

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) is made and entered into this 19<sup>th</sup> day of March, 2014, by and between defendants UnitedHealthcare Insurance Company, OptumRx, Inc., Pacificare Life and Health Insurance Company, UHC of California d/b/a UnitedHealthcare of California, and UnitedHealth Group (collectively “United”) and the Plaintiffs listed below (“Plaintiffs”) (collectively defined below as “Parties”).

### **I. BACKGROUND**

WHEREAS, on June 7, 2013, Plaintiff JOHN DOE (whose identity has been revealed to United pursuant to an agreement of confidentiality), individually and on behalf of a putative class, filed a complaint captioned *JOHN DOE v. UnitedHealthcare Insurance Company, OptumRx, Inc., Pacificare Life and Health Insurance Company and UnitedHealth Group*, U.S. Dist. Ct. C.D. Cal. Case No. SACV 13-00864-DOC (JPRx), alleging, *inter alia*, that United’s requirement that Members obtain HIV/AIDS Specialty Medications from a Specialty Pharmacy by mail violated state statutes, regulations and rights of privacy (the “Lawsuit”). The complaint asserted claims in the Lawsuit for: (1) Violation of Unfair Competition Law, Business and Professions Code section 17200, *et seq.*; (2) Common Counts and Assumpsit/Common Law Restitution; (3) Breach of the Implied Covenant of Good Faith and Fair Dealing; (4) Declaratory Relief; and (5) Violation of Unruh Civil Rights Act, Cal. Civil Code section 51, *et seq.*;

WHEREAS, four additional JOHN DOE Plaintiffs, whose identities have also been revealed to United under an agreement of confidentiality, agreed to join in the Lawsuit, and have been added as plaintiffs in a First Amended Complaint (“Complaint”) filed by order of the Court on January 24, 2014, which reasserts the claims in the original complaint, adds additional claims

under the Employee Retirement Income Security Act (“ERISA”) and the Americans with Disabilities Act (“ADA”), adds UHC of California d/b/a UnitedHealthcare of California as a defendant, and amends the definition of the proposed class on whose behalf the Lawsuit has been filed. Plaintiffs JOHN DOES 1 through 5 are collectively referred to herein as “Plaintiffs”;

WHEREAS, United denies any wrongdoing or liability of any kind whatsoever with respect to United’s requirement that Members obtain HIV/AIDS Specialty Medications from a Specialty Pharmacy by mail, the Lawsuit, the Complaint, and any and all allegations made therein;

WHEREAS, without admitting any wrongdoing or liability whatsoever, United nevertheless has agreed to enter into this Agreement to avoid further litigation expense and the uncertainties of litigation;

WHEREAS, Plaintiffs have been fully advised by their counsel Whatley Kallas, LLP and Consumer Watchdog (collectively, “Plaintiffs’ Counsel”) as to the terms and effects of this Agreement, including the nature of the claims released, the potential for success if the Lawsuit was to be litigated to its conclusion, and the relief obtained by the settlement;

WHEREAS, in evaluating the settlement set forth in this Agreement, Plaintiffs’ Counsel have concluded that the substantial benefits provided under this Agreement make a settlement with United pursuant to such terms and conditions reasonable when weighed against the uncertainties and complexities of such litigation and overcoming the legal and factual defenses that have been asserted by United and the expense and length of time necessary to prosecute this action through trial;

WHEREAS, the Parties desire to settle all issues that either are, were, or could have been asserted arising out of the claims asserted in the Lawsuit or the Complaint by or on behalf of the Plaintiffs and the Class Members as set forth herein;

WHEREAS, the Parties, through their respective counsel, have engaged in extensive arm's length negotiations in reaching this Agreement, including extensive negotiations between counsel for all parties in the Lawsuit and the informal exchange of relevant information;

WHEREAS, the Parties, and their respective counsel, believe that the terms of the settlement set forth in this Agreement are fair, reasonable and adequate; and,

WHEREAS, the Parties desire and intend to seek Court approval of the dismissal of the Lawsuit with prejudice and entry of a Final Order as set forth in this Agreement;

NOW, THEREFORE, it is agreed that, in consideration of the promises and mutual covenants set forth in this Agreement and the entry by the Court of a Final Order as set forth in this Agreement in the form attached hereto as Exhibit 2, the Lawsuit shall be settled on the terms and conditions set forth below.

The recitals stated above are true and accurate and are hereby made a part of this Agreement.

## **II. DEFINITIONS**

In addition to any definitions set forth above or elsewhere in this Agreement, the following terms, as used in the Agreement, shall have the meanings set forth below:

A. The term "Affiliate" when used with respect to United means United's predecessors and successors-in-interest, including, but not limited to, all of its respective past and

present parents, subsidiaries, joint ventures, partnerships, related companies, controlled entities, entities with common control or ownership, unincorporated entities, divisions, groups, present or former directors, officers, members, agents, employees, representatives, administrators, and attorneys.

B. The term “Agreement” means this Settlement Agreement and Release, including its recitals and Exhibits.

C. The term “Best Efforts” means the efforts that a reasonable person in the position of the Party would use so as to fulfill an obligation diligently and expeditiously.

D. The term “Bodily Harm” means any injury to the body or bodily functions.

E. The term “Class Member” means a natural person who has been diagnosed as having HIV or AIDS (“HIV/AIDS”), who is or has in the past been prescribed a medication that the Specialty Pharmacy identifies as a medication for the treatment of HIV/AIDS, who does not opt out of the class defined in the Order of Preliminary Approval and who, as of the date of this Agreement, (i) is enrolled in or covered by any health plan offered or administered by United or its Affiliates that includes a prescription drug benefit, including but not limited to insured and self-funded ERISA plans, individual plans, governmental plans, and church or group plans, (ii) is prescribed HIV/AIDS Specialty Medications, and (iii) is required to participate in the Program.

F. The term “Complaint” means the First Amended Complaint filed in the Lawsuit.

G. The term “Compliance Dispute Officer” means a person the Parties agree upon in writing and approved by the Court in the Final Order to initially hear and decide various

issues identified in this Agreement pursuant to the Compliance Protocol attached hereto as Exhibit 6.

H. The term “Court” means the United States District Court for the Central District of California, Southern Division.

I. The term “Effective Date” means (i) if no appeal is filed, the first business day after the last date on which a notice of appeal from the Final Order could have been timely filed; and, (ii) if an appeal is filed, the first business day after the Final Order is affirmed, all appeals are dismissed, or no further appeal to, or discretionary review in, any Court remains. Subsection (ii) does not apply if the attorneys’ fees and/or payments approved by the Court pursuant to Section III.6 or 7 herein are the only issue(s) raised or remaining on appeal.

J. The term “Exemption Right” means the right of any Member to decline to receive his or her HIV/AIDS Specialty Medication by mail through the Program and to obtain such HIV/AIDS Specialty Medication instead from or through a retail, in-network pharmacy, by stating that: (1) the Member is concerned about his or her privacy in connection with receiving medication packages by mail where the Member lives or works, or (2) the Member is concerned about the timing, accuracy or other problems with the delivery of his or medications from the Specialty Pharmacy, or (3) the Member is unable to effectively discuss his or her condition over the phone with the Specialty Pharmacy due to an HIV/AIDS-related neurocognitive disorder or other significant HIV/AIDS-related impairment that is being monitored or treated.

K. The term “Final Order” means a final judgment and order of dismissal entered by the Court in the Lawsuit according to the terms set forth in this Agreement in the form attached

hereto as Exhibit 2, which is incorporated by reference, pursuant to Fed. R. Civ. Proc. Rule 23(e).

L. The term “Future Member” means a natural person who has been diagnosed as having HIV/AIDS, who is or has in the past been prescribed a medication that the Specialty Pharmacy identifies as a medication for the treatment of HIV/AIDS, who is not a Class Member and did not opt out of the class, but who after the date of this Agreement, (i) is enrolled in or covered by any health plan offered or administered by United or its Affiliates that includes a prescription drug benefit including but not limited to insured and self-funded ERISA plans, individual plans, governmental plans, and church or group plans, (ii) is prescribed HIV/AIDS Specialty Medications, and (iii) is or may be required to participate in the Program.

M. The term “Group Plans” means plans that are established and maintained by organizations (including but not limited to employers, religious organizations, associations, and unions) and that provide healthcare coverage to a defined group of people.

N. The term “HIV/AIDS Specialty Medication” means any medication prescribed by a physician that is subject to the Program and that Specialty Pharmacy identifies as a medication for the treatment of HIV/AIDS, Immune Deficiency, Growth Hormones, Neutropenia, and Anemia, and any other category that may be agreed to by the Parties.

O. The term “Member” means someone who is either a Class Member or a Future Member.

P. The terms “Party” and “Parties” means Plaintiffs and United.

Q. The term “Personal Injury” means any emotional distress, pain, or suffering.

R. The term “Persons” means all persons and entities, including, without limitation, natural persons, firms, corporations, limited liability companies, joint ventures, joint stock companies, unincorporated organizations, agencies, bodies, governments, political subdivisions, governmental agencies and authorities, associations, partnerships, limited liability partnerships, trusts, and their predecessors, successors, administrators, executors, heirs, and assigns.

S. The term “Plaintiffs” means the individuals referenced as JOHN DOE Plaintiffs 1-5 in the Complaint, all of whom have been previously identified to United pursuant to an agreement of confidentiality.

T. The term “Program” means any program pursuant to which the only way for Members to obtain HIV/AIDS Specialty Medications on an in-network basis as part of their health care pharmacy benefit is to obtain HIV/AIDS Specialty Medications from the Specialty Pharmacy by mail.

U. The term “Released Claims” means any and all known and unknown, suspected and unsuspected, ripe and contingent, claims, claims for relief, causes of action, suits, rights of action, or demands, whether sounding in contract, tort, or equity, or involving an alleged violation of any law or regulation, for any form of legal, equitable, injunctive relief, damages, debts, indemnity, contribution, or for costs, expenses and attorney’s fees, based upon, arising from, or relating to the claims and allegations asserted in the Complaint or the Lawsuit, but not including any possible claims for Personal Injury or Bodily Harm. The term “Released Claims” includes, without limitation, any claim alleging that an action taken by the Released Parties that is in compliance with this Agreement violates any legal right. All claims under California Civil

Code section 1542 and any other comparable laws, whether state or federal, are waived with regard to the Released Claims as described below in Section 8 of this Agreement.

V. The term “Released Parties” means United and all of its Affiliates. With respect to a Group Plan, to the extent the Program is operated in compliance with the provisions of Section III.3 below, the term “Released Parties” also means the Group Plan and any Persons who purchased, provided, controlled or administered such Group Plan except as to self-insured Group Plans as set forth under Section III.3m below.

W. The term “Specialty Pharmacy” shall refer to OptumRx or any other entity that provides HIV/AIDS Specialty Medications to Members by mail.

### **III. TERMS OF AGREEMENT**

1. **Non-Admission of Liability.** This Agreement is for settlement purposes only, and neither the fact of, nor any specific provision contained in, this Agreement nor any action taken hereunder shall constitute, or be construed as, any admission of the validity of any claim or any fact alleged by Plaintiffs or by any other Person or Member of any wrongdoing, fault, violation of law, or liability of any kind on the part of the Released Parties. This Agreement constitutes a compromise pursuant to Fed. R. of Evid. Rule 408 and all similar state or federal laws, rights, rules, or legal principles of any other jurisdiction that may be applicable. It shall not be offered or be admissible in any proceeding, either in whole or in part, as evidence against the Released Parties, except in any action or proceeding to enforce its terms.



**2. Entry of Final Order.**

a. Utilizing the procedures set forth below, the Parties shall jointly request that the Court enter the Final Order dismissing the Lawsuit pursuant to Fed. R. Civ. Proc. 23(e). The actual form of the Final Order entered by the Court may include additional provisions as to which the Parties may subsequently agree in writing, or as the Court may direct, so long as such provisions are not inconsistent with any of the express terms or conditions of this Agreement.

b. Upon full execution of this Agreement, the Parties shall present this Agreement to the Court by way of motion or application seeking preliminary approval of this Agreement (the “Submission for Preliminary Approval”). In connection with the Submission for Preliminary Approval, the Parties, through counsel, shall apply for an order substantially in the form of Exhibit “1” to this Agreement (“Order of Preliminary Approval”). The Submission for Preliminary Approval shall request:

- (i) Preliminary approval of the Agreement;
  - (ii) Provisional certification for settlement purposes only of a Class pursuant to Fed. R. Civ. Proc. Rule 23(a) and (b)(3);
  - (iii) Appointment of Plaintiffs’ Counsel as counsel for the Class and appointment of Plaintiffs as class representatives for the Class Members;
  - (iv) Approval of the proposed notices set forth in Exhibits “3” and “4”;
- and

(v) Establishment of a schedule for completing the class notice program, submitting papers in support of the Parties' joint motion for entry of the Final Order, for Class Members to object to the Agreement or request exclusion from the class, and for the Court to hear the joint motion for entry of the Final Order ("Fairness Hearing").

c. No later than ten (10) days after the entry of the Order of Preliminary Approval (unless otherwise specifically modified or provided for as set forth in that Order) (the "Notice Deadline"), Plaintiffs shall, at United's sole cost and expense, (i) cause class-wide notice to be disseminated as directed in the Order of Preliminary Approval by disseminating the full version of the class notice in a form substantially similar to that attached as Exhibit "3" to this Agreement (the "Full Notice") to all Persons who would be Class Members if they did not Opt Out ("Putative Class Members"), that Defendants can reasonably identify, by first class regular mail postage prepaid and (ii) establish a settlement website that will contain this Agreement and the relevant exhibits, relevant pleadings and a list of relevant deadlines, and other agreed-to materials and information.

d. The Parties shall request that the deadline for requesting exclusion from the Class ("Opt Out") be no later than forty-two (42) days after the Notice Deadline ("Opt-Out Deadline"). Putative Class Members may Opt Out by timely submitting a request to Opt Out in accordance with the Opt Out procedure approved by the Court.

