” for years.

4 41. Insurance Code section 10133.5, subdivision (a) provides “that insureds have
5 opportunity to access needed health care services in a timely manner” . . . “to assure accessibility
6 of provider services in a *timely manner* to individuals . . . pursuant to benefits covered under the
7 policy or contract” (emphasis added). The purpose of the statute is to insure, among other things,
8 that:

- 9 • “[T]he policy or contract is not inconsistent with standards of *good health care and clinically appropriate care*.” (emphasis added). (Ins. Code § 10133.5(b)(3).)
- 10 • “All contracts including contracts with providers, and other persons furnishing services,
11 or facilities shall be fair and reasonable.” (Ins. Code § 10133.5(b)(4).)

12 42. Regulations promulgated pursuant to Insurance Code section 10133.5 require that
13 “insurers shall ensure that”:

- 14 • “Network providers are duly licensed or accredited and that they are sufficient, in
15 number or size, to be capable of furnishing the health care services covered by the
16 insurance contract, taking into account the number of covered persons, their
17 characteristics and medical needs including the frequency of accessing needed medical
18 care within the prescribed geographic distances outlined herein and the projected demand
19 for services by type of services.” (Cal. Code Regs. Title 10 § 2240.1(b)(1).)
- 20 • “Decisions pertaining to health care services to be rendered by providers to covered
21 persons are based on such persons’ medical needs and are made by or under the
22 supervision of licensed and appropriate health care professionals.” (*Id.* at (b)(2).)
- 23 • “Facilities used by providers to render basic health care services are located within
24 reasonable proximity to the work places or the principal residences of the primary
25 covered persons, are reasonably accessible by public transportation and are reasonably
26 accessible to the physically handicapped.” (*Id.* at (b)(3) [“Basic health care services”
27 include outpatient prescription drug services. (*See* Cal. Code Regs. Title 10 § 2240 (a)).
- 28 • Basic health care services (excluding emergency health care services) are available at
least 40 hours per week, except for weeks including holidays. Such services shall be
available until at least 10:00 p.m. at least one day per week or for at least four hours each
Saturday, except for Saturdays falling on holidays. (Cal. Code Regs. Title 10 §
2240.1(b)(4).)
- “Network provider services are rendered pursuant to written procedures which include a
documented system for monitoring and evaluating accessibility of such care. The

1 monitoring of waiting time for appointments shall be a part of such a system.” (*Id.* at
2 (b)(7) [“Network provider services” means “health care services which are covered under
3 an insurance contract when rendered by a network provider within the service area.”
4 (Cal. Code Regs. Title 10 § 2240(g)].)

5 43. Additionally, regulations promulgated pursuant to Insurance Code 10133.5
6 provide that insurance contracts and Evidences of Coverage shall contain the following (Cal.
7 Code Regs. Title 10 § 2240.2):

- 8 • “A provision that the insurer shall give written notice to the group contract holder, within
9 a reasonable period of time, of any termination or permanent breach of contract by, or
10 permanent inability to perform of, any network provider if such termination, breach or
11 inability would materially and adversely affect the contract holder or covered persons.”
12 (*Id.* at (b).)
- 13 • “A provision that the contract holder shall distribute to the primary covered persons the
14 substance of any notice given to the contract holder pursuant to subsection (b) not later
15 than 30 days after its receipt.” (*Id.* at (c).)
- 16 • “A provision that, pursuant to Insurance Code section 10133.56 upon termination of a
17 network provider contract, the insurer shall be liable for covered services rendered by
18 such provider to a covered person under the care of such provider at the time of
19 termination until such services are completed, unless reasonable and medically
20 appropriate arrangements for assumption of such services by another network provider
21 are made. This provision need not provide that the insurer shall be liable for any services
22 rendered to a covered person after such person ceases to be eligible for coverage under
23 the insurance contract.” (*Id.* at (d).)
- 24 • “A brief and prominent warning reflecting the limitations in the contract pertaining to
25 network provider services. Such warning shall identify, by caption or number, the
26 certificate provisions required by subsections (d), (e) and (f), below.” (Cal. Code Regs.
27 Title 10 § 2240.3(c) [“Network provider services” means “health care services which are
28 covered under an insurance contract when rendered by a network provider within the
service area.” (Cal. Code Regs. Title 10 § 2240(g)].)
- “A provision or attachment identifying all network providers or describing where a
current directory of network providers can be found on the Internet.” (Cal. Code Regs.
Title 10 § 2240.3(d).)

