STATE OF LOUISIANA

VS.

OPTUMRX, INC. AND
UNITED HEALTHCARE OF
LOUISIANA, INC d/b/a UNITED
HEALTHCARE COMMUNITY PLAN

DIV. DOCKET NO:

19TH JUDICIAL DISTRICT COURT

EAST BATON ROUGE PARISH

STATE OF LOUISIANA

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PETITION FOR INJUNCTIVE RELIEF AND RESTITUTION

NOW INTO COURT, through undersigned counsel, comes the State of Louisiana through the Honorable Jeff Landry, Attorney General, who respectfully represents:

NATURE OF THE ACTION

1.

The Attorney General brings this suit to recover billions of dollars in inflated prescription drug prices charged by the Defendants to the Louisiana Medicaid Program. Defendant OptumRX, Inc. ("Optum") is a pharmacy benefit management organization ("PBM"), who acts as a middleman between pharmacies, drug suppliers, and Medicaid. Together with its co-owned Defendant United Healthcare ("United"), it exploits the secrecy that surrounds the real prices paid for prescription drugs through the supply chain, as well as the complex system of rebates, reimbursements, and other payments that cause health insurers—like the Louisiana Medicaid Program—to needlessly pay billions of dollars more per year for prescription drug benefits than they otherwise would.

2.

In what can only be described as perverse incentive structure, United gets to count overpayments it makes to its wholly owned PBM subsidiary as an "expense" to help United satisfy its statutorily required medical loss ratio. The more these "expenses" are inflated, and the less transparent the billing is to Louisiana Medicaid, the greater the illicit profits for Optum and United.

3.

Defendants not only know that their business models generate overpayments, they count on the complexity of the system to get away with it. For example, multiple layers of contracts mask the fact that when the PBM acts as a middleman, it is really creating "spread"—charging more for a given drug than the amount it reimburses a pharmacy—so that it can pocket the difference. This is just one of several ways that PBMs like Optum use the complexity of the prescription drug system to reap unlawful profits.

4.

The series of relevant contracts governing Defendants' services to the State are discussed in detail herein. Defendants' performance of their duties for the state's Medicaid program is governed by contractual relationships as well as by state law.

5.

In this Petition, the State will reveal problems with the prescription drug pricing structure as a whole, and in particular how those business practices and Defendants' specific conduct constitute continuing and ongoing violations of both contractual obligations to the State of Louisiana and statutory provisions that govern performance, as well as violations of the Louisiana Unfair Trade Practices Act and the Louisiana Medical Assistance Programs Integrity Law.

6.

In addition to other widespread harm associated with these violations, Defendants have caused the State to grossly overpay for Medicaid services in Louisiana by measures of billions of dollars. This suit seeks immediate injunctive relief, restitution, and statutory fines and penalties for these abuses of the public trust by Defendants.

PARTIES

7.

Plaintiff **STATE OF LOUISIANA ("State")** is a sovereign state that fulfills its duties to its citizens through various departments, agencies, and offices as established by law. The Attorney General is given the constitutional and statutory authority to bring actions on behalf of the State and its agencies. This action is brought in the public interest to seek injunctive relief, restitution, and civil penalties against Defendants, and to prohibit it from engaging in conduct, activities, or proposed actions in violation of Louisiana law or of Defendants' contractual obligations.

8.

Defendant **OPTUMRX, INC. ("Optum")** is a foreign corporation registered in Louisiana at 3867 Plaza Tower Dr., Baton Rouge, Louisiana, 70816 and doing business in Louisiana as a Pharmacy Benefit Management ("PBM") company at all times relevant to this action. Its principal place of business is 2300 Main Street, MS CA124-0501, Irvine, California, 92614.

9.

Defendant **UNITED HEALTHCARE OF LOUISIANA, INC. d/b/a UNITED HEALTHCARE COMMUNITY PLAN ("United")** is a domestic corporation registered in Louisiana at 3867 Plaza Tower Dr., Baton Rouge, Louisiana, 70816 and doing business in Louisiana as a Managed Care Organization ("MCO") at all times relevant to this action. Its principal place of business is 3838 North Causeway Blvd, Suite 2600, Metairie, Louisiana, 70002.

JURISDICTION AND VENUE

10.

Defendants are subject to the jurisdiction of this court pursuant to LSA-R.S. 51:1418(A), LSA-R.S. 46:438.1, and relevant contractual terms.

11.

This Court has jurisdiction over the State's claims because they arise exclusively under Louisiana law.

12.

Pursuant to LSA-R.S. 13:3201, this Court has personal jurisdiction over Defendants and venue is proper in this Parish. This Court has personal jurisdiction over Defendants as they conduct business in Louisiana, purposefully direct or directed their actions toward Louisiana, and/or have the requisite minimum contacts with Louisiana necessary to constitutionally permit the Court to exercise jurisdiction. Furthermore, Plaintiff alleges that the Defendants' conduct occurred, at least in part, in East Baton Rouge Parish in the State of Louisiana. Additionally, certain relevant governing contractual provisions dictate proper venue in East Baton Rouge Parish.

LEGAL BACKGROUND

A. The Louisiana Medicaid Program

13.

The Louisiana Medicaid program is a state-administered program with federal matching funds that pays for medical care for Louisiana's low-income and disabled citizens.

14.

Louisiana Medicaid currently covers approximately 1,700,000 individuals.

15.

The Louisiana Medical Assistance Programs Integrity Law, LSA-R.S. 46:437.2, was enacted to combat and prevent fraud and abuse committed within the medical assistance programs.

The Attorney General is given the duty to protect the fiscal and programmatic integrity of the programs from people who engage in fraud, misrepresentation, abuse, or other ill practices to obtain payments to which they are not entitled, and may institute a civil action to seek recovery of actual damages, civil fines, civil penalties, costs, expenses, fees and attorney fees for violations.

16.

As a result of the Defendants' unlawful conduct described herein, the Louisiana Medicaid program has incurred and will continue to incur significant overcharges for prescription drugs.

B. Unfair and Deceptive Trade Practices

17.

Under the Louisiana Unfair Trade Practices Act (LUTPA), LSA-R.S. 51:1401 *et seq.*, unfair and deceptive acts or practices in the conduct of any trade or commerce are declared unlawful. The Attorney General has the power and authority to bring suit against any person believed to have used any method, act or practice declared unlawful under LUTPA.

18.

The Attorney General is authorized to seek injunctive relief, penalties, treble damages, and costs and attorney fees for such violations, and may also seek equitable relief, including restitution, for any aggrieved person.

PHARMACEUTICAL SUPPLY CHAIN AND PBM INDUSTRY BACKGROUND

19.

Most consumer markets are straightforward. Buyers select goods, and payments for those goods are transmitted at points of sale between buyers and sellers for prices they have directly set or negotiated. In contrast, the pharmaceutical market[1] is far more complicated. Each time a consumer fills a prescription, a multi-stage transaction implicating a series of contracts between numerous parties with variable pricing calculations is actually taking place behind the scenes. In this system, the prices each party pays or charges along the way is largely kept secret. This secrecy allows middle-men to exploit the system, unlawfully extracting profits and increasing the costs for the party that ends up paying the final bill—in this case the Medicaid Program.

[1] References herein to pharmaceuticals, the pharmaceutical market, drugs, or the drug market refer solely to the prescription drug market and those medications that are prescribed by a licensed professional and dispensed through a licensed pharmacist.

20.

Pharmaceutical purchases begin with a prescription written by a licensed health care provider and given to a patient. The patient must then seek a licensed pharmacist to dispense the drug. Pursuant to federal regulations and state laws, the pharmacist may (and often must) substitute an approved generic drug[2] when one exists, in lieu of dispensing the more expensive branded drug. Under various health care provider plans, including private insurance and the Medicaid coverage administered by the State, the patient may pay a co-pay or portion of the drug's cost to the pharmacy at the point of sale. The remainder is ultimately covered by the patient's health care plan. The physical possession of a drug flows from the drug manufacturer to a drug wholesaler, who then provides the drug to the dispensing pharmacy.

21.

The first Pharmacy Benefit Manager ("PBM") company was formed in 1968. Through the 1970's and into the 1980's, PBMs served as administrative intermediaries, adjudicating and reconciling claims for the prescription drugs that were filled by pharmacies and reimbursed by health plans.

22.

Today's PBMs contract with—and in some cases share ownership with—drug manufacturers, wholesalers, pharmacies, and health insurance plans. Although they play no role in the physical distribution of prescription drugs, they are involved in every single aspect of the movement of pharmaceuticals within the supply chain, and most importantly, with each financial transaction that takes place when a drug is dispensed.

23.

Due to the disconnect between prescriber, consumer, dispenser, and payor as described in paragraph 20, the payment for a prescription drug is not a simple point of sale transaction between two parties. Nor is it a relatively straightforward reimbursement transaction between the dispensing pharmacy and the ultimate payor health plan. Rather, payments flow through an intricate chain of contracts, with PBMs serving as middlemen in nearly every transaction.

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[2] As early as the 1980's, concern developed regarding the increasing dollars spent on prescription drugs in America, and Congress passed the Drug Price Competition and Patent Term Restoration Act of 1984 ("the "Hatch-Waxman Act") to allow less-costly generic drugs to compete more easily with their branded counterpart. Through a statutory process, the Food and Drug Administration approves a generic drug as therapeutically equivalent to a branded drug. The cheaper generic drug then may be substituted for an expensive branded drug by a pharmacist at the point of sale.

24.

Today PBMs contract with each of the following participants in the pharmaceutical supply and payment chain in the following ways:

(a) PBMs contract with pharmaceutical manufacturers. They negotiate rebates off the cost of a manufacturer's drug in exchange for the placement of that drug on a health plan's formulary.[3] Manufacturers are eager to make these deals in the hopes that they will increase their market share and, ultimately, their profitability. While a portion of the rebate is passed through to the payor health plan, some percentage is retained by the PBM. Each of these contracts are confidential, and their terms are kept secret from the other entities contracting with the PBM.

(b) PBMs contract with health plans such as private insurers and Medicaid Managed Care Organizations ("MCOs"). PBMs establish the drug formularies for the plans and the co-pay amounts in effect for each drug on the plan's formulary, as well as the method of calculation for the plan's payment for a drug and how much it will reimburse a pharmacy for dispensing it. In return the PBM receives administrative fees, but contractual provisions also allow the PBMs to retain certain portions of payments made through other contractual relationships. Some PBMs, including Optum, are owned by or share common ownership with the MCOs with whom they contract.

