

**IN THE CIRCUIT COURT FOR MADISON COUNTY, ALABAMA**

**Star Discount Pharmacy, Inc.**, an Alabama corporation;  
**Propst Discount Drugs, Inc.**, an Alabama corporation;  
**C&H Pharmacy, Inc.**, an Alabama corporation;  
**Darden Heritage**, an individual;

Plaintiffs,

v.

**MedImpact Healthcare Systems, Inc.**, a California corporation;  
**Michael Struhs**, an individual;  
**Nicole Adams**, an individual;  
Nos. 1-10, whether singular or plural, the individual(s) and/or entity(ies), who or which administered, created, funded, and/or authored, any plan that provided prescription pharmacy benefits to public education employees of the State of Alabama;  
Nos. 11-20, whether singular or plural, the individual(s) and/or entity(ies) who or which created, administered, marketed, funded, and/or had any role in the network of pharmacies providing prescription pharmacy benefits to public education employees of the State of Alabama;  
Nos. 21-30, whether singular or plural, the individual(s) and/or entity(ies), who or which designed, crafted, planned, authored, created, marketed, any plan to provide limited access to prescription pharmacy benefits within the State of Alabama;  
Nos. 31-40, whether singular or plural, the individual(s) and/or entity(ies), known as and/or doing business as MedImpact, at all times material hereto;  
Nos. 41-50, whether singular or plural, the individual(s) and/or entity(ies), who or which assisted and/or conspired with any named and/or fictitious defendants herein;  
Nos. 51-60, whether singular or plural, the individual(s) and/or entity(ies), who or which is/are the predecessor(s), successor(s), alter ego(s), principal(s), agent(s), master(s), servant(s), employer(s), co-conspirator(s) and/or employee(s) of any named and/or fictitious defendants herein;

Defendants.

## COMPLAINT

### THE PARTIES

1. The plaintiffs Star Discount Pharmacy, Inc., Propst Discount Drugs, Inc., and C&H Pharmacy, Inc., (hereinafter referred to as "Local Pharmacies") are Alabama corporations with their principal place of business in Madison County, Alabama.
2. The plaintiff Darden Heritage (hereinafter "Heritage") is an individual resident citizen of Madison County, Alabama. Heritage is a local, independent pharmacist who owns and operates the plaintiffs identified as Local Pharmacies.
3. The plaintiffs bring this action on behalf of themselves and as the representatives of the class defined herein and which is a class of similarly situated individuals.
4. The defendant MedImpact Healthcare Systems, Inc., (hereinafter "Medimpact") is a California company doing business at all times material hereto in Madison County, Alabama.
5. Upon information and belief, the defendant Michael Struhs (hereinafter Struhs) is an adult resident citizen of the State of California.
6. Upon information and belief, the defendant Nicole Adams (hereinafter "Adams") is an adult resident citizen of the State of Alabama.
7. The fictitious defendants designated herein are presently unknown to plaintiffs or if known then their identity as proper party defendants is not known. However, the proper parties will be substituted by amendment upon discovery.
8. Any reference in this Complaint to any individual defendant, specific defendants, or defendants in general, refers to all defendants both named and fictitious.

### FACTS COMMON TO ALL ISSUES

9. The plaintiffs named herein own and/or operate local, independent pharmacies within the State of Alabama. These pharmacies are engaged in the business of providing pharmaceutical services and prescription medications to the public and are licensed under Alabama law to engage in this profession.