44. Finally, another provision of the California Code of Regulations entitled
“Contracts with Exclusive Providers” requires that

Effective June 30, 2008, contracts between network providers and insurers or
their agents shall: 1) be in writing and be fair and reasonable as to the parties to
such contracts; 2) provide that network providers shall not make any additional
charges for rendering network services except as provided for in the contract
between the insurer and the insured; 3) include all the agreements between the

1 parties pertaining to the rendering of network provider services; 4) recite that the
2 provider’s primary consideration shall be the quality of the health care services
3 rendered to covered persons; 5) **include provisions ensuring that providers shall**
4 **not discriminate** against any insured in the provision of contracted services on the
5 basis of sex, marital status, sexual orientation, race, color, religion, ancestry,
6 national origin, **disability, health status**, health insurance coverage , utilization of
7 medical or mental health services or supplies, or other unlawful basis including
8 without limitation, the filing by such insured of any complaint, grievance, or legal
9 action against a provider.

6 (Cal. Code Regs. Title 10 § 2240.4(a); emphasis added).

7 45. Insurance Code section 10133.56 similarly allows consumers who are in the
8 course of treatment to continue to receive treatment from their provider of choice, including
9 clinical pharmacists, even after the health insurer terminates its contract with the provider:

10 (a) A health insurer that enters into a contract with a professional or
11 institutional provider to provide services at alternative rates of payment
12 pursuant to Section 10133 shall, at the request of an insured, arrange for
13 the completion of covered services by a terminated provider, if the
14 insured is undergoing a course of treatment for any of the following
15 conditions:

14 (1) An acute condition. An acute condition is a medical condition that
15 involves a sudden onset of symptoms due to an illness, injury, or other
16 medical problem that requires prompt medical attention and that has a
17 limited duration. Completion of covered services shall be provided for
18 the duration of the acute condition.

17 (2) A serious chronic condition. A serious chronic condition is a medical
18 condition due to a disease, illness, or other medical problem or medical
19 disorder that is serious in nature and that persists without full cure or
20 worsens over an extended period of time or requires ongoing treatment to
21 maintain remission or prevent deterioration. **Completion of covered**
22 **services shall be provided for a period of time necessary to complete a**
23 **course of treatment and to arrange for a safe transfer to another**
24 **provider**, as determined by the health insurer in consultation with the
25 insured and the terminated provider and consistent with good
26 professional practice. Completion of covered services under this
27 paragraph shall not exceed 12 months from the contract termination date.

23 * * *

24 46. Insurance Code sections 10603 and 10604 require health plans to “provide, in
25 easily understood language . . . and in a uniform, clearly organized manner” information
26 including the “principal benefits and coverage of the disability insurance policy” and the
27 “exceptions, reductions, and limitations that apply to such policy.”

1 51. But for the Program, under the terms of JOHN DOE’s coverage the maximum
2 JOHN DOE would pay for his HIV/AIDS medications is a \$20.00 co-payment for each drug.
3 However, as described above, under the Program if JOHN DOE purchases his HIV/AIDS
4 medications at his retail pharmacy, JOHN DOE’s prescriptions would be subject to the “non-
5 Network Benefit,” requiring JOHN DOE to pay far more for his medications. In fact, JOHN DOE
6 would be required to purchase the medications at *full retail price*—\$1,218.37 each month for his
7 three HIV/AIDS medications—at his retail pharmacy. JOHN DOE would then be required to
8 submit a request for reimbursement from United, an uncertain process that often takes weeks or
9 months to complete. JOHN DOE may receive reimbursement, but not at the full network rate. For
10 all but the wealthiest HIV/AIDS patients, such large out-of-pocket payments with no certainty of
11 immediate reimbursement are untenable. Though it is no conciliation for JOHN DOE, as
12 HIV/AIDS drug regimens go, JOHN DOE’s medications are considered relatively inexpensive.

13 52. JOHN DOE’s experience with OptumRx has confirmed his worst fears. To set-
14 up his first delivery from OptumRx he was told he had to call back a total of three times. First, he
15 called to set-up his OptumRx account; he was told he would have to call back once his HIV
16 prescriptions had been confirmed by his doctor’s office. He called back again—the doctor’s
17 office had confirmed his medications, now he would have to wait for OptumRx “pharmacy
18 specialist” to review his order. The pharmacy specialist was not available for JOHN DOE to talk
19 to; he had to wait and call back again the next day. At this point, JOHN DOE was beyond
20 frustrated. He was running low on medication—which for HIV/AIDS patients is a life-threatening
21 situation, and the added stress of dealing with OptumRx was making his situation unstable.
22 JOHN DOE finally received medications with only a few days’ supply left. He asked to not
23 participate in the Program but was told participation was mandatory. JOHN DOE’s experience
24 with his May medication shipment was much the same: poor customer service, and two phone
25 calls to order refills of the same medications he had ordered just the month before.