(c) PBMs contract with pharmacies to establish reimbursement amounts the pharmacy will receive for dispensing each drug. In some instances, the PBM owns or shares common ownership with the pharmacy. Through those relationships and other contracts, a pharmacy may be considered "preferred" for a health care plan and thus operate under a different reimbursement regime. Other pharmacies may be required to contract through a separate entity called a Pharmacy Services Administrative Organization ("PSAO"). The PSAOs contract with the PBM on behalf of those pharmacies, but the contracts between the PSAO and the PBM are confidential and their terms are kept secret from the pharmacies. Many of the PSAOs are owned by or share common ownership with a drug wholesaler. Pharmacies acquire physical possession their inventories through wholesalers, who are paid by pharmacies through a negotiated

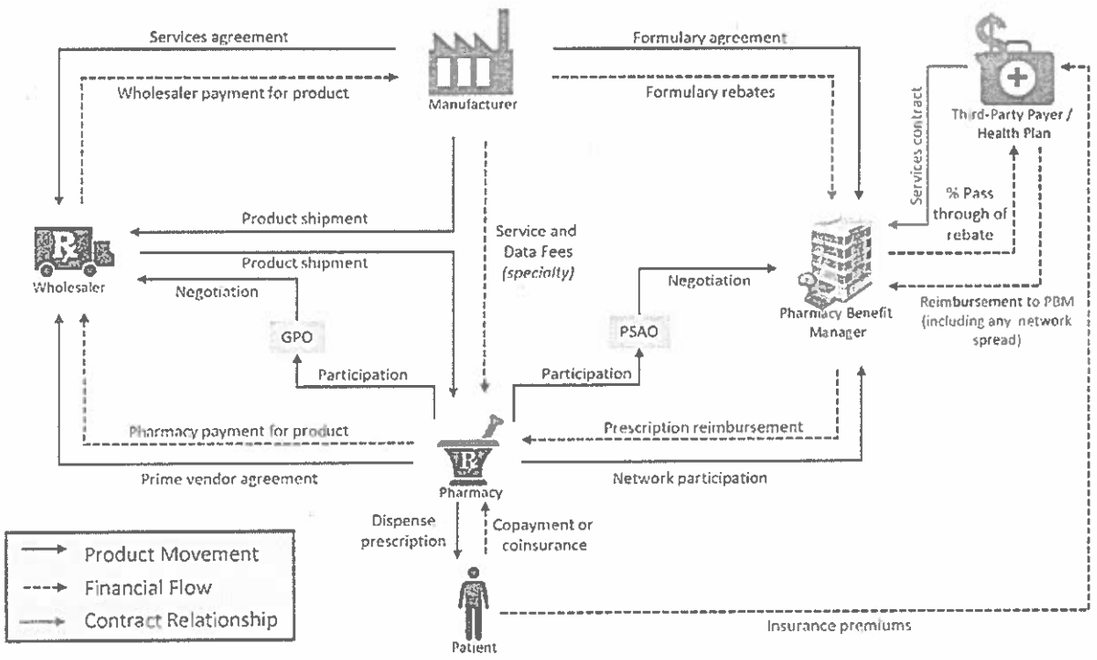
[3] Formularies are the lists of generic and brand name drugs that a health plan will cover—a health plan may only pay for the drugs listed on its formulary.

formula. The pharmacies' reimbursements, however, flow through these contracts with PBMs.

25.

The movement of physical products, payments, and services within the prescription drug supply chain is represented in the following chart.

U.S. Distribution and Reimbursement System: Patient-Administered, Outpatient Drugs



Source: Fein, Adam J., *The 2017 Economic Report on U.S. Pharmacies and Pharmacy Benefit Managers*, Drug Channels Institute, 2017. Chart illustrates flows for **Patient-Administered, Outpatient Drugs**. Please note that this chart is illustrative. It not intended to be a complete representation of every type of financial, product flow, or contractual relationship in the marketplace.
GPO = Group Purchasing Organization; PSAO = Pharmacy Services Administrative Organization

DRUG CHANNELS INSTITUTE

CALCULATING DRUG COSTS

26.

Americans spend more on prescription drugs than anyone else in the world. The country's estimated drug spend is between $350 and $400 billion per year in recent years on retail prescriptions. In Louisiana alone, the pharmacy benefits through the managed care program exceeded costs of over $1.5 billion for the state fiscal year 2020. Not only is the collective spend high, but individual drug costs have also risen exorbitantly, annually outpacing inflation for two decades. Almost 3 in 10 Americans report going without prescribed medications because of cost.

27.

Just as the payment procedures for drugs are not straightforward, neither are the cost calculations. Drug costs are based on prices paid by different parties at different stages in the drug manufacturing, acquisition, and dispensing processes. Because the prices are related to one

another, the prices paid throughout the drug distribution process have an effect on the final cost, including the final price that state Medicaid programs pay.[4]

28.

Manufacturers sell drugs to wholesalers for a contracted amount called the Wholesale Acquisition Cost ("WAC")[5]. Pharmacies purchase these drugs from the wholesalers for amounts that are typically calculated based upon the WAC.

29.

The Average Wholesale Price ("AWP") is the published list price of a drug sold by wholesalers to pharmacies. The AWP plays a prominent role as the starting point for many negotiations and calculations with the payment system, including many health care plan reimbursement rates and patient co-pays.

30.

The Average Manufacturer Price ("AMP"), defined by 42 U.S.C. 1396r-8(k)(1)(A), is the average price paid to manufacturers for direct purchases of a drug from the manufacturer, mostly by wholesalers. The AMP is used to calculate statutory drug rebates for the Medicaid program.

31.

Maximum Allowable Cost ("MAC") is established by the PBM as the maximum allowable cost on which reimbursement to a pharmacy or pharmacist may be based for multi-source brand drugs or generic drugs

32.

Using benchmarks such as WAC, AWP, AMP, MAC, and others, market players negotiate the various contractual costs, prices and reimbursements paid at each stage within the pharmaceutical supply and distribution process. For instance, a health plan may agree to pay a certain pharmacy AWP – 13% for a certain drug under their contract, while a different plan may agree to pay WAC + 5% to the same pharmacy for the same drug.

33.

In this variable method of drug pricing, calculations are dependent upon the specific stage of the transaction, the contractual agreements between certain parties, and price lists (such as AWP) that change on a regular basis. The complexity and variability of the pricing structures

[4] https://files.kff.org/attachment/Issue-Brief-Pricing-and-Payment-for-Medicaid-Prescription-Drugs

[5] Wholesalers rarely actually pay the WAC and often receive rebates or discounts from the manufacturer. However, the WAC is what is reported and used as a benchmark to calculate other costs within the supply chain.

make it challenging for even the participating parties to calculate the amounts owed at the point of the transaction.

34.

PBMs exploit this complexity. Through their contractual relationships with various entities in the system, they negotiate the formulas that will be used to calculate each stage of payment, and become the middlemen through whom each payment flows. The terms of their contracts are confidential, and so the formulas used to calculate one side of the payment/cost equation are unknowable to the parties operating on the other side of the equation.

35.

Thus, for each prescription drug dispensed in the United States, there are multiple price calculations taking place:

(a) AWP benchmark established by manufacturer;

(b) WAC benchmark established by manufacturer;

(c) Actual price paid by drug wholesaler, usually based upon WAC and discounted for volume;

(d) Actual price paid by dispensing pharmacy to wholesaler;

(e) Reimbursement paid to pharmacy by PBM, set by contract with a PBM and usually calculated based upon AWP minus a percentage, plus a dispensing fee or the MAC price plus a dispensing fee. These amounts are highly dependent upon the status of a pharmacy as a major retailer with an associated PBM (thus enjoying the benefit of the PBM's purchasing power and status as a preferred pharmacy) or an independent pharmacy and, per the PBM contracts, the PBM may "clawback" portions of the patient's copay when the copay exceeds the pharmacy's contracted rate for the drug[6];

(f) Amount collected by PBM from health plan for reimbursement, set by contract between plan and PBM, dependent upon the drug's formulary placement by the PBM, and often influenced by PBM's rebate contracts with manufacturers;

(g) Adjustment to the calculated costs to account for manufacturer's volume rebate due to contract between manufacturer and the PBM; and

[6] These clawbacks occur at the end of a year or quarter, and are calculated using the average for all payments to a pharmacy to determine whether those aggregate average amounts exceed an agreed upon average; clawbacks are not tied to a single claim, but rather are calculated by the PBM using data that only the PBM possesses, and are used to offset future payments to the pharmacy.

(h) Aggregate performance guarantees to the health plan typically calculated using a discount off of AWP.

36.

It is within the last four calculations—the reimbursement paid to the pharmacy, the amount collected from the health plan, the rebates paid by the manufacturers, and performance guarantees—that PBMs are able to take advantage of the lack of transparency in their contracts to retain excess profits for themselves.

37.

As the major market forces in setting pharmaceutical prices—over 80% of prescriptions in the United States flow through the three biggest companies—PBMs have no incentive to seek lower drug prices. In fact, the higher that drug prices soar, the greater the PBM's ability to negotiate charges and reimbursements that create a "spread"—the difference between the amount charged to the plan and the amount paid to the pharmacy for a particular prescription. The spread is retained by the PBM, so higher prices can mean greater spread, which generates greater profit to the PBMs.

38.

Rebates influence spread as well—although seemingly rebates should operate solely to drive costs down, in reality it is the higher priced name brand drugs who offer rebates. Those drugs become disproportionately dispensed in order for the PBM to fulfill their end of the rebate bargain with the manufacturer. The higher drug prices are passed through to the plan, but the PBMs collect and retain a portion of the rebates. Studies have shown that the rebate amounts do not adequately compensate for the inflated prices branded drugs carry compared to their generic equivalents.

39.

Spread pricing was made explicitly illegal in Louisiana effective July 1, 2020 under LSA-R.S. 22:1867 and R.S. 40:2870 without the statutorily prescribed written notice. Under those statutes, any violation that is committed or performed with such frequency as to indicate a general business practice shall be subject to the provisions of the Louisiana Unfair Trade Practices Law, LSA-R.S. 51:1401 *et seq.* Likewise, MAC list manipulation is deemed and unfair and deceptive practice. LSA-R.S. 22:1865, et. seq. and R.S. 40:2870 et seq. Prior to the enactment of those laws,

spread pricing also frequently ran afoul of the duty of good faith and fair dealing, as well as contractual covenants and guarantees.

40.

Due to the secrecy of all PBM contracts, spread pricing and other PBM pricing schemes are difficult to detect and rebate amounts are confidential. However, they ultimately drive-up total drug costs and healthcare prices.

LOUISIANA MEDICAID PROGRAM AND UNITED/OPTUM CONTRACTS

41.

The Louisiana Medicaid program is administered by the State through the Louisiana Department of Health ("LDH"). In 2012, LDH implemented a Medicaid "managed care" model to provide healthcare benefits to Medicaid beneficiaries. Under this model, LDH contracts with Managed Care Organizations, or MCOs. These MCOs act as insurance plans for Medicaid participants, and the State pays a capitated rate to the MCO for each enrollee that participates in that MCO's plan.

42.

Capitated rates are akin to insurance premiums per enrollee. The rates are set by actuarial calculations that take into account the reported spending over prior time periods.

43.

The State currently holds contracts with five MCOs, one of which is UnitedHealthcare of Louisiana, Inc., d/b/a UnitedHealthcare Community Plan ("United"). United has provided MCO services to the State during the entire relevant time frame.

44.

The State's contracts with the MCOs permit the companies to subcontract the provision of prescription drug benefits to third party PBMs, which United has chosen to do. United's subcontractor PBM handling prescription drug coverage for its Louisiana Medicaid enrollees is the Defendant, Optum. Optum is owned by UnitedHealth Group, who also owns UnitedHealthcare.

45.