10. The defendant MedImpact operates a business engaged in the administration of prescription drug benefit plans.
11. The defendants Struhs and Adams are employees and/or agents of the defendant MedImpact.
12. The Alabama legislature has provided for the creation and maintenance of health insurance benefits for individuals working in the field of public education in our State. This plan has been in existence for many years and is commonly known as the "Alabama Public Education Employees' Health Insurance Plan" or PEEHIP. The plan includes the provision of prescription medication benefits to State employees in the field of public education.
13. During the existence of PEEHIP, the plan would occasionally contract with private companies to administer certain aspects of the offered benefits, including the provision of prescription medications.
14. Upon information and belief, prior to his association with the defendant MedImpact, the defendant Struhs was the Director of Business Development for Wal-Mart's Health and Wellness business unit. During his association with this chain store, Struhs advocated the implementation of prescription drug networks that denied the provision of professional services by smaller and/or independent pharmacies, and moreover, limited pharmacy access by the end consumer.
15. Upon information and belief, in 2010, the defendant Struhs became employed by the defendant MedImpact. The defendant Struhs continued to formulate his plan to prohibit the provision of professional services by smaller and/or independent pharmacies.
16. In close proximity to the defendant Struhs becoming employed by the defendant MedImpact, the defendant MedImpact entered into an agreement to serve as the third-party administrator (TPA) of PEEHIP's prescription medication program.
17. Upon becoming the TPA of PEEHIP's prescription medication program, the defendant MedImpact entered into an agreement with the State of Alabama and, additionally, assigned its employee the defendant Nicole Adams to serve as liaison to officials of the State of Alabama. As part of this assignment, defendant Adams maintains an office in the State of Alabama. PEEHIP is the Defendant Adams' sole account assignment.
18. As part of MedImpact's agreement with the State of Alabama the defendant expressly assumed a duty to comply with all Alabama law, including insurance

laws, applicable to the provision of prescription and/or pharmaceutical benefits in an employee benefit plan within our State.

19. In addition to the preceding paragraph, the defendant MedImpact also expressly assumed the duty of administering prescription benefits to employees covered by PEEHIP.

20. A health benefit plan, such as PEEHIP, may provide reimbursement for covered medical expenses directly to the beneficiary or, alternatively, the beneficiary may assign this right to the services provider such as a pharmacy. In such cases, the providing pharmacy would be reimbursed directly by the TPA.

21. After entering into its TPA agreement with the State of Alabama and assuming duties including those expressed in the preceding paragraphs, the defendant MedImpact began directly contacting pharmacies and requesting that the pharmacies enter into specific contracts with MedImpact.

22. Alabama law specifically prohibits any agreements between any plan administrator and a pharmacy that establishes reimbursement rates for pharmacies which are less than the usual and customary rates paid by consumers not covered by a third-party plan. This prohibition is codified in our statutes, including Ala.Code Sec. 34-23-115.

23. Alabama law also expressly prohibits any employee benefit plan from preventing a covered beneficiary from going to the pharmacy of his or her choice. The statute also prohibits any effort to deny a licensed pharmacy or pharmacist the right to participate in the provision of prescription benefits under the plan. This Alabama statute is commonly referred to as the "any willing provider" law and is contained in Ala.Code Sec. 27-45-1, et.seq.

24. In accordance with its scheme and/or plan to limit local, independent pharmacies within the State of Alabama from providing prescription benefits, the defendants engaged in a course of conduct designed to require independent pharmacies to either enter into agreements for reimbursement upon unfavorable, unlawful, and/or unprofitable terms or, in the alternative, to be denied any right of reimbursement related to the provision of prescription medications within the State of Alabama.

25. The present plaintiffs have suffered substantial and irreparable financial losses as a result of the defendants' unlawful course of conduct. These losses include the loss of revenue and the loss of customers. Said losses will likely continue into the future.

26. The defendants' actions are in concert with its illegal plan to deny independent pharmacies within Alabama, such as the plaintiffs, with access to the Alabama market and to design a closed and/or limited access pharmacy network within our State for prescription medications in violation of Alabama law.

**COUNT ONE  
NEGLIGENCE**

27. Plaintiffs reallege and readopt all the preceding allegations.

28. The defendants had a duty to reimburse the plaintiffs for the provision of prescription medications to covered beneficiaries within the State of Alabama.

29. The defendants had a duty to reimburse the plaintiffs for the provision of prescription medications to covered beneficiaries within the State of Alabama at the usual and customary rates to pharmacies within our State.

