

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY

MARGIE WALDROP, on Behalf of Herself  
and All Others Similarly Situated,

Plaintiff,

v.

HUMANA, INC. and HUMANA PHARMACY  
SOLUTIONS, INC.,

Defendants.

Civil Action No.: 3:16-cv-706-GNS

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff Margie Waldrop (“Plaintiff”), by and through the undersigned counsel for her Class Action Complaint against Defendants Humana, Inc. and Humana Pharmacy Solutions, Inc. (collectively, “Defendants”), states and alleges as follows:

**INTRODUCTION**

1. Plaintiff, on behalf of herself and all others similarly situated, brings this action against Defendants to recover monetary damages, injunctive relief, and other remedies resulting from Defendants’ common fraudulent and deceptive pricing scheme to artificially inflate prescription copayment amounts (“copayment” or “copay”) causing consumers to pay more than they otherwise would on purchases of medically necessary, covered prescription drugs.

2. About 90% of all United States citizens are now enrolled in private or public health insurance plans that cover some, or all, of the costs incurred for medical and pharmaceutical benefits. A feature of most of these plans is the shared cost of prescription drugs. Normally, when a plan participant fills a prescription for a medically necessary, covered prescription drug under his or her health care plan, the plan pays a portion of the cost and the plan participant pays the remaining portion of the cost directly to the pharmacy in the form of a copayment or coinsurance.

Merriam-Webster defines a copayment as “a small fixed fee that a health insurer (as an HMO) requires the patient to pay for certain covered medical expenses (as office visits or prescription drugs).”<sup>1</sup> Pharmacies are required by contract to collect the copayment on Defendants’ behalf from the plan participant at the time the prescription is filled and are not allowed to waive or reduce the copayment collected.

3. Defendants are health insurance companies along with pharmacy benefit managers (“PBMs”). The PBMs are either owned or retained by the health insurance companies, on behalf of the plan or third-party payors, to provide the pharmacy benefits to plan members, which includes, *inter alia*, establishing a formulary of drugs that will be covered, a network of pharmacies that will serve as participating pharmacies for plan participants to obtain their prescriptions, copayment amounts, coinsurance amounts, and deductibles (if applicable). In this instance, Defendant Humana, Inc. owns the PBM, Defendant Humana Pharmacy Solutions, Inc., that provides the pharmacy benefit to Plaintiff.

4. As set forth below, Defendants and their co-conspirators, which include other insurance companies who utilize Humana Pharmacy Solutions, Inc., have engaged in a scheme to defraud plan members by artificially inflating the copayment of medically necessary prescription drugs well above the cost of the drug. Plan participants, including Plaintiff and the Class (defined below), pay inflated copayments to participating pharmacies in exchange for receiving their prescription drugs. Unbeknownst to the plan participants, Defendants artificially inflate the purported costs of the prescription drugs in the form of increased copayments and then “claw back,” or recoup, from the pharmacies a large portion of the copayments.

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<sup>1</sup> See *Co-payment*, MERRIAM-WEBSTER (2016), <http://www.merriam-webster.com/dictionary/co%E2%80%93payment> (last visited Nov. 8, 2016).

5. Defendants utilize the U.S. Mail and interstate wire facilities to engage in their fraudulent billing scheme. Defendants represent to plan participants that their copayment amount is based on some portion of the actual cost for the drug, when, in fact, plan participants pay more than the actual cost of the drug and Defendants simply pocket the overpayment in the form of prescription claw back. Defendants represent to the pharmacies that they are clawing-back the increased copayment amount because consumers overpaid for their prescriptions. However, Defendants never disclose this to plan participants, nor do they reimburse plan participants for their supposed overpayments. The amounts Defendants claw back from the copayments are pure, undisclosed profit for Defendants.

6. The costs incurred by plan members resulting from Defendants' fraudulent scheme can be significant. For example, when a consumer pays a \$10 prescription copayment to the pharmacy for a medically necessary, covered prescription drug, as required under the consumer's health benefit plan, the acquisition cost of the drug may be only \$3. The PBM then reduces the pharmacy's reimbursement for the claim for this prescription by \$6 as an adjustment to the original claim. In this scenario, the PBM has "clawed back" \$6 of the \$10 copay. Ultimately, the pharmacy is reimbursed \$4 (all from the consumer copayment) making only \$1 over the cost of the drug, while the Defendants fraudulently retain \$6 – which they do not pass back to the plan participant.

7. In order to implement Defendants' fraudulent scheme, Defendants' contracts with participating pharmacies require the pharmacists not to disclose the existence of the claw back or the fact that a plan member could, in certain circumstances, pay more as a copayment for a prescription drug than if the plan member did not have insurance. Pharmacies are often subject to "gag clauses" in their contracts, prohibiting them from advising plan participants that she or he could pay less for a drug if the purchase is made without applying the pharmacy insurance benefit.

8. Defendants' fraudulent scheme to artificially inflate the copay for medically necessary, covered prescription drugs and then surreptitiously retaining those excess amounts jeopardizes the entire pharmaceutical delivery system. For one, consumers are paying higher amounts than they otherwise would had Defendants not artificially inflated the copayment amounts; as for many of these drugs, the cost without insurance would be only slightly over acquisition cost. Therefore, consumers believe that they are saving money through the use of their pharmacy benefit, when, in reality, they have been charged an excessive amount for the prescription. The pharmacy believes that it is being reimbursed a reasonable amount for the prescriptions it fills for consumers, only to have a large portion of it clawed back by Defendants. And, the plan participant believes she or he is paying a copayment based on the prescription drug's true cost, but instead is paying an inflated cost for the prescription.

9. Class members are consumers who pay artificially inflated copayments for medically necessary, covered prescriptions that cost plan participants more than if they did not have insurance. Indeed, the very purpose of obtaining insurance and having pharmacy benefits is to enable plan members to receive the purported benefits of the insurance company and PBMs through the insurance company's and PBMs' negotiating and buying power with prescription drug manufacturers, which is supposed to result in reduced costs for prescription drugs, costs for administration, and overhead of their pharmacy benefit.