Pursuant to section 4.7.4.2-3 of the State's contract with United, any subcontractors hired by United are required to abide by the terms and conditions of United's contract with the State and

with all applicable laws and regulations. These terms and conditions include, but are not limited to:

(a) Complying and cooperating with information requests from the State as described in the several following paragraphs, including permitting the State to inspect all books and records pertaining to services rendered under the contract;

(b) Negotiating ingredient cost reimbursements and updating those reimbursements at least weekly and within 3 business days of new rates being posted from the source of choice;

(c) Basing MAC price lists on generic drugs with FDA rating beginning with an A;

(d) Making drug pricing lists available for pharmacies to review;

(e) Refraining from charging pharmacy providers claims processing or provider enrollment fees;

(f) Retaining records for pharmacy claims processing;

(g) Submitting all drug encounters to LDH pursuant to certain contractual requirements and allowing LDH or its vendor to submit the encounters for federal supplemental pharmacy rebates from manufacturers under the authority of the LDH secretary;

(h) Submitting a weekly claim-level detail file of pharmacy encounters to LDH which includes individual claim-level detail information on each pharmacy claim dispensed, including but not limited to total number of metric units, dosage form, strength and package size and NDC code;

(i) Paying prescription claims in accordance with the contract between United and the State;

(j) Identifying the proposed PBM and ownership of the proposed PBM;

(k) Obtaining LDH approval before entering into subcontract with the PBM;

(l) Submitting a written description of the assurances and procedures that must be put in place under the proposed PBM subcontract, such as independent audit, and ensuring no conflicts of interest exist;

(m) Providing a plan documenting how the MCO will monitor PBM subcontractors prior to the date pharmacy services begin;

(n) Having an automated claims and encounter processing system for pharmacy claims that will support the requirements of the contract and ensure the accurate and timely processing of claims and encounters;

(o) Ensuring that the manufacturer number, product number, and package number for the drug dispensed be listed on all claims and taken from the actual package from which the drug is usually purchased, from a supplier whose products are generally available to all pharmacies and reported in one or more national compendia;

(p) Limiting compensation for PBM services to a transaction fee not to exceed $1.25 per claim, which shall cover non-claim costs exclusive of amounts paid to a pharmacy for a prescription, including the ingredient cost, dispensing fee and provider fee;

(q) Excluding any rebates or discounts, direct or indirect, from any pharmaceutical manufacturer from the PBM contract;

(r) Excluding any "spread pricing," defined as any amount charged or claimed by a PBM to a MCO that is in excess of the amount paid to the pharmacy for a prescription, including the ingredient cost, provider fee and dispensing fee; and

(s) Reporting to LDH all transactions with a party in interest as defined by section 1903(m)(4)(A) of the Social Security Act, which refers to Section 1318(b) of the Public Health Services Act defines a party in interest as any entity under common control with the MCO.

46.

Pursuant to section 4.7.5 of the State's contract with United, the State, including LDH and the Attorney General and their designees, shall have the right to audit, evaluate, and inspect any records or systems that pertain to any activities performed or amounts payable under the contract and specifically under any major subcontract at any time. United and Optum are also required to make their records and systems available for the purposes of any audit, evaluation, or inspection.

47.

Pursuant to section 5.15 of United's contract with the State, "the MCO must disclose all financial terms and arrangements for remuneration of any kind that apply between the MCO or the MCO's PBM subcontractor and any prescription drug wholesaler, manufacturer or labeler, including, without limitation, formulary management, educational support, claims processing, pharmacy network fees, drug product sales or pricing agreements, data sales fees, and any other fees. Section 16 of this contract provides that LDH or state auditors may audit such information at any time."

48.

Section 7.13.12 of United's contract with the State provides that "all contracts and/or agreements between a MCO and its subcontractors and/or providers shall provide that the contractor, subcontractor and/or provider shall comply, within a reasonable time, with any information, records or data request from any healthcare oversight agency, including the Louisiana Office of the Attorney General," and further states that "[T]his requirement **shall be** (emphasis added) inclusive of contracts or subcontracts with entities who manage or coordinate…benefits for Medicaid beneficiaries on behalf of the MCO but do not directly provide the service to Medicaid beneficiareies: such as the MCO's subcontracted PBM." Moreover, the MCO contractor, subcontractor and/or provider agrees that it **shall not require** the MFCU[7] to enter into any contract, agreement or memorandum to obtain the requested information and that "this contract creates for the healthcare oversight agency an enforceable right for which the healthcare oversight agency can petition the court in the event of non-compliance with an information, records or data request."

49.

Section 15.1.4 of United's contract with the State provides that "the MCO and its providers and subcontractors shall make all program and financial records and service delivery sites open to the representative of any designees…HHS, LDH…the Office of the Attorney General, and/or the designees of any of the above shall have timely and reasonable access and the right to examine and make copies, excerpts or transcripts from all books, documents, papers, and records which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions…"

50.

Pursuant to Section 15.1.18 of United's contract with the State, "the MCO and its subcontractors shall cooperate with all appropriate state and federal agencies, including MFCU, in investigating fraud and abuse."

51.

Section 15.1.18.9 of United's contract with the State provides that "the MCO and its subcontractors shall cooperate fully in any further investigation or prosecution by any duly

[7] "MFCU" is the Medicaid Fraud Control Unit, a section of the Office of the Louisiana Attorney General. MFCU's are mandated by 42 U.S.C. 1369(b) (Title XIX §1903 of the Social Security Act) for all states that participate in the Medicaid program, and are created for the purpose of conducting statewide investigations and prosecutions of all applicable State laws regarding any and all aspects of fraud in the Medicaid program. For the purposes of the Medicaid program, the MFCU is a healthcare oversight agency.

authorized government agency, whether administrative, civil, or criminal. Such cooperation shall include providing, upon request, information, access to records, and access to interview…"

52.

In September, 2021, designees of the Office of the Attorney General ("OAG") began receiving MCO and MCO-PBM contracts from LDH pursuant to the Attorney General's request that such contracts be reviewed for compliance and for potential fraud, waste and abuse. The following timeline relates to the OAG's request for documents from United and Optum:

(a) In October, LDH informed the OAG that United was requiring execution of a confidentiality agreement before it would permit its unredacted documents be provided to the OAG, contrary to the requirements of its contract per section 7.13.12.

(b) A conference call was held between the OAG and United's counsel, and on November 9, 2021, counsel for United sent the OAG a proposed confidentiality agreement.

(c) The OAG returned a redline on November 11, 2021.

(d) Further revisions were circulated on December 1, 2021.

(e) On December 13, 2021, United's counsel indicated that all revisions were accepted and on December 16th the OAG returned the executed agreement to United.

(f) On January 10, 2022, the OAG requested that United's counsel provide a status of the matter and a timeline for receipt of the requested documents.

(g) On January 11, United responded that the executed agreement had been received and that counsel would have the documents to the OAG that morning.

(h) On January 12, United transmitted the countersigned agreement, and requested additional signatures from the OAG.

(i) On January 13, the OAG returned the agreement with the requested additional signatures.

(j) On January 19, United's counsel offered that he was "working with someone on this now" and stated that he should have it over to the OAG "soon."

(k) On January 26, the OAG again requested that United's counsel provide a status of the matter and a timeline for receipt of the requested documents.

(l) On January 31, United's counsel responded that he did not have a specific "ETA" yet, but that they were gathering documents and expected to be able to transmit them in the near future.

(m) That same day, the OAG responded that the document requests originated in mid-September and asked United to identify with specificity what documents were still being gathered. The OAG suggested that a phone call would be helpful to discuss any genuine issues related to the timeliness of United's production.

(n) United provided no response to the OAG's request or suggestion until February 25, 2022, when counsel for United transmitted ten documents to the OAG.

(o) Of the 2,191 pages contained in those ten documents, 1,816 pages or 83% are fully redacted.

53.

Due to the events described in paragraph 52, the State is still not in possession of accurate, complete, and signed copies of United's contract with Optum.

54.

An unsigned, incomplete, and yet-unverified-as-final copy of a contract between United and Optum, however, suggests that the following provisions relate to Optum's provision of services to the State:

(a) Optum shall be responsible for determining and complying with all applicable laws and regulations;

(b) Optum shall maintain accurate, complete and timely books and records of all transactions occurring as part of its furnishing of services;

(c) Optum and United shall each permit any governmental authority or its designees to inspect, evaluate and audit the facilities, offices and records related to their performance;

(d) Optum and United shall cooperate and comply with any governmental audit;

(e) Optum must comply with state-specific laws and regulations set forth in Exhibit E of the contract, which is not present in the incomplete copy in possession of the State;

(f) Optum shall establish and maintain a custom network of pharmacies to service the plan, in compliance with all applicable laws and regulations;

(g) Optum shall be compensated by United as set forth in Exhibit C-1 (which is missing or appears to be at least partially redacted from the incomplete copies in the possession of the State);

(h) Optum shall operate and support an on-line claims processing system that operates in real-time, effecting point-of-sale communications with network pharmacies to ensure accurate and timely adjudication and payment of all prescription claims submitted by a network pharmacy on behalf of its members;

(i) Optum understands that United will implement a formulary for use with the benefit plan and that the formulary, along with applicable cost-sharing amounts for prescription drugs on the formularies, and each will comply with the formulary requirements;

(j) Optum shall assist in the development and management of the formularies, shall provide support services in connection with the formularies, and shall administer the formularies in accordance with the coverage terms and conditions of the applicable benefit plan and all laws and regulations;

(k) Optum acknowledges that United shall have the right to contract directly with drug manufacturers if, in its sole discretion, United decides to do so. In the event of such direct contract with a drug manufacturer, any minimum rebate guarantees set forth on Exhibit C-1 **(missing or partially redacted from the incomplete copy of the contract in the possession of the State)** shall not apply. Optum agrees to administer, on behalf of United, the terms and conditions of the United rebate agreements;

(l) If United does not contract directly with a manufacturer, Optum agrees that United shall be permitted to participate in Optum's rebate agreements;

(m) Optum agrees to work collaboratively with United to support rebate contracting specific to United's needs as dictated by the benefit plan's unique drug coverage strategy;

(n) Optum, in its sole and absolute discretion, shall enter into rebate agreements with drug manufacturers on behalf of its clients that have drugs on Optum or its clients' formularies. United shall only participate in rebate agreements with drug manufacturers when United satisfies the minimum contract criteria and has decided to place the manufacturer's drug on a formulary;

(o) Optum shall provide United with access to the terms of applicable rebate agreements and complete transparency of all rebates and administrative fees received from manufacturers by administrator based on United member utilization under such rebate

agreements. If the rebate agreement contains restrictions preventing Optum from providing United with access to such information, Optum shall use commercially reasonable efforts to obtain the manufacturer's consent to disclose such information;

(p) Optum shall collect rebates and pass through 100% of the rebate revenue to United, and shall comply with various reporting requirements regarding the rebate revenue collected and owed; and

(q) Optum, in its capacity as a mail order pharmacy, shall receive certain discounts and rebates from manufacturers that it may retain and not pass through to United.

55.