30. The defendants had a duty to allow the plaintiffs to participate in the in-state network for the provision of prescription medications upon terms prescribed by Alabama law as well as payment terms prescribed by the State of Alabama.

31. The defendants had a duty to act with transparency and fairness in the treatment of pharmacies within the State of Alabama.

32. The defendants had a duty to comply with Alabama law in the reimbursement of pharmacies within our State, including, but not limited to, Alabama laws related to reimbursement rates and any willing providers of pharmaceutical services.

33. The defendants had a duty to operate and/or administer a network of pharmacies that provided pharmaceutical services and prescription medications throughout the State of Alabama in compliance with any applicable laws, including, without limitation state laws applicable to insurers.

34. The defendants possessed the aforementioned duties pursuant to Alabama law, the provisions of its agreements with the State of Alabama, and its express assumptions of said duties.

35. The defendants breached said duties by failing and/or refusing to reimburse the plaintiffs for prescription benefits; by failing and/or refusing to allow the plaintiffs to participate in the in-state network of pharmacies upon terms required by Alabama law; by failing and/or refusing to provide usual and customary reimbursement rates; by affirmatively placing conditions upon the plaintiffs that

would have prevented them from customer relationships with other non-covered beneficiaries upon different terms; by actively placing conditions upon the plaintiffs that denied them the ability to participate in the provision of prescription benefits as allowed by Alabama law; and/or by failing and/or refusing to comply with any applicable law, including, without limitation, state laws applicable to insurers.

36. As a proximate result of the defendants' negligent conduct, the plaintiffs suffered and will continue to suffer economic loss including lost revenues, lost profits, additional expenses, and the loss of customer relationships.

WHEREFORE, PREMISES CONSIDERED, plaintiffs request compensatory damages in an amount to be determined by struck jury, plus costs, fees, and any other available relief.

### **COUNT TWO WANTONNESS**

37. Plaintiffs reallege and readopt all the preceding allegations.

38. The defendants possessed the aforementioned duties.

39. The defendants intentionally, wantonly, and/or recklessly, with complete disregard of Alabama law to the detriment of Plaintiffs and others similarly situated, breached said duties as set forth in the preceding paragraphs.

40. As a proximate result of the defendants' intentional, wanton and/or reckless conduct, the plaintiffs suffered and will continue to suffer economic loss including lost revenues, lost profits, additional expenses, and the loss of customer relationships.

WHEREFORE, PREMISES CONSIDERED, plaintiffs request compensatory and punitive damages in an amount to be determined by struck jury, plus costs, fees, and any other available relief.

### **COUNT THREE UNJUST ENRICHMENT**

41. Plaintiffs reallege and readopt all the preceding allegations.

42. The defendants knowingly retained benefits by refusing to provide reimbursement to plaintiffs for the provision of prescription medications and/or by

providing reimbursement at rates below the usual and customary rates required by Alabama law. The defendants knowingly and wrongfully accepted the benefits of plaintiffs' provision of services.

43. The plaintiffs have a reasonable expectation of compensation based on Alabama law. Plaintiffs pursue this claim individually and on behalf of all similarly situated pharmacies within the State of Alabama.

WHEREFORE, PREMISES CONSIDERED, plaintiffs request that this Court take jurisdiction of these claims and grant any and all available equitable relief, plus compensatory damages, costs, and any other available relief.

**COUNT FOUR**  
**INTENTIONAL INTERFERENCE WITH A BUSINESS RELATIONSHIP**

44. Plaintiffs reallege and readopt all the preceding allegations.

45. At all times material hereto, the plaintiffs had business relationships with customers of their pharmacies.

46. The plaintiffs developed these valuable and long-term relationships through considerable efforts and valuable service.

47. The defendants knew that plaintiffs had developed these business relationships with their customers.

48. The defendants had knowledge of plaintiffs' business relationships, as well as knowledge of Alabama law which allowed these customers to choose to utilize the plaintiffs' services without interference.