10. As a result of Defendants' fraudulent scheme, Defendants overcharged Plaintiff and the other Class members for prescription drugs during the Class Period (defined below). Defendants' misconduct has caused Plaintiff and the other Class members to suffer significant damages.

## **PARTIES**

**A. Plaintiff**

11. Plaintiff Margi Waldrop is a citizen of the State of Alabama during the Class Period, Plaintiff participated in a Medicare Advantage Part D health plan offered by Humana, Inc. and Humana Pharmacy Solutions, Inc. and utilized Defendants' pharmacy benefit to obtain prescriptions for medically necessary, covered prescriptions and paid copayments for such prescriptions. As described in detail below, as a result of Defendants' fraudulent scheme, Plaintiff has been injured by paying inflated copayments for medically necessary, covered prescriptions.

**B. Defendants**

12. Defendant Humana, Inc. offers, among other things, health insurance products and services and network-based health and well-being services to beneficiaries and other government-sponsored health care programs. Humana, Inc. is a Delaware corporation with its principal place of business located at 500 West Main Street, Louisville, Kentucky 40202.

13. Defendant Humana Pharmacy Solutions, Inc. is a wholly-owned subsidiary of Humana, Inc. with its principal place of business located at 500 West Main Street, Louisville, Kentucky 40202. Humana Pharmacy Solutions, Inc. provider pharmacy benefit solutions serves as a PBM for millions of individuals throughout the United States. Humana Pharmacy Solutions, Inc. represents that "it provides you and your employees with the benefits and services you really want – guaranteed costs with no surprises, a variety of plan options and pricing strategies, plus ongoing reliability you can count on that always puts patient care first."<sup>2</sup>

**JURISDICTION AND VENUE**

14. This Court has jurisdiction pursuant to 28 U.S.C. §1331, as claims are brought under federal statutes and necessarily involve adjudication of one or more federal questions. This

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<sup>2</sup> <https://www.humana.com/agent/products-and-services/pharmacy/solutions/> (last accessed Nov. 8, 2016).

Court also has jurisdiction pursuant to 18 U.S.C. §1964(a), which states that the “district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962.”

15. This Court also has jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. §1332(d)(2), (5) because: (i) the Class has more than 100 members; (ii) the amount at issue exceeds five million dollars, exclusive of interest and costs; and (iii) minimal diversity exists, as Plaintiff and Defendants are citizens of different states.

16. This Court has personal jurisdiction over Defendants because Defendants conduct business in Kentucky and this District, have their principle executive offices and provided prescription drug services in Kentucky and this District, have advertised, marketed, and promoted their services in this District, and have sufficient minimum contacts within Kentucky and/or sufficiently availed themselves of the markets in Kentucky and this District to render the exercise of jurisdiction by this Court permissible.

17. Venue is proper in this District under 28 U.S.C. §1391(a)-(d) because, *inter alia*, substantial parts of the events or omissions giving rise to the claim occurred in this District and/or a substantial part of property that is the subject of the action is situated in this District.

### **FACTUAL BACKGROUND**

#### **A. Prescription Drug Coverage**

18. Over 90% of health care beneficiaries in the United States have a health care plan (either private or public) that covers all, or a portion of, their medical and pharmaceutical expenses. Few plans cover all expenses, but instead, require plan participants to pay a portion of their drug costs out-of-pocket. These out-of-pocket expenses include copayments, co-insurance, and/or deductibles.

19. Even though plan participants cannot, and do not, negotiate the price charged by pharmacies for prescription drugs and do not negotiate the copayment price for the drug in a given transaction; they are required to pay the pharmacy a predetermined copayment amount in order to receive the prescription.

20. Plan participants pay health insurance premiums, either directly or through an employer deduction, to a third-party payor for the purpose of insuring against healthcare costs, including prescriptions.

21. In the context of Medicare, consumers pay a premium and obtain prescription drug coverage by enrolling in a Medicare Prescription Drug Plan (Part D). According to the official U.S. Government site for Medicare: “Medicare Prescription Drug Plans (Part D): These plans (sometimes called "PDPs") add drug coverage to Original Medicare, some Medicare Cost Plans, some Medicare Private Fee-for-Service (PFFS) Plans, and Medicare Medical Savings Account (MSA) Plans.”<sup>3</sup>

22. Medicare Prescription Drug Plans (“PDPs”) provide pharmacy benefits to their Part D enrollees and serve as middlemen between drug manufacturers and/or pharmacies and the plans members that pay for drug prescriptions. Medicare PDPs contract with the U.S. Government to offer prescription drug benefits along with numerous services, including developing a pharmacy network, formulary design, negotiating drug rebates, drug utilization review, and processing and analyzing prescription claims.

23. In a typical situation, where a benefit plan participant seeks to fill a drug prescription, the role of the Medicare PDP is illustrated as follows: the insured consumer visits a network pharmacy; the pharmacy checks with the Medicare PDP to confirm consumer eligibility,

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<sup>3</sup> <https://www.medicare.gov/sign-up-change-plans/get-drug-coverage/get-drug-coverage.html> (last accessed November 9, 2016).

coverage, and copayment information; the consumer pays the copayment (and any deductible) and purchases the drug; the Medicare PDP then reimburses the pharmacy for the remainder of the negotiated drug price, including the ingredient cost and a dispensing fee less the copayment; and the Medicare PDP then bills the U.S. Government for the payments it made, pursuant to the terms of the contractual agreement between the Medicare PDP and the U.S. Government.

**B. How Prescription Drug Prices Are Set**

24. The common pricing benchmark for virtually all retail drug reimbursement transactions is the “Average Wholesale Price” (“AWP”). AWP represents the manufacturer’s published catalog or list price for a drug product. Commercial publishers of drug pricing data, such as Red Book and First DataBank, have published AWP data since the 1970s. AWP is used to determine drug prices and third-party reimbursement throughout the healthcare industry.