Putative Class Members who properly request to Opt Out shall not be entitled to the benefits of this Agreement and shall not be Class Members. Within ten (10) days after the Opt Out Deadline, either Plaintiffs' Counsel or the Settlement Administrator shall furnish United with a complete list of all timely and valid Opt Out requests.

e. Class Members shall have up to forty-two (42) days after the Notice Deadline ("Objection Deadline") to file, in the manner specified in the Full Notice, any written objection or other response to this Agreement.

f. In addition, consistent with the timing set forth in the entry of the Order of Preliminary Approval, Plaintiffs' counsel shall also cause to be published, at United's sole cost and expense, a summary form of the Notice (the "Summary Notice"), as set forth in Exhibit "4" to this Agreement in newspapers or publications agreed to by the Parties and approved by the Court to ensure nationwide notice is provided to Class Members.

g. The Parties agree that the methods of notice set forth in this Section constitute the best form of notice to the Class Members that is practicable under the circumstances.

h. United shall cause to be served notice of this settlement that meets the requirements of and includes all the information required by 28 U.S.C. § 1715, on the appropriate federal and state officials and on Plaintiffs' Counsel not later than ten (10) days after the filing of this Agreement with the Court, and advising all appropriate persons of the relevant proposed hearing dates.

i. The Parties shall request that the Court hold the Fairness Hearing no later than seventy-five (75) days from entry of the Order of Preliminary Approval, unless otherwise agreed or ordered. At the Fairness Hearing, the Parties shall jointly request that the Court enter the Final Order, which shall (1) finally approve the terms of this Agreement and certify, for settlement purposes only, a settlement class of all persons who qualify as Class Members, pursuant to Fed. R. Civ. Proc. Rule 23(b)(3), (2) dismiss the entire Lawsuit with prejudice, (3) discharge the Released Parties of and from all further liability to the Plaintiffs and Class Members with respect to the Released Claims (but not as to any obligations created or owed pursuant to this Agreement), and (4) permanently bar and enjoin Plaintiffs and Class Members from bringing, filing, commencing, prosecuting (or further prosecuting), maintaining, intervening in, participating in, assisting in any way, formally or informally, except as required by law, or receiving any benefits from, any other lawsuit, arbitration, or administrative, regulatory or other proceeding or cause of action in law or equity that asserts or arises from the Released Claims. The actual form of Final Order entered by the Court may include additional provisions as to which the Parties may subsequently agree, or which the Court may direct, that are not inconsistent with any of the express terms or conditions of this Agreement.

j. Following entry by the Court of the Final Order, no default by any Person in the performance of any covenant or any obligation arising under this Agreement, or any order of judgment entered in connection therewith, shall affect the

dismissal of the Lawsuit, the discharge and release of the Released Parties, or any other provision of this Agreement. The above notwithstanding, nothing in this subsection shall prevent a Party from seeking enforcement of or compliance with the terms of this Agreement, or the intervention of the Court to compel such enforcement or compliance based on the continuing jurisdiction of the Court to enforce the Final Order and as otherwise provided herein.

**3. Settlement Consideration.** In consideration for the dismissal of the Lawsuit under the terms of this Agreement, United shall, in accordance with the terms of this Agreement and the Final Order, unless otherwise specifically modified below, implement procedures to provide the following:

a. **Exercising Exemption Right.** Any Member may exercise his or her Exemption Right at any time after the Effective Date by mail, facsimile, telephone, or on the Specialty Pharmacy's website as set forth herein.

b. **Implementation of Notice Program.** No later than thirty (30) days after the Effective Date, United shall send by regular U.S. mail a letter to all Class Members as set forth in Exhibit 5 hereto (the "Notice Letter").

c. **Exemption Process.** United and its Specialty Pharmacy will establish and implement the following communications, procedures and processes to implement any Member's decision to exercise his or her Exemption Right (the "Exemption Process"), and will do so by no later than the date on which the Notice Letter is sent:

(1) United will establish and maintain a unique and designated toll-free telephone number to handle calls relating to the Exemption Process as

described in this Section III.3.c. United also may use this dedicated line to handle calls from Members relating to other issues involving HIV/AIDS. The dedicated line will be staffed with live personnel Monday - Friday, 5 a.m. - 7 p.m., Pacific Time except to the extent such days are federal holidays.

(2) The dedicated phone line will be staffed by customer service representatives (“CSRs”) who have completed at least two hours of training in communicating with and assisting Members, including training with respect to HIV/AIDS issues and concerns and Members’ exercise of their Exemption Right. Each CSR will be specifically trained to use the script, attached as Exhibit 7 (the “Script”), about the Program and such Member’s ability to exercise his or her Exemption Right. Beginning on the Effective Date and continuing for a period of three months (the “Initial Period”), the Specialty Pharmacy shall internally monitor on a daily basis its performance under this Agreement, and it shall provide United with a summary of the results of that monitoring on a weekly basis. After the Initial Period, the Specialty Pharmacy shall internally monitor on a monthly basis its performance under this Agreement, and it shall provide United with a summary of the results of that monitoring on a monthly basis.

(3) A sufficient number of CSRs will be made available to assure that incoming calls to the toll-free telephone number described above are answered by a CSR within approximately 30 seconds on average (measured annually) and 60 seconds on average (measured monthly) after a call is received into the customer

service queue, and that no calls are placed on hold immediately upon initial answering of the call. After the initial greeting, no calls will be placed on hold for any unreasonable time period during the call, and then only for the purpose of verifying information as set forth in the Script or processing a Member's exercise of his or her Exemption Right. The number of CSRs shall be adjusted, as needed, to meet the Specialty Pharmacy's needs based on call volume.

(4) The Notice Letter will also include a separate tear off sheet, attached as Exhibit 8. This sheet will permit Members to exercise their Exemption Right either by regular mail or facsimile. United may include in that tear sheet an optional section where the Member is requested to provide an explanation of the reasons for exercising his or her Exemption Right, but failure to provide an explanation or complete that section shall not be a basis to deny a Member's Exemption Right. United shall mail Members who return the form by mail or facsimile a letter that shall include a confirmation number confirming their exercise of their Exemption Right (the "Confirmation Code"), and a copy of the Pharmacy Designation Change Form attached hereto as Exhibit 9. A Member's exercise of his or her Exemption Right by mail or facsimile shall be processed by United within five (5) business days of receipt. A Member will not need the confirmation letter in order to obtain an HIV/AIDS Specialty Medication at an in-network retail pharmacy.

(5) Members who exercise their Exemption Right using the telephone process described above will be provided a Confirmation Code by the CSR during their telephone call. All Members who exercise their Exemption Right by telephone will also be sent a letter, which shall include the Confirmation Code and a copy of the Pharmacy Designation Change Form, confirming in writing that they have exercised their Exemption Right. A Member will not need the confirmation letter in order to obtain an HIV/AIDS Specialty Medication at an in-network retail pharmacy.

(6) Once a Member exercises his or her Exemption Right and after it has been processed by United, United shall treat prescriptions for HIV/AIDS Specialty Medications filled at any in-network retail pharmacy designated by the Member as set forth below as having been filled on an in-network basis. The Member shall designate the in-network retail pharmacy at the time the Member exercises his or her Exemption Right. The Member may change this designation at any time either by (a) calling the Specialty Pharmacy, (b) using the Specialty Pharmacy secure website (subject to Section III.3.c.7 below), (c) mailing or faxing a Pharmacy Designation Change Form to the Specialty Pharmacy, or (d) having an in-network retail pharmacist call the Specialty Pharmacy on the Member's behalf prior to or at the time HIV/AIDS Specialty Medications are to be dispensed using the telephone number(s) provided to in-network retail pharmacists that enable them to speak with Specialty Pharmacy representatives



24-hours-a-day. Change requests made by telephone by either the Member or the in-network retail pharmacist shall be processed immediately. Change requests submitted on the Specialty Pharmacy website shall be processed by 5:00 p.m. (Pacific Time) of the first business day after the day on which the request was submitted. Change requests submitted by faxing or mailing a Pharmacy Designation Change Form shall be processed within five (5) business days after receipt.

(7) No later than July 1, 2014 or the ninetieth (90<sup>th</sup>) day after the Effective Date, whichever is later, United or the Specialty Pharmacy shall implement a method for Members to exercise their Exemption Right and designate or change their designation of an in-network retail pharmacy through the Specialty Pharmacy's secure website. United will provide information to Plaintiffs on the proposed format of this method at least three weeks prior to its implementation, and shall be required to obtain Plaintiffs' agreement, prior to its implementation. Plaintiffs shall provide that agreement at least one week before the scheduled implementation date, and such agreement shall not be unreasonably withheld. United shall mail Members who exercise their Exemption Right using the website described above a letter that shall include a Confirmation Code, and a copy of the Pharmacy Designation Change Form attached hereto as Exhibit 9.

(8) Any disputes over these processes shall be submitted to the Compliance Officer for resolution pursuant to the terms of the Compliance Protocol.

d. **Notice After Program Initiation.** For Future Members, United shall send the Notice Letter to such Members within ten (10) business days of United's systems recognizing that such Member is subject to the Program or within thirty (30) calendar days after the Effective Date, whichever is later. The Notice Letter may be sent to a Future Member separately, or included as part of a welcome packet as long as the welcome packet includes a cover letter containing the bolded phrase: "**IMPORTANT INFORMATION ABOUT YOUR RIGHT TO AN EXEMPTION FROM THE REQUIREMENT TO OBTAIN SPECIALTY MEDICATIONS BY MAIL INCLUDED IN THIS PACKET.**"

e. **Initial Retail Re-Fill.** Any Member who is informed for the first time after the Effective Date that he or she is subject to the Program will be permitted upon request one initial fill or re-fill at an in-network retail pharmacy.

f. **Exercising Exemption Right After Entry into Program.** Any Member who is receiving HIV/AIDS Specialty Medications through the Program by mail may exercise his or her Exemption Right at any time after the Effective Date.

g. **Exemption is Perpetual.** Once a Member has exercised his or her Exemption Right and after it has been processed by United, the Member's exercise of his or her Exemption Right shall be immediately effective and valid and shall continue to be

recognized as effective and valid as long as the Member continues to be a Member who is subject to the Program, unless the Member subsequently decides to participate in the Program.

h. **No Loss of or Decrease in Benefits for Exercising Exemption Right.**

United will not impose any additional personal expense or decrease in benefits on a Member solely as a result of the Member's exercise of his or her rights under the terms of this Agreement.

i. **Filling Prescriptions.** United will not cause the altering of the "in-network" status and will not penalize an in-network retail pharmacy because such pharmacy dispenses HIV/AIDS Specialty Medication to a Member who has exercised his or her Exemption Right pursuant to this Agreement.

j. **Individual Request for Reimbursement.** Any Class Member may submit a claim for reimbursement of any Out-of-Pocket Costs incurred prior to the Effective Date. For purposes of this Section, "Out-of-Pocket Costs" means the difference between (i) what the Class Member actually paid out-of-pocket for his or her HIV/AIDS Specialty Medications and (ii) what the Class Member would have paid out-of-pocket had the Class Member purchased those HIV/AIDS Specialty Medications from the Specialty Pharmacy. "Out-of-Pocket Costs" shall not include any Member's co-pay or co-insurance requirements. The Notice to Class Members will include information that Class Members have a right to be compensated for their Out-of-Pocket Costs, how and where to obtain information and a claim form to do so, and any deadlines for submitting such a

claim. Class Members seeking compensation for Out-of-Pocket Costs shall submit receipts or any other records of payment supporting their claims, including but not limited to credit card payment records or evidence of payments made to a pharmacist, to the claims administrator along with a completed claim form. Upon confirming the validity of the submitted documents, the claims administrator shall determine the total amount of valid Out-of-Pocket Costs incurred by each Class Member who timely submitted a claim for payment of Out-of-Pocket Costs. United, or the claims administrator on United's behalf, shall then reimburse those Class Members for their valid Out-of-Pocket Costs. If the total amount of valid Out-of-Pocket Costs exceeds \$240,000, then the amount of reimbursement to be paid to each Class Member shall be prorated by dividing \$240,000 by the total value of timely and valid claims submitted, and applying that percentage to the reduce the amount of each individual claim to be paid. Under no circumstances shall United be required to pay more than \$240,000 to Class Members pursuant to this paragraph. United shall provide Class Counsel a declaration that may be filed with the Court as part of the Submission for Preliminary Approval explaining how the above amount was calculated.

k. **Costs and Expenses of Agreement.** All costs and expenses that are required to be paid or incurred under the terms of this Agreement relating to (i) providing notice of this Agreement pursuant to Section III.2; (ii) the implementation of new procedures and payment of individual requests for reimbursement pursuant to this Section III.3; (iii) the payment of Attorneys' Fees and Expenses pursuant to Section III.6;

and (iv) the payment of Compensation to Plaintiffs pursuant to Section III.7, shall be paid or borne by United.

1. **Enforceability of Final Order.**

(1) All Members who have an Exemption Right under the terms of the Agreement are intended third-party beneficiaries of the Final Order (but not of Section III.3.j of the Agreement). The terms of the Final Order are to be directly enforceable by the Parties and the Members under the continuing jurisdiction of the Court, to which the Parties agree.

(2) If Plaintiffs believe there is evidence there has been a material non-compliance with the terms of this Agreement, they shall present that issue to the Compliance Dispute Officer for resolution pursuant to the provisions of a compliance protocol, the terms of which are set forth in Exhibit 6 hereto (the “Compliance Protocol”). The Compliance Dispute Officer shall be appointed by the Court in the Final Order and empowered to issue various orders and provide such relief as set forth in the Compliance Protocol.

(3) United shall appoint an internal compliance officer with whom Plaintiffs’ Counsel or Members may interact to attempt to resolve any disputed issues relating to United’s compliance with Section III.3.

m. **Self-Insured Customers.** United shall implement and apply the procedures specified in this Section III.3 with respect to all Members who are not enrolled in a self-insured Group Plan. United also shall implement and apply the procedures in Section III.3 with respect to all Members enrolled in a self-insured Group

Plan except to the extent that those Persons who purchase, provide, control or administer such self-insured Group Plan instruct United to implement and apply different procedures; provided, however, that United shall recommend to any such Persons that United implement and apply the procedures in Section III.3. To the extent United is instructed to implement and apply different procedures for a self-insured Group Plan notwithstanding United's recommendation, then such Group Plan and the Persons who purchase, provide, control and administer such group plan shall not be Released Parties. The full class notice shall include a provision for advising Class Members how to determine if their self-insured Group Plan has instructed United to follow procedures that differ from those delineated in Section III.3.

n. **Future Modifications.** The Parties recognize that technological and other changes and developments in the future that the Parties cannot currently anticipate may make it appropriate in the future to modify one or more of the practices described in Sections III.3.a, c, and d above. The Parties agree that, by agreement of the Parties or, if after using their Best Efforts to reach agreement they fail to do so, as ordered by the Compliance Dispute Officer, the practices described in Sections III.3.a, c, and d above may be modified to take into account such future changes and developments, provided that such modifications do not materially alter or reduce the benefits and rights of members under those Sections or materially increase the costs to United of complying with its obligations under those Sections.

**4. Best Efforts of Parties.** The Parties agree to undertake their Best Efforts to expeditiously effectuate the settlement described in this Agreement. The Parties further represent, agree and acknowledge that the settlement reflected in this Agreement is a fair resolution of these claims for the Parties and the Class Members.