26 53. Thus, Plaintiff and others similarly situated are currently facing a Morton’s Fork
27 – be forced to pay thousands of dollars each month out of pocket for medications otherwise
28 covered with their prescription drug health plan, or forego using the pharmacist who understands

1 his or her required regimen and take advice from someone he or she has never met in some
2 undisclosed location.

3 **DEFENDANTS' UNLAWFUL CONDUCT**

4 54. Defendants' practices violate numerous provisions of California law outlined
5 above.

6 55. First, as detailed above, the Program violates Class members' inalienable right to
7 privacy by eliminating their choice to keep their medical condition private by requiring public
8 delivery of their medications.

9 56. The Program violates the Unruh Civil Rights Act, Civil Code section 51, *et seq.*,
10 as the Program targets individuals with specific disease states. Here, Defendants specifically
11 target certain "specialty medicines" that are used to treat serious and chronic health conditions. In
12 fact, due to the specialized nature of the targeted medications, this policy change will only or
13 predominantly impact subscribers with serious medical conditions, and specifically for purposes
14 of this Complaint, persons with HIV/AIDS. Furthermore, the Unruh Act requires "equal
15 accommodations, advantages, facilities, privileges, or services in all business establishments of
16 every kind whatsoever" for all persons regardless of "disability [or] medical condition." The
17 Program would deny equal use of and access to community pharmacists and deny prescription
18 drug benefits due under their health plans for only these people.

19 57. As discussed above, Defendants' actions violate the intent and spirit of Insurance
20 Code sections 10273.6, 10128.50, *et seq.*, and 10901.8, which guarantee that seriously ill
21 consumers may renew their health plan coverage, by making continued enrollment under the
22 terms of the Program untenable. These actions constitute an unlawful constructive eviction from
23 coverage that consumers have a legal right to renew. Although coverage of HIV/AIDS
24 medications is technically provided under the Program, due to the (i) serious health risks
25 associated with the Program, (ii) the Program's threat to Class members' inalienable right to
26 privacy, and (iii) the prohibitively high cost of the medications in the event the consumer opts to
27 continue accessing care at a retail pharmacy, Defendants are, in effect, undermining, and
28 potentially eliminating, access to life-saving medications.

1 58. Defendants’ conduct also violates Insurance Code section 10133.56, which allows
2 consumers who are in a course of treatment to continue to receive treatment from their provider,
3 including clinical pharmacists, even after an insurer terminates the contract with the provider.
4 Under the Program, if a United enrollee chooses to continue purchasing his or her “specialty
5 medications” from their retail pharmacy of choice, they “will be subject to the non-Network
6 Benefit for that Prescription Drug Product.” Therefore, for specialty medications identified by
7 United, Defendants have effectively terminated contracts with JOHN DOE’s provider.
8 Furthermore, HIV/AIDS is a “serious chronic condition” for which Defendants must provide
9 continuity of care under the statute. Here, Defendants have failed to provide the required “period
10 of time necessary to complete a course of treatment and to arrange for a safe transfer to another
11 provider.” Class members have effectively been told that they may no longer continue to have
12 access to the pharmacists that have been providing them care even though their need for that care
13 is on-going.

14 59. United’s health plans violate Insurance Code section 10133.5 because United’s
15 Outpatient Prescription Drug Rider, which United unilaterally and unconscionably inserted into
16 its Certificates of Coverage, is not “fair and reasonable” (See Ins. Code § 10133.5(b)(4)), among
17 other deficiencies. Plaintiff and others similarly situated are suffering from serious illnesses.
18 They purchase health plans from United in the first place to guarantee that they would have
19 coverage in the event that they became ill. They paid their monthly dues on time. State law
20 guarantees that they can renew their coverage indefinitely. However, United has unilaterally
21 adopted the Program, making it difficult for Plaintiff and Class members to remain enrolled in
22 United coverage or forcing them to make unacceptable choices in doing so. In these
23 circumstances, Defendants’ conduct is neither fair nor reasonable.

24 60. Defendants’ conduct also violated Insurance Code section 10133.5 by adopting
25 contract provisions that are inconsistent with *good health care and clinically appropriate care*.
26 (Ins. Code § 10133.5(b)(3).)