25. The AWP may be determined by several different methods. The drug manufacturer may report the AWP to the individual publisher of drug pricing data. The AWP may also be calculated by the publisher based upon a mark-up specified by the manufacturer that is applied to the wholesale acquisition cost (“WAC”) or direct price (“DP”). The WAC is the manufacturer’s list price of the drug, when sold to the wholesaler, while the DP is the manufacturer’s list price, when sold to non-wholesalers.

**C. Defendants’ Copayment Claw Back Scheme**

26. Consumers purchase health insurance to protect them from unexpected high medical costs, including prescription drug costs. Plan participants, including Plaintiff and the Class, at a minimum, expect to pay the lower than uninsured or cash-paying individuals for a prescription. Otherwise, they would receive no benefit from their insurance plan, and would, in



fact, be punished for having insurance. Therefore, plan participants reasonably expect to pay less for prescription drugs than cash-paying customers who do not have insurance coverage.

27. Plaintiff is enrolled in a Medicare Advantage Part D health plan that is underwritten and issued by Humana, Inc. Plaintiff's health plan is contained in a standard form contract that provides a pharmacy benefit for outpatient prescription drugs. Plaintiff's health plan further provides that she is responsible to pay the applicable copayment with respect to medically necessary, covered prescription drugs.

28. Medicare defines a copayment as “[a]n amount you may be required to pay as your share of the cost for health care services, like a doctor's visit, or prescriptions. A copayment is usually a set amount, rather than a percentage. For example, you might pay \$10 or \$20 for a doctor's visit or prescription.”<sup>4</sup>

29. A copayment is a type of insurance payment where the insured pays a specified amount that is usually a fraction of the total costs with the insurer paying the remaining costs. Copayments are usually a set amount based on the type of prescription drug. Prescription drugs are usually tiered according to price. For example, a three-tier prescription drug plan may require a higher copay for each tier. Thus, with a three-tier copay, a consumer may pay a \$7 copay for a Tier 1 categorized prescription drug, a \$12 copay for a Tier 2 categorized prescription drug, and a \$47 copay for a Tier 3 categorized prescription drug. The tiering of copays is standard in insurance policies and normally reflective of the costs for the prescription drugs, *i.e.*, the higher the cost of the drug, the higher the copay. However, evidence from numerous pharmacies show that Defendants are charging inflated copays that exceed the costs of the drugs.

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<sup>4</sup> <https://www.medicare.gov/find-a-plan/staticpages/glossary/planfinder-glossary.aspx>. (last accessed November 9, 2016).

30. Plaintiff has been a victim of Defendants' prescription drug claw back scheme. Specifically, during the Class Period, Plaintiff has paid copayments for medically necessary, covered prescription drugs at her local pharmacy where Defendants have improperly inflated the price of the prescription drug copayment and then clawed back a portion of the copayment charged to Plaintiff.<sup>5</sup>

31. On September 22, 2016, Plaintiff filled a prescription at her local network pharmacy for a medically necessary, covered drug. The pharmacy submitted the prescription drug claim and Defendants adjudicated the claim, requiring the pharmacy to charge Plaintiff a \$20.32 copayment for the prescription. However, unbeknownst to Plaintiff, Defendants, through Humana Pharmacy Solutions, Inc., artificially inflated the cost of the prescription and clawed back \$5.00 of the copayment from the pharmacy.

32. Plaintiff believes that she has been subjected to additional undisclosed clawbacks as a result of Defendants' scheme.

33. As demonstrated above, Defendants have engaged in a fraudulent scheme to inflate prescription copayments significantly above the amounts for the cost of the drugs. Defendants have required pharmacies to collect these inflated copayments and then have clawed back or recouped a portion of the copayments that the pharmacies collected.

34. Neither the copayment amount paid by the plan participant nor the amount clawed back by the Defendants appear to have any relationship to the contractual provisions of the plan, AWP, wholesale price, WAC, or any other terms of reimbursement.

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<sup>5</sup> To protect Plaintiff's privacy, Plaintiff is not providing the specific prescription drugs that were submitted to Defendants, as Defendants already possess such information. To the extent requested, Plaintiff will provide such information to the Court and Defendants under seal.

35. Plaintiff’s investigation reveals that Defendants’ claw back scheme is pervasive and is occurring with numerous prescription drugs, including Phentermine, Alcantin, Bystolic, Estrogen, Vitamin D and medically necessary, covered prescription drugs.

36. Another instance of Defendants’ claw back scheme is shown through the following document image regarding the prescription drug Guaifenesin, which is a cough medicine. This image demonstrates how the claw back works. It shows the cost of the drug, including tax and the pharmacist’s fee, is \$6.67, but also reveals the pharmacy had to charge the customer a copayment of \$11.67. The remaining \$5.00 was sent back to the Medicare PDP. The image below taken from an article from Fox 8 News entitled “Copay or you-pay? Prescription drug clawbacks draw fire” describes how the PBM claws back a significant portion of the copay for Guaifenesin.<sup>6</sup>

37. Indeed, the Fox News 8 New Orleans investigation, entitled “Copay or you-pay? Prescription drug clawbacks draw fire,” support Plaintiff’s claim and state that Humana may be clawing back money from customers, when the customers' drugs aren't covered under the Medicare Part D program. The Fox News 8 investigation stated that several pharmacists told Fox News 8 that the documentation they received clearly shows Humana, Inc. ordered the collection of copays that were higher than the costs of the drugs.