49. The defendants intentionally and unlawfully interfered with the plaintiffs' business relationships. This interference included the defendants' refusal to provide reimbursement to either the plaintiffs or their customers directly as well as the defendants' refusal to honor the choice of these customers to utilize plaintiffs' services as a willing pharmacy provider. This intentional interference also included the defendants' interjection of mandatory contractual terms concerning the reimbursement rates which would be paid to the plaintiffs and other independent pharmacies. This intentional interference also included the Defendants explicitly directing the Plaintiffs' customers to fill their prescription medications elsewhere.

WHEREFORE, PREMISES CONSIDERED, plaintiffs request compensatory and punitive damages in an amount to be determined by struck jury, plus costs, fees, and any other available relief.

**COUNT FIVE**  
**CIVIL CLAIM UNDER THE**  
**RACKATEER INFLUENCED AND CORRUPT ORGANIZATIONS ACT**  
**(RICO)**  
**(For all Class Members)**

50. Plaintiffs reallege and readopt all the preceding allegations.

51. At all times material hereto, the defendants were engaged in a scheme to create a closed and/or limited access network of pharmacies in contravention of Alabama law, in restraint of trade, and in an effort to control the provision of pharmaceutical services and prescription medications to the beneficiaries of an employee benefit plan in our State.

52. The defendant's scheme was developed and articulated over a period of time prior to the activities at issue which subsequently damaged the plaintiffs and other similarly situated pharmacies throughout Alabama.

53. Upon information and belief, the defendant Struhs began developing his plan and/or scheme while serving as an officer of a large chain retailer of prescription medications.

54. Upon beginning his employment with the defendant MedImpact, Struhs placed his plan in action within the State of Alabama.

55. During the relevant period, the defendants MedImpact and Struhs retained the defendant Adams and had her placed in an office within the Retirement Systems of Alabama where she could serve to influence officials with responsibilities for the benefits plan at issue. The Defendant Adams' sole account assignment was PEEHIP.

56. During the relevant time period, the defendants engaged in a plan to influence certain public officials to deny the application of laws passed by our legislature and applicable to pharmacies, including laws that require reimbursement at usual and customary rates, laws that allow any willing pharmacy to participate in the provision of covered benefits, and laws that allow plan beneficiaries to select the pharmacy of his or her choice.



57. Prior to his employment with the defendant MedImpact, the defendant Struhs acknowledged that his plan and/or scheme to limit access to pharmaceutical services and prescription medications would not work in a state with an "any willing provider" statute such as Alabama. Thus, the placement of defendant Adams within the offices of our State and the defendants' actions in concert with certain public officials to ignore these statutes were essential to the defendants' efforts to limit access to pharmaceutical services and prescription medications.

58. During the relevant time period, certain officials with the State of Alabama began denying the applicability of Alabama's insurance laws such as the "any willing provider" statute despite expressing in writing shortly before this that said statute would be honored.

59. Thereafter, the defendants furthered their scheme by beginning to propose written contracts to pharmacies within the State of Alabama to join its network for PEEHIP.

60. The provision of a simple contract to in-state pharmacies so that they may join the network and receive direct reimbursement instead of the customer submitting reimbursement information is not, in itself, an issue. Rather, in an effort to further their scheme, the defendants included mandatory terms in said proposed pharmacy network agreements that were not the same as the reimbursement rates indicated by the State of Alabama, were not usual and customary reimbursement rates, were not equitable or equal reimbursement rates between independent pharmacies in Alabama and large chain pharmacies, required the independent pharmacies to accept reimbursement at unprofitable rates, required the independent pharmacies to receive reimbursement at the lowest rate provided to any of their customers, and required the Plaintiffs and others similarly situated to warrant that the pharmacy network agreement complied with all applicable laws. However, to further the scheme, the agreement placed no such requirement upon the Defendants.

61. The pharmacy network agreement was designed to discourage and prevent independent pharmacies from entering the market and/or providing benefits to covered beneficiaries.