27 61. Similarly, Defendants’ conduct violates regulations promulgated pursuant to
28 Insurance Code section 10133.5 because as a result of this conduct:

- 1 • Class members are not provided duly licensed or accredited providers and pharmacists in
2 sufficient number to be capable of furnishing the health care services covered by the
3 insurance contract, taking into account the number of covered persons, their
4 characteristics and medical needs, including the frequency of accessing needed medical
5 care, in violation of California Code of Regulations, Title 10 section 2240.1, subdivision
6 (b)(1.)
- 7 • Decisions pertaining to health care services to be rendered by providers to covered
8 persons are not based on such persons' medical needs and are not made by or under the
9 supervision of licensed and appropriate health care professionals, in violation of
10 California Code of Regulations, Title 10 section 2240.1, subdivision (b)(2).
- 11 • Facilities used by providers to render basic health care services, including outpatient
12 prescription drugs needed to treat HIV/AIDS, are not located within reasonable
13 proximity to the work places or the principal residences of the primary covered persons,
14 are not reasonably accessible by public transportation and are not reasonably accessible
15 to the physically handicapped, in violation of California Code of Regulations, Title 10
16 section 2240.1, subdivision (b)(2).
- 17 • Basic health care services, including the provision of outpatient prescription drugs
18 needed to treat HIV/AIDS and counseling services provided by appropriately licensed or
19 certified medical professionals, are not available at least 40 hours per week, are not
20 available until at least 10:00 p.m. at least one day per week or for at least four hours each
21 Saturday, in violation of California Code of Regulations, Title 10 section 2240.1,
22 subdivision (b)(4).
- 23 • Network provider services, including services provided by network pharmacies and
24 pharmacists, are not rendered pursuant to written procedures which include a
25 documented system for monitoring and evaluating accessibility of such care in violation
26 of California Code of Regulations, Title 10 section 2240.1, subdivision (b)(7).

27 62. Defendants' conduct also violates regulations promulgated pursuant to Insurance
28 Code section 10133.5 requiring that Evidences of Coverage contain provisions regarding network
provider services which United's Evidences of Coverage do not contain, including:

- A provision that the insurer shall give written notice to the group contract holder, within a reasonable period of time, of any termination or permanent breach of contract by, or permanent inability to perform of, any network provider if such termination, breach or inability would materially and adversely affect the contract holder or covered persons, in violation of California Code of Regulations, Title 10, section 2240.2, subdivision (b).
- A provision that, upon termination of a network provider contract, including the contract of a network pharmacy and its pharmacists, the insurer shall be liable for covered services rendered by such provider to a covered person under the care of such provider at the time of termination until such services are completed, unless reasonable and medically appropriate arrangements for assumption of such services by another network

1 provider are made, in violation of California Code of Regulations, Title 10, section
2 2240.2, subdivision (d). Even if Class members' Evidences of Coverage contain such a
3 provision, Defendants' conduct has violated these requirements because United has failed
4 to provide reasonable and medically appropriate arrangements for the assumption of such
5 services.

- 6 • A **brief and prominent warning** reflecting the limitations in the contract pertaining to
7 network provider services, including limitations to network pharmacies' and
8 pharmacists' ability to dispense specialty medications at in-network rates, including
9 provisions required by subdivisions (d), (e) and (f), in violation of California Code of
10 Regulations, Title 10, section 2240.3, subdivision (c).
- 11 • A provision or attachment identifying all network providers or describing where a current
12 directory of network providers can be found on the Internet, in violation of California
13 Code of Regulations, Title 10, section 2240.3, subdivision (d). United has not provided
14 such a provision or attachment.

15 63. Finally, Defendants' conduct violates another provision of the California Code of
16 Regulations, entitled "Contracts with Exclusive Providers," because (1) contracts between
17 network pharmacies and pharmacists and United are not fair and reasonable as to the parties to
18 such contracts; (2) as a result of the Program network pharmacies and pharmacists may be
19 required to charge HIV/AIDS patients additional charges for rendering network services
20 compared to enrollees seeking to fill prescriptions for non-specialty medications; and (3) such
21 contracts include provisions requiring network pharmacies to discriminate against any insured in
22 the provision of contracted services on the basis of sexual orientation, **disability, health status,**
23 utilization of medical or mental health services or supplies, or other unlawful. (Cal. Code Regs.
24 Title 10 § 2240.4(a) (emphasis added). Class members are the intended third-party beneficiaries
25 of the contract between United and its network pharmacies and pharmacists.

26 64. Class members' EOCs also violate Insurance Code sections 10603 and 10604,
27 which require health plans to "provide, in easily understood language . . . and in a uniform,
28 clearly organized manner" information including the "principal benefits and coverage of the
disability insurance policy" and the "exceptions, reductions, and limitations that apply to such
policy." Here, the EOCs misrepresent the coverage under the health plans for the medications in
question, including the prescription drug benefits, as described above, and fail to provide
information about the "exceptions, reductions, and limitations" to the prescription drug benefits
embodied in the Program, as described herein. The EOCs are inconsistent with the Outpatient

1 Prescription Drug Rider, described above, which United unilaterally and unconscionably inserted
2 into Class members EOCs.