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***** PAID CLAIM INFORMATION *****
Patient: [REDACTED]
ADDR: [REDACTED]
Drug: GUAIFEN/COD SOD AC SOLN 100-10/5 Qty: 120 NDC: 00121-0775-16
Cvg: SMD Phone: 800-865-8715 Ref#: A5357155921101
Rx# 1177896 Date: 11-11-15 Trans. Date: 11-11-15 Time: 16:16

Transmitted Received Difference
Cost 12.09 4.92 7.17 ( 59.31%)
Fee 15.00 1.75
Tax 0.00
Cost+Fee+Tax 27.09 6.67 0.00 Acq Cost
Copay 11.67-
Amt.Paid 5.00-

Benefit Stage Qualifier Benefit Stage Amount
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11.67

Insurance Information
Group ID: [REDACTED]
Plan ID: [REDACTED]
Network Reimbursement ID: [REDACTED]
Payer ID Qualifier: [REDACTED]
Payer ID: [REDACTED]
Cardholder ID: [REDACTED]
URL:
Patient Information
First Name: [REDACTED]
Last Name: [REDACTED]
Date Of Birth: [REDACTED]

Optional Data Review
Plan Identification: MPRF
Network Reimbursement ID: NET=9101
Basis of Reimbursement: MAC Pricing Cost Paid to MAC Price
Addl. Resp. Msg: CMS EXCLUDED DRUG
    
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<sup>6</sup> See Lee Zu (3:10 PM), <http://www.fox8.com> (last visited Nov. 8, 2016).

<sup>1</sup> (May 4, 2016, 11:00 AM), <http://www.fox8.com> (back-draw-fire).

38. Louisiana State Insurance Commissioner Jim Donelon questioned the legality of this practice: “It is an additional premium in my judgment, comparable to raising rates,” Donelon warns. “And I think that charge constitutes a price of having insurance with whatever carrier you're insured with.”<sup>7</sup>

39. With respect to the payment of copayments above the cost of actual cost of the prescription drug, Donelon further stated: “You could say that, if the customer is paying more than the drug is worth, it's not a copay – it's a “you-pay”. “There's no copay,” our pharmacist says, “that is an absolute, additional premium being paid, that they're paying, that they don't realize.”  
*Id.*

40. In these instances, instead of a traditional copayment based on the actual cost of the prescription drug, patients, like Plaintiff and the Class, are unknowingly footing the entire bill for their prescriptions, whereas Defendants pay nothing and make a sizable undisclosed profit off of the consumers.

41. Unfortunately, plan participants often do not know the true costs of their prescriptions or that there are cheaper options available. And, many pharmacies are contractually prohibited from letting plan participants know about less expensive options.

42. Defendants' fraudulent copayment claw back scheme results in plan participants paying more for the cost of a prescription with insurance – which defeats the entire purpose of having insurance in the first place. Defendants do not disclose their scheme to plan participants and, in fact, disguise their scheme through contractual provisions, which make it appear that their copayments are based on, and are a portion of, the cost of the prescriptions. Indeed, there is simply

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<sup>7</sup> <http://www.fox8live.com/story/31891070/zurik-copay-or-you-pay-prescription-drug-clawbacks-draw-fire> (last accessed Nov. 8, 2016)

no legitimate basis for Defendants to charge for more for medically necessary, covered prescription drugs than those without insurance.

43. Defendants' contracts with participating pharmacies require the pharmacists not to disclose the existence of the claw back or the fact that a plan member could, in certain circumstances, pay more in a copay for a prescription drug than the drug would cost the plan member if she or he did not have insurance. Pharmacies are often subject to "gag clauses" prohibiting them from advising consumers that she or he could pay less for a drug if the purchase was made without applying the insurance benefit.

44. Indeed, a June 28, 2016 press release issued by the NCPA described the claw back practice and how it is impacting pharmacists and consumers throughout the United States.<sup>8</sup> The press release went on to discuss a survey that was conducted by the NCPA of its members between June 2 and June 17, 2016, which disclosed the following:

- Copay claw backs are relatively common, as 83 percent of pharmacists witnessed them at least 10 times during the past month.
- Two-thirds (67 percent) said the practice is limited to certain PBMs.
- Most (59 percent) said they believe the practice occurs in Medicare Part D plans as well as commercial ones.
- Sometimes PBM corporations impose "gag clauses" that prohibit community pharmacists from volunteering the fact that a medication may be less expensive if purchased at the "cash price" rather than through the insurance plan. In other words, the patient has to affirmatively ask about pricing. Most pharmacists (59 percent) said they encountered these restrictions at least 10 times during the past month.

*Id.*

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<sup>8</sup> News Releases, NCPA, Pharmacists Survey: Prescription Drug Costs Skewed by Fees on Pharmacies, Patients (June 28, 2016), <http://www.ncpanet.org/newsroom/news-releases/2016/06/28/pharmacists-survey-prescription-drug-costs-skewed-by-fees-on-pharmacies-patients> (last visited Oct. 12, 2016); *see also Survey of Community Pharmacies*, NCPA (2016), [http://www.ncpa.co/pdf/dir\\_fee\\_pharmacy\\_survey\\_june\\_2016.pdf](http://www.ncpa.co/pdf/dir_fee_pharmacy_survey_june_2016.pdf) (last visited Nov.9, 2016).

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

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

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“Simvastatin 90-day charged the patient \$30 more than cash price.”

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“[A] patient copay is over \$50 and the claw back is over \$30 all for a drug where our cash price would only be \$15.”

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

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“Same patient, same day, five prescriptions. ... Total copay \$146.89. Total claw back \$134.49. Total price of the five prescriptions \$12.40. Our gross profit on these five drugs \$3.79. These are all maintenance medications for this patient.”

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“Recently filled a bupropion xl 150 script for 30 tabs. Cost is \$17.15. PBM required us to charge a patient \$47.10 and then took back \$35.”<sup>9</sup>

46. Clearly, these examples of claw backs could not be possible if the true cost of the prescription drug was disclosed and the pharmacy was not prohibited by contract and threat of termination from disclosing the lower cash-paying price for these drugs.

### **CLASS ALLEGATIONS**

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<sup>9</sup> See *Community pharmacists describe PBM copay clawbacks on patients*, NCPA.CO (2016), <http://www.ncpa.co/pdf/06-27-16-copay-clawbacks.pdf> (last visited Nov. 9, 2016).