**5. Termination.**

a. If the Effective Date does not occur, and United or Plaintiffs provide written notice to the other of the failure of the Effective Date to occur, then this Agreement shall be terminated.

b. If the number of Putative Class Members submitting Opt-Out requests exceeds three percent (3%) of the total number of Class Members, United may in its sole and absolute discretion terminate this Agreement by delivering a notice of termination to the other Parties within ten (10) business days of its receipt of the complete list of Opt-Out requests from either Plaintiffs' Counsel or the Settlement Administrator.

c. If this Agreement is terminated pursuant to Section 5.a or 5.b above, this Agreement shall be null and void, shall have no further force and effect with respect to any Party, and shall not be offered in evidence or used in the Lawsuit (or in any other matter or proceeding, including any regulatory proceeding or inquiry) for any purpose. In such event, this Agreement and all negotiations, proceedings, documents prepared, and statements made in connection herewith shall be without prejudice to the Released Parties or Plaintiffs, shall not be deemed or construed to be an admission or confession by any Party of any fact, matter or proposition of law, and shall not be used in any matter or

proceeding for any purpose, and all Parties shall stand in the same position as if this Agreement had not been negotiated, made, or filed with the Court. To the extent feasible, the Parties shall be returned to their respective positions in the Lawsuit as of the date of this Agreement. The Lawsuit shall then proceed in all material respects as if this Agreement and any related orders had never been executed.

**6. Payments of Attorneys' Fees and Expenses.**

a. In consideration for entering into the terms of the Agreement and the releases provided for herein, Plaintiffs' Counsel may petition the Court to be paid their attorneys' fees and expenses up to a total of \$1.5 million. United agrees not to oppose any application for an award by the Court of up to \$700,000.00 for attorneys' fees and expenses, but reserves the right to oppose any application above that amount. United shall pay to Plaintiffs' counsel whatever amount of attorneys' fees and expenses is awarded by the Court up to a total of \$1.5 million, subject to United's right to appeal any award of more than \$700,000.00 and Plaintiffs' right to appeal any award of less than \$1.5 million. Plaintiffs' Counsel shall allocate such attorneys' fees and expenses among themselves in a manner that, in their sole discretion, reflects the respective contributions of Plaintiffs' Counsel to the results achieved in this matter. The Parties represent that their negotiation of and agreement to the foregoing amounts did not occur until after the substantive terms of the Agreement had been negotiated and agreed.

b. All such amounts shall be payable within thirty (30) calendar days after the entry of the Final Order and after United has been provided with any necessary tax identification numbers to the client trust account of Whatley Kallas, LLP or as separately



agreed to in writing by the Parties, subject to the obligation of Plaintiffs' Counsel to repay such amounts in the event the Agreement does not take effect.

c. Other than as set forth in Section 6 and Section 7, the Released Parties shall have no responsibility or liability whatsoever regarding the payment of attorneys' fees, costs, expenses or incentive awards or compensation of any other kind to Plaintiffs' Counsel or other attorneys representing Plaintiffs or any other Persons as to the Released Claims.

**7. Compensation to Plaintiffs.** United agrees to pay incentive awards to Plaintiffs in an amount approved by the Court up to a total of \$10,000 for each Plaintiff approved by the Court. Plaintiffs agree that they will not seek additional incentive awards or any other form of compensation from the Released Parties as to the Released Claims or the resolution of the Lawsuit and that under no circumstances shall United have any obligation to pay incentive awards in an amount greater than agreed to herein. The Parties represent that their negotiation of and agreement to this amount did not occur until after the substantive terms of the Agreement had been negotiated and agreed. This amount shall be payable within ten (10) business days after the Effective Date and after United has been provided with any necessary tax identification numbers to the client trust account of Whatley Kallas, LLP or as separately agreed to in writing by the Parties, and distributed as agreed to with Plaintiffs by their legal counsel.

**8. Releases, Waiver and Covenant Not to Sue.**

a. Effective as of the Effective Date, and in consideration of this Agreement, Plaintiffs and all Class Members, on behalf of themselves and their respective successors,

assigns, past, present, and future parents, subsidiaries, joint ventures, partnerships, related companies, affiliates, unincorporated entities, divisions, groups, directors, officers, shareholders, employees, agents, representatives, attorneys, servants, partners, executors, administrators, assigns, predecessors, successors, descendants, dependents, and heirs do fully release and forever discharge the Released Parties from the Released Claims and fully release and forever discharge the Released Parties and their counsel from any claims arising out of the investigation, filing, defense or resolution of the Lawsuit, and hereby covenant they shall not take any adverse action against the Released Parties or their counsel in response to or in retaliation to settling or dismissal of the Lawsuit or any publicity in connection therewith, or as a result of entering into this Agreement.

b. Effective as of the Effective Date, and in consideration of this Agreement, the Released Parties, on behalf of themselves and their respective successors, assigns, past, present, and future parents, subsidiaries, joint venturers, partnerships, related companies, affiliates, unincorporated entities, divisions, groups, directors, officers, shareholders, employees, agents, representatives, servants, partners, executors, administrators, assigns, predecessors, successors, descendants, dependents, and heirs, do fully release and forever discharge Plaintiffs and Plaintiffs' Counsel, on behalf of themselves and his or her respective successors, assigns, past, present, and future parents, subsidiaries, joint ventures, partnerships, related companies, affiliates, unincorporated entities, divisions, groups, directors, officers, shareholders, employees, agents, representatives, servants, partners, executors, administrators, assigns, predecessors,

successors, descendants, dependents, and heirs, from any claims arising out of the investigation, publication, filing, prosecution or resolution of the original or amended Complaint filed in the Lawsuit through the date of this Agreement and hereby covenant they shall not take any adverse action against Plaintiffs or Plaintiffs' Counsel in response to or in retaliation to the filing of the Lawsuit or any publicity in connection therewith through the date of this Agreement, or as a result of entering into this Agreement.

c. The Parties understand that if any fact relating to any matter covered by this Agreement is later found to be other than or different from the facts now believed by them to be true, they expressly accept and assume the risk of such possible differences in fact and agree and acknowledge that this Agreement shall nevertheless remain fully binding and effective.

d. The Parties expressly understand and acknowledge that certain state statutes and principles of common law provide that a "general" release does not extend to claims that a creditor does not know or suspect to exist in his, her, or its favor. For example, Cal. Civil Code section 1542 provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HER OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

To the extent that it could be argued that such statutes or principles of common law are applicable here, the Parties agree that any such statutes, principles of common law or

other sources of legal authority of any and all jurisdictions that may be applicable are hereby knowingly and voluntarily waived and relinquished, and further agree and acknowledge that this is an essential term of this Agreement. The Parties understand the statutory language of Section 1542 of the California Civil Code and nevertheless elect to release the Released Parties from the Released Claims, whether known or unknown, and specifically waive any rights that each may have under said Civil Code section, and by executing below fully understand that if the facts with respect to this Agreement are found hereafter to be other than or different from the facts now believed to be true, each expressly accepts and assumes the risk of such possible difference in fact and agrees that this Agreement shall be and remain effective, notwithstanding any such difference. The Parties declare that prior to and in connection with the execution of this Agreement, they have been apprised of sufficient relevant data from sources selected by them so as to exercise their judgment intelligently in deciding whether to execute this document and further declare that their decision is not predicated on or influenced by any declarations or representations of any other party. The Parties state that this Agreement is executed voluntarily by them with full knowledge of its significance and legal effect.

e. In addition to the extent provided for in the Order of Preliminary Approval and the timing set forth therein, Plaintiffs and Class Members shall be directed to refrain from instituting, maintaining, or proceeding in any action against the Released Parties, or counsel for the Released Parties, as applicable, with respect to any of the claims released by Section III.8. The agreement set forth in this Section 8.e shall terminate on the

Effective Date or, if the Effective Date does not occur, when this Agreement is terminated pursuant to Section III.5 above. Plaintiffs and Class Counsel make no warranty, covenant or representation that such claims will not be filed by Class Members other than Plaintiffs.

f. Upon the Effective Date, Plaintiffs and Class Members shall, by operation of the Final Order, be restrained from instituting, maintaining, or proceeding in any action against the Released Parties, or counsel for the Released Parties, as applicable, with respect to any of the claims set forth in this Section III.8 except as provided under the terms of this Agreement. Plaintiffs hereby represent they are not aware of any related action pending that asserts any of the claims set forth in this Section III.8. Plaintiffs and Class Counsel make no warranty, covenant or representation that such claims will not be filed by Class Members other than Plaintiffs.

g. This Agreement may be pleaded as a full and complete defense to, and may be used as the basis for a temporary restraining order or preliminary or permanent injunction against, any action, suit or other proceeding, which has been or may be instituted, prosecuted, continued to be prosecuted, or attempted, asserting any claim released by this Agreement. However, nothing contained in this Agreement is intended to, or shall, in any way reduce, eliminate or supersede any Party's existing obligation to comply with applicable provisions of relevant state and federal law and regulations, and United shall comply with such state and federal law and regulations.

9. **Entire Agreement.** This Agreement shall constitute the entire agreement between the Parties, and supersedes and replaces any prior agreements and understandings, whether oral or written, between and among them, with respect to such matters. This Agreement shall not be subject to any change, modification, amendment, or addition, without the express written consent of the Parties, and may be amended or modified only by a written instrument signed by or on behalf of a Party or their representative or their respective successors-in-interest.

10. **Binding Agreement.** This Agreement shall benefit and bind the Parties, as well as their representatives, Affiliates, heirs and successors.

11. **Continuing Jurisdiction.** Except as provided herein and as set forth in the Compliance Protocol, the Court shall retain continuing and exclusive jurisdiction over the Parties, and over the administration and enforcement of the Agreement. Any disputes or controversies arising with respect to the interpretation, enforcement or implementation of this Agreement or the Final Order are to be submitted by any affected Person by motion or *ex parte* application to the Court or to the Compliance Dispute Officer as provided herein and in the Compliance Protocol, as may be applicable.

12. **No Assignment.** The Parties each represent and warrant that they have not assigned, transferred or purported to assign or transfer, in whole or in part, any interest in any of the rights and claims that are the subject of this Agreement.

13. **Choice of Law.** The validity, construction, interpretation, performance, and enforcement of this Agreement shall be governed by the internal, substantive laws of the State of California without giving effect to applicable choice of law principles.

**14. Counterparts.** This Agreement may be executed in one or more counterparts, either manually or by facsimile. All executed counterparts, and each of them, shall be deemed to be one and the same original instrument. This Agreement shall be deemed executed as of the date set forth on the first page of this Agreement. The Parties shall exchange among themselves original, signed counterparts.

**15. Advice of Counsel.** Each of the Parties has had the benefit of the advice of counsel in the negotiation, drafting and execution of this Agreement, and the language in all parts of this Agreement is the product of the efforts of such counsel. Accordingly, neither this entire Agreement, nor any specific provision within the Agreement, shall be deemed to have been proposed or drafted by any Party or construed against any Party on that alleged basis. This Agreement shall be construed as a whole, according to its plain meaning.

**16. Authority.** The Parties each represent and warrant that they have authority to enter into this Agreement either directly or through their counsel.

**17. No Party is Drafter.** None of the Parties to this Agreement shall be considered to be the primary drafter of this Agreement or any provision hereof for the purpose of any rule of interpretation or construction that might cause any provision to be construed against the drafter.

**18. Notification.** All notices and other communications between the Parties referenced in this Agreement shall be in writing and shall be served by overnight mail or by registered or certified mail, return receipt requested, addressed to the Parties' counsel at their respective addresses as set forth below:

Notices to Plaintiffs:

WHATLEY KALLAS, LLP  
Edith M. Kallas, Esq.  
1180 Avenue of the Americas, 20<sup>th</sup> Floor  
New York, NY 10036

Notices to United:

Peter Bisio, Esq.  
HOGAN LOVELLS US LLP  
Columbia Square  
555 Thirteenth Street,  
NW Washington, DC  
20004

**19. Time for Compliance.** If the date for performance of any act required by or under this Agreement to be performed on a particular day or within a specified period of time falls on a Saturday, Sunday or legal or Court holiday, such act may be performed upon the next business day, with the same effect as if it had been performed on the day or within the period of time specified by or under this Agreement. If an act is to be performed on a particular day, it must be completed no later than 4:30 p.m. Pacific Time on that day.

**20. No Benefits To Third Parties.** This Agreement shall not confer any rights or benefits upon any Person other than Plaintiffs and Members and their authorized caregivers. No Persons other than Plaintiffs and Members and their authorized caregivers are entitled to claim any rights under this Agreement whether as a third party beneficiary, assignee, in subrogation, or otherwise. Plaintiffs and Members and their authorized caregivers may not assign any of their rights under this Agreement to any person, and any purported assignments of such rights shall be deemed invalid and unenforceable.



IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement and Release to be executed effective as of this 19<sup>th</sup> day of March, 2014.

UNITEDHEALTHCARE INSURANCE  
COMPANY



By: Peter Bisio  
Title: Counsel  
Dated: March 19, 2014

OPTUM RX, INC.



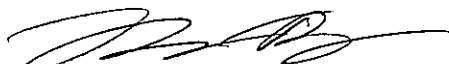
By: Peter Bisio  
Title: Counsel  
Dated: March 19, 2014

PACIFICARE LIFE AND HEALTH  
INSURANCE COMPANY



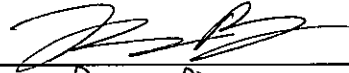
By: Peter Bisio  
Title: Counsel  
Dated: March 19, 2014

UHC OF CALIFORNIA D/B/A  
UNITEDHEALTHCARE OF CALIFORNIA



By: Peter Bisio  
Title: Counsel  
Dated: March 19, 2014

UNITEDHEALTH GROUP



By: Peter Bisio  
Title: Counsel  
Dated: March 19, 2014

JOHN DOE (ACTUAL SIGNATURE TO  
BE SEPARATELY SUPPLIED IN  
CONFIDENCE PURSUANT TO NON-  
DISCLOSURE AGREEMENT)

By: JOHN DOE ONE  
Dated: \_\_\_\_\_, 2014

JOHN DOE TWO (ACTUAL SIGNATURE  
TO BE SEPARATELY SUPPLIED IN  
CONFIDENCE PURSUANT TO NON-  
DISCLOSURE AGREEMENT)

By: JOHN DOE TWO  
Dated: \_\_\_\_\_, 2014


JOHN DOE THREE (ACTUAL  
SIGNATURE TO BE SEPARATELY  
SUPPLIED IN CONFIDENCE  
PURSUANT TO NON-DISCLOSURE  
AGREEMENT)

By: JOHN DOE THREE  
Dated: \_\_\_\_\_, 2014


UNITEDHEALTH GROUP

\_\_\_\_\_  
By:  
Title:  
Dated: \_\_\_\_\_, 2014


JOHN DOE (ACTUAL SIGNATURE TO  
BE SEPARATELY SUPPLIED IN  
CONFIDENCE PURSUANT TO NON-  
DISCLOSURE AGREEMENT)

  
By: JOHN DOE ONE  
Dated: 3/15, 2014


JOHN DOE TWO (ACTUAL SIGNATURE  
TO BE SEPARATELY SUPPLIED IN  
CONFIDENCE PURSUANT TO NON-  
DISCLOSURE AGREEMENT)