3 65. For similar reasons, such conduct also violates various provisions of the
4 Consumers Legal Remedies Act, Civil Code section 1770, because:

- 5 • By adopting the Program after Class members enrolled in coverage, Defendants have
6 “[r]epresented that goods or services have sponsorship, approval, *characteristics*,
7 ingredients, uses, *benefits*, or quantities which they do not have,” in violation of
8 subdivision (a)(5). (Emphasis added).
- 9 • By entering into transactions with Class members for health plans that purportedly allow
10 consumers to purchase their prescription drugs at retail pharmacies, Defendants have
11 “[r]epresent[ed] that a transaction confers or involves rights, remedies, or obligations
12 which it does not have or involve, *or which are prohibited by law*,” in violation of
13 subdivision (a)(14).
- 14 • By unilaterally altering its agreement with Class members by adopting the Program,
15 which dramatically threatens the health and privacy of the Class, Defendants have
16 “[i]nser[ed] an unconscionable provision in the contract,” in violation of subdivision
17 (a)(19).

18 66. By asserting such conduct is lawful when it is not, or that they do not have a right
19 to not participate in the Program when they secretly provide that right to other enrollees,
20 Defendants have also disseminated uniformly misleading information to United enrollees.

21 67. For all these reasons, Defendants must provide Class members the right to not
22 participate in the Program and instead benefit from in-person counseling from a pharmacist in
23 order to receive the services they are entitled to receive. Forcing patients to participate in a
24 mandatory mail order program will cause severe detriment and irreparable harm to Class
25 members. Such conduct is continuing, as Class members either have switched against their will
26 or are presently deciding what actions they must take.

27 CLASS ALLEGATIONS

28 68. This action is brought on behalf of Plaintiff individually and on behalf of all other
similarly situated current California residents pursuant to Federal Rules of Civil Procedure Rule
23. Plaintiff seeks to represent the following class (the “Class”):

All current California residents enrolled in a UHG health plan, including any individual plan, governmental plan, or church plan with prescription drug benefits and who (i) require specialty medications to treat HIV/AIDS and (ii)

either already are or will be required to participate in the Program.⁵

1
2 69. The precise number and identity of Class members are unknown to Plaintiff but
3 as indicated can be obtained from Defendants' records.

4 70. Common questions of law and fact predominate over any individualized
5 questions. Common legal and factual questions include the following:

6 (a) Whether Defendants' conduct violates the laws detailed above;

7 (b) Whether Defendants engaged in an unlawful, unfair, fraudulent,
8 misleading or deceptive business act or practice with regard to implementation of the
9 Program;

10 (c) Whether Plaintiff and Class members are entitled to damages,
11 disgorgement of profits and/or restitution; and

12 (d) Whether Plaintiff and Class members are entitled to an Order enjoining
13 Defendants from engaging in the conduct here at issue.

14 71. For the reasons set forth above, Plaintiff's claims are typical of the claims of the
15 Class in that he has been subjected to the practices at issue. Additionally, Plaintiff has already
16 lost money or property as a result of these acts and practices.

17 72. Plaintiff is willing and prepared to serve the Court and the proposed Class in a
18 representative capacity. Plaintiff will fairly and adequately protect the interests of the Class and
19 has no interests adverse to or which materially and irreconcilably conflict with the interests of the
20 other members of the Class.

21 73. The self-interests of Plaintiff are co-extensive with and not antagonistic to those
22 of absent Class members. Plaintiff will undertake to represent and protect the interests of absent
23 Class members.

24 74. Plaintiff has engaged the services of counsel indicated below who are experienced
25 in complex class litigation, will adequately prosecute this action, and will assert and protect the
26 rights of and otherwise represent Plaintiff and absent Class members.

27 75. A class action is superior to other available means for the fair and efficient

28 ⁵ "UHG health plans" refers to any health plan offered by any UHG subsidiary in the State of California, including but not limited to United and PacifiCare.

1 adjudication of this controversy. The injuries suffered by individual Class members are, while
2 important to them, relatively small compared to the burden and expense of individual prosecution
3 of the complex and extensive litigation needed to address Defendants’ conduct. Individualized
4 litigation presents a potential for inconsistent or contradictory judgments. By contrast, a class
5 action presents far fewer management difficulties; allows the hearing of claims that might
6 otherwise go unaddressed; and provides the benefits of single adjudication, economies of scale,
7 and comprehensive supervision by a single court.

8 76. Defendants have acted or refused to act on grounds generally applicable to the
9 Class, thereby making appropriate final and injunctive relief with respect to the members of the
10 Class as a whole.