47. Plaintiff brings this action individually and on behalf of the following Class (the “Nationwide Class”), pursuant to Rule 23 of the Federal Rules of Civil Procedure:

All individuals residing in the United States and its territories who purchased medically necessary, covered prescription drugs on Defendants’ formulary at any time during the relevant statute of limitations period (the “Nationwide Class Period”) and paid a copayment in excess of the prescription drug’s cost.

48. Plaintiff reserves the right to redefine the Class prior to certification.

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

50. This action is brought, and may properly be maintained, as a Class action pursuant to Fed. R. Civ. P. 23. This action satisfies the numerosity, typicality, adequacy, predominance, and superiority requirements of those provisions.

51. The Class is so numerous that the individual joinder of all of its members is impracticable. Due to the nature of the trade and commerce involved, Plaintiff believes that the total number of Class members is in the thousands and that the members of the Class are geographically dispersed across the United States. While the exact number and identities of the Class members are unknown at this time, such information can be ascertained through appropriate investigation and discovery.

52. Common questions of law and fact exist, as to all members of the Class, and these common questions predominate over any questions affecting only individual members of the Class. These common legal and factual questions, which do not vary from Class member to Class member, and which may be determined without reference to the individual circumstances of any Class member, include, but are not limited to, the following:

- a. whether Defendants' pricing of the prescription drugs was false and misleading;
- b. whether Defendants engaged in a scheme to inflate the copayment for medically necessary, covered prescription drugs;
- c. whether Defendants engaged in a pattern of deceptive and/or fraudulent activity intended to defraud Plaintiff and the Class members;
- d. whether Defendants utilized or formed enterprises for the purpose of carrying out the out-of-network reimbursement scheme;
- e. whether Defendants used the U.S. mails and interstate wire facilities to carry out the fraudulent copayment scheme;
- f. whether the Defendants used the U.S. Mail and interstate wire facilities to carry out their conspiracy and agreement;
- g. whether Defendants' conduct violated the Racketeer Influenced and Corrupt Organizations Act ("RICO");
- h. whether Defendants violated the states Consumer Protection Statute;
- i. whether Plaintiff and the Class are entitled to compensatory damages and if so, the nature of such damages; and
- j. whether Plaintiff and the Class are entitled to injunctive relief.

53. Plaintiff's claims are typical of the claims of the members of the Class. Plaintiff and all members of the Class have been similarly affected by Defendants' common course of conduct, since they all relied on Defendants' representations in the plan contract regarding their prescription drug coverage and paid copayments to their pharmacies based on those representations.



54. Plaintiff will fairly and adequately represent and protect the interests of the Class. Plaintiff has retained counsel with substantial experience in handling complex class action litigation. Plaintiff and her counsel are committed to vigorously prosecuting this action on behalf of the Class and have the financial resources to do so.

55. A class action is superior to other available methods for the fair and efficient adjudication of the present controversy. Individual joinder of all members of the Class is impracticable. Even if individual members of the Class had the resources to pursue individual litigation, it would be unduly burdensome to the courts in which the individual litigation would proceed. Individual litigation magnifies the delay and expense to all parties in the court system of resolving the controversies engendered by Defendants' common course of conduct. The class action device allows a single court to provide the benefits of unitary adjudication, judicial economy, and the fair and efficient handling of all Class members' claims in a single forum. The conduct of this action as a class action conserves the resources of the parties and the judicial system and protects the rights of the Class. Furthermore, for many, if not most, a class action is the only feasible mechanism that allows an opportunity for legal redress and justice.

56. This action is maintainable as a class action, under Fed. R. Civ. P. 23(b)(1), because individual actions by class members would create: (1) inconsistent or varying adjudications that would establish incompatible standards of conduct for Defendants; and/or (2) adjudications that, as a practical matter, would be dispositive of the interests of other class members not parties to the adjudications, and would substantially impair or impede the ability of such non-party class members to protect their interests.

57. This action is maintainable as a class action, under Fed. R. Civ. P. 23(b)(2), because Defendants have acted, or refused to act, on grounds generally applicable to the Class, thereby making appropriate final injunctive relief respecting the Class as a whole.

58. This action is maintainable as a class action, under Fed. R. Civ. P. 23(b)(3), because the common questions of law and fact identified above, without limitation, predominate over any questions affecting only individual members and a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

### **CAUSES OF ACTION**

#### **Count I - Violation of RICO, 18 U.S.C. §1962(c)**

59. Plaintiff realleges each and every allegation contained above as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

60. At all relevant times, Defendants are “person[s]” within the meaning of RICO, 18 U.S.C. §§1961(3), 1964(c).

61. As described herein, Defendants Humana, Inc operated and managed Humana Pharmacy Solutions, Inc. as an enterprise to carry out their pattern of racketeering activity. Humana Pharmacy Solutions, Inc. is a legal entity enterprise pursuant to 18 U.S.C. §1961(4).

62. The Defendants utilized Humana Pharmacy Solutions, Inc. both for the illegal conduct described herein, but also for the legal purpose of delivering prescription drug services in accordance with the law.

63. As described herein, all of the Defendants also operated and managed as legal entity enterprises the individual pharmacies where Plaintiff and members of the Class filled their prescriptions that were subject to Defendants’ illegal scheme.

64. Defendants utilized Plaintiff's and the Class members' pharmacies both for the illegal conduct described herein, but also for the legal purpose of facilitating prescription drug delivery services in accordance with the law.

65. In addition, at all relevant times, and as described herein, all of the Defendants carried out their claw back copayment scheme to Humana, Inc members in connection with the conduct of an association-in-fact enterprise, within the meaning of 18 U.S.C. §1961(4), comprising of Humana, Inc and Humana Pharmacy Solutions, Inc., non-defendant independent network pharmacies, and non-defendant insurance companies (collectively, "Humana Enterprise").