  
By: JOHN DOE TWO  
Dated: 3/15, 2014


JOHN DOE THREE (ACTUAL  
SIGNATURE TO BE SEPARATELY  
SUPPLIED IN CONFIDENCE  
PURSUANT TO NON-DISCLOSURE  
AGREEMENT)

  
By: JOHN DOE THREE  
Dated: 3/14, 2014

JOHN DOE FOUR (ACTUAL  
SIGNATURE TO BE SEPARATELY  
SUPPLIED IN CONFIDENCE  
PURSUANT TO NON-DISCLOSURE  
AGREEMENT)


  
By: JOHN DOE FOUR  
Dated: 3/19, 2014

JOHN DOE FIVE (ACTUAL SIGNATURE  
TO BE SEPARATELY SUPPLIED IN  
CONFIDENCE PURSUANT TO NON-  
DISCLOSURE AGREEMENT)

  
By: JOHN DOE FIVE  
Dated: 3/19, 2014

PLAINTIFFS' COUNSEL:

WHATLEY KALLAS, LLP

  
By: Edith M. Kallas  
Dated: 3/19, 2014

CONSUMER WATCHDOG

\_\_\_\_\_  
By: Harvey Rosenfield, Esq.  
Dated: \_\_\_\_\_, 2014

JOHN DOE FOUR (ACTUAL  
SIGNATURE TO BE SEPARATELY  
SUPPLIED IN CONFIDENCE  
PURSUANT TO NON-DISCLOSURE  
AGREEMENT)

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By: JOHN DOE FOUR  
Dated: \_\_\_\_\_, 2014

JOHN DOE FIVE (ACTUAL SIGNATURE  
TO BE SEPARATELY SUPPLIED IN  
CONFIDENCE PURSUANT TO NON-  
DISCLOSURE AGREEMENT)

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By: JOHN DOE FIVE  
Dated: \_\_\_\_\_, 2014


PLAINTIFFS' COUNSEL:

WHATLEY KALLAS, LLP

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By: Edith M. Kallas  
Dated: \_\_\_\_\_, 2014

CONSUMER WATCHDOG

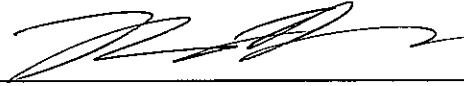


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By: Harvey Rosenfield, Esq.  
Dated: 3-19, 2014

DEFENDANTS' COUNSEL:

HOGAN LOVELLS US LLP



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By: Peter Bisio, Esq.

Dated: March 19, 2014

# EXHIBIT 1

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

JOHN DOE ONE, et al., on behalf of  
themselves and all others similarly  
situated,

Plaintiffs,

v.

UNITEDHEALTHCARE  
INSURANCE COMPANY, *et al.*,

Defendants.

CASE NO. SACV-13-00824-DOC  
(JPRx)

**CLASS ACTION**

**[PROPOSED] ORDER GRANTING  
PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT AND  
DIRECTING DISSEMINATION OF  
CLASS NOTICE**

Date:  
Time:  
Judge: Hon. David O. Carter  
Trial Date: Not Set

Complaint Filed: June 7, 2013

THIS MATTER having been brought before the Court jointly by Plaintiffs JOHN DOES ONE through FIVE, through their attorneys Whatley Kallas LLP and Consumer Watchdog (together, "Plaintiffs' Counsel"), and by Defendants UnitedHealthcare Insurance Company, OptumRx, Inc., Pacificare Life and Health Insurance Company, UHC of California d/b/a UnitedHealthcare of California, and UnitedHealth Group (collectively, "United"), through their attorneys, Hogan Lovells US LLP, pursuant to Fed. R. Civ. Proc. 23(e), for entry of an Order granting the Joint Motion for Entry of Order Preliminarily Approving Settlement and Class Notice Program (the "Motion"); and the Court having reviewed the



1 submissions of the parties, having held a hearing on \_\_\_\_\_, and having found  
2 that the parties are entitled to the relief they seek, and for good cause shown;

3 IT IS ORDERED that the Motion is GRANTED, and it is further ORDERED  
4 as follows:

5 1. The proposed Settlement Agreement and Release (the “Settlement  
6 Agreement”), submitted with the Motion as Ex. 1 to the Declaration of Alan M.  
7 Mansfield, falls “within the range of possible approval.” Federal Judicial Center,  
8 *Manual for Complex Litigation* (“MCL 4th”) §21.632 (4th ed. 2004). Accordingly,  
9 the Settlement Agreement is preliminarily approved, subject to a further  
10 determination to be made after a Fairness Hearing, as defined below, and is  
11 sufficient to warrant sending notice to the Class, as set forth below and in the  
12 Settlement Agreement.<sup>1</sup>

13 2. Based upon the submissions of counsel for the parties, and for  
14 purposes of settlement only, the Court conditionally certifies a Class pursuant to  
15 Fed. R. Civ. Proc. 23(a) and (b)(3) comprised of all natural persons who have been  
16 diagnosed as having HIV or AIDS (“HIV/AIDS”), who are or have in the past been  
17 prescribed a medication that the Specialty Pharmacy identifies as a medication for  
18 the treatment of HIV/AIDS, who do not opt out of the class defined in the Order of  
19 Preliminary Approval and who, as of the date of this Agreement, (i) are enrolled in  
20 or covered by any health plan offered or administered by United or its Affiliates  
21 that includes a prescription drug benefit including but not limited to insured and  
22 self-funded ERISA plans, individual plans, governmental plans, and church or  
23 group plans, (ii) are prescribed HIV/AIDS Specialty Medications, and (iii) are  
24 required to participate in the Program.

25 3. The Court provisionally finds, for purposes of settlement only, that:  
26 (a) the Class Members are so numerous as to make joinder of them impracticable;

27 \_\_\_\_\_  
28 <sup>1</sup> Except as otherwise specified herein, all capitalized terms set forth in this  
Order shall have the same meaning as that set forth in the Settlement Agreement.

1 (b) there are questions of law and fact common to the Class; (c) the Plaintiffs'  
2 claims and the defenses asserted thereto are typical of the claims of Class Members  
3 and the defenses asserted thereto; (d) JOHN DOES ONE through FIVE and  
4 Plaintiffs' Counsel have fairly and adequately protected the interests of Class  
5 Members throughout this action; (e) questions of law or fact relating to the  
6 settlement that are common to Class Members predominate over any questions  
7 affecting only individual Members, and (f) a class action is superior to all other  
8 available methods for fairly and efficiently resolving this action, considering: (i) the  
9 interests of the Class Members in individually controlling the prosecution of  
10 separate actions; (ii) the extent and nature of the litigation concerning the  
11 controversy already commenced by Class Members; (iii) the desirability and  
12 undesirability of concentrating the litigation of these claims in a particular forum;  
13 and (iv) the difficulties likely to be encountered in the management of a class  
14 action.

15 4. The Court's conditional certification of the Class and its provisional  
16 findings are solely for purposes of effectuating the proposed settlement. If the  
17 Settlement Agreement is terminated or is not consummated for any reason, the  
18 foregoing conditional certification and provisional findings shall automatically be  
19 void and of no further effect, and the parties to the settlement shall be returned to  
20 the status each occupied before entry of this Order without prejudice to any legal  
21 argument that any of the parties to the Settlement Agreement might have asserted  
22 but for the Settlement Agreement.

23 5. A final hearing (the "Fairness Hearing") shall be held before this Court  
24 on \_\_\_\_\_ at \_\_\_\_\_, to determine whether (a) class certification for  
25 settlement purposes should be finally approved, (b) the Settlement Agreement  
26 should receive final approval as fair, reasonable, adequate, and in the best interests  
27 of the Class; (c) final approval of the Settlement Agreement should be granted;  
28 (d) final judgment should be entered dismissing the First Amended Complaint filed

1 in the above-captioned action with prejudice consistent with the terms provided for  
2 in the Settlement Agreement; (e) the application of Plaintiffs' Counsel for the  
3 payment of attorneys' fees and reimbursement of expenses and payments to Class  
4 representatives is reasonable and should be approved; and (f) such other matters as  
5 the Court may deem necessary and appropriate. All papers in support of such  
6 requests shall be filed with the Court no later than \_\_\_\_\_, 2014. The Fairness  
7 Hearing may be postponed, adjourned or continued by further order of this Court,  
8 without further notice to the Class.

9         6. At the Fairness Hearing, the Court will consider and determine  
10 whether the Settlement Agreement should be finally approved as fair, adequate and  
11 reasonable in light of any objections that may be presented by Class Members and  
12 the parties' responses to any such objections. Any Class Member may object to the  
13 fairness, reasonableness or adequacy of the proposed settlement. Any Class  
14 Member who so objects also may appear at the Fairness Hearing, in person or  
15 through counsel, to show cause why the proposed settlement should not be  
16 approved as fair, adequate and reasonable. Each Class Member who wishes to  
17 object to any term of the Settlement Agreement must do so in writing by filing a  
18 written objection with the Clerk of the Court and mailing it to counsel for the  
19 parties. Any such objection must be filed with the Clerk of the Court and  
20 received by counsel for the Parties no later than \_\_\_\_\_, 2014. The objection  
21 must (a) include the case name and case number; (b) include a statement identifying  
22 whether the Class Member has objected to any class action settlement in the last  
23 five years and if so, the name of the lawsuit in which such objection was made;  
24 (c) include copies of any materials that will be submitted to the Court or presented  
25 at the Fairness Hearing; (d) state whether the Class Member or his counsel intends  
26 to appear in person at the Fairness Hearing; (e) be signed by the Class Member; and  
27 (f) state in detail: (i) the legal and factual ground(s) for the objection, (ii) the Class  
28 Member's, name, address and, if available, telephone number, and (iii) if

1 represented by counsel, such counsel's name, address and telephone number. Any  
2 objection that fails to satisfy the requirements of this Paragraph, or that is not  
3 properly and timely submitted, shall be deemed ineffective, will be disregarded by  
4 the Court, and will be deemed to have been waived.

5 7. The settling parties may respond to any objections that are filed. Any  
6 such response must be filed with the Clerk of the Court and received by the  
7 objector(s) and their counsel no later than \_\_\_\_\_, 2014.

8 8. Any Person who is within the scope of the Class, but who wishes to be  
9 excluded from membership in the Class must do so in writing by mailing a request  
10 for exclusion from the Class to the persons listed in the Notice, so that such request  
11 is postmarked no later than \_\_\_\_\_, 2014 (the "Opt-Out Deadline"). The  
12 request for exclusion must be personally signed by the Person requesting exclusion  
13 and contain a statement that indicates a desire to be excluded from the Class. Any  
14 request for exclusion that fails to satisfy the requirements of this paragraph or that  
15 is not properly and timely submitted, as required above, shall not be effective. A  
16 Person submitting such a request shall be deemed to have waived all rights to opt  
17 out of the Class, and shall be deemed a Class Member for all purposes pursuant this  
18 Order.

19 9. The Court finds that the proposed manner and content of the Notice  
20 Program specified in the Settlement Agreement and the Motion, including (i) first  
21 class mailed notice to all persons within the scope of the Class that Defendants can  
22 reasonably identify, (ii) information on a settlement website  
23 ([www.UnitedHIVSettlement.com](http://www.UnitedHIVSettlement.com)), and (iii) publishing notice in *USA TODAY*, *The*  
24 *Los Angeles Times*, *The San Francisco Chronicle*, and *The New York Times*, will  
25 provide the best notice practicable to the Class Members under the circumstances.  
26 This Notice Program shall be completed on or before \_\_\_\_\_, 2014. All costs  
27 incurred in connection with the preparation and dissemination of any notices to the  
28 Class shall be borne by United as set forth in the Settlement Agreement.

1           10. Prior to the Fairness Hearing, the Settlement Administrator shall file a  
2 sworn statement attesting to compliance with the Notice Program.

3           11. Class Members shall not institute, maintain, or proceed in any action  
4 against the Released Parties, or counsel for the Released Parties, as applicable, after  
5 the Opt-Out Deadline with respect to any of the claims released by Section III.8 of  
6 the Settlement Agreement pending further order of this Court. If the Settlement  
7 Agreement is finally approved, the Court shall enter a separate Order finally  
8 approving the Settlement Agreement, and entering judgment consistent with the  
9 terms of the Settlement Agreement.

10           12. In the event that the proposed settlement provided for in the  
11 Settlement Agreement is not approved by this Court, or entry of the final order and  
12 judgment set forth herein does not occur for any reason, then the Settlement  
13 Agreement, all drafts, negotiations, discussions, and documentation relating thereto,  
14 and all orders entered by this Court in connection therewith shall become null and  
15 void without further Court Order. In such event, the Settlement Agreement and  
16 all negotiations and proceedings relating thereto shall be withdrawn without  
17 prejudice to the rights of the Parties, who shall be restored to their respective  
18 positions as of the date of the execution of the Settlement Agreement.

19  
20 DATED: \_\_\_\_\_, 2014

21 HON. DAVID O. CARTER  
22 U.S. District Court Judge  
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# EXHIBIT 2

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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION**

JOHN DOE ONE, et al., on behalf  
of themselves and all others  
similarly situated,

Plaintiffs,

v.

UNITEDHEALTHCARE  
INSURANCE COMPANY, *et al.*,

Defendants.

CASE NO. SACV-13-00824-DOC  
(JPRx)

CLASS ACTION

**[PROPOSED] ORDER GRANTING  
JOINT MOTION FOR FINAL  
APPROVAL OF CLASS ACTION  
SETTLEMENT AND PLAINTIFFS'  
APPLICATION FOR ATTORNEYS'  
FEES AND REIMBURSEMENT OF  
EXPENSES AND PAYMENTS TO  
CLASS REPRESENTATIVE AND  
PLAINTIFFS**

Date:  
Time:  
Judge: Hon. David O. Carter  
Trial Date: Not Set

Complaint Filed: June 7, 2013

THIS MATTER having been brought before the Court jointly by Plaintiffs, through their attorneys, Whatley Kallas, LLP and Consumer Watchdog (together, "Plaintiffs' Counsel"), and by Defendants, UnitedHealthcare Insurance Company, OptumRx, Inc., Pacificare Life and Health Insurance Company, UHC of California d/b/a UnitedHealthcare of California, and UnitedHealth Group (collectively, "United"), through their attorneys, Hogan Lovells LLP, pursuant to Fed. R. Civ. P. 23(e), for an Order granting final approval of a class action settlement, and the application of Plaintiffs' Counsel for approval of payment of attorneys' fees and

1 reimbursement of expenses, and payments to the Plaintiffs (together, the “Motion”);  
2 and the Court, having reviewed the submissions of the parties and all purported  
3 members of the Class, having held a hearing on \_\_\_\_\_, and having found that  
4 the parties are entitled to the relief they seek for the reasons stated on the record  
5 during the hearing on the Motion and based upon the submission of the parties, and  
6 for good cause shown, the Court makes the following findings:

7 1. The Court has jurisdiction over the subject matter of this lawsuit  
8 pursuant to 28 U.S.C. §§ 1331 and 1367, and over all the parties to this lawsuit and  
9 all members of the Class.