Although the contractual provisions seem to give the State sufficient oversight for the administration of Medicaid pharmacy benefits to ensure that drug spending is not improperly inflated, in reality the State lacks access to the data necessary to calculate the true drug costs being paid on a prescription-by-prescription basis due to the additional layer of contracts and transactions stemming from the use of a PBM.

56.

Requests to United for documents and data related to the additional layer of contracts and transactions stemming from its use of Optum as PBM has been met with resistance, delays, and incomplete responses as described in paragraph 52, which is not in compliance with the contractual provisions mandating cooperation and production of records as detailed in paragraphs 45 – 51.

57.

Information available to the State, however, indicates that Optum is engaging in spread pricing practices, failing to pass through rebate amounts, and entering into contracts with terms that do not benefit the state Medicaid program due to the misalignment of incentives in the pharmaceutical supply chain that drive prices higher through utilization of PBMs.

58.

Specifically, upon information and belief, Defendants have exploited the lack of transparency in the market for prescription drugs to overcharge the state for prescriptions, including but not limited to various forms of "spread" pricing and other deceptive conduct as follows:

(a) Charging the State more for prescription drugs than the amounts they reimburse pharmacies and keeping the difference;

(b) Reclassifying generic drugs as branded drugs by implicating their contracts with the branded drug manufacturers, paying the pharmacies generic drug reimbursement rates while charging the MCOs higher branded rates, and keeping the difference;

(c) Switching between different versions of the same generic drug, charging the MCO for the more expensive generic while reimbursing the pharmacies for the less expensive generic and keeping the difference;

(d) Charging the State higher costs for generic drugs than their average wholesale acquisition price;

(e) Deceptively inflating contractual dispensing fees;

(f) Clawing back "rebates" from pharmacies but failing to account for or credit these refunds to the State.

MEDICAL LOSS RATIO

59.

In addition to the contractual provisions binding United and Optum's performance of their services to the State, certain statutory requirements also apply. Under federal law, health insurers must abide by a "Medical Loss Ratio" ("MLR") standard,[8] meaning that the government dictates what percentage of dollars paid in health insurance premiums by consumers must be used on actual health care costs. The Affordable Care Act requires insurers to submit data on the proportion of premium revenues spent on clinical services and quality improvement and mandates that 80-85% of premium revenues must be spent on health care (as opposed to administrative costs, including executive salaries and profits). When insurers do not meet this standard, they are required to issue rebates to enrollees.

60.

This requirement also applies to MCOs like United. Therefore, for every dollar paid by the State to United on the capitated rate per Medicaid enrollee, 80-85 cents must be used to pay for actual medical expenses and health improvements.

61.

When United pays Optum, those expenditures are counted as health care expenditures for pharmaceutical drug coverage and contribute to United's 80-85% MLR requirement. Since United

[8] https://www.cms.gov/CCIIO/Programs-and-Initiatives/Health-Insurance-Market-Reforms/Medical-Loss-Ratio https://www.macpac.gov/wp-content/uploads/2022/01/Medical-loss-ratio-issue-brief-January-2022.pdf

and Optum are jointly owned, however, any retained spread, rebates, or other forms of profit that benefit Optum also benefit United. Since only United is required to abide by the MLR requirement, inflating the drug costs paid to Optum actually helps United meet its MLR but does not create an actual loss to their parent company. Under this scheme, inflated payments to Optum are additional profits for United, yet are counted as costs for purposes of meeting the MLR.

CLAIMS FOR RELIEF

I. First Cause of Action: Breach of Contract

62.

Plaintiff realleges and incorporates by reference each of the allegations contained in the preceding paragraphs as though fully alleged herein.

63.

The contracts between the State of Louisiana, Department of Health and United and between United and Optum were and are valid and enforceable contracts.

64.

Plaintiff has fully performed or tendered all performance required under those contracts.

65.

Pursuant to both contracts, United as an MCO and Optum as a PBM subcontractor are and were required to comply with all laws and regulations applicable to the work they performed.

66.

In the course of its business practices regarding the provision of MCO services to the state Medicaid program, Defendants have violated the terms of United's contract with the State of Louisiana.

67.

United's repeated and continuing violations of its contract include:

a. Failure to abide by its contractual terms relating to the right of the State and its designees to access and inspect documents;

b. Failure to ensure adherence to applicable state laws, including but not limited to those discussed with specificity in other counts;

c. Failure to abide by its contractual terms relating to its duty to properly supervise any subcontractor, including its PBM subcontractor Optum;

d. Failure to abide by its contractual terms relating to its duty to ensure that any subcontractor, including its PBM subcontractor Optum, abides by the terms of its own contract with the State;

e. Failure to provide the necessary documentation to the State regarding its subcontract with Optum;

f. Failing to ensure that its subcontractor PBM Optum fully disclosed the method and amount of compensation or other consideration that Optum received from United or from any other source in relation to the services it provided relative to the Louisiana Medicaid program;

g. Using false, deceptive, and/or misleading reports and calculations to misrepresent the costs of pharmacy services ultimately paid through the state Medicaid program

h. Failure to abide by its contractual terms relating to the payment of rebates and reimbursements for pharmaceutical products;

i. Receiving payments in a greater amount than that to which it was entitled;

j. Failure to abide by its contractual terms related to conflicts of interest; and

k. Knowingly inflating pharmacy cost information to the State as part of a deceptive scheme designed to maximize the profitability of its parent company, United Healthcare Group, at the expense of the Louisiana Medicaid program and the citizens of the State of Louisiana.

68.

Optum's repeated and continuing violations of its contract include:

a. Failure to abide by the contractual terms relating to the right of the State and its designees to access and inspect documents;

b. Failure to ensure adherence to applicable state laws, including but not limited to those discussed with specificity in other counts;

c. Failure to abide by the terms of the State's contract with United, as required for any subcontractor to that contract;

d. Failure to provide the necessary documentation to the State regarding its subcontract with United;

e. Failing to fully disclosed the method and amount of compensation or other consideration that it received from United or from any other source in relation to the services it provided relative to the Louisiana Medicaid program;

f. Using false, deceptive, and/or misleading reports and calculations to misrepresent the costs of pharmacy services ultimately paid through the state Medicaid program

g. Failure to abide by its contractual terms relating to the payment of rebates and reimbursements for pharmaceutical products;

h. Receiving payments in a greater amount than that to which it was entitled;

i. Failure to abide by its contractual terms related to conflicts of interest; and

j. Knowingly inflating pharmacy cost information to the State as part of a deceptive scheme designed to maximize the profitability of its parent company, United Healthcare Group, at the expense of the Louisiana Medicaid program and the citizens of the State of Louisiana.

69.

These as well as other actions and omissions constitute breaches of United's and Optum's duties under their contracts pertaining to the provision of pharmacy services to the Louisiana Medicaid program.

70.

Pursuant to its contract with the State, United is liable for breaches of contract committed by its subcontractors, including Optum.

71.

As a result of the breaches described herein, Plaintiff has been damaged financially in that the Louisiana Medicaid Program has expended billions of dollars which, in the absence of these breaches, it would not have expended.

72.

Optum and United are legally responsible for the totality of the financial damages suffered by Plaintiff as a result of the breaches of contract committed by United and Optum.

II. Second Cause of Action: Violations of the Louisiana Unfair Trade Practices Act (LUTPA)

73.

Plaintiff realleges and incorporates by reference each of the allegations contained in the preceding paragraphs as though fully alleged herein.

74.

Plaintiff, the State of Louisiana, on behalf of itself and its citizens, seeks injunctive relief, damages, restitution, and other equitable relief such as disgorgement, and penalties against Defendants under the Louisiana Unfair Trade Practices Act, LSA-R.S. 51:1401 *et seq.* ("LUTPA"). Plaintiff maintains that Defendants' business practices were and are unfair, unscrupulous, oppressive, contrary to established public policy, and substantially injurious to the state fisc, the public welfare, and to all citizens of the State.

75.

Defendants' repeated and continuing violations of LUTPA include:

a. Intentionally and falsely misleading the State regarding the costs and amounts paid for pharmacy services under the State-United contract and the United-Optum contract;

b. Creating an opaque system of contracts regarding the provision of pharmacy services through the State Medicaid Program such that payments and services can be misrepresented and hidden due to the lack of transparency in the system;

c. Using deception to obtain or attempt to obtain payments under the Medicaid program to which they were not entitled;

d. Receiving payments to which they were not entitled;

e. Receiving payments in a greater amount than that to which they were entitled;

f. Failing to provide clear and accurate reports and accounting for pharmacy services such that the State could adequately supervise the execution of Defendants' contractual obligations;

g. Deceptively labeling payments and misrepresenting amounts paid and reimbursed in reports to the State in order to create and benefit from additional "spread" pricing;

h. Conspiring as related parties to divert funds from United to Optum in order to meet United's obligations under the Medical Loss Ratio provisions of the Affordable Care Act while overcharging the State of Louisiana for pharmacy services;

i. Establishing spread pricing through frequent and continued regular business practices in violation of LSA-R.S. 22:1867 and R.S. 40:2870;

j. Manipulation of MAC list in violation of LSA-R.S. 22:1865 and R.S. 40:2870;

k. Engaging in business practices that result in higher AWP and other benchmark prices, which serves to continuously increase drug prices over time; and

l. Engaging in business practices that cause the State's Medicaid program costs to increase over time.

76.

Defendants' continuing and systematic business practices meant to manipulate the State's payment for pharmaceutical services through the Medicaid program are likely to mislead reasonable persons and thus constitute deceptive acts or practices.

77.

Defendants' continuing and systematic business practices meant to manipulate the State's payment for pharmaceutical services through the Medicaid program are likely to cause substantial harm to the State that is not outweighed by any countervailing benefit and which are unethical and against public policy and thus constitute unfair acts or practices.

78.

All actions described herein create potential for further financial harm to the State and its citizens through the increased costs of health care.

79.

The practices alleged herein constitute a pattern of unfair and deceptive trade practices in violation of LSA-R.S. 51:1405.

80.

Pursuant to LSA-R.S. 51:1407(A), the Attorney General has the right to seek injunctive relief to restrain Defendants' violations of the LUTPA.

81.

Pursuant to LSA-R.S. 51:1407(B) and (C), the Attorney General has the right to seek civil penalties for each violation, including enhanced civil penalties for violations committed with the intent to deceive.

82.

Pursuant to LSA-R.S. 51:1408, the Attorney General may seek any relief necessary to compensate any aggrieved persons for any loss resulting from Defendants' violations of the LUTPA.

III. Third Cause of Action: Violations of Louisiana Medical Assistance Programs Integrity Law (MAPIL)

83.

Plaintiff realleges and incorporates by reference each of the allegations contained in the preceding paragraphs as though fully alleged herein.

84.

By virtue of the acts alleged above, Defendants' conduct violates the MAPIL, LSA-R.S. 46:437.1 *et seq.* Specifically, Defendants' fraudulent and false claims, misrepresentations, illegal remuneration, and defrauding of the State medical assistance programs as set forth above constitute violations of LSA-R.S. 46:438.3.

85.

Defendants knowingly caused false and fraudulent claims for reimbursement from the State's Medicaid program to be submitted for prescription drugs whose costs it knew were being manipulated and misrepresented through a series of opaque contracts that Defendants themselves designed in violation of LSA-R.S. 46:438.3(A).