62. In accordance with the defendants' unlawful plan and/or scheme, the proposed pharmacy network agreement treats independent pharmacies inequitably and unfairly and operates to the exclusive benefit of the desired large chains.

63. Despite the representations in their marketing material of transparency, the defendants have refused to provide paid claims data for PEEHIP.

64. At all times material hereto, the defendants proposed and required execution of their illegal and oppressive pharmacy network agreement as a condition to any reimbursement for the provision of covered pharmaceutical services and prescription medications.

65. When the plaintiffs did not execute the required pharmaceutical network agreement, the defendants refused to reimburse customers directly at any rate. Moreover, the defendants sent correspondence to the plaintiffs purporting to be a letter that the defendants proposed sending to customers of the plaintiffs directing that those customers contact the defendants to get the names of other pharmacies.

66. The defendants' plan and/or scheme has resulted in severe economic damages to the plaintiffs and other similarly situated independent pharmacies in Alabama. Additionally, the concerted actions of the defendants along with complicit officials has resulted, and/or will result, in a closed and/or limited access network of pharmacies detrimental to covered beneficiaries in the field of public education within our State. The closed and/or limited access network will result in less access to necessary medications; less access to competent pharmacists; greater distances of travel to get medications, especially in rural areas; and potential problems with the delivery of medications within our State. As a reference, many rural communities have numerous covered employees but only a local independent pharmacy. As an additional reference, times of natural disaster could result in a complete shutdown of the network as it did in Huntsville recently during a multi-day power outage where the plaintiffs were the only local pharmacy believed to have remained open for business.

67. Plaintiffs seek relief under 18 U.S.C. Sec. 1964(a) of RICO and seek to recover actual and treble damages against the defendants for violations of 18 U.S.C. Sec. 1962(c), for a conspiracy to violate 18 U.S.C. Sec 1962(a) and (c) in violation of 18 U.S.C. Sec. 1962(d), and for seeking to aid and abet and aiding and abetting violations of 18 U.S.C. Sec. 1962(a) and (c) within the meaning of 18 U.S.C. Sec. 2.

68. The plaintiffs and each member of the Class that the plaintiffs represent are "persons" within the meaning of 18 U.S.C. Sec. 1964(c).

69. At all times material hereto, the plaintiffs, the class members, and the defendants were "persons" within the meaning of 18 U.S.C. 1961(3).

70. With respect to the activities alleged herein, each defendant acted at all times with malice toward plaintiffs and the class, intending to engage in the conduct complained of for the benefit of themselves and with knowledge that such conduct constituted unlawfulness. Such conduct was done knowingly and with

actionable wantonness and reckless disregard for the rights of the plaintiffs and the class as well as in disregard of the Defendants' contractual obligations under PEEHIP and for the laws to which the defendants were subject.

71. With respect to the activities alleged herein, the respective employee benefit plan, officials of the State of Alabama, and others not named as defendants in this complaint aided and abetted the defendants in committing these activities, within the meaning of 18 U.S.C. Sec. 2, by seeking to aid and abet and aiding and abetting a scheme to violate 18 U.S.C. Secs. 1962(a) and (c). Each defendant and some or all of the co-conspirators also agreed to the operation of the scheme or artifice to defraud and to obtain money by false pretenses and to the scheme or artifice to deprive the plaintiffs and members of the class of the right to deliver pharmaceutical services for profit within the State of Alabama. In furtherance of these agreements, the defendants also agreed with certain officials of the respective employee benefit plan and others to interfere with, obstruct, and/or affect commerce by attempting to obtain and/or actually obtaining property interests to which the defendants were not entitled through the exploitation of the class member's fear of economic loss and/or loss of business.