10 2. Capitalized terms used in this Order that are not otherwise defined  
11 herein have the meaning assigned to them in the Settlement Agreement.

12 3. Notice to the Class and the appropriate public officials pursuant to the  
13 provisions of the Class Action Fairness Act has been provided in accordance with  
14 this Court’s Preliminary Approval Order. Such notice has been provided in an  
15 adequate and sufficient manner, constitutes the best notice practicable under the  
16 circumstances and satisfies the requirements of due process. The Notice apprised  
17 all persons within the scope of the Class of the pendency of the litigation, of all  
18 material elements of the proposed settlement, of the effect of the settlement on the  
19 members of the Class, of the opportunity to Opt Out of the Class, and of the  
20 opportunity to comment on and/or object to the settlement and to appear at the  
21 Fairness Hearing. Full opportunity has been afforded to the members of the Class  
22 to participate in the Fairness Hearing. Accordingly, the Court determines that all  
23 persons within the scope of the Class who have not opted out are bound by this  
24 Order and by the final judgment to be entered pursuant thereto.

25 4. The Court has held a hearing to consider the fairness, reasonableness  
26 and adequacy of the settlement, has been advised of all objections to the settlement,  
27 and has given fair consideration to such objections.

28 ///



1           5.     The Settlement Agreement and Release dated March 19, 2014 (the  
2     “Settlement Agreement”), was arrived at after extensive arm’s-length negotiations  
3     conducted in good faith by counsel for all parties in the above-captioned action.

4           6.     This litigation presents difficult and complex issues as to which there  
5     are substantial grounds for difference of opinion.

6           7.     The settlement, as provided for in the Settlement Agreement, is in all  
7     respects fair, reasonable, adequate and proper and in the best interests of the Class  
8     in light of the complexity, expense and duration of the litigation, and the risks  
9     inherent and involved in establishing liability and damages, and in maintaining  
10    class action status through trial and appeals. In reaching this conclusion, the Court  
11    has considered a number of factors, including (a) an assessment of the likelihood  
12    that the Plaintiffs and/or the Class would prevail at trial; (b) the range of possible  
13    outcomes of a trial; (c) the consideration provided to members of the Class pursuant  
14    to the Settlement, as compared to the range of possible outcomes of a trial  
15    discounted for the inherent risks of litigation; (d) the complexity, expense and  
16    possible duration of such litigation in the absence of a settlement; (e) the nature and  
17    extent of any objections to the settlement; and (f) the stage of proceedings at which  
18    the settlement was reached.

19          8.     Only \_\_\_ purported members of the Class filed objections to the  
20    settlement, which are hereby overruled, and only \_\_\_ persons within the scope of  
21    the Class have submitted valid and timely requests for exclusion from the Class,  
22    which are hereby recognized.

23          9.     The promises and commitments of the Parties under the terms of the  
24    Settlement Agreement constitute fair value given in exchange for the releases set  
25    forth in the Settlement Agreement and as detailed herein.

26          10.    The Parties and each Class Member have submitted to the jurisdiction  
27    of this Court for any suit, action, proceeding, or dispute arising out of the  
28    Settlement Agreement except as otherwise provided herein.

1           11. It is in the best interests of the Parties and the Class Members, and  
2 consistent with principles of judicial economy, that any dispute between any Class  
3 Member and any of the Released Parties that in any way relates to the applicability  
4 or scope of the Settlement Agreement should be presented exclusively to this Court  
5 for resolution by this Court except as provided for in the Settlement Agreement in  
6 terms of certain types of claims that are to be submitted to the Compliance Dispute  
7 Officer for resolution.

8           Based upon the foregoing findings, and all of the evidence presented in the  
9 record, IT IS HEREBY ORDERED AS FOLLOWS:

10           1. The Settlement Agreement submitted with the Motion is finally  
11 approved as fair, reasonable, adequate, just, and in the best interests of the Class  
12 Members. The Parties are hereby directed to consummate the Settlement  
13 Agreement and comply with the relief described in the Settlement Agreement in  
14 accordance with the terms of the Settlement Agreement.

15           2. Based upon the submissions of the Parties, and for purposes of  
16 settlement only, the Court finds as to the Class that: (a) the Class Members are so  
17 numerous as to make joinder of them impracticable; (b) there are questions of law  
18 and fact common to the Class; (c) the Plaintiffs' claims and the defenses asserted  
19 thereto are typical of the claims of Class Members and the defenses asserted  
20 thereto; (d) the Plaintiffs and Plaintiffs' Counsel have fairly and adequately  
21 protected the interests of Class Members throughout this action; (e) questions of  
22 law or fact relating to the settlement that are common to class members  
23 predominate over any questions affecting only individual members, and (f) a class  
24 action is superior to all other available methods for fairly and efficiently resolving  
25 this action, considering: (i) the interests of the Class Members in individually  
26 controlling the prosecution of separate actions; (ii) the extent and nature of the  
27 litigation concerning the controversy already commenced by Class Members;  
28 (iii) the desirability and undesirability of concentrating the litigation of these claims

1 in a particular forum; and (iv) the difficulties likely to be encountered in the  
2 management of a class action. The Court confirms these previous findings made  
3 based on the record submitted to the Court. The Court approves Plaintiffs and  
4 Plaintiffs' Counsel as representatives of the Class and finally certifies a Class  
5 pursuant to Fed. R. Civ. P. 23(a) and (b)(3) for settlement purposes only comprised  
6 of all natural persons who have been diagnosed as having HIV or AIDS  
7 ("HIV/AIDS"), who are or have in the past been prescribed a medication that the  
8 Specialty Pharmacy identifies as a medication for the treatment of HIV/AIDS, who  
9 do not opt out of the class defined in the Order of Preliminary Approval and who,  
10 as of the date of the Settlement Agreement, (i) are enrolled in or covered by any  
11 health plan offered or administered by United or its Affiliates that includes a  
12 prescription drug benefit including but not limited to insured and self-funded  
13 ERISA plans, individual plans, governmental plans, and church or group plans, (ii)  
14 are prescribed HIV/AIDS Specialty Medications, and (iii) are required to participate  
15 in the Program.

16 3. Notwithstanding the certification of the foregoing Class and  
17 appointment of class representatives for purposes of effecting the Settlement, if this  
18 Order is reversed on appeal or the Settlement Agreement is terminated or not  
19 consummated for any reason, the foregoing certification of the Class and  
20 appointment of class representatives shall be automatically void and of no further  
21 effect and the parties to the settlement shall be returned to the status each occupied  
22 before entry of this Order, without prejudice to any legal argument that any of the  
23 parties to the Settlement Agreement might have asserted but for the Settlement  
24 Agreement.

25 4. The proposed fee and expense payment to Plaintiffs' Counsel and the  
26 payments to the Plaintiffs, as set forth in the Settlement Agreement and in  
27 Plaintiffs' Motion for Final Approval of Settlement and Plaintiffs' Counsel's fee  
28 and expense application, are hereby approved as reasonable.

1           5.     The above-captioned action is hereby dismissed on the merits with  
2 prejudice as to all Parties, consistent with the terms and releases as set forth in the  
3 Settlement Agreement.

4           6.     By this Order and the Judgment entered pursuant to it, effective as of  
5 the Effective Date, and in consideration of the Settlement Agreement and the  
6 benefits extended to the Class, Plaintiffs and all Class Members, on behalf of  
7 themselves and their respective successors, assigns, past, present, and future  
8 parents, subsidiaries, joint ventures, partnerships, related companies, affiliates,  
9 unincorporated entities, divisions, groups, directors, officers, shareholders,  
10 employees, agents, representatives, attorneys, servants, partners, executors,  
11 administrators, assigns, predecessors, successors, descendants, dependents, and  
12 heirs are deemed to fully release and forever discharge the Released Parties from  
13 the Released Claims and fully release and forever discharge the Released Parties  
14 and their counsel from any claims arising out of the investigation, filing, defense or  
15 resolution of the Lawsuit, and hereby covenant they shall not take any adverse  
16 action against the Released Parties or their counsel in response to or in retaliation to  
17 settling or dismissal of the Lawsuit or any publicity in connection therewith, or as a  
18 result of entering into the Settlement Agreement.

19           7.     By this Order and the Judgment entered pursuant to it, effective as of  
20 the Effective Date, and in consideration of the Settlement Agreement, the Released  
21 Parties, on behalf of themselves and their respective successors, assigns, past,  
22 present, and future parents, subsidiaries, joint venturers, partnerships, related  
23 companies, affiliates, unincorporated entities, divisions, groups, directors, officers,  
24 shareholders, employees, agents, representatives, servants, partners, executors,  
25 administrators, assigns, predecessors, successors, descendants, dependents, and  
26 heirs, are deemed to fully release and forever discharge Plaintiffs and Plaintiffs'  
27 Counsel, on behalf of themselves and his or her respective successors, assigns, past,  
28 present, and future parents, subsidiaries, joint ventures, partnerships, related

1 companies, affiliates, unincorporated entities, divisions, groups, directors, officers,  
2 shareholders, employees, agents, representatives, servants, partners, executors,  
3 administrators, assigns, predecessors, successors, descendants, dependents, and  
4 heirs, from any claims arising out of the investigation, publication, filing,  
5 prosecution or resolution of the original or amended Complaint filed in the Lawsuit  
6 through the date of the Settlement Agreement and hereby covenant they shall not  
7 take any adverse action against Plaintiffs or Plaintiffs' Counsel in response to or in  
8 retaliation to the filing of the Lawsuit or any publicity in connection therewith  
9 through the date of the Settlement Agreement, or as a result of entering into the  
10 Settlement Agreement.

11 8. With respect to all Released Claims, the Court also finds the Parties  
12 (on behalf of themselves and the Class Members) expressly understand and  
13 acknowledge that certain state statutes and principles of common law provide that a  
14 "general" release does not extend to claims that a creditor does not know or suspect  
15 to exist in his, her, or its favor. For example, Cal. Civil Code section 1542 provides:

16 A GENERAL RELEASE DOES NOT EXTEND TO  
17 CLAIMS WHICH THE CREDITOR DOES NOT KNOW  
18 OR SUSPECT TO EXIST IN HER OR HER FAVOR AT  
19 THE TIME OF EXECUTING THE RELEASE, WHICH  
IF KNOWN BY HIM OR HER MUST HAVE  
MATERIALLY AFFECTED HIS OR HER  
SETTLEMENT WITH THE DEBTOR.

20 To the extent that it could be argued that such statutes or principles of common law  
21 are applicable here, the Court recognizes that the Parties agree that any such  
22 statutes, principles of common law or other sources of legal authority of any and all  
23 jurisdictions that may be applicable are hereby knowingly and voluntarily waived  
24 and relinquished, and further agree and acknowledge that this is an essential term of  
25 the Settlement Agreement. The Court recognizes that the Parties understand the  
26 statutory language of Section 1542 of the California Civil Code and nevertheless  
27 elect to release the Released Parties from the Released Claims, whether known or  
28 unknown, and specifically waive any rights that each may have under said Civil

1 Code section, and also fully understand that if the facts with respect to the  
2 Settlement Agreement are found hereafter to be other than or different from the  
3 facts now believed to be true, expressly accepts and assumes the risk of such  
4 possible difference in fact and agrees that the Settlement Agreement shall be and  
5 remain effective, notwithstanding any such difference.

6 9. Effective as of the Effective Date, the Court orders and enters a  
7 permanent injunction barring and enjoining Plaintiffs and Class Members from  
8 instituting, maintaining, or proceeding in any action against the Released Parties, or  
9 counsel for the Released Parties, as applicable, with respect to any of the claims set  
10 forth in Section III.8 of the Settlement Agreement, except as provided under the  
11 terms of the Settlement Agreement.

12 10. The Court appoints \_\_\_\_\_ as the Compliance Dispute  
13 Officer for purposes of enforcing the provisions of the Compliance Protocol as set  
14 forth in Exhibit 6 to the Settlement Agreement. Any disputes or controversies  
15 arising with respect to the interpretation, enforcement or implementation of this  
16 Order or the Settlement Agreement that are not required to be submitted to the  
17 Compliance Dispute Officer pursuant to the Settlement Agreement and the  
18 Compliance Protocol are to be submitted by any affected Person to the Court.

19 11. Except as otherwise provided for in Section III.3.1.2. and Exhibit 6 of  
20 the Settlement Agreement, and without affecting the finality of the judgment  
21 entered pursuant to this Order, this Court retains continuing jurisdiction over this  
22 settlement, including the administration, consummation, and enforcement of the  
23 Settlement Agreement, and review of any Compliance Dispute appealed to the  
24 Court. In addition, without affecting the finality of the judgment entered pursuant  
25 to this Order, this Court retains jurisdiction over the Parties, the Released Parties,  
26 and each member of the Class, who are deemed to have submitted to the exclusive  
27 jurisdiction of this Court for any suit, action, proceeding or dispute arising out of or  
28 relating to this Order and the terms of the Settlement Agreement. The terms of this

1 Order are to be directly enforceable under the continuing jurisdiction of this Court  
2 as expressly retained by this Court. All Class Members provided rights under this  
3 Order are intended third party beneficiaries of this Order.

4 12. Neither the Settlement Agreement nor any provision therein, nor any  
5 negotiations, statements, or proceedings in connection therewith shall be construed  
6 as, or be deemed to be evidence of, an admission or concession on the part of any of  
7 the class representatives, Class Counsel, any members of the Class, Defendants or  
8 any other Person of any liability or wrongdoing by them, or that the claims and  
9 defenses that have been, or could have been, asserted in the Actions are or are not  
10 meritorious, and this Order, the Settlement or any such communications shall to the  
11 fullest extent permitted by law not be offered or received in evidence in any action  
12 or proceeding, or be used in any way as an admission or concession or evidence of  
13 any liability or wrongdoing of any nature or that the class representatives, any  
14 member of the Class or any other Person has or has not suffered any damage;  
15 *provided, however*, that the Settlement Agreement, this Order, and the Judgment to  
16 be entered thereon may be filed in any action by any Released Party seeking to  
17 enforce the Settlement Agreement, this Order, or the Judgment by injunctive or  
18 other relief, or to assert defenses including, but not limited to *res judicata*, collateral  
19 estoppel, release, good faith settlement, judgment bar or reduction or any theory of  
20 claim preclusion or issue preclusion or similar defense or counterclaim. The terms  
21 of the Settlement Agreement and of this Order and the Judgment shall be forever  
22 binding on, and shall have *res judicata* and preclusive effect in, all pending and  
23 future lawsuits or other proceedings that are subject to the Release.

24 13. In the event that the Effective Date cannot occur, or the Settlement  
25 Agreement is cancelled or terminated in accordance for any reason, then this Order  
26 and the Judgment shall be automatically rendered null and void.

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14. The Court finds that there is no reason for delay and directs the Clerk to enter judgment in accordance with the terms of this Order as of the date of this Order.