11 **FIRST CAUSE OF ACTION**

12 **Violation of Business & Professions Code § 17200, *et seq.* –**

13 **Unlawful Business Acts and Practices**

14 77. Plaintiff incorporates by reference each of the preceding paragraphs as though
15 fully set forth herein.

16 78. Business & Professions Code section 17200, *et seq.* prohibits acts of “unfair
17 competition”, which is defined by Business & Professions Code section 17200 as including “any
18 unlawful, unfair or fraudulent business act or practice. . . .”

19 79. The acts and practices, as described above, violate Business & Professions Code
20 section 17200’s prohibition against engaging in “unlawful” business acts or practices, by, *inter*
21 *alia*, violating the above sections of the Civil Code, Insurance Code, California Code of
22 Regulations, and the other laws as set forth herein.

23 80. Plaintiff and Class members have already been injured and/or will suffer injury in
24 fact and a loss of money or property by Defendants’ unlawful business acts and practices by, *inter*
25 *alia*, spending hours dealing with these issues and either paying or being told they will need to
26 pay and/or by paying increased amounts for such medications, even if covered.

27 81. As a result of Defendants’ violations of the UCL, Plaintiff and Class members are
28 entitled to equitable relief in the form of full restitution and disgorgement of the profits derived

1 from these unlawful business acts and practices.

2 82. Plaintiff also seeks an order enjoining Defendants from continuing these unlawful
3 business practices and from engaging in such conduct.

4 83. THEREFORE, Plaintiff prays for relief as set forth below.

5 **SECOND CAUSE OF ACTION**

6 **Business & Professions Code § 17200, *et seq.* –**

7 **Unfair Business Acts and Practices**

8 84. Plaintiff incorporates by reference each of the preceding paragraphs as though
9 fully set forth herein.

10 85. The acts and practices of Defendants, as described above, and each of them,
11 constitute unfair business acts and practices.

12 86. Defendants' conduct does not benefit consumers or competition. Indeed the harm
13 to consumers and competition is substantial.

14 87. Plaintiff and Class members could not have reasonably avoided the injury each of
15 them suffered based on implementation of the Program, which injury is substantial.

16 88. The gravity of the consequences of Defendants' conduct as described above
17 outweighs any justification, motive or reason therefor and is immoral, unethical, unscrupulous,
18 offends established public policy that is tethered to a legislatively declared policy as set forth in
19 the laws detailed above, or is substantially injurious to Plaintiff and other members of the Class.

20 89. Plaintiff and Class members have already been injured and/or will suffer injury in
21 fact and a loss of money or property by Defendants' unfair business acts and practices by, *inter*
22 *alia*, spending hours dealing with these issues and either paying or being told they will need to
23 pay for such medications and/or paying increased amounts for such medications, even if covered,
24 and receiving lesser benefits.

25 90. As a result of Defendants' violations of the UCL, Plaintiff and Class members are
26 entitled to equitable relief in the form of full restitution and disgorgement of the profits derived
27 from these unfair business acts and practices.

28 91. Plaintiff also seeks an order enjoining Defendants from continuing to engage in

1 such conduct.

2 92. THEREFORE, Plaintiff prays for relief as set forth below.

3 **THIRD CAUSE OF ACTION**

4 **Business & Professions Code § 17200, *et seq.* –**

5 **Fraudulent Business Acts and practices**

6 93. Plaintiff incorporates by reference each of the preceding paragraphs as though
7 fully set forth herein.

8 94. The acts and practices of Defendants as described above constitute fraudulent
9 business practices under Business & Professions Code section 17200, *et seq.*

10 95. As more fully described herein, Defendants' misleading and fraudulent
11 communications are likely to deceive reasonable California consumers into believing they have
12 no reasonably available choice other than to participate in the Program. Class members were
13 additionally deceived regarding United's written announcement of the additional cost of using
14 their pharmacists of choice when doing so is prohibited by law and regarding their statutory
15 rights, or being told by Defendants that they had no ability to not participate in the Program when
16 that right was provided to some, albeit a limited number, of United enrollees. Defendants'
17 misrepresentations and omissions of material fact were material and were a substantial factor in
18 Plaintiff's decision to enroll in OptumRx, and the decision of Class members to either stay with
19 their pharmacist and pay additional money or switch to the Program and risk their health and
20 privacy.

21 96. These acts and practices resulted in and caused Plaintiff and Class members to
22 participate in the Program even though they did and do not desire to do so, not pursue all
23 alternatives, or pay more for medications, or to accept lesser benefits and services than they
24 would have received absent Defendants' conduct. Plaintiff and Class members have already been
25 injured and/or will suffer injury in fact and a loss of money or property as a result of Defendants'
26 fraudulent business acts and practices by, *inter alia*, spending hours dealing with these issues
27 and/or paying increased amounts for such specialty medications, even if covered, and receiving
28 lesser benefits under the Program.