72. With respect to the overt acts and activities alleged herein, each defendant conspired with persons not named as defendants in the complaint, to violate U.S.C. Secs. 1962(a) and (c), all in violation of 18 U.S.C. Sec. 1962(d). Each defendant also conspired with the other defendants to participate, directly or indirectly, in the fraudulent scheme or artifice alleged herein, to obtain money by false pretenses, and to deprive the plaintiffs and class members of valuable business interests. Each defendant also agreed and conspired with the others to interfere, obstruct, delay, and/or affect commerce by attempting to obtain and/or actually obtaining property interests to which the defendants were not entitled through the exploitation of fear of economic loss and/or loss of business.

73. The numerous predicate acts of mail and wire fraud, interference with the operation of employee benefit plans, and/or extortion, were part of each defendant's common fraudulent and extortionate scheme that was designed to:

- A. Defraud and/or deprive the plaintiffs and class members of money and property interests under false pretenses;
- B. Deprive the plaintiffs and class members of the ability to provide lawful pharmaceutical services through the pharmacy-patient relationship;
- C. Deprive the plaintiffs and the class members of the ability to provide prescription medications contrary to the defendants' actual obligations as an administrator of PEEHIP under Alabama law.

74. The plaintiffs and other class members, as victims of the unlawful pattern of illegal activity, suffered losses as a result of these actions.

75. To accomplish their illegal goal and/or scheme, the defendants have engaged in "racketeering activity" as defined in 18 U.S.C. Sec. 1961(1) to include wrongful conduct under Title 18, United States Code, involving Sec. 1341 (relating to mail fraud), Sec. 1343 (related to wire fraud), and Sec. 1951 (relating to extortion).

76. The defendants violated 18 U.S.C. Secs. 1341, 1343, and 1346. For the purposes of executing and/or attempting to execute their scheme to defraud and to obtain money by means of false or fraudulent pretenses, representations, or promises, as well as to execute and/or attempt to execute their scheme or artifice to deprive another of the tangible right of honest services, the defendants violated 18 U.S.C. Sec. 1341, 1343, and 1346, by placing in post offices, matters and things sent for delivery by the Postal Service and received matters and things therefrom and knowingly caused to be delivered by mail those matters and things according to the directions thereon or at the place at which they were directed to be delivered by the persons to whom they were addressed. Additionally, the defendants transmitted in interstate commerce wire and other transmissions.

77. The aforementioned transmissions contained such matters as the defendants' illegal and oppressive proposed pharmacy network agreement, the defendants' threats against the plaintiff as well as its customers to wrongfully withhold reimbursement, the defendants' illegal pharmacy network agreement language attempting to restrain plaintiffs' ability to serve non-PEEHIP covered customers through price discrimination clauses, monetary payments/reimbursements contrary to the legal amount required in Alabama, and other communications.

78. With respect to their unlawful activities described above, the defendants transmitted contracts, funds, correspondence, and other forms of business communications in a continuous and uninterrupted flow across state lines and employed the United States mail and interstate wires in violations of 18 U.S.C. Secs. 1341, 1343, and 1346.

79. The defendants intentionally and knowingly made the material misrepresentations to the plaintiffs and members of the class for the purpose of deceiving them and thereby obtaining financial gain for themselves and other preferred pharmacies. The plaintiffs and the class reasonably relied on the misrepresentations and omissions.

80. The plaintiffs and class members were forced to elect between foregoing reimbursement and/or receiving reimbursement at improper rates. As a result, plaintiffs and class members were deprived of their legal right of honest services and reimbursement as a result of the defendants' conduct. Moreover, the defendants' wrongful activities produced harm to PEEHIP's beneficiaries by resulting in a loss of services and/or limited access to pharmaceutical services.

81. The plaintiffs and class members were injured in their business or property by the defendants' overt acts and racketeering activities in amounts to be determined at trial.