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
Hon. DAVID O. CARTER  
U.S. District Judge



# EXHIBIT 3

**OFFICIAL NOTICE FROM THE UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA**

***JOHN DOES 1-5 v. UnitedHealthcare Insurance Company, OptumRx, Inc., Pacificare Life and Health Insurance Company, UHC of California d/b/a UnitedHealthcare of California, and UnitedHealth Group, U.S. Dist. Ct. C.D. Cal. Case No. SACV 13-00864-DOC (JPRx)***

**NOTICE OF CLASS ACTION SETTLEMENT**

**IF YOU ARE ENROLLED IN OR COVERED BY ANY HEALTH PLAN OFFERED OR ADMINISTERED BY UNITEDHEALTHCARE AND HAVE BEEN PRESCRIBED HIV/AIDS SPECIALTY MEDICATIONS, PLEASE READ THIS NOTICE CAREFULLY. THE CLASS ACTION SETTLEMENT DESCRIBED BELOW MAY AFFECT YOUR LEGAL RIGHTS.**

***A California Court authorized this notice. This is not a solicitation from a lawyer.***

This notice advises you of a proposed class action settlement with UnitedHealthcare Insurance Company, OptumRx, Inc., Pacificare Life and Health Insurance Company, UHC of California d/b/a UnitedHealthcare of California, and UnitedHealth Group.

If you are a person who has been diagnosed as having HIV or AIDS (“HIV/AIDS”), who is or has in the past been prescribed a medication that the Specialty Pharmacy (usually OptumRx) identifies as a medication for the treatment of HIV/AIDS, and who, as of March 19, 2014 (the date of the Settlement Agreement), (i) is enrolled in or covered by any health plan offered or administered by United or its Affiliates that includes a prescription drug benefit including but not limited to insured and self-funded ERISA plans, individual plans, governmental plans, and church or group plans, (ii) is prescribed HIV/AIDS Specialty Medications, and (iii) is required to participate in the Program, you could be entitled to rights under the class action settlement described in this Notice.

The “Program” referred to in this Notice is any program pursuant to which the only way for a person to obtain HIV/AIDS Specialty Medications on an in-network basis as part of their health care pharmacy benefit is to obtain HIV/AIDS Specialty Medications from a designated Specialty Pharmacy by mail. “HIV/AIDS Specialty Medications” means any medication prescribed by a physician that is subject to the Program and that Specialty Pharmacy identifies as a medication for the treatment of HIV/AIDS, Immune Deficiency, Growth Hormone Neutropenia, and Anemia, and any other category that may be agreed to by the Parties.

Under this settlement, members of the Class, as well as other persons with HIV/AIDS who are enrolled in or covered by health plans offered or administered by United or its Affiliates, will have the right to be exempted from the Program and will be able to obtain their HIV/AIDS Specialty Medications on an in-network basis at any in-network retail pharmacy they designate. Class Members will be able to exercise this exemption right or change their in-network retail pharmacy designation either by mail, facsimile, telephone or on-line. Class Members also will be able to request reimbursement of certain out-of-pocket costs they may have incurred as a result of the Program.

Your options - **and the deadlines to exercise them** - are explained in this Notice. You may:

**OPT OUT** – You can request in writing to be excluded from the Class so that you will not be impacted by the settlement. If you do so, you will not have the right to participate in any settlement benefits. If you do not request exclusion, you are prohibited from instituting, maintaining or proceeding with a separate lawsuit with respect to any claim released by Section III.8 of the Settlement Agreement absent further Court order.

**COMMENT OR OBJECT** – You can write to the Court about why you do or don't like the settlement. Additionally, those who comment or object may, if they desire, speak at the Final Fairness Hearing. If the settlement is approved, you will remain a member of the Class and be bound by the terms of the settlement even if you file an objection. You also will receive the rights under the settlement described in this Notice.

**DO NOTHING** – If you do nothing, you will be a member of the Class and be bound by the terms of the settlement. As a member of the Class, you will receive the rights under the settlement described in this Notice.

**Key Dates for Class Members**

Last Day to Opt Out of Settlement	_____	, 2014
Last Day to Object to Settlement	_____	, 2014
Final Fairness Hearing Before the Hon. David O. Carter	_____	, 2014

**1. Why is this Notice Being Provided to Me?** Plaintiffs JOHN DOES 1-5 have reached a settlement of the above lawsuit on behalf of themselves and also on behalf of other people (other than certain persons affiliated with United or the Court) who have been diagnosed as having HIV or AIDS (“HIV/AIDS”), who are or have in the past been prescribed a medication that the Specialty Pharmacy identifies as a medication for the treatment of HIV/AIDS, who do not opt out of the Class defined in the Order of Preliminary Approval and who, as of March \_\_, 2014 (i) are enrolled in or covered by any health plan offered or administered by United or its Affiliates that includes a prescription drug benefit including but not limited to insured and self-funded ERISA plans, individual plans, governmental plans, and church or group plans, (ii) are

prescribed HIV/AIDS Specialty Medications, and (iii) are required to participate in the Program. The purpose of this Notice is to: (1) inform you of the terms of a proposed settlement and the benefits available to you under the settlement, (2) inform you how this lawsuit and the settlement may affect your legal rights, (3) advise you of the steps you must take if you want to object to or exclude yourself from the class, and (4) advise you of the steps that you must take if you want to receive benefits under the settlement, which includes the right to an exemption from the Program and instead obtain your HIV/AIDS Specialty Medications on an in-network basis from an in-network retail pharmacy of your choice.

**2. What is the Lawsuit About?** Plaintiffs filed this lawsuit alleging that United's requirement that members obtain their HIV/AIDS Specialty Medications on an in-network basis from the Specialty Pharmacy by mail violated state and federal statutes, regulations and rights of privacy, including ERISA, the Americans with Disabilities Act, and the California Unruh Act (the "Lawsuit"). This lawsuit seeks relief barring United from engaging in conduct pertaining to the Program that Plaintiffs allege violates such laws as applied to persons diagnosed with HIV/AIDS, monetary relief, attorneys' fees, and costs of suit.

United denies Plaintiffs' claims, has asserted numerous defenses and has vigorously defended the Lawsuit. United denies any wrongdoing or liability of any kind whatsoever with respect to the Program, this lawsuit, the claims in the Complaint, and any and all allegations made therein.

The Court has made no determination about the correctness or validity of any of the Plaintiffs' contentions or any of United's defenses in this lawsuit. Instead, Plaintiffs and United have entered into a Settlement Agreement to end the time, expense, and uncertainty of this litigation.

**3. What are the Settlement Terms?** The Court has preliminarily approved a settlement on the following terms, for the benefit of each Class Member who chooses not to opt out and to participate in the settlement:

- a. No later than thirty (30) calendar days after the Effective Date (which has yet to be set by the Court, but will be no earlier than August, 2014), United shall send by regular U.S. mail a letter to all Class Members (the “Notice Letter”) advising Class Members of their right to exempt themselves from the Program in the manner described in the Notice Letter (“Exemption Right”).
- b. United and its Specialty Pharmacy (currently, OptumRx, Inc.) will establish and implement the following communications, procedures and processes to implement a Member’s<sup>1</sup> decision to exercise his or her Exemption Right (the “Exemption Process”):
  - (1) United will establish and maintain a unique and designated toll-free telephone number to handle calls relating to the Exemption Process. The dedicated line will be staffed with live personnel Monday - Friday, 5 a.m. - 7 p.m., Pacific Time except to the extent such days are federal holidays.
  - (2) The dedicated phone line will be staffed by customer service representatives (“CSRs”) who have completed at least two hours of training in communicating with and assisting Members, including training with respect to HIV/AIDS issues and concerns and processing Members’ exercise of their Exemption Right. Each CSR will be specifically trained to answer questions about the Program and such Member’s ability to

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<sup>1</sup> “Members” include both Class Members and persons with HIV or AIDS who become subject to the Program in the future.

exercise his or her Exemption Right. Beginning on the Effective Date and continuing for a period of three months (the “Initial Period”), the Specialty Pharmacy shall internally monitor on a daily basis its performance under this Agreement, and it shall provide United with a summary of the results of that monitoring on a weekly basis. After the Initial Period, the Specialty Pharmacy shall internally monitor on a monthly basis its performance under this Agreement, and it shall provide United with a summary of the results of that monitoring on a monthly basis.

- (3) A sufficient number of CSRs will be made available to assure that incoming calls to the toll-free telephone number described above are answered by a CSR within approximately 30 seconds on average (measured annually) and 60 seconds on average (measured monthly) after a call is received into the customer service queue, and that no calls are placed on hold immediately upon initial answering of the call. After the initial greeting, no calls will be placed on hold for any unreasonable time period during the call, and then only for the purpose of verifying information or processing the Member’s exercise of his or her Exemption Right. The number of CSRs shall be adjusted, as needed, to meet the Specialty Pharmacy’s needs based on call volume.
- (4) The Notice Letter will also include a separate tear-off sheet. This sheet will permit Members to exercise their Exemption Right either by regular mail or facsimile rather than over the telephone. United may include in that tear-off sheet an optional section where the Member is requested to provide an explanation of the reasons for exercising his or her Exemption

Right, but failure to provide an explanation or complete that section shall not be a basis to deny a Member's Exemption Right. United shall mail Members who return the tear-off sheet by mail or facsimile an acknowledgment that shall include a confirmation number confirming their exercise of their Exemption Right (the "Confirmation Code"). A Member's decision to exercise his or her Exemption Right submitted by mail or facsimile shall be processed by United within five (5) business days of receipt.

- (5) Members who exercise their Exemption Right using the telephone process described above will be provided a Confirmation Code by the CSR during their telephone call. All Members who exercise their Exemption Right by telephone will also be sent a letter confirming in writing that they have exercised their Exemption Right. A Member will not need the confirmation letter in order to obtain their HIV/AIDS Specialty Medications at an in-network retail pharmacy.
- (6) Once a Member exercises his or her Exemption Right and after it has been processed by United, United shall treat any prescriptions for HIV/AIDS Specialty Medications filled at the in-network retail pharmacy designated by the Member as having been filled on an in-network basis. The Member shall designate the in-network retail pharmacy at the time the Member exercises his or her Exemption Right. The Member may change this designation at any time either by (a) calling the Specialty Pharmacy, (b) using the Specialty Pharmacy secure website, (c) mailing or faxing a Pharmacy Designation Change Form to the Specialty Pharmacy, or

(d) having an in-network retail pharmacist call the Specialty Pharmacy on the Member's behalf prior to or at the time HIV/AIDS Specialty Medications are to be dispensed using the telephone number(s) provided to in-network retail pharmacists that enable them to speak with Specialty Pharmacy representatives 24-hours-a-day.

(7) Within 90 days after the Effective Date United or the Specialty Pharmacy shall implement a method for Members to exercise their Exemption Right through the Specialty Pharmacy's secure website.

(8) Any disputes over these processes shall be submitted to a Compliance Dispute Officer appointed by the Court for resolution pursuant to the terms of a Compliance Protocol (Ex. 6 to the Settlement Agreement), which is available for review on the [www.UnitedHIVSettlement.com](http://www.UnitedHIVSettlement.com) website.

c. For Members who are not Class Members, but who have been diagnosed with HIV or AIDS and who after the date of the Settlement Agreement are prescribed any HIV/AIDS Specialty Medications and are subject to the Program, United shall send the Notice Letter to such Members within ten (10) business days of United's systems recognizing that such Member is subject to the Program or within thirty (30) calendar days after the Effective Date, whichever is later. The Notice Letter may be sent to a Future Member separately, or included as part of a welcome packet as long as the welcome packet includes a cover letter containing the bolded phrase: "IMPORTANT INFORMATION ABOUT YOUR RIGHT TO AN EXEMPTION FROM THE REQUIREMENT TO OBTAIN SPECIALTY MEDICATIONS BY MAIL INCLUDED IN THIS PACKET."



- d. Any Member who is informed for the first time after the Effective Date that he or she is subject to the Program will be permitted upon request one initial fill or re-fill at an in-network retail pharmacy.
- e. Any Member who is receiving HIV/AIDS Specialty Medications through the Program by mail may exercise his or her Exemption Right at any time after the Effective Date.
- f. Once a Member has exercised his or her Exemption Right and the Member has been provided the required Confirmation Code, the Member's exercise of his or her Exemption Right shall be immediately effective and valid and shall continue to be recognized as effective and valid as long as the Member continues to be a Member who is subject to the Program, unless the Member subsequently decides to participate in the Program.
- g. Any Class Member may submit a claim for reimbursement of any Out-of-Pocket Costs incurred prior to the Effective Date. "Out-of-Pocket Costs" means the difference between (i) what the Class Member actually paid out-of-pocket for his or her HIV/AIDS Specialty Medications and (ii) what the Class Member would have paid out-of-pocket had the Class Member purchased those HIV/AIDS Specialty Medications from the Specialty Pharmacy. "Out-of-Pocket Costs" shall not include any Member's co-pay or co-insurance requirements. Class Members seeking compensation for Out-of-Pocket Costs shall submit receipts or any other records of payment supporting their claims, including but not limited to credit card payment records or evidence of payments made to a pharmacist, to the claims administrator along with a completed claim form. Upon confirming the validity of the submitted documents, the claims administrator shall determine the

total amount of valid Out-of-Pocket Costs incurred by each Class Member who timely submitted a claim for payment of Out-of-Pocket Costs. United, or the claims administrator on United's behalf, shall then reimburse those Class Members for their valid Out-of-Pocket Costs. If the total amount of valid Out-of-Pocket Costs exceeds \$240,000, then the amount of reimbursement to be paid to each Class Member shall be prorated by dividing \$240,000 by the total value of timely and valid claims submitted, and applying that percentage to the reduce the amount of each individual claim to be paid. United shall not be required to pay more than \$240,000 in reimbursement for Out-of-Pocket Costs to Class Members. The claim form will be available for download from [www.UnitedHIVSettlement.com/ClaimForm](http://www.UnitedHIVSettlement.com/ClaimForm). Please check the website for the deadline for submitting such claims.

- h. United will not impose any additional personal expense or decrease in benefits on a Member solely as a result of the Member's exercise of his or her rights under the terms of this Agreement.
- i. United will not cause the altering of the "in-network" status and will not penalize an in-network retail pharmacy because such pharmacy dispenses HIV/AIDS Specialty Medications to any Member who has exercised his or her Exemption Right pursuant to this Agreement.