66. Each Defendant is legally and factually distinct from each of the enterprises described herein.

67. At all relevant times, the Humana Enterprise was engaged in, and its activities affected, interstate commerce within the meaning of RICO, 18 U.S.C. §1962(c).

68. As described herein, the Humana Enterprise has, and continues to have, an ascertainable structure and function separate and apart from the pattern of racketeering activity in which Defendants have engaged. In addition, the members of the Humana Enterprise function as a structured and continuous unit and performed roles consistent with this structure. The members of the Humana Enterprise performed certain legitimate and lawful activities that are not being challenged in this complaint, including the provision of health insurance and plan and claims administration services by Humana, Inc., which was done for many claims lawfully and without resort to unlawful practices. However, the copayment claw back scheme was not legitimate, as it involved the artificial inflation of prescription drug amounts beyond the true cost of the drugs enabling Defendants to obtain additional monies that they otherwise would not be entitled to or enable to obtain. Aside from legitimate activities carried out by the members of the Humana

Enterprise, its members used the Humana Enterprise structure to carry out the fraudulent and unlawful activities alleged herein, including, but not limited to, intentional inflation of copayment amounts and the automatic recoupment, or clawing back, of these inflated copayment amounts from plan members' pharmacies.

69. The purpose of the Defendants' use of the enterprises described herein was to create a mechanism by which Defendants could obtain additional monies beyond the copayments from plan members for medically necessary, covered prescription drugs. In particular, as described herein, Defendants created what appeared to be an appropriate structure between the independent network pharmacies, insurance company, and the PBMs, to provide pharmacy benefits to plan members, which includes, *inter alia*, establishing a formulary of drugs that will be covered, a network of pharmacies that will serve as participating pharmacies for plan members to obtain their prescriptions, copayment amounts, coinsurance amounts, and deductibles, when, in fact, they were invalid.

70. Through their roles in the scheme, Defendants benefited by artificially inflating the copayments for medically necessary, covered prescription drugs. Defendants further used the enterprises to facilitate its goal of artificially inflating the copayments for medically necessary, covered prescription drugs.

71. Through its wrongful conduct, as alleged herein, Defendants, in violation of 18 U.S.C. §1962(c), conducted and participated in the conduct of the enterprises' affairs, directly and indirectly, through a "pattern of racketeering activity," as defined in 18 U.S.C. §1961(5).

72. Defendants, acting through its officers, agents, employees, and affiliates, have committed numerous predicate acts of "racketeering activity," as defined in 18 U.S.C. §1961(5), prior to, and during, the Class Period and continue to commit such predicate acts, in furtherance

of their claw back payment scheme, including: (a) mail fraud, in violation of 18 U.S.C. §1341; and (b) wire fraud, in violation of 18 U.S.C. §1343. Such predicate acts include the following:

- a. by mailing, or causing to be mailed, and otherwise knowingly agreeing to the mailing of various materials and information, including, but not limited to, materially false and misleading copayment determinations, for the purpose of artificially inflating the amount of monies paid and each such mailing constituting a separate and distinct violation of 18 U.S.C. §1341; and
- b. by transmitting, or causing to be transmitted, and otherwise knowingly agreeing to the transmittal of various materials and information, including, but not limited to, materially false copayment determinations and related benefit determinations, by means of telephone, facsimile, and the Internet, in interstate commerce, for the purpose of effectuating the above-described false copayment scheme and each such transmission constituting a separate and distinct violation of 18 U.S.C. §1343.

73. As set forth above, Defendants made copayment determinations, which were contrary to law and its members' contracts. Defendants knew that the copayment determinations artificially inflated the costs of medically necessary, covered prescription drugs and that Defendants would claw back, or recoup, such amounts.

74. In furtherance of its copayment claw back scheme, Defendants, in violation of 18 U.S.C. §§1341, 1343, repeatedly and regularly used the U.S. Mail and interstate wire facilities to further all aspects of the copayment claw back scheme by delivering and/or receiving materials, including contracts, pharmacy benefit determinations, copayment determinations, and other materials necessary to carry out the scheme to defraud Plaintiff and other Class members.

75. The foregoing communications *via* U.S. Mail and interstate wire facilities contained false and fraudulent misrepresentations and/or omissions of material facts, had the design and effect of preventing Plaintiff and the Class from learning of Defendants' improper inflation of copayments, and/or otherwise were incident to an essential part of Defendants' copayment claw back scheme to defraud.

76. Defendants knew that their plan participants would reasonably rely on the accuracy, completeness, and integrity of disclosures by the Defendants. Plan participants did rely, to their detriment, on misrepresentations and omissions from the Defendants.

77. Each such use of the U.S. Mail and interstate wire facilities alleged in this complaint constitutes a separate and distinct predicate act.

78. Plaintiff and members of the Class were injured by reason of Defendants' RICO violations because they directly and immediately overpaid for medically necessary, covered prescription drugs. Their injuries were proximately caused by Defendants' violations of 18 U.S.C. §1962(c) because these injuries were the foreseeable, direct, intended, and natural consequence of Defendants' RICO violations (and commission of underlying predicate acts) and, but for Defendants' RICO violations (and commission of underlying predicate acts), they would not have suffered these injuries.

79. Pursuant to §1964(c) of RICO, 18 U.S.C. §1964(c), Plaintiff and the members of the Class are entitled to recover, threefold, their damages, costs, and attorneys' fees from Defendants and other appropriate relief.

#### **Count II – Violation of RICO, 18 U.S.C. §1962(d)**

80. Plaintiff realleges each and every allegation contained above as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

81. During the Class Period, Defendants conspired with other co-conspirators, which include other unnamed insurance companies who utilize Humana Pharmacy Solutions, Inc. to engage in the claw back payment scheme, to conduct or participate, directly or indirectly, in the conduct of the affairs of the enterprises (described above) through a pattern of racketeering activity, as described above, in violation of 18 U.S.C. §1962(d). This conspiracy to violate 18 U.S.C. §1962(c) constitutes a violation of 18 U.S.C. §1962(d).