1 **FIFTH CAUSE OF ACTION**

2 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

3 104. Plaintiff incorporates by reference each of the preceding paragraphs as though
4 fully set forth herein.

5 105. Each of the agreements described in this Complaint contain an implied covenant
6 of good faith and fair dealing that is incorporated into all contracts as a matter of law that, *inter*
7 *alia*, such contracts shall be performed and executed consistent with the requirements of
8 California law and enforced in a manner that acts to protect and make effective the interests of
9 Plaintiff and Class members in the having the promises required by agreement and law performed
10 and by ensuring companies do not engage in unfair dealing. No breach of any specific provision
11 of the parties' agreements need be shown in order for Plaintiff to assert this claim.

12 106. Defendants, either separately or by acting in concert, breached this duty of good
13 faith and fair dealing owed to Plaintiff and Class members, and in undertaking such actions
14 frustrated or denied them the benefits of their bargain while charging them the same or higher
15 costs.

16 107. Defendants also breached this duty of good faith and fair dealing owed to Plaintiff
17 and members of the Class by other acts or omissions of which Plaintiff is presently unaware and
18 which will be shown according to proof at trial.

19 108. As a proximate result of the conscious, deliberate and objectively unreasonable
20 conduct of Defendants as set forth above, which conduct was either intended, designed to or did
21 frustrate the rights of Plaintiff and Class members arising out of the purposes of such agreements
22 and their reasonably justified expectations based upon the requirements of the law, Plaintiff and
23 members of the Class have suffered and/or will continue to suffer in the future, damages plus
24 interest, and other economic and consequential damages, in an amount to be proven at trial. As a
25 further proximate result of the conduct of Defendants, Plaintiff was compelled to retain legal
26 counsel and to institute litigation to obtain the benefits of these agreements and covenants for the
27 benefit of themselves and all other Class members.

28

1 **SIXTH CAUSE OF ACTION**

2 **Declaratory Relief**

3 109. Plaintiff incorporates by reference each of the preceding paragraphs as though
4 fully set forth herein.

5 110. An actual controversy over which this Court has jurisdiction now exists between
6 Plaintiff, members of the Class and Defendants concerning their respective rights, duties and
7 obligations under various agreements as set forth herein. Plaintiff desires a declaration of rights
8 under the individual contracts with Class members asserted herein, including whether (1)
9 Defendants may implement the Program; and, (2) if such agreements can unilaterally be modified
10 by Defendants, which declaration may be had before there has been any breach of such obligation
11 in respect to which such declaration is sought.

12 111. Plaintiff and Class members may be without adequate remedy at law, rendering
13 declaratory relief appropriate in that:

14 (a) relief is necessary to inform the parties of their rights and obligations
15 under the agreements asserted herein;

16 (b) damages may not adequately compensate Class members for the injuries
17 suffered, nor may other claims permit such relief;

18 (c) the relief sought herein in terms of ceasing such practices may not be fully
19 accomplished by awarding damages; and

20 (d) if the conduct complained of is not enjoined, harm will result to Class
21 members and the general public because Defendants' wrongful conduct is both
22 threatened as to those Class member who have yet to sign up for the Program and is
23 continuing as to those Class members who desire to not participate in the Program and
24 are currently being denied or not informed of that right. A judicial declaration is therefore
25 necessary and appropriate at this time and under these circumstances so the parties may
26 ascertain their respective rights and duties.

27 112. Plaintiff requests a judicial determination and declaration of the rights of Class
28 members, and the corresponding responsibilities of Defendants. Plaintiff also requests an order

1 declaring Defendants are obligated to not implement the Program as currently in place and
2 provide them the opportunity or decision not to participate in the Program, or pay restitution to all
3 members of the Class as appropriate and pay over all funds Defendants wrongfully acquired
4 either directly or indirectly as a result of the illegal conduct by which Defendants were unjustly
5 enriched.

6 **SEVENTH CAUSE OF ACTION**

7 **Violation of Unruh Civil Rights Act**

8 **(Cal. Civ. Code § 51, *et seq.*)**

9 113. Plaintiff incorporates by reference each of the preceding paragraphs as though
10 fully set forth herein.

11 114. The Unruh Civil Rights Act (“Unruh” or the “Act”), Civil Code section 51(b),
12 provides:

13 All persons within the jurisdiction of this state are free and equal, and no matter
14 what their sex, race, color, religion, ancestry, national origin, disability, medical
15 condition, genetic information, marital status, or sexual orientation are entitled to
16 the full and equal accommodations, advantages, facilities, privileges, or services
17 in all business establishments of every kind whatsoever.