**IMPORTANT – THE ABOVE TERMS WILL NOT BECOME EFFECTIVE UNLESS THE COURT FINALLY APPROVES THIS SETTLEMENT AND EITHER THERE ARE NO APPEALS OR ANY APPEALS ARE FAVORABLY RESOLVED, WHICH WILL BE NO EARLIER THAN AUGUST 2014. PLEASE CHECK THE SETTLEMENT WEBSITE**

**WWW.UNITEDHIVSETTLEMENT.COM PERIODICALLY FOR UPDATES IF  
AND WHEN THIS SETTLEMENT HAS BEEN FINALLY APPROVED.**

- j. United shall implement and apply the procedures specified above with respect to all Members who are not enrolled in a self-insured Group Plan. United also shall implement and apply these procedures with respect to all Members enrolled in a self-insured Group Plan except to the extent that such Group Plan instructs United to implement and apply different procedures over United's recommendation. To find out whether your plan is a self-insured Group Plan that has instructed United to implement and apply different procedures, please contact United at 1-888-XXX-XXXX.

**4. Release of Claims.** If you do not opt out of the settlement, you will be deemed to have fully and finally waived and released all "Released Claims." The term "Released Claims" means any and all known and unknown, suspected and unsuspected, ripe and contingent, claims, claims for relief, causes of action, suits, rights of action, or demands, whether sounding in contract, tort, or equity, or involving an alleged violation of any law or regulation, for any form of legal, equitable, injunctive relief, damages, debts, indemnity, contribution, or for costs, expenses and attorney's fees, based upon, arising from, or relating to the claims and allegations asserted in the Complaint or the Lawsuit, as generally described in Section 2, but not including any possible claims for personal injury or bodily harm. The term "Released Claims" includes, without limitation, any claim alleging that an action taken by the Released Parties that is in compliance with this Agreement violates any legal rights. Each Class Member shall be deemed to have expressly waived and released any and all provisions, rights and benefits conferred either (a) by California Civil Code section 1542, which states:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HER OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

or (b) by any other comparable laws, whether state or federal. The full release language is set forth in Sections II.U-V and III.8 of the Settlement Agreement, which can be reviewed at [www.UnitedHIVSettlement.com/settlement](http://www.UnitedHIVSettlement.com/settlement) documents.

**5. Attorneys' Fees and Costs.** You will not be required to pay any attorneys' fees or costs from your share of the settlement if you remain in this lawsuit. An award of attorneys' fees and costs will be determined by the Court. Plaintiffs' Counsel are also requesting that Class representatives receive an additional amount for acting as class representatives of up to \$10,000 per approved representative, which is also subject to Court approval. These amounts were only negotiated after the other material settlement terms were agreed to between the parties and are based on the time and expenses Plaintiffs and their counsel have expended in connection with this lawsuit.

**6. Effect of Not Opting Out.** Unless you opt out of (*i.e.*, you request in writing to be excluded from) the Class as set forth below, you will be considered to be a Member in the Class and will be entitled to the benefits of the settlement as set for in Section 3 above. If you remain a member of the Class, you will be bound by the Court's Order finally approving this settlement and the Judgment entered by the Court, and you shall be deemed to have released United from the Released Claims as described in Section 4, above.

**7. What Has Occurred in the Lawsuit?** The Parties, through their respective counsel, have engaged in extensive arm's length negotiations in reaching this settlement since this matter has been on file, filed an original and amended Complaint, and exchanged significant

relevant information regarding the current Program, how the revised program would be operated, and the number of persons impacted by the Program.

**8. Who Represents the Class?** Plaintiffs' Class Counsel are:

Edith M. Kallas  
Whatley Kallas LLP  
1180 Avenue of the Americas, 20<sup>th</sup> Floor  
New York, New York 10036

Jerry Flanagan  
Consumer Watchdog  
2701 Ocean Park Blvd., Suite 112  
Santa Monica, California 90405

**9. The Settlement Agreement.** If you would like to obtain a complete copy of the Settlement Agreement and the exhibits, you may review them at [www.UnitedHIVSettlement.com/settlement](http://www.UnitedHIVSettlement.com/settlement) documents.

**10. Is the Settlement Final?** Not yet. **The final Fairness Hearing is scheduled to be held on \_\_\_\_\_, 2014, at \_\_\_\_:00 a.m. at the following address:**

United States District Judge David O. Carter  
Central District of California – Southern Division  
411 West Fourth Street, Courtroom 9D  
Santa Ana, California 92701-4516

This settlement will not be final or take effect, and the Effective Date will not occur, unless and until: (A) it is presented to and finally approved by the Court after the Final Fairness Hearing and a Final Order has been entered by the Court, and (1) the applicable period for the appeal of the Final Order and Judgment has expired without any appeals (other than appeals regarding Plaintiffs' counsel's attorneys' fees or Plaintiffs' awards) having been filed, or (2) all such appeals (other than appeals regarding Plaintiffs' counsel's attorneys' fees of Plaintiffs' awards) have been dismissed; or (B) the Ninth Circuit Court of Appeals has entered a final

judgment affirming the Final Order, which is no longer subject to any further appellate challenge. Counsel do not know at this time if any objections or appeals will be filed. At the present time the parties do not know when the settlement will take effect, but it will be no earlier than August 2014. Check back periodically at [www.UnitedHIVSettlement.com](http://www.UnitedHIVSettlement.com) for an update on the status of these proceedings.

**11. If the Court Finally Approves the Settlement, What Will Happen to Any Claims I May Have against United?** If the settlement receives final judicial approval, it will result in a release by Plaintiffs and all Class Members of all Released Claims, which is described in Section 4 of this Notice and in Sections II.U-V and III.8 of the Settlement Agreement. The Court also will issue an order barring Class Members from asserting Released Claims. Thus, if you do not exclude yourself from the Class, you will not be able to sue, or join another lawsuit against, United or any of its affiliates for the Released Claims.

**12. Why is Counsel Recommending the Class Settlement?** Plaintiffs and Plaintiffs' Counsel are supporting this settlement based on the fairness of the settlement in terms of providing members of the Class the right to obtain HIV/AIDS Specialty Medications on an in-network basis from an in-network retail pharmacy of their choice and seek reimbursement of certain Out-of-Pocket costs incurred as a result of the Program, compared to the risks of and uncertainty at trial and/or appeal, and the delays associated with such litigation. Plaintiffs and Plaintiffs' Counsel reached this settlement after weighing the risks and benefits to the Class of this settlement as compared to continuing the litigation. The factors that counsel considered included the uncertainty associated with continued litigation, including various legal issues that have not yet been determined by the Court. Counsel balanced these and other risks, in determining that the settlement is fair, reasonable and adequate in light of all the circumstances,

and is in the best interests of the Class considering the substantial benefits provided to Class Members under this settlement.

**13. What if I Do Not Want to Participate in the Settlement?** You will be bound by the Judgment entered in the Lawsuit unless you submit a valid and timely request for exclusion (an “opt-out request”) from the Class. If you wish to be excluded from the Settlement Class you must send an opt-out request by mail to Plaintiffs’ Counsel/the Settlement Administrator. **The opt-out request must be postmarked no later than \_\_\_\_\_, 2014 and mailed to the following address:**

**[Address of Settlement Administrator]**

To be valid, an opt-out request must (a) refer to the “DOE v. United Settlement”; (b) identify the name and address of the individual who is opting out and state your wish to be excluded from the Class; and (c) state that such person is authorized to opt out of the Class. If you opt out, you will not be bound by the Court’s Final Order and you will not waive or release any of the Released Claims asserted in the Lawsuit, but you will not be entitled to receive any relief under this settlement or participate in the expanded exemption process under the Program. If you choose not to opt out, your interests will be represented by Plaintiffs through the attorneys listed in Section 8 above.

**14. Right to Comment on or Object to the Settlement.** Any member of the Class has the right to comment on or object to the proposed settlement, and any member who comments or objects may appear personally or through counsel at the Fairness Hearing to be held on \_\_\_\_\_, 2014. Even if you object to the settlement, you may still be entitled to participate in the settlement. **In order to be heard or to have papers or briefs considered by the Court, any commenting or objecting Class Member must file, by \_\_\_\_\_, 2014 an**

**original of the Class Member's comment or objection with the Court at the address listed in Section 10.**

The comment or objection must: (a) include the case name and case number; (b) include a statement identifying whether you have objected to any class action settlement in the last five years and if so, the name of the lawsuit in which such objection was made; (c) include proof of Class membership and copies of any materials that will be submitted to the Court or presented at the Fairness Hearing; (d) state whether you or your counsel intends to appear in person at the Fairness Hearing, (e) be signed by you; and (f) state in detail: (i) the ground(s) for the comment or objection, (ii) your name, address and, if available, telephone number, and (iii) if you are or will be represented by counsel, such counsel's name, address and telephone number. Any objecting Class Member who fails to submit a timely written comment or objection or fails to satisfy the requirements of this paragraph shall waive and forfeit any and all rights that he or she may have to appear separately and/or comment or object, and shall be bound by all the terms of the settlement, release, and by all proceedings, orders and judgments in this action.

Copies of all documents filed with the Clerk of the Court must **also** be sent to the following counsel:

Counsel for Plaintiffs

Edith M. Kallas  
Whatley Kallas LLP  
1180 Avenue of the Americas, 20<sup>th</sup> Floor  
New York, New York 10036

Jerry Flanagan  
Consumer Watchdog  
2701 Ocean Park Blvd., Suite 112  
Santa Monica, California 90405



Counsel for United

Peter R. Bisio  
Hogan Lovell US LLP  
Columbia Square  
555 Thirteenth Street, NW  
Washington, DC 20004

IF YOU DO NOT OPPOSE THE PROPOSED SETTLEMENT, YOU NEED NOT APPEAR AT THE FINAL FAIRNESS HEARING OR FILE ANY PAPERS. IF YOU FILE A COMMENT OR AN OBJECTION, IT WILL BE CONSIDERED BY THE COURT. YOU NEED NOT APPEAR AT THE FINAL FAIRNESS HEARING.

**15. Resolution of Disputes.** If there is a dispute regarding any aspect of your participation in the settlement and that dispute cannot be informally resolved, the dispute shall be decided by the Compliance Dispute Officer to be appointed by the Court at the final Fairness Hearing, if it is a Compliance Dispute as that term is defined in the Compliance Protocol, or the Judge before whom the Lawsuit is pending. You may visit [www.UnitedHIVSettlement.com/settlement](http://www.UnitedHIVSettlement.com/settlement) documents for more information.

**16. Where You Can Obtain Further Information.** If you want additional information about the Lawsuit and this settlement that is not answered or available at [www.UnitedHIVSettlement.com](http://www.UnitedHIVSettlement.com), you should contact the Settlement Administrator at the following toll free telephone number: 1-888-xxx-xxxx. Please indicate that you are calling regarding the *DOE v. United* class action settlement.

**OTHER THAN QUESTIONS ABOUT SELF-INSURED PLANS DESCRIBED IN SECTION 3.J, DO NOT CONTACT THE COURT, UNITED'S COUNSEL, OR UNITED DIRECTLY ABOUT THIS LAWSUIT.**

# EXHIBIT 4

## **SUMMARY CLASS NOTICE**

### **NOTICE OF PROPOSED SETTLEMENT WITH UNITED**

**IF YOU ARE ENROLLED IN OR COVERED BY ANY HEALTH PLAN OFFERED OR ADMINISTERED BY UNITEDHEALTHCARE AND HAVE BEEN PRESCRIBED HIV/AIDS SPECIALTY MEDICATIONS, PLEASE READ THIS NOTICE CAREFULLY. THE CLASS ACTION SETTLEMENT DESCRIBED BELOW MAY AFFECT YOUR LEGAL RIGHTS.**

This notice summarizes the proposed settlement of a class action lawsuit: *JOHN DOES 1-5 v. UnitedHealthcare Insurance Company, OptumRx, Inc., Pacificare Life and Health Insurance Company, UHC of California d/b/a UnitedHealthcare of California, and UnitedHealth Group*, U.S. Dist. Ct., C.D. Cal. Case No. SACV 13-00864-DOC (JPRx). Plaintiffs JOHN DOES 1-5 represent people who have been diagnosed as having HIV or AIDS (“HIV/AIDS”), who are or have in the past been prescribed a medication that the Specialty Pharmacy (usually OptumRx) identifies as a medication for the treatment of HIV/AIDS, who do not opt out of the class defined in the Order of Preliminary Approval and who, as of the date of the proposed settlement, (i) are enrolled in or covered by any health plan offered or administered by United or its Affiliates that includes a prescription drug benefit, (ii) are prescribed HIV/AIDS Specialty Medications, and (iii) are required to participate in the Program. The “Program” refers to any program pursuant to which the only way for Members to obtain HIV/AIDS Specialty Medications on an in-network basis as part of their health care pharmacy benefit is to obtain HIV/AIDS Specialty Medications from the Specialty Pharmacy by mail.

Under this settlement, members of the Class, as well as persons who are enrolled in or covered by United health plans and prescribed HIV/AIDS Specialty Medications in the future, in exchange for a release of claims, will have the right to be exempted from the Program (“Exemption Right”) and obtain their HIV/AIDS Specialty Medications on an in-network basis from any in-network retail pharmacy. Class members will be able to exercise this Exemption Right by mail, facsimile, telephone or on-line. They also will be able to request reimbursement of certain out-of-pocket costs they may have incurred as a result of the Program. Details of the settlement including the Exemption Right, how and when it may be exercised, how to request reimbursement and the scope of the claims to be released if this settlement is approved are available on-line at [www.UnitedHIVSettlement.com](http://www.UnitedHIVSettlement.com).

The Court has preliminarily approved the settlement and has set a final approval hearing to consider the views of Class members. That hearing is set for \_\_\_\_\_, at \_\_\_\_\_ in Department 9-D of the United States District Court, Central District of California, located at 411 West Fourth Street, Santa Ana, California 92701.

You do not need to do anything to be a Class member and to be entitled to receive the benefits of the settlement. However, any Class member may comment on or object to the settlement in writing, and any person who does not wish to be a Class member may submit a written request to be excluded from the Class. The deadline to comment, object, or request exclusion from the Class is \_\_\_\_\_, 2014. The Court will consider all written comments and objections that are submitted on time. If you submit a written request to be excluded from the Class on time, you will not be entitled to participate in any of the settlement benefits. If the settlement is approved, the judgment approving the settlement will bind all Class members who do not request to be excluded from the

Class, even if they file an objection. No Class member may institute, maintain or proceed with any action with respect to any claim released by the Settlement Agreement and the Final Approval Order absent further Court order unless they submit a timely and valid request to be excluded from the Class.

**This is only a summary of the settlement.** To object to the settlement or exclude yourself from the Class, you must follow the instructions in the full Notice of Pendency of Class Action and Proposed Settlement (“Notice”), which is available at [www.UnitedHIVSettlement.com](http://www.UnitedHIVSettlement.com). For additional information regarding this settlement, you can read the full Notice along with additional background about this lawsuit at [www.UnitedHIVSettlement.com](http://www.UnitedHIVSettlement.com), or obtain a copy of the Notice from the **Settlement Administrator at *DOE v. United* c/o [United/Claims Administrator], \_\_\_\_\_ [address].** You may also call **1-888-xxx-xxxx** if you have any questions.