82. The defendants violated 18 U.S.C. Sec. 1951(b)(2). During the relevant times herein alleged, and in furtherance of and for the purpose of executing and/or attempting to execute the above discussed scheme and artifice to defraud and/or deprive plaintiffs and class members, the defendants, aided and abetted by co-conspirators and others not named in the complaint, conspired to and attempted to and did interfere with, obstruct, delay, or affect "commerce" as the term is defined in 18 U.S.C. Sec. 1951 and by "extortion" as defined in 18 U.S.C. Sec. 1951(b)(2). The defendants unlawfully attempted to and/or induced numerous pharmacies to part with property interests to which the defendants were not unlawfully entitled. These interests included the right of pharmacies to receive usual and customary rates of reimbursement and to serve PEEHIP beneficiaries under the plan.

83. The defendants either knew or recklessly disregarded that the natural consequences of their actions and words was and continues to be to exploit fear of economic loss or loss of business to attempt to and to interfere with and secure property rights to which they are not entitled.

84. The defendants acts included all the acts previously set forth in earlier averments. Moreover, in a further effort to incite economic fear the defendants actually sent letters to the plaintiffs containing the names and addresses of plaintiffs' customers which clearly purported to tell those customers to seek out another pharmacy for their prescriptions and listing a website to help in that process. Defendants threatened to send these letters to plaintiffs' customers if plaintiffs did not accept the defendants' proposed pharmacy network agreement. Moreover, the defendants hired the defendant Adams and placed her within the offices of the Retirement Systems of Alabama, an agency which should be transparent and open to plaintiffs and PEEHIP beneficiaries.

85. As stated previously, the plaintiffs and class members were injured in their business or property by the defendants' overt acts and racketeering activities in amounts to be determined at trial.

86. The defendants violated 18 U.S.C. Sec. 1952(a). During the relevant times herein alleged, and in furtherance of and for the purpose of executing and/or attempting to execute their illegal scheme and/or plan to violate Alabama law and deny the plaintiffs and class members their economic opportunities, the defendants traveled and/or used the mail in interstate commerce in order to carry on their plan, distribute the proceeds of their plan, and/or facilitate their unlawful activity.

87. The plaintiffs and class members were injured in their business or property by the defendants' overt acts, as previously described, and racketeering activities in amounts to be determined at trial.

88. The defendants have committed the aforementioned prohibited activities and have engaged in a "pattern of racketeering activity" as defined in Sec. 1961(5) of RICO, by committing and/or conspiring to or aiding and abetting a scheme for at least two such acts of racketeering activity, as described above, within the past ten years. Each such act was related, had a similar purpose, involved the same or similar participants and methods of commission, and had similar results impacting upon similar victims, including the plaintiffs and class members.

89. This claim for relief arises under 18 U.S.C. Sec. 1964(c) of RICO and seeks to recover actual and treble damages for each defendants' violations of 18 U.S.C. Sec. 1962(c) and their violations of 18 U.S.C. Sec. 1962(d) by conspiring to violate 18 U.S.C. 1962(a) and (c).

90. The persons with respect to these claims are the defendant MedImpact, defendant Struhs, defendant Adams, and others. The enterprise for each claim is an association in fact consisting of those respective persons and others.

91. The respective defendants were associated with the respective enterprise as described above and conducted and participated in the conduct of the affairs of that enterprise through the pattern of racketeering activity described herein.

92. The plaintiffs and class members were directly and proximately injured both by this pattern of activity and by the respective defendants' conduct and participation, for which they are entitled to actual and treble damages, attorneys' fees, and costs under 18 U.S.C. Sec. 1964(c).

WHEREFORE, PREMISES CONSIDERED, plaintiffs, on behalf of themselves and the class members, request all available damages as well as any other available relief to be determined by struck jury.

**COUNT SIX**  
**VIOLATION OF ALABAMA'S ANTITRUST LAWS**

93. Plaintiffs reallege and readopt all the preceding allegations.

94. Alabama law prohibits persons and/or corporations from acting, agreeing, engaging, operating, and/or combining to fix or limit the quantity of any article or commodity sold within the State of Alabama. These prohibitions are contained in several sections of Alabama's Code, including, those sections at Ala.Code Secs. 6-5-60 and 8-10-1, et seq..