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

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

**Count III - Violation of Kentucky Consumer  
Protection Act Ky. Rev. Stat. §367.170**

84. Kentucky Revised Statutes §367.170 provides that: “Unfair, false, misleading, or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.” Ky. Rev. Stat. §367.170(1).

85. Defendants provide pharmaceutical insurance coverage to consumers, which falls within the meaning of “any trade or commerce” under Ky. Rev. Stat. §367.170.

86. Defendants engaged into deceptive practice of materially omitting that the insured's copays actually could and would exceed the actual price of the prescription medications and that part of their co-pay would actually go to Defendants, rather than insureds' pharmacists.

87. Defendants engaged in the deceptive practice of requiring pharmacies not to inform their customers (*i.e.*, Defendants' insureds) that it would actually be cheaper not to use insurance for the particular transactions described above.

88. Defendants made misleading statements by labeling patients' obligation as "co-pays," when in reality the insurer, the ostensible other "co-payor," paid ***nothing*** to the pharmacy, but instead took part of patients' co-pays for itself from the pharmacy.

89. Defendants engaged in the false pretense of making it appear that a co-pay is an amount that is less than the actual price of the prescription medicines patients would obtain from their pharmacists.

90. These misleading statements, false pretenses, deceptive practices, and omissions were material, in that reasonable consumers would have opted not to use insurance to purchase their medicines when their "co-pays" would exceed the price of the medication available without insurance.

91. Defendants intended that Plaintiff and consumers rely upon these unfair, false misleading or deceptive practices, and omissions, which were made in connection with the sale of insurance and pharmaceuticals in violation of Kentucky's Consumer Protection Act, Kentucky statutes, and Ky. Rev. Stat. §367.170.

92. As a result of Defendants' violative conduct, Plaintiff and consumers have suffered damages and are entitled to injunctive and equitable relief, including but not limited to restitution and disgorgement, and an award of attorneys' fees pursuant to Ky. Rev. Stat. §367.220(3). Defendants misleading statements, false pretenses, deceptive practices, and omissions were held out to the public at large, and many members of the public would receive relief from the success of this action.



93. By committing the acts alleged above, Defendants have violated the Kentucky's Consumer Protection Act, Kentucky statutes, and Ky. Rev. Stat. §367.170.

94. Defendants' representations and omissions were false, untrue, misleading, deceptive, and/or likely to deceive.

95. Defendants knew, or should have known, that their representations and omissions were false, untrue, misleading, deceptive, and/or likely to deceive.

96. Defendants used or employed such deceptive and unlawful acts or practices with the intent that Plaintiff and members of the Class rely thereon.

97. Plaintiff and the other members of the Class did so rely.

98. Plaintiff and the other members of the Class purchased the prescription drugs sold by Defendants, who misrepresented the copayment price of the prescription drugs purchased by Plaintiff and the Class.

99. Plaintiff and the other members of the Class would not have paid as much as they did for the prescription drugs, but for Defendants' deceptive and unlawful acts.

100. As a result of Defendants' conduct, Plaintiff and the other members of the Class sustained damages in amounts to be proven at trial.

101. In accordance with Kentucky's Consumer Protection Act, Kentucky statutes, Ky. Rev. Stat. §367.170, Plaintiff seeks an order: (1) enjoining Defendants from continuing to conduct business through its deceptive conduct; (2) requiring Defendants to conduct a corrective advertising campaign; (3) ordering Defendants to implement whatever measures are necessary to remedy the untrue, misleading, or deceptive business acts or practices; (4) awarding Plaintiff and the Nationwide Class costs, including reasonable attorney's fees; and (5) ordering such other relief as may be just and proper.

#### **Count IV – Fraud**

102. Plaintiff realleges each and every allegation contained above as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

103. Defendants materially misrepresented and/or concealed the true copay prices of prescription drugs. Defendants made such misrepresentations and/or omissions by reporting artificially inflated copay prices for such drugs to Plaintiff and members of the Class.

104. Defendants made these misrepresentations and omissions knowingly, or at least with reckless disregard of their falsity, given that Defendants knew the copay prices that they reported to Plaintiff and members of the Class were substantially (and unjustifiably) higher than the prices that would be charged to cash-paying customers.

105. Defendants intended to induce Plaintiff and the Class, with respect to the Class, to rely on its misrepresentations and/or omissions. Defendants knew that Plaintiff and the Class would rely on Defendants' misrepresentations and/or omissions regarding copay prices and as a result, would pay copayments higher than the actual prices for those prescription drugs.

106. Plaintiff and the Class justifiably relied upon Defendants' misrepresentations and/or omissions in that Plaintiff and members of the Class would not have purchased prescription drugs for more than the cash prices, but for Defendants' misrepresentations and/or omissions. Plaintiff's and the Class' reliance on Defendants' misrepresentations and/or omissions were, thus, to their detriment.

107. As a proximate result of Defendants' conduct, Plaintiff and the Class have been damaged because they paid copayments for prescription drugs that were far higher than the prices they would have paid, but for Defendants' misconduct.

108. Defendants are therefore liable to Plaintiff and the Class for the damages they sustained.

### **Count V – Negligent Misrepresentation**

109. Plaintiff realleges each and every allegation contained above as if fully set forth herein and, to the extent necessary, pleads this cause of action in the alternative.

110. Under the circumstances alleged, Defendants owed a duty to Plaintiff and the Class to provide them with accurate information regarding the prices of their prescription drugs.

111. Defendants misrepresented and/or concealed the true copay prices of prescription drugs. Defendants made such misrepresentations by reporting artificially inflated prices for such drugs to Plaintiff and the Class.

112. Defendants had no reasonable grounds to believe that these misrepresentations and/or omissions were true. The prices that Defendants reported to Plaintiff and members of the Class were substantially (and unjustifiably) higher than the prices charged to cash-paying customers.