86.

Defendants knowingly engaged in misrepresentation or made, used or caused to be made or used false records or statements material to cause false and fraudulent claims for reimbursement from the State's Medicaid program to be submitted for prescription drugs whose costs it knew were being manipulated and misrepresented through a series of opaque contracts that Defendants themselves designed in violation of LSA-R.S. 46:438.3(B).

87.

Defendants manipulated and falsified reimbursement records in order to cause false and fraudulent claims for reimbursement from the State's Medicaid program to be submitted for prescription drugs whose costs it knew were being manipulated and misrepresented through a series of opaque contracts that Defendants themselves designed in violation of LSA-R.S. 46:438.3(C).

88.

Defendants acted in concert to engage in misrepresentation to cause false and fraudulent claims for reimbursement from the State's Medicaid program to be submitted for prescription drugs whose costs it knew were being manipulated and misrepresented through a series of opaque contracts that Defendants themselves designed in violation of LSA-R.S. 46:438.3(D), including (a) conspiring to defraud Medicaid through misrepresentation; (b) conspiring to defraud Medicaid by obtaining or attempting to obtain payment for a false or fraudulent claim; (c) attempting to defraud Medicaid through misrepresentation; and (d) attempting to defraud Medicaid by obtaining or attempting to obtain payment for a false or fraudulent claim.

89.

Defendants have fraudulently concealed the true costs of pharmaceutical products provided under their contracts with the State. Defendants have manipulated records and have refused to comply with contractual provisions that mandate transparency and access to records and data that would show the overpayments they have caused the State to pay.

90.

As the actual and proximate result of Defendants' violations of MAPIL, as outlined above, the State has suffered actual damages in excess of the jurisdictional amount established by LSA-R.S. 46:438.3(G), which will be determined at trial.

91.

In addition to actual damages, pursuant to LSA-R.S. 46:438.6(A), the State is entitled to all civil fines and penalties proscribed in LSA-R.S. 46:438.6(B) and related sections, since Defendants have violated the State's prohibitions against fraudulent claims as outlined above.

92.

In addition to the actual damages provided in LSA-R.S. 46:438.6(A) and the civil fines imposed pursuant to 438.6, Defendants shall further pay to the State all civil fines, penalties, interest, costs, and attorneys' fees provided by LSA-R.S. 46:438.6(C) and (D) and related sections.

IV. Fourth Cause of Action: Unjust Enrichment

93.

Plaintiff realleges and reincorporates by reference each of the allegations contained in the preceding paragraphs as though fully alleged herein.

94.

In the alternative, Defendants have benefited from the grossly inflated prices for pharmaceutical products resulting from the unlawful and inequitable acts alleged herein.

95.

The State has conferred on Defendants an economic benefit, in the nature of profits resulting from the grossly inflated prices paid for pharmaceutical products and the increase in the State's capitated rate payments, to the economic detriment of the State.

96.

The economic benefit derived by Defendants is a direct and proximate result of Defendants' unlawful practices.

97.

The financial benefits derived by Defendants rightfully belong to the State, as the State incurred the costs of the grossly inflated prices paid for pharmaceutical products.

98.

It would be inequitable for Defendants to be permitted to retain any of the profits derived from their unfair and unconscionable methods, acts and practices alleged herein.

99.

Defendants should be compelled to disgorge for the benefit of the State all unlawful or inequitable proceeds received by them.

100.

The State has no adequate remedy at law.

JURY DEMAND

101.

Plaintiff, the State of Louisiana, hereby demands a trial by jury on all claims so triable pursuant to LA. C.C.P. Art. 1731 and related statutes.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that, in due course, the Court issue a permanent injunctive order against Defendants, including any employees, agents, contractors, and those persons in active concert or participation with them, to restrain, enjoin, and prohibit Defendants from:

1. Engaging in any activity in violation of LUTPA;
2. Engaging in any activity in violation of MAPIL;
3. Engaging in any activity in violation of their contractual provisions with the State;
4. Obfuscating or otherwise manipulating payments and reimbursements made for pharmaceutical products;
5. Any other provisions that are found to be equitable after a trial of this matter.

Plaintiff further prays that, in due course, the Court issue an Order that Defendants immediately turn over the documents and data requested by the State pursuant to its contract with the Defendants.

Plaintiff further prays that, in due course, the Court issue an Order that Defendants pay restitution to the State of Louisiana for all expenses reasonably related to their business practices described herein through any manner deemed practicable by the Court.

Plaintiff further prays that, in due course, the Court issue an Order requiring Defendants to reimburse the Office of the Attorney General for all costs and expenses incurred in the investigation and prosecution of this action, including attorneys' fees under LSA-R.S. 51:1408 and 1409 and LSA-R.S. 46:438.6.

Plaintiff further prays for judgment in favor of Plaintiff and against Defendants under MAPIL for actual damages incurred by Plaintiff as a result of Defendants' violations, a civil fine in the amount of three times the Plaintiff's actual damages sustained as a result of Defendants' violations, and interest at the maximum rate of legal interest provided by LSA-R.S. 13:4202 from the date the violations occurred to the date of repayment, in a total amount to be determined at trial, and a civil monetary penalty for each violation and interest at the maximum rate of legal interest from the date the violations occurred to the date of repayment.

Plaintiff further prays for all additional civil penalties allowable under the law.

Plaintiff further prays for all additional damages allowable under the law.

Plaintiff further prays that this Court grant any further relief that it finds justice may require or is otherwise equitable.

RESPECTFULLY SUBMITTED this 13th day of April, 2022.

JEFF LANDRY
ATTORNEY GENERAL FOR
THE STATE OF LOUISIANA

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PLEASE SERVE:

UNITED HEALTHCARE OF LOUISIANA, INC.
Through its registered agent:
CT Corporation System
3867 Plaza Tower Drive
Baton Rouge, LA 70816

and

OPTUMRX, INC.
Through its registered agent:
CT Corporation System
3867 Plaza Tower Drive
Baton Rouge, LA 70816

STATE OF LOUISIANA	**DIV. DOCKET NO:**
VS.	**19TH JUDICIAL DISTRICT COURT**
	EAST BATON ROUGE PARISH
OPTUMRX, INC. AND UNITED HEALTHCARE OF LOUISIANA, INC. d/b/a UNITED HEALTHCARE COMMUNITY PLAN	**STATE OF LOUISIANA**

****

PLAINTIFF STATE OF LOUISIANA'S FIRST SET OF INTERROGATORIES TO DEFENDANT UNITED HEALTHCARE OF LOUISIANA, INC.

Pursuant to La. C.C.P. Art. 1421, the Plaintiff State of Louisiana by and through its Attorney General Jeff Landry, ("State") hereby submits Plaintiff's First Set of Interrogatories ("Interrogatories") to Defendant United Healthcare of Louisiana, Inc., and requests that Defendant respond to each of the following Interrogatories separately and fully in writing, under oath, within thirty (30) days, or such other time as the parties may agree, and supplement its responses as required by La. C.C.P. Art. 1428.

DEFINITIONS

1. "Attorney General" shall mean the office of the Attorney General of Louisiana.
2. "Communication" shall mean all inquiries, discussions, conversations, negotiations, agreements, understandings, meetings, telephone conversations, letters, notes, telegraphs, advertisements or other forms of verbal intercourse, whether oral or written.
3. "Control" means possession, custody, or control, and includes control to the extent that You, Your attorneys, agents or representatives have a right to demand or compel production of the Document or Communication from a source with possession thereof.
4. "Custodian" shall mean the person(s) who is/are most knowledgeable about the information and documents requested herein, including:
    a. The location and method of record keeping for the documents responsive to this Request;
    b. The organization of the documents as they are produced to the State pursuant to this Request; and
    c. Defendants' process for identifying documents responsive to this Request. The person(s) shall have the ability to authenticate and identify each document provided by you pursuant to the standard found in the Louisiana Code of Civil Procedure.
5. "Defendants" mean the defendants in the Petition served with these Requests.

6. "Describe" means provide a detailed description including any and all identifying information about the thing being described, whether a person, place, thing, event, occurrence or other.
7. "Document(s)" means any writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations, stored in any medium from which information can be obtained directly, or if necessary, after translation by the responding party into a reasonably usable form. It includes Communications and electronically stored information ("ESI"). ESI includes, without limitation, all electronic data stored in any form that is responsive to these Interrogatories, including the metadata for all Documents. A Draft or non-identical copy is a separate Document within the meaning of this term.
8. "Enrollee" means any person receiving Medicaid healthcare benefits through any program administered by You during the relevant time period.
9. "Evidence" means Documents or percipient witness statements or testimony.
10. "Identify" means:
    a. With respect to a natural person, "identify" means to state the person's complete name, date of birth, telephone number, occupation, last known place of employment, present or last known street and mailing address for both home and business;
    b. With respect to a juridical person, "identify" means to state the name, the nature of its organization (e.g., corporation, general partnership, limited liability company, etc.), its present or last known street and address, present or last known telephone number, and any other information known, which may reasonably be used to locate and contact the juridical person in question;
    c. With respect to a document, "identify" means to provide the Document's identification number, its title, its date, its location, its signatory, any authors and recipients, its description (e.g., memorandum, letter, contract, form), and the number of pages. If any such Document was but is no longer in the possession or subject to the control of You, Your attorney, or Your agents, state what disposition was made of the Document and explain the circumstances surrounding such disposition, including the date or approximate date thereof;

d. With respect to a statement, omission, or Communication, "identify" means to provide: (i) the name, employer, and position(s) of the speaker, writer, or other person who made the statement or omission; (ii) the name(s) and position(s) of the recipient(s) of the statement, or in the case of an omission, person who You contend should have received a disclosure; (iii) when and where the statement or omission occurred; (iv) the content of the statement made or, in the case of an omission, the information You contend should have been conveyed.

11. "Including" means including but not limited to.

12. "OptumRx, Inc." and "Optum" shall refer to the entity made co-defendant in the Petition filed jointly with this discovery that provides pharmacy benefit management services to Your enrollees.

13. "Person(s)" is any natural or legal person.

14. "Pharmacy Benefit Management," "Pharmacy Benefit Manager," or "PBM" shall refer to any and all services provided by OptumRx to United for Louisiana enrollees during the relevant time period.

15. "Refer" shall mean to make a statement about, embody, discuss, describe, reflect, identify, deal with, consist of, establish, compromise, list, or in any way pertain, in whole or in part, to the subject of the document request.

16. "Relate" shall mean embody, refer or relate, in any manner, to the subject of the document request.

17. "Relevant time period" shall be defined as January 1, 2012 to the present date.

18. "You," "Your," "United Healthcare of Louisiana, Inc." and "United" shall mean and include: United Healthcare of Louisiana, Inc. and/or any and all officers, board members, directors, owners, members, partners, predecessors, successors, affiliates, subsidiaries, consultants, attorneys, employees, agents and representatives of United Healthcare of Louisiana, Inc.

INSTRUCTIONS

1. Your response to these Interrogatories must reflect and contain the knowledge of all persons embraced by the term "Defendant" or "United" or "United Healthcare of Louisiana, Inc." or by the terms "you" or "your." These terms refer to Defendant and all of its agents, representatives, and all other persons or entities acting in concert with it, or

under its control, whether directly or indirectly, including any attorney, and also includes any parent, affiliate, and/or subsidiary corporation of Defendant.