18 115. Defendants’ actions have denied Plaintiff and members of the Class full and equal
19 benefits under their health plans. Defendants also discriminated or made a distinction that denied
20 Plaintiff and Class members full benefits under those health plans.

21 116. Defendants’ actions constitute discrimination on the basis of medical condition,
22 disability, genetic information, and sexual orientation as set forth herein.

23 117. Defendants’ Program results in arbitrary discrimination. While Defendants may
24 assert that requiring seriously ill patients to fill prescriptions for certain expensive drugs through a
25 mail order service is factually and rationally related to providing cost-effective health care, in fact
26 an increased risk of detrimental health outcomes, and loss of personal privacy, associated with
27 mail order pharmacy services may actually *increase costs* and personal hardship over time.
28 Furthermore, community standards in California do not comport with health insurance companies
subjecting enrollees with HIV/AIDS to different and riskier means of obtaining life-sustaining
medications, and thus does not implicate a compelling societal interest, while also reinforcing

1 harmful stereotypes of excluding such persons from the normal societal means of acquiring
2 complex medications. Such arbitrary discrimination has the effect of terminating community
3 pharmacy access to Plaintiff and others similarly situated and would deny them equal and full use
4 and access to these community pharmacy facilities.

5 118. By implementing its new Program, which will effectively terminate community
6 pharmacists from Plaintiff's and Class members' network of service, Defendants have
7 specifically targeted individuals that have a particular chronic disease and intentionally and
8 affirmatively made a distinction or discrimination against such persons on the basis of their
9 specific chronic disease. Such conduct is prohibited by the Unruh Civil Rights Act, Civil Code
10 section 51.

11 119. Plaintiff's and others' specific chronic medical condition and the need to procure
12 expensive medications to treat that chronic condition was a motivating reason for Defendants'
13 conduct in terminating their access to community specialty pharmacies and pharmacists.

14 120. Plaintiff and Class members either will or will continue to be harmed by
15 Defendants' actions through the loss of access to their local pharmacy and specialty pharmacist
16 and their continuity of care as a result of the Program.

17 121. Defendants' conduct has or will cause harm to Plaintiff and all others similarly
18 situated, and is a substantial factor in causing such harm.

19 122. As a proximate result of Defendants' conduct, Plaintiff and Class members are
20 entitled to recover actual, compensatory and statutory damages in an amount to be proven at trial
21 as well as attorneys' fees and costs.

22 123. Plaintiff is seeking to recover the \$4,000 per person minimum damages that Civil
23 Code section 52 imposes for violations of the Unruh Civil Rights Act.

24 124. In addition, Defendants concerted conduct as described herein was intended by
25 them to cause injury to members of the Class and/or was despicable conduct carried on by
26 Defendants with a willful and conscious disregard of the rights of members of the Class,
27 subjected members of the Class to cruel and unjust hardship in conscious disregard of their rights,
28 and was an intentional misrepresentation, deceit, or concealment of material facts known to

1 Defendants with the intention to deprive members of the Class property, legal rights or to
2 otherwise cause injury, such as to constitute malice, oppression or fraud under Civil Code section
3 3294, thereby entitling Plaintiff and members of the Class to exemplary damages in an amount
4 appropriate to punish or set an example of Defendants.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff, individually and on behalf of the Class, prays for relief as
7 follows as applicable for the particular cause of action:

- 8 1. An Order certifying this as a Class and appointing Plaintiff and the counsel listed
9 below to represent the Class;
- 10 2. An Order awarding Plaintiff and the Class restitution and/or disgorgement and
11 such other equitable relief as the Court deems proper;
- 12 3. An Order enjoining Defendants from continuing to implement the Program in
13 violation of applicable law;
- 14 4. An Order awarding Plaintiff and the Class actual, compensatory, statutory and
15 exemplary damages and pre-judgment and post-judgment interest;
- 16 5. An Order awarding Plaintiff's attorneys' fees, expert witness fees and other costs
17 pursuant to, *inter alia*, Code Civ. Proc. section 1021.5; and
- 18 6. An Order awarding such other and further relief as may be just and proper.

19 **JURY DEMAND**

20 Plaintiff demands a trial by jury on all issues so triable.

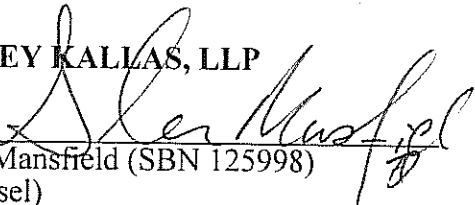
21 DATED: June __, 2013

CONSUMER WATCHDOG

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