113. Defendants intended to induce Plaintiff and the Class to rely on their misrepresentations and/or omissions. Defendants knew that Plaintiff and the Class would rely on Defendants' misrepresentations and/or omissions regarding copayment prices and as a result, would pay copayments higher than the actual prices for those prescription drugs.

114. Plaintiff and the Class justifiably relied upon Defendants' misrepresentations and/or omissions in that Plaintiff and the Class would not have purchased prescription drugs for more than the cash prices, but for Defendants' misrepresentations and/or omissions. Plaintiff's and the Class' reliance on Defendants' misrepresentations and/or omissions were, thus, to their detriment.

115. As a proximate result of Defendants' negligent conduct, Plaintiff and the Class have been damaged because they paid copayments for prescription drugs that were far higher than the prices they would have paid, but for Defendants' misconduct.

116. Defendants are therefore liable to Plaintiff and the Class for the damages they sustained.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for relief and judgment against Defendants as follows:

A. That the Court certifies the Class, under Fed. R. Civ. P. 23, appoints Plaintiff as Class Representative, and appoints her attorneys as Class Counsel to represent the members of the Class;

B. That the Court declares that Defendants' conduct has violated, and continues to violate, the statutes and laws referenced herein;

C. That the Court preliminarily and permanently enjoins Defendants from conducting business through the untrue, misleading, or deceptive business acts or practices, and other violations of law described in this Complaint;

D. That the Court orders Defendants to implement whatever measures are necessary to remedy the untrue, misleading, or deceptive business acts or practices and other violations of law described in this Complaint;

E. That the Court orders Defendants to notify each and every individual, who paid a copayment for medically necessary, covered prescription drugs above that prescription drug's cost, of the pendency of the claims in this action in order to give such individuals an opportunity to obtain restitution from Defendants;

F. That the Court orders Defendants to pay restitution to restore to all affected persons all funds acquired by means of any act or practice declared by this Court to be an unlawful, unfair, or deceptive business act or practice or in violation of law, as described in this Complaint, plus pre- and post-judgment interest thereon;

G. That the Court orders Defendants to disgorge all monies wrongfully obtained and all revenues and profits derived by Defendants, as a result of their acts or practices, as alleged in this Complaint;

H. That the Court awards damages to Plaintiff and the Class;

I. That the Court enters an Order awarding costs, expenses, and reasonable attorneys' fees; and

J. That the Court grants such other and further relief as may be just and proper.

**JURY TRIAL DEMAND**

Plaintiff hereby demands a trial by jury for all issues so triable.

DATED: November 10, 2016

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*Attorneys for Plaintiff Margie Waldrop*

**CIVIL COVER SHEET** 3:16-cv-706-GNS

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

**I. (a) PLAINTIFFS**  
 Margie Waldrop

(b) County of Residence of First Listed Plaintiff Jackson Co., AL  
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)  
 Gray & White  
 713 E. Market St. #2  
 Louisville, Ky 40202

**DEFENDANTS**  
 Humana, Inc. and Humana Pharmacy Solutions, Inc.

County of Residence of First Listed Defendant Jefferson Co., Ky.  
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

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

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

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

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input checked="" type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

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

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

1 Original Proceeding     2 Removed from State Court     3 Remanded from Appellate Court     4 Reinstated or Reopened     5 Transferred from Another District (specify)     6 Multidistrict Litigation

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. 1332

Brief description of cause:  
RICO Cause of action

**VII. REQUESTED IN COMPLAINT:**     CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.    DEMAND \$ \_\_\_\_\_    CHECK YES only if demanded in complaint: JURY DEMAND:  Yes     No

**VIII. RELATED CASE(S) IF ANY** (See instructions): JUDGE \_\_\_\_\_ DOCKET NUMBER \_\_\_\_\_

DATE: 11/10/2016    SIGNATURE OF ATTORNEY OF RECORD: /s/ Jacob Levy

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_



## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

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

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.  
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.  
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.  
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.  
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.  
 Original Proceedings. (1) Cases which originate in the United States district courts.  
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.  
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.  
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.  
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.  
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.  
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.  
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

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

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Kentucky

MARGUE WALDROP

Plaintiff(s)

v.

HUMANA, INC. and HUMANA PHARMACY SOLUTIONS, INC.

Defendant(s)

Civil Action No. 3:16-cv-706-GNS

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Humana Pharmacy Solutions, Inc. Corporation Service Company 421 WEST MAIN STREET FRANKFORT, KY 40601

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Mark Gray, Matthew White, and Jacob Levy Gray and White Law Firm 713 E. Market Street, Suite 200 Louisville, KY 40202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: \_\_\_\_\_

Signature of Clerk or Deputy Clerk

AO 440 (Rev. 06/12) Summons in a Civil Action (Page 2)

Civil Action No. \_\_\_\_\_

**PROOF OF SERVICE**

*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* \_\_\_\_\_  
was received by me on *(date)* \_\_\_\_\_.

I personally served the summons on the individual at *(place)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I left the summons at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* \_\_\_\_\_, who is  
designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_  
\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

I returned the summons unexecuted because \_\_\_\_\_; or

Other *(specify)*: \_\_\_\_\_  
\_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Western District of Kentucky

MARGUE WALDROP

Plaintiff(s)

v.

HUMANA, INC. and HUMANA PHARMACY SOLUTIONS, INC.

Defendant(s)

Civil Action No. 3:16-cv-706-GNS

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Humana, Inc.
Corporation Service Company
421 WEST MAIN STREET
FRANKFORT, KY 40601

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Mark Gray, Matthew White, and Jacob Levy
Gray and White Law Firm
713 E. Market Street, Suite 200
Louisville, KY 40202

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

Signature of Clerk or Deputy Clerk

Civil Action No. \_\_\_\_\_

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\_\_\_\_\_ on *(date)* \_\_\_\_\_; or

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I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding attempted service, etc:

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Humana, Humana Pharmacy Solutions Facing Price-Fixing Class Action](#)

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