2. In answering these Interrogatories, furnish all information, including heresay, however obtained, which you have in your possession or which is known by you, your agents, employees, or attorneys, or which appears in any records or other information in your possession, custody or control.
3. If you cannot answer an Interrogatory in full, after exercising due diligence to secure the full information or knowledge you have concerning the remaining portion, so state and answer the remaining portion stating whatever information or knowledge you have concerning the remaining portion, and detailing your attempt to secure the unknown information.
4. Each Interrogatory is to be construed independently and answered separately, fully and completely, without reference to any answer or response to any other request, unless specifically requested to do so.
5. Unless otherwise indicated, you should respond to these Interrogatories by listing all documents referred to or relied upon in formulating its responses, wherever located, along with the date prepared, sent and/or received. Where only a portion of a document relates or refers to the subject indicated, the entire document, along withal attachments, appendices and/or exhibits, must nevertheless be noted in your response.
6. If any Interrogatory is answered by a reference to documents, compilations, abstracts and/or other records, please attach same as exhibits to Defendants' responses to these Interrogatories.
7. If Defendant believes any term or other aspect of the Interrogatories is vague, ambiguous, or otherwise objectionable and intends to so object, counsel for the State offers to promptly meet with counsel for Defendant to resolve any issues.
8. If you do not have sufficient information to respond to an Interrogatory, please so state and identify those persons who may possess such information whenever appropriate.
9. The relevant time period for these Interrogatories is from January 1, 2012 to date.
10. If an Interrogatory calls for a response as to which You claim any privilege, set forth each and every fact on which Your claim of privilege is based with sufficient specificity to permit the Court to make a determination as to whether Your claim of privilege is valid,

including: (a) the number and particular part of the Interrogatory to which the claimed privileged information is responsive; (b) a description of the information or Communications; (c) the date and time of the information or Communications; (d) the basis upon which the privilege is claimed; and (e) the identity of each Person (other than the attorneys representing You in this action) to whom the information or contents of the Communication have been disclosed, either orally or by Document.

11. Where the context of the Interrogatories makes it appropriate, each singular word includes its plural, and each plural word includes its singular. The words "any," "and," and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery all responses which might otherwise be construed to be outside its scope. Each of the following words includes the meaning of every other word: "each," "every," "all," and "any." The present tense shall be construed to include the past tense, and the past tense shall be construed to include the present tense.

FIRST SET OF INTERROGATORIES

INTERROGATORY NO. 1:

Provide the following corporate information:

(a) Identify your corporate officers, directors, members, partners and board members.

(b) Identify any entity which is currently or has been the parent company of United Healthcare of Louisiana, Inc.

(c) Identify any entity that is currently or has been a subsidiary of United Healthcare of Louisiana, Inc.

(d) Identify any entity that is currently or has been an affiliate of United Healthcare of Louisiana, Inc.

(e) Identify all physical addresses, post office boxes, telephone numbers, web addresses and email addresses from which you conduct business or have conducted business in or from Louisiana.

INTERROGATORY NO. 2:

Identify all custodians with knowledge of the facts alleged in the Petition, including but not limited to United's agreements with the State, United's agreements with Optum, and the provision of all PBM services on behalf of United in the State of Louisiana.

INTERROGATORY NO. 3:

Identify all reports, communications, and documentation exchanged between United and Optum that reflect any claims made or paid in connection with the PBM services provided on behalf of United during the relevant time period; including payments between United and Optum or between Optum and any pharmacy, including but not limited to any mail order pharmacy; and including but not limited to any routine reports or communications required under the contracts in place between United and Optum during any point in the relevant time period.

INTERROGATORY NO. 4:

Identify all third parties, including but not limited to consultants, advisory board members, public relations firms, marketing companies and economists, that directly or indirectly created, participated in, assisted with, implemented, consulted or provided advice related to the provision of PBM services on behalf of United.

INTERROGATORY NO. 5:

Describe your document retention policies in effect during the relevant time period for United Healthcare of Louisiana, Inc. and any other entity listed in response to Interrogatory No. 1 (b) – (d).

INTERROGATORY NO. 6:

Identify any witnesses whose testimony you intend to rely upon at trial.

RESPECTFULLY SUBMITTED this 13th day of April, 2022.

JEFF LANDRY
ATTORNEY GENERAL FOR
THE STATE OF LOUISIANA

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PLEASE SERVE:

UNITED HEALTHCARE OF LOUISIANA, INC.
Through its registered agent:
CT Corporation System
3867 Plaza Tower Drive
Baton Rouge, LA 70816

and

OPTUMRX, INC.
Through its registered agent:
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3867 Plaza Tower Drive
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STATE OF LOUISIANA **DIV. DOCKET NO:**

VS. **19TH JUDICIAL DISTRICT COURT**

EAST BATON ROUGE PARISH

OPTUMRX, INC. AND UNITED HEALTHCARE OF LOUISIANA, INC. d/b/a UNITED HEALTHCARE COMMUNITY PLAN **STATE OF LOUISIANA**

****

PLAINTIFF STATE OF LOUISIANA'S FIRST SET OF INTERROGATORIES TO DEFENDANT OPTUMRX, INC.

Pursuant to La. C.C.P. Art. 1421, the Plaintiff State of Louisiana by and through its Attorney General Jeff Landry, ("State") hereby submits Plaintiff's First Set of Interrogatories ("Interrogatories") to Defendant OptumRx, Inc., and requests that Defendant respond to each of the following Interrogatories separately and fully in writing, under oath, within thirty (30) days, or such other time as the parties may agree, and supplement its responses as required by La. C.C.P. Art. 1428.

DEFINITIONS

1. "Attorney General" shall mean the office of the Attorney General of Louisiana.
2. "Communication" shall mean all inquiries, discussions, conversations, negotiations, agreements, understandings, meetings, telephone conversations, letters, notes, telegraphs, advertisements or other forms of verbal intercourse, whether oral or written.
3. "Control" means possession, custody, or control, and includes control to the extent that You, Your attorneys, agents or representatives have a right to demand or compel production of the Document or Communication from a source with possession thereof.
4. "Custodian" shall mean the person(s) who is/are most knowledgeable about the information and documents requested herein, including:
    a. The location and method of record keeping for the documents responsive to this Request;
    b. The organization of the documents as they are produced to the State pursuant to this Request; and
    c. Defendants' process for identifying documents responsive to this Request. The person(s) shall have the ability to authenticate and identify each document provided by you pursuant to the standard found in the Louisiana Code of Civil Procedure.
5. "Defendants" mean the defendants in the Petition served with these Requests.

6. "Describe" means provide a detailed description including any and all identifying information about the thing being described, whether a person, place, thing, event, occurrence or other.
7. "Document(s)" means any writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations, stored in any medium from which information can be obtained directly, or if necessary, after translation by the responding party into a reasonably usable form. It includes Communications and electronically stored information ("ESI"). ESI includes, without limitation, all electronic data stored in any form that is responsive to these Interrogatories, including the metadata for all Documents. A Draft or non-identical copy is a separate Document within the meaning of this term.
8. "Enrollee" means any person receiving Medicaid healthcare benefits through any program administered by You during the relevant time period.
9. "Evidence" means Documents or percipient witness statements or testimony.
10. "Identify" means:
    a. With respect to a natural person, "identify" means to state the person's complete name, date of birth, telephone number, occupation, last known place of employment, present or last known street and mailing address for both home and business;
    b. With respect to a juridical person, "identify" means to state the name, the nature of its organization (e.g., corporation, general partnership, limited liability company, etc.), its present or last known street and address, present or last known telephone number, and any other information known, which may reasonably be used to locate and contact the juridical person in question;
    c. With respect to a document, "identify" means to provide the Document's identification number, its title, its date, its location, its signatory, any authors and recipients, its description (e.g., memorandum, letter, contract, form), and the number of pages. If any such Document was but is no longer in the possession or subject to the control of You, Your attorney, or Your agents, state what disposition was made of the Document and explain the circumstances surrounding such disposition, including the date or approximate date thereof;

d. With respect to a statement, omission, or Communication, "identify" means to provide: (i) the name, employer, and position(s) of the speaker, writer, or other person who made the statement or omission; (ii) the name(s) and position(s) of the recipient(s) of the statement, or in the case of an omission, person who You contend should have received a disclosure; (iii) when and where the statement or omission occurred; (iv) the content of the statement made or, in the case of an omission, the information You contend should have been conveyed.

11. "Including" means including but not limited to.

12. "Person(s)" is any natural or legal person.

13. "Pharmacy Benefit Management," "Pharmacy Benefit Manager," or "PBM" shall refer to any and all services provided by OptumRx to United for Louisiana enrollees during the relevant time period.

14. "Refer" shall mean to make a statement about, embody, discuss, describe, reflect, identify, deal with, consist of, establish, compromise, list, or in any way pertain, in whole or in part, to the subject of the document request.

15. "Relate" shall mean embody, refer or relate, in any manner, to the subject of the document request.

16. "Relevant time period" shall be defined as January 1, 2012 to the present date.

17. "United Healthcare of Louisiana, Inc." and "United" shall refer to the entity made co-defendant in the Petition filed jointly with this discovery and on whose behalf You provide pharmacy benefit management services to its Louisiana enrollees.

18. "You," "Your," "OptumRx, Inc." and "Optum" shall mean and include: OptumRx, Inc. and/or any and all officers, board members, directors, owners, members, partners, predecessors, successors, affiliates, subsidiaries, consultants, attorneys, employees, agents and representatives of OptumRx, Inc.

INSTRUCTIONS

1. Your response to these Interrogatories must reflect and contain the knowledge of all persons embraced by the term "Defendant" or "Optum" or "OptumRx, Inc." or by the terms "you" or "your." These terms refer to Defendant and all of its agents, representatives, and all other persons or entities acting in concert with it, or under its control, whether directly

or indirectly, including any attorney, and also includes any parent, affiliate, and/or subsidiary corporation of Defendant.

2. In answering these Interrogatories, furnish all information, including heresay, however obtained, which you have in your possession or which is known by you, your agents, employees, or attorneys, or which appears in any records or other information in your possession, custody or control.
3. If you cannot answer an Interrogatory in full, after exercising due diligence to secure the full information or knowledge you have concerning the remaining portion, so state and answer the remaining portion stating whatever information or knowledge you have concerning the remaining portion, and detailing your attempt to secure the unknown information.
4. Each Interrogatory is to be construed independently and answered separately, fully and completely, without reference to any answer or response to any other request, unless specifically requested to do so.
5. Unless otherwise indicated, you should respond to these Interrogatories by listing all documents referred to or relied upon in formulating its responses, wherever located, along with the date prepared, sent and/or received. Where only a portion of a document relates or refers to the subject indicated, the entire document, along withal attachments, appendices and/or exhibits, must nevertheless be noted in your response.
6. If any Interrogatory is answered by a reference to documents, compilations, abstracts and/or other records, please attach same as exhibits to Defendant's responses to these Interrogatories.
7. If Defendant believes any term or other aspect of the Interrogatories is vague, ambiguous, or otherwise objectionable and intends to so object, counsel for the State offers to promptly meet with counsel for Defendant to resolve any issues.
8. If you do not have sufficient information to respond to an Interrogatory, please so state and identify those persons who may possess such information whenever appropriate.
9. The relevant time period for these Interrogatories is from January 1, 2012 to date.
10. If an Interrogatory calls for a response as to which You claim any privilege, set forth each and every fact on which Your claim of privilege is based with sufficient specificity to permit the Court to make a determination as to whether Your claim of privilege is valid,

including: (a) the number and particular part of the Interrogatory to which the claimed privileged information is responsive; (b) a description of the information or Communications; (c) the date and time of the information or Communications; (d) the basis upon which the privilege is claimed; and (e) the identity of each Person (other than the attorneys representing You in this action) to whom the information or contents of the Communication have been disclosed, either orally or by Document.