95. In the case at bar, the defendants created, devised, and implemented, a plan and/or scheme to limit the provision of pharmaceutical services and prescription medications within the State of Alabama. The defendants' plan and/or scheme does not involve the manufacture of medications or their shipments across state lines. Rather, it involves the retail provision of prescription medications within the State of Alabama by pharmacies operating at locations within the State of Alabama to citizens of the State of Alabama.

96. While the defendants' conduct constitutes interstate commerce as determined for the application of RICO as set forth in the preceding averments, the actual trade restraint occurs solely within the borders of Alabama.

97. The plaintiffs suffered damages and will continue to suffer damages in the future as a result of the defendants' unlawful activities to limit the provision of a service or a commodity within the State of Alabama, namely the intrastate provision of prescription medications and pharmaceutical services.

WHEREFORE, PREMISES CONSIDERED, plaintiffs request compensatory and punitive damages in an amount to be determined by struck jury, plus costs, fees, and any other available relief.

**COUNT SEVEN**  
**CLASS CLAIMS**

98. Plaintiffs bring this action on behalf of themselves and all others similarly situated, who are members of the following class:

All licensed pharmacies within the State of Alabama

99. Plaintiffs claims are made on behalf of themselves and all others similarly situated under Alabama's Rules of Civil Procedure.

100. On information and belief, the class consists of numerous pharmacies throughout Alabama injured and/or damaged by defendants' conduct, making joinder impracticable.

101. The claims of the representative plaintiffs are typical of the claims of the class in that the representative plaintiffs have suffered adverse effects proximately caused by the defendants and their wrongful conduct.

102. Furthermore, the factual bases of defendants' misconduct are common to all class members and represent a common thread of misconduct resulting in injury to all members of the class.

103. Plaintiffs will fairly and adequately represent and protect the interests of the class. Plaintiffs have retained counsel with experience in prosecuting business and complex cases. Plaintiffs and their counsel are committed to prosecuting this action vigorously on behalf of the class and have the financial resources to do so. Neither plaintiffs nor their counsel have interests adverse to those of the class.

104. There is a well-defined community of interest in that the questions of law and fact common to the class predominate over questions affecting only individual class members.

105. Absent class treatment, plaintiffs and class members will continue to suffer harm and damages as a result of defendants' unlawful and wrongful conduct.

106. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy. Without a class action, individual class members would face burdensome litigation expenses, deterring them from bringing suit or adequately protecting their rights. Absent a class action, class members would continue to incur harm without remedy.

107. The consideration of common questions of fact and law will conserve judicial resources and promote a fair and consistent resolution of these claims.

WHEREFORE, premises considered, Plaintiffs and the Class Members demand judgment against Defendants, jointly and severally, as follows:

A. An order certifying the Class as set forth herein, appointing Plaintiffs



as Class Representatives, and appointing undersigned counsel as counsel for the Class;

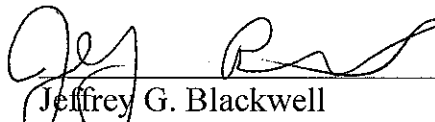
B. Economic and compensatory damages in the amount to be determined at trial;

C. Punitive damages;

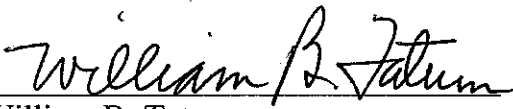
D. Pre-judgment and post-judgment interest at the maximum rate allowable by law;

E. Attorneys' fees and costs; and

F. Such other and further relief available under all applicable laws and any relief the Court deems just and appropriate.

  
Jeffrey G. Blackwell  
Attorney for the Plaintiff's

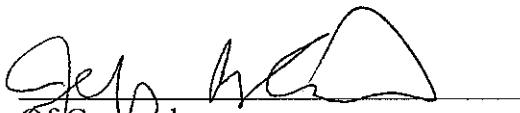
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### **JURY DEMAND**

Plaintiffs demand a trial by struck jury on all available issues and counts.

  
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