11. Where the context of the Interrogatories makes it appropriate, each singular word includes its plural, and each plural word includes its singular. The words "any," "and," and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery all responses which might otherwise be construed to be outside its scope. Each of the following words includes the meaning of every other word: "each," "every," "all," and "any." The present tense shall be construed to include the past tense, and the past tense shall be construed to include the present tense.

FIRST SET OF INTERROGATORIES

INTERROGATORY NO. 1:

Provide the following corporate information:

(a) Identify your corporate officers, directors, members, partners and board members.

(b) Identify any entity which is currently or has been the parent company of OptumRx, Inc.

(c) Identify any entity that is currently or has been a subsidiary of OptumRx, Inc.

(d) Identify any entity that is currently or has been an affiliate of OptumRx, Inc.

(e) Identify all physical addresses, post office boxes, telephone numbers, web addresses and email addresses from which you conduct business or have conducted business in or from Louisiana.

INTERROGATORY NO. 2:

Identify all custodians with knowledge of the facts alleged in the Petition, including but not limited to United's agreements with the State, United's agreements with Optum, and the provision of all PBM services on behalf of United in the State of Louisiana.

INTERROGATORY NO. 3:

Identify all reports, communications, and documentation exchanged between United and Optum that reflect any claims made or paid in connection with the PBM services provided on behalf of United during the relevant time period; including payments between United and Optum or between Optum and any pharmacy, including but not limited to any mail order pharmacy; and including but not limited to any routine reports or communications required under the contracts in place between United and Optum during any point in the relevant time period.

INTERROGATORY NO. 4:

Identify all third parties, including but not limited to consultants, advisory board members, public relations firms, marketing companies and economists, that directly or indirectly created, participated in, assisted with, implemented, consulted or provided advice related to Your provision of PBM services on behalf of United.

INTERROGATORY NO. 5:

Describe your document retention policies in effect during the relevant time period for OptumRx, Inc. and any other entity listed in response to Interrogatory No. 1 (b) – (d).

INTERROGATORY NO. 6:

Identify any witnesses whose testimony you intend to rely upon at trial.

RESPECTFULLY SUBMITTED this 13th day of April, 2022.

JEFF LANDRY
ATTORNEY GENERAL FOR
THE STATE OF LOUISIANA

Nicholas J. Diez (No. 31701)
Matthew P. Stafford, Jr. (No. 32706)
Medicaid Fraud Control Unit
Christopher Alderman (No. 38652)
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Facsimile: (225) 326-6499
diezn@ag.louisiana.gov
staffordm@ag.louisiana.gov
aldermanc@ag.louisiana.gov

PLEASE SERVE:

UNITED HEALTHCARE OF LOUISIANA, INC.
Through its registered agent:
CT Corporation System
3867 Plaza Tower Drive
Baton Rouge, LA 70816

and

OPTUMRX, INC.
Through its registered agent:
CT Corporation System
3867 Plaza Tower Drive
Baton Rouge, LA 70816

STATE OF LOUISIANA **DIV. DOCKET NO:**

VS. **19TH JUDICIAL DISTRICT COURT**

EAST BATON ROUGE PARISH

OPTUMRX, INC. AND UNITED HEALTHCARE OF LOUISIANA, INC. d/b/a UNITED HEALTHCARE COMMUNITY PLAN **STATE OF LOUISIANA**

****

PLAINTIFF STATE OF LOUISIANA'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT UNITED HEALTHCARE OF LOUISIANA, INC.

Pursuant to La. C.C.P. Art. 1421, the Plaintiff State of Louisiana by and through its Attorney General Jeff Landry ("State") hereby submits Plaintiff's First Set of Requests for Production of Documents ("Requests") to Defendant, United Healthcare of Louisiana, Inc. and requests that Defendant respond to each of the following Requests separately and fully in writing, under oath, within thirty (30) days, or such other time as the parties may agree, and supplement their responses as required by La. C.C.P. Art. 1428.

INSTRUCTIONS

1. Unless otherwise set forth, the Documents requested include all Documents concerning events or conditions in the Relevant Time Period, as well as Documents created during the Relevant Time Period.

2. In answering and responding to these Document Requests, You shall furnish information and Documents in Your possession, custody, or Control, including information that is in the possession, custody, or Control of Your employees, agents, investigators, consultants, representatives, attorneys (subject to any otherwise applicable privileges), or any other person or entity within Your Control.

3. If Defendant believes that any term or other aspect of any Document Request is vague, ambiguous, or otherwise objectionable and intends to so object, counsel for the State offer to promptly meet with counsel for Defendant to attempt to resolve any issues.

4. In producing Electronically Stored Information ("ESI") or data in machine- readable form in response to any Request, provide such information or data in a form that is reasonably usable, including (i) Bates-numbered TIFF images of the Electronically Stored Information, (ii) searchable text of the ESI in a format compatible with industry-standard litigation-support applications, and (iii) a compatible load file. Produce Excel files, databases, and media files in their native forms. For all ESI produced, include for each

item the metadata that can be reasonably extracted from the ESI. For any hardcopy paper that is produced in an ESI format, such as a scanned Document, include for each such Document OCR data using the highest quality settings available. Unitization for any Documents You produce shall be maintained as it was in the original Document.

5. For each Document, including ESI, produced in response to these Requests, identify (i) the custodian of the Document, if collected from the Defendant, or (ii) the source of the Document, if obtained from a third party.

6. If a Request calls for a response or production of a Document as to which You claim any privilege, set forth each and every fact on which Your claim of privilege is based with sufficient specificity to permit the Court to make a determination as to whether Your claim of privilege is valid, including:

    a. The number and particular part of the Request for Production to which the claimed privileged Document is responsive;

    b. A description of the Document or Communications;

    c. The date and time of the Document or Communications;

    d. The basis upon which the privilege is claimed; and

    e. The identity of each person (other than the attorneys representing You in this action) to whom the information or contents of the Document or Communication have been disclosed, either orally or in writing.

7. Where the context in the Requests makes it appropriate, each singular word includes its plural, and each plural word includes its singular. The words "any," "and," and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery all responses which might otherwise be construed to be outside its scope. Each of the following words includes the meaning of every other word: "each," "every," "all," and "any." The present tense shall be construed to include the past tense, and the past tense shall be construed to include the present tense.

DEFINITIONS

1. "Attorney General" shall mean the office of the Attorney General of Louisiana.

2. "Communication" shall mean all inquiries, discussions, conversations, negotiations, agreements, understandings, meetings, telephone conversations, letters, notes, telegraphs, advertisements or other forms of verbal intercourse, whether oral or written.

3. "Control" means possession, custody, or control, and includes control to the extent that You, Your attorneys, agents, or representatives have a right to demand or compel production of the Document or Communication from a source with possession thereof.
4. "Custodian" shall mean the person(s) who is/are most knowledgeable about the information and documents requested herein, including:
    a. The location and method of record keeping for the documents responsive to this Request; and
    b. The organization of the documents as they are produced to the State pursuant to this Request.
    c. Defendant's process for identifying documents responsive to this Request. The person(s) shall have the ability to authenticate and identify each document provided by you pursuant to the standard found in the Louisiana Code of Civil Procedure.
5. "Describe" means provide a detailed description including any and all identifying information about the thing being described, whether a person, place, thing, event, occurrence, or other.
6. "Document(s)" means any writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained directly, or, if necessary, after translation by the responding party into a reasonably usable form. It includes Communications and electronically stored information ("ESI"). ESI includes, without limitation, all electronic data stored in any form that is responsive to these Interrogatories, including the metadata for all Documents. A draft or non-identical copy is a separate Document within the meaning of this term.
7. "Enrollee" means any person receiving Medicaid healthcare benefits through any program administered by You during the relevant time period.
8. "Evidence" means Documents or percipient witness statements or testimony.
9. "Identify" or "identify" means:
    a. With respect to a natural person, "identify" means to state the person's complete name, date of birth, telephone number, occupation, last known place of

employment, present or last known street and mailing addresses for both home and business.

b. With respect to a juridical person, "identify" means to state the name, the nature of its organization (e.g., corporation, general partnership, limited partnership, etc.), its present or last known street and address, present or last known telephone number, and any other information known, which may reasonably be used to locate and contact the juridical person in question.

c. With respect to a Document, "identify" means to provide the Document's identification number, its title, its date, its location, its signatory, any authors and recipients, its description (e.g., memorandum, letter, contract, form), and the number of pages. If any such Document was but is no longer in the possession or subject to the Control of You, Your attorney, or Your agents, state what disposition was made of the Document and explain the circumstances surrounding such disposition, including the date or approximate date thereof.

d. With respect to a statement, omission, or Communication, "identify" means to provide: (i) the name, employer, and position(s) of the speaker, writer, or other person who made the statement or omission; (ii) the name(s) and position(s) of the recipient(s) of the statement or, in the case of an omission, person who You contend should have received a disclosure; (iii) when and where the statement or omission occurred; (iv) the content of the statement made or, in the case of an omission, the information You contend should have been conveyed.

10. "Including" means including but not limited to.

11. "OptumRx, Inc." and "Optum" shall refer to the entity made co-defendant in the Petition filed jointly with this discovery that provides pharmacy benefit management services to Your enrollees.

12. "Person(s)" is any natural or legal person.

13. "Pharmacy Benefit Management," "Pharmacy Benefit Manager," or "PBM" shall refer to any and all services provided by OptumRx to United for Louisiana enrollees during the relevant time period.

14. "Refer" shall mean to make a statement about, embody, discuss, describe, reflect, identify, deal with, consist of, establish, comprise, list, or in any way pertain, in whole or in part, to the subject of the document request.

15. "Relate" shall mean embody, refer or relate, in any manner, to the subject of the document request.

16. "You," "Your," "United Healthcare of Louisiana, Inc.," and "United" shall mean and include: United Healthcare of Louisiana, Inc. and/or any and all officers, board members, directors, owners, members, partners, predecessors, successors, affiliates, subsidiaries, consultants, attorneys, employees, agents and representatives of United Healthcare of Louisiana, Inc.

FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1:

Produce all documents relied upon in your responses to the Plaintiff's First Set of Interrogatories.

REQUEST NO. 2:

Produce all documents identified in response to Interrogatory No. 3.

REQUEST NO. 3:

Produce all contracts between United Healthcare of Louisiana, Inc. and any entities identified in response to Interrogatory No. 1 (b) – (d).

REQUEST NO. 4:

Produce all contracts between any entity identified in response to Interrogatory No. 1 (b) – (d) and any entity identified in response to Interrogatory No. 4.

REQUEST NO. 5:

Produce all network pharmacy agreements affecting enrollees in the State of Louisiana, as defined by the contracts existing between United and Optum.

REQUEST NO. 6:

Produce all pharmacy plan specifications, as defined by the contracts existing between United and Optum.

REQUEST NO. 7:

Produce all "clean claims," as defined by the contracts existing between United and Optum. For each "clean claim," if there exist any other records related to that claim (including but not limited to "prescription claims" or "actual prescription drug reimbursement" as defined by the contracts existing between United and Optum) produce each other record related to that claim as well, in a format making it easy to compare the data for each claim across the data sources.

REQUEST NO. 8:

Produce all contracts between United and any pharmaceutical drug manufacturer for any and all drugs dispensed to Louisiana Medicaid enrollees during the relevant time period.

REQUEST NO. 9:

Produce all records pertaining to any funds withheld, offset, or "clawed back" from any pharmacy for any and all drugs dispensed to Louisiana Medicaid enrollees during the relevant time period.

REQUEST NO. 10:

Produce any evidence that you intend to rely upon at trial.

RESPECTFULLY SUBMITTED this 13th day of April, 2022.

JEFF LANDRY
ATTORNEY GENERAL FOR
THE STATE OF LOUISIANA

Nicholas J. Diez (No. 31701)
Matthew P. Stafford, Jr. (No. 32706)
Medicaid Fraud Control Unit
Christopher Alderman (No. 38652)
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diezn@ag.louisiana.gov
staffordm@ag.louisiana.gov
aldermanc@ag.louisiana.gov

PLEASE SERVE:

UNITED HEALTHCARE OF LOUISIANA, INC.
Through its registered agent:
CT Corporation System
3867 Plaza Tower Drive
Baton Rouge, LA 70816

and

OPTUMRX, INC.
Through its registered agent:
CT Corporation System
3867 Plaza Tower Drive
Baton Rouge, LA 70816

STATE OF LOUISIANA	**DIV. DOCKET NO:**
VS.	**19TH JUDICIAL DISTRICT COURT**
	EAST BATON ROUGE PARISH
OPTUMRX, INC. AND UNITED HEALTHCARE OF LOUISIANA, INC. d/b/a UNITED HEALTHCARE COMMUNITY PLAN	**STATE OF LOUISIANA**

****

PLAINTIFF STATE OF LOUISIANA'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT OPTUMRX, INC.

Pursuant to La.C.C.P. Art. 1421, the Plaintiff State of Louisiana by and through its Attorney General Jeff Landry ("State") hereby submits Plaintiff's First Set of Requests for Production of Documents ("Requests") to Defendant, OptumRx, Inc. and requests that Defendant respond to each of the following Requests separately and fully in writing, under oath, within thirty (30) days, or such other time as the parties may agree, and supplement their responses as required by La. C.C.P. Art. 1428.

INSTRUCTIONS

1. Unless otherwise set forth, the Documents requested include all Documents concerning events or conditions in the Relevant Time Period, as well as Documents created during the Relevant Time Period.
2. In answering and responding to these Document Requests, You shall furnish information and Documents in Your possession, custody, or Control, including information that is in the possession, custody, or Control of Your employees, agents, investigators, consultants, representatives, attorneys (subject to any otherwise applicable privileges), or any other person or entity within Your Control.
3. If Defendant believes that any term or other aspect of any Document Request is vague, ambiguous, or otherwise objectionable and intends to so object, counsel for the State offer to promptly meet with counsel for Defendant to attempt to resolve any issues.
4. In producing Electronically Stored Information ("ESI") or data in machine- readable form in response to any Request, provide such information or data in a form that is reasonably usable, including (i) Bates-numbered TIFF images of the Electronically Stored Information, (ii) searchable text of the ESI in a format compatible with industry-standard litigation-support applications, and (iii) a compatible load file. Produce Excel files, databases, and media files in their native forms. For all ESI produced, include for each

item the metadata that can be reasonably extracted from the ESI. For any hardcopy paper that is produced in an ESI format, such as a scanned Document, include for each such Document OCR data using the highest quality settings available. Unitization for any Documents You produce shall be maintained as it was in the original Document.

5. For each Document, including ESI, produced in response to these Requests, identify (i) the custodian of the Document, if collected from the Defendant, or (ii) the source of the Document, if obtained from a third party.

6. If a Request calls for a response or production of a Document as to which You claim any privilege, set forth each and every fact on which Your claim of privilege is based with sufficient specificity to permit the Court to make a determination as to whether Your claim of privilege is valid, including:

    a. The number and particular part of the Request for Production to which the claimed privileged Document is responsive;

    b. A description of the Document or Communications;

    c. The date and time of the Document or Communications;

    d. The basis upon which the privilege is claimed; and

    e. The identity of each person (other than the attorneys representing You in this action) to whom the information or contents of the Document or Communication have been disclosed, either orally or in writing.

7. Where the context in the Requests makes it appropriate, each singular word includes its plural, and each plural word includes its singular. The words "any," "and," and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery all responses which might otherwise be construed to be outside its scope. Each of the following words includes the meaning of every other word: "each," "every," "all," and "any." The present tense shall be construed to include the past tense, and the past tense shall be construed to include the present tense.

DEFINITIONS

1. "Attorney General" shall mean the office of the Attorney General of Louisiana.

2. "Communication" shall mean all inquiries, discussions, conversations, negotiations, agreements, understandings, meetings, telephone conversations, letters, notes, telegraphs, advertisements or other forms of verbal intercourse, whether oral or written.

3. "Control" means possession, custody, or control, and includes control to the extent that You, Your attorneys, agents, or representatives have a right to demand or compel production of the Document or Communication from a source with possession thereof.
4. "Custodian" shall mean the person(s) who is/are most knowledgeable about the information and documents requested herein, including:
    a. The location and method of record keeping for the documents responsive to this Request; and
    b. The organization of the documents as they are produced to the State pursuant to this Request.
    c. Defendant's process for identifying documents responsive to this Request. The person(s) shall have the ability to authenticate and identify each document provided by you pursuant to the standard found in the Louisiana Code of Civil Procedure.
5. "Describe" means provide a detailed description including any and all identifying information about the thing being described, whether a person, place, thing, event, occurrence, or other.
6. "Document(s)" means any writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained directly, or, if necessary, after translation by the responding party into a reasonably usable form. It includes Communications and electronically stored information ("ESI"). ESI includes, without limitation, all electronic data stored in any form that is responsive to these Interrogatories, including the metadata for all Documents. A draft or non-identical copy is a separate Document within the meaning of this term.
7. "Enrollee" means any person receiving Medicaid healthcare benefits through any program administered by You during the relevant time period.
8. "Evidence" means Documents or percipient witness statements or testimony.
9. "Identify" or "identify" means:
    a. With respect to a natural person, "identify" means to state the person's complete name, date of birth, telephone number, occupation, last known place of

employment, present or last known street and mailing addresses for both home and business.

b. With respect to a juridical person, "identify" means to state the name, the nature of its organization (e.g., corporation, general partnership, limited partnership, etc.), its present or last known street and address, present or last known telephone number, and any other information known, which may reasonably be used to locate and contact the juridical person in question.

c. With respect to a Document, "identify" means to provide the Document's identification number, its title, its date, its location, its signatory, any authors and recipients, its description (e.g., memorandum, letter, contract, form), and the number of pages. If any such Document was but is no longer in the possession or subject to the Control of You, Your attorney, or Your agents, state what disposition was made of the Document and explain the circumstances surrounding such disposition, including the date or approximate date thereof.

d. With respect to a statement, omission, or Communication, "identify" means to provide: (i) the name, employer, and position(s) of the speaker, writer, or other person who made the statement or omission; (ii) the name(s) and position(s) of the recipient(s) of the statement or, in the case of an omission, person who You contend should have received a disclosure; (iii) when and where the statement or omission occurred; (iv) the content of the statement made or, in the case of an omission, the information You contend should have been conveyed.

10. "Including" means including but not limited to.

11. "Person(s)" is any natural or legal person.

12. "Pharmacy Benefit Management," "Pharmacy Benefit Manager," or "PBM" shall refer to any and all services provided by OptumRx to United for Louisiana enrollees during the relevant time period.

13. "Refer" shall mean to make a statement about, embody, discuss, describe, reflect, identify, deal with, consist of, establish, comprise, list, or in any way pertain, in whole or in part, to the subject of the document request.

14. "Relate" shall mean embody, refer or relate, in any manner, to the subject of the document request.

15. "United Healthcare of Louisiana, Inc." and "United" shall refer to the entity made co-defendant in the Petition filed jointly with this discovery on whose behalf You provide pharmacy benefit management services to its enrollees.

16. "You," "Your," "OptumRx, Inc.," and "Optum" shall mean and include: OptumRx, Inc. and/or any and all officers, board members, directors, owners, members, partners, predecessors, successors, affiliates, subsidiaries, consultants, attorneys, employees, agents and representatives of OptumRx, Inc.

FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST NO. 1:

Produce all documents relied upon in your responses to the Plaintiff's First Set of Interrogatories.

REQUEST NO. 2:

Produce all documents identified in response to Interrogatory No. 3.

REQUEST NO. 3:

Produce all contracts between OptumRx, Inc. and any entities identified in response to Interrogatory No. 1 (b) – (d).

REQUEST NO. 4:

Produce all contracts between any entity identified in response to Interrogatory No. 1 (b) – (d) and any entity identified in response to Interrogatory No. 4.

REQUEST NO. 5:

Produce all network pharmacy agreements affecting enrollees in the State of Louisiana, as defined by the contracts existing between United and Optum.

REQUEST NO. 6:

Produce all pharmacy plan specifications, as defined by the contracts existing between United and Optum.

REQUEST NO. 7:

Produce all "clean claims," as defined by the contracts existing between United and Optum. For each "clean claim," if there exist any other records related to that claim (including but not limited to "prescription claims" or "actual prescription drug reimbursement" as defined by the contracts existing between United and Optum) produce each other record related to that claim as well, in a format making it easy to compare the data for each claim across the data sources.

REQUEST NO. 8:

Produce all contracts between Optum and any pharmaceutical drug manufacturer for any and all drugs dispensed to Louisiana Medicaid enrollees during the relevant time period.

REQUEST NO. 9:

Produce all records pertaining to any funds withheld, offset, or "clawed back" from any pharmacy for any and all drugs dispensed to Louisiana Medicaid enrollees during the relevant time period.

REQUEST NO. 10:

Produce any evidence that you intend to rely upon at trial.

RESPECTFULLY SUBMITTED this 13th day of April, 2022.

JEFF LANDRY
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PLEASE SERVE:

UNITED HEALTHCARE OF LOUISIANA, INC.
Through its registered agent:
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3867 Plaza Tower Drive
Baton Rouge, LA 70816

and

OPTUMRX, INC.
Through its registered agent:
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