**SI NECESITA ASISTENCIA EN ESPANOL, POR FAVOR LLAME AL  
1-888-xxx-xxxx**

# EXHIBIT 5

**IMPORTANT NOTICE ABOUT YOUR PRESCRIPTION DRUGS AVAILABLE  
BY MAIL**

Dear FIRST NAME,

Our Specialty Pharmacy prescription drug program provides comprehensive management and support and improved clinical outcomes to thousands of people with diseases that require costly yet live-saving medications. Through the Specialty Pharmacy program, members can obtain Specialty Medications on an in-network basis through designated Specialty Pharmacies, primarily by mail. We understand, however, that our members with HIV/AIDS may have unique concerns as a result of their disease, and may not want to obtain their HIV/AIDS Specialty Medications by mail.

If you do not want to obtain your HIV/AIDS Specialty Medications by mail because you have privacy and/or delivery concerns regarding your HIV/AIDS medications, or are unable to effectively discuss your condition over the phone due to an HIV-related neurocognitive disorder or other significant HIV-related impairment, please complete the enclosed HIV/AIDS Specialty Medications Exemption Form and return it to the following address:

UnitedHealthcare  
P.O Box [XXX]  
City, State Zip Code

Once we receive your completed form, we will authorize an exemption to our Specialty Pharmacy program so that you can obtain your HIV/AIDS Specialty Medications on an in-network basis from a retail network pharmacy near you. Alternatively, you can call the OptumRx Specialty Pharmacy at 1-888-XXX-XXXX to exercise your exemption right for one of the reasons set forth in the HIV/AIDS Specialty Medications Exemption Form. If you have a different reason for wanting an exemption so that you can obtain your HIV/AIDS Specialty Medications on an in-network basis from a retail network pharmacy, please call the OptumRx Specialty Pharmacy and ask about the Short-Term and Long-Term Retail Override Criteria to see if you otherwise qualify for an exemption.

We appreciate the opportunity to serve you.

Sincerely,

Susan V. Maddux, PharmD  
Pharmacy Director

Enclosure

# EXHIBIT 6



## **Compliance Disputes Arising Under This Agreement**

### **1.1 Jurisdiction, Coordination and Costs**

#### **(a) Compliance Dispute Officer**

The Parties shall recommend to the Court for appointment an initial Compliance Dispute Officer (the “Compliance Dispute Officer”). In the event that a person serving as the Compliance Dispute Officer notifies the parties that he or she is unable or unwilling to continue to serve in that role, the parties will jointly select a new Compliance Dispute Officer within ten (10) business days of such notification. If the parties are unable to jointly select a new Compliance Dispute Officer in that time frame, the parties may jointly or individually petition the Court to select a new Compliance Dispute Officer.

#### **(b) Compliance Disputes**

Compliance Disputes are disputes concerning (i) a Member’s exercise of his or her Exemption Right, (ii) the processes set forth in Section III.3.c of the Agreement, or (iii) allegations of non-compliance with Section III.3 of this Agreement. All Compliance Disputes shall be directed to the Compliance Dispute Officer. Compliance Disputes shall not be directed to the Court nor to any other state court, federal court, arbitration panel or any other binding or non-binding dispute resolution mechanism, except as provided in the Agreement. All other disputes arising under the Agreement are to be resolved by application to the Court under Section III.11 of the Agreement.

#### **(c) Fees and Costs**

United shall pay the reasonable fees and expenses of the Compliance Dispute Officer.

### **1.2 Who May Petition the Compliance Dispute Officer**

Plaintiffs’ Counsel may petition the Compliance Dispute Officer if they have a good faith belief that there is a dispute that is a Compliance Dispute.

### **1.3 Procedure for Initiating Compliance Disputes**

To initiate a Compliance Dispute, Plaintiffs’ Counsel shall provide a brief written description of the dispute to United’s Counsel, Peter Bisio, Esq. of Hogan Lovells LLP, or any other attorney or other person designated by United to serve in this role for purposes of the Agreement (“United’s Counsel”).

## **1.4 Dispute Resolution Without Full Review**

Plaintiffs' Counsel and United's Counsel shall attempt in good faith to achieve a resolution of any Compliance Dispute initiated by Plaintiffs' Counsel. If such efforts do not achieve resolution of the Compliance Dispute within five (5) business days after United is notified by Plaintiffs' Counsel of the Compliance Dispute, Plaintiffs' Counsel may refer the Compliance Dispute to the Compliance Dispute Officer for full review and shall notify United's Counsel of any such referral.

## **1.5 Dispute Resolution With Full Review**

### **(a) Requirements for a Compliance Dispute With Full Review**

To refer a Compliance Dispute to the Compliance Dispute Officer for full review, Plaintiffs' Counsel shall submit a summary of the dispute to the Compliance Dispute Officer describing the basis for their belief that the dispute at issue is a Compliance Dispute. The Compliance Dispute Officer shall then determine, in his or her sole judgment, whether the summary alleges a dispute that is a Compliance Dispute. If the Compliance Dispute Officer determines that the summary does not allege a dispute that is a Compliance Dispute, he or she will so inform the parties in writing. If the Compliance Dispute Officer determines that the summary does allege a dispute that is a Compliance Dispute, then the Compliance Dispute shall proceed as set out in ¶¶ 1.5(b)-(d) below.

### **(b) Memoranda to Compliance Dispute Officer**

The Compliance Dispute Officer shall in writing request memoranda from Plaintiffs' Counsel and United's Counsel regarding the merits of the Compliance Dispute and appropriate remedies. Plaintiffs' Counsel shall have ten (10) business days from the date of such request to submit its memorandum and any supporting documentation, and United's Counsel shall submit its memorandum and any supporting documentation in response within ten (10) business days after receipt of Plaintiffs' Counsel's memorandum.

### **(c) Oral Argument of Compliance Dispute**

The Compliance Dispute Officer, at his or her sole option, may request Plaintiffs' Counsel and United's Counsel to present oral argument of the Compliance Dispute, either by telephone or in person at a time and place agreed to by Plaintiffs' Counsel, United's Counsel, and the Compliance Dispute Officer.

### **(d) Decisions by the Compliance Dispute Officer**

In resolving a Compliance Dispute, the Compliance Dispute Officer shall issue a written decision based only on the memoranda submitted by Plaintiffs' Counsel and United's Counsel, any supporting documentation submitted in support of such memoranda, and any oral argument. The written decision shall state whether

United has failed to comply with its obligations under the Agreement as alleged in the Compliance Dispute and the basis for such statement. To the extent the Compliance Dispute Officer determines that United has failed to comply with its obligations under this Agreement, the Compliance Dispute Officer shall order appropriate remedies as necessary to effectuate the terms of the Agreement, including but not limited to providing additional and supplemental notice to Class Members of their options.

#### **1.6 Awarding of Fees and Costs**

If the Compliance Dispute Officer determines that United has failed to comply with its obligations under this Agreement, the Compliance Dispute Officer may award Plaintiffs' Counsel reasonable attorneys' fees and expenses associated with initiating and pursuing the Compliance Dispute, such fees and expenses to be paid by United.

#### **1.7 The Compliance Dispute Officer's Decision May be Appealed to the Court**

The Parties agree that the decision of the Compliance Dispute Officer may be appealed to the Court as provided for in Section III.11 of the Agreement. The Court shall exercise *de novo* review of any Compliance Dispute appealed to the Court, and any such appeal shall be filed within thirty (30) calendar days of the issuance of the Compliance Dispute Officer's decision.

#### **1.8 Enforcement by the Court**

If the Compliance Dispute Officer determines that United has not complied with its decision regarding a Compliance Dispute, it shall provide written notice of such noncompliance to United. If United does not comply within five (5) business days from the date of such notice, the Compliance Dispute Officer shall provide written notice to Plaintiffs' Counsel, and Plaintiffs' Counsel may petition the Court for enforcement of the Compliance Dispute Officer's decision.

# EXHIBIT 7

## Customer Service Scripting Regarding Specialty Pharmacy Exemption

Specialty Medications typically can only be obtained on an in-network basis through the mail. Members with HIV/AIDS may obtain a permanent exemption from the Specialty Pharmacy program so that they can obtain their HIV/AIDS Specialty Medications on an in-network basis from an in-network retail pharmacy based on privacy or delivery concerns, or if they have difficulty discussing their HIV medications over the phone. The nature of these concerns may be expressed in a variety of ways.

Part I below sets out the different concerns and Customer Service's initial response. (If the Member does not identify the nature of the concern, Customer Service will first ask: "Can you tell me the nature of your concern?") Members will not be required to identify more than one concern. Customer Service will choose the response based on the scenario below that most closely relates to the Member's concerns.

Part II sets out what Customer Service will say based on the Member's response to the question asked in Part I.

### PART I

Answering Customer Service representative: [Greeting.] What is the nature of your call?

If Member refers to concerns regarding the Specialty Pharmacy program or receiving prescription drugs by mail, Customer Service must ascertain whether the Member is an HIV/AIDS Member. If Member is an HIV/AIDS Member, Customer Service then states:

- I am authorized to address your concerns, including by granting you a waiver from the Specialty Pharmacy program so that you can fill your prescription for HIV/AIDS medications at your local retail network pharmacy. Please tell me your concerns.

### Privacy Concerns Scenario #1

Member's Concern:

***"I don't want anyone to see my medication package."***

***"I don't feel like OptumRx/mail service is private enough."***

***"I live with other people and my mail isn't secure enough."***

***"There are times I may not be there when it's delivered and someone else could open it."***

***"Someone else handles my mail so there is a possibility he/she could open the box."***

***"I'm concerned about my receiving medication at work."***

Customer Service Response: [choice of one]

- Your privacy is our top concern. If you're not already aware, let me reassure you that the box has no information identifying the contents. Does that address your concern?
- Your privacy is our top concern. Did you realize we can ship your medication to any address or location? Would changing the address to which we ship your medication address your concern?
- Your privacy is our top concern. Did you know I can require a signature for the package so it can only be delivered directly to you or someone you designate? Would that address your concern?

(The response chosen will depend on the precise nature of the concern expressed.)

If Member answers "no" or "not really" or otherwise indicates that the response does not fully satisfy her concerns, proceed to Part II.A.

If Member answers "yes" or otherwise indicates the response satisfies her concerns, proceed to Part II.B.

## Privacy Concerns Scenario #2

### Member's Concern:

***"I don't like the information inserted with my medication because others might see it."***

### Customer Service Response:

- Your privacy is our top concern. Every pharmacy is required either by the FDA or pharmacy practice regulations to provide drug information with prescriptions. However, if you would prefer, I can request that additional information and brochures about HIV/AIDS not be included in your packages. Would that address your concern?

If Member answers "no" or "not really" or otherwise indicates that the response does not fully satisfy her concerns, proceed to Part II.A.

If Member answers "yes" or otherwise indicates the response satisfies her concerns, proceed to Part II.B.

### Privacy Concerns Scenario #3

Member's Concern:

***"I can't call to refill my prescription because I don't have enough privacy at work."***

Customer Service Response: [choice of one]

- Your privacy is our top concern. We do have extended telephone service hours from 7 am to 9 pm Central Standard Time, Monday through Friday, and 8 am to 7 pm Saturdays and Sundays. Does that address your concern?
- I understand your concern. Did you know you can request refills using the prescription number rather than saying the drug name? Does that address your concern?

(The response chosen will depend on the precise nature of the concern expressed.)

If Member answers "no" or "not really" or otherwise indicates that the response does not fully satisfy her concerns, proceed to Part II.A.

If Member answers "yes" or otherwise indicates the response satisfies her concerns, proceed to Part II.B.

### Privacy Concerns Scenario #4

Member's Concern:

***"I keep getting calls to refill and I'm afraid someone else will answer."***

Customer Service Response:

- Your privacy is our top concern. While our refill reminder calls will never identify your condition or medication until you have identified yourself, I can stop those calls if you would like. Would that address your concern?

If Member answers "no" or "not really" or otherwise indicates that the response does not fully satisfy her concerns, proceed to Part II.A.

If Member answers "yes" or otherwise indicates the response satisfies her concerns, proceed to Part II.B.

## Privacy Concerns Scenario #5

Member's Concern:

***Any other concern related to privacy not identified in previous scenarios.***

Customer Service Response:

- [Customer Service to choose a response from any of those listed above]

If Member answers “no” or “not really” or otherwise indicates that the response does not fully satisfy her concerns, proceed to Part II.A.

If Member answers “yes” or otherwise indicates the response satisfies her concerns, proceed to Part II.B.

## Delivery Concerns Scenario #1

Member's Concern

***“I’m worried that I won’t get my refill **in time.**”***

***“I’m worried that my package will get lost in the mail or delivered to the wrong address.”***

***“I’m concerned about mail order delivery.”***

Customer Service Response

- I understand your concern. OptumRx has an excellent record in delivering medication on time. However, if for any reason you don’t receive your medication when you are supposed to, you can ask for a one-time exception that would allow you to get the medication you need from a local pharmacy until your package arrives. Does that address your concern?

If Member answers “no” or “not really” or otherwise indicates that the response does not fully satisfy her concerns, proceed to Part II.A.

If Member answers “yes” or otherwise indicates the response satisfies her concerns, proceed to Part II.B.



## Delivery Concerns Scenario #2

### Member's Concern

***"I never remember to refill in time. It's much easier to just go to my own pharmacy."***

### Customer Service Response

- OptumRx can help with automated refill reminder calls about 7-10 days before you need a refill. I will check to make sure we have a correct phone number for you. We also offer text reminders for taking your medication if that would help as well. Would that address your concerns?

If Member answers "no" or "not really" or otherwise indicates that the response does not fully satisfy her concerns, proceed to Part II.A.

If Member answers "yes" or otherwise indicates the response satisfies her concerns, proceed to Part II.B.

## Delivery Concerns Scenario #3

***Any other concern related to delivery not identified in previous scenarios.***

### Customer Service Response:

- [CSR to choose a response from any of those listed above]

If Member answers "no" or "not really" or otherwise indicates that the response does not fully satisfy her concerns, proceed to Part II.A.

If Member answers "yes" or otherwise indicates the response satisfies her concerns, proceed to Part II.B.

## Difficulty Discussing Medications/Condition over the Phone Concerns Scenario

### Member's Concern:

***"I don't feel I can/am able to discuss my prescription over the phone because of my condition/disease."***

***"My condition/HIV/AIDS makes me tired/ I have very little energy/I have trouble discussing things like my prescription over the phone."***

### Customer Service Response:

- Are you saying that you are unable to effectively discuss your condition over the phone due to an HIV-related neurocognitive disorder or other significant HIV-related impairment that is being monitored or treated?

### If the Member answers "Yes," Customer Service then states:

- "You can submit questions about your prescription to us via our secure website, or we can call you at a time and location of your choice. Would that address your concerns?"

If Member answers "no" or "not really" or otherwise indicates that the response does not fully satisfy her concerns, proceed to Part II.A.

If Member answers "yes" or otherwise indicates the response satisfies her concerns, proceed to Part II.B.

## **PART II**

### **A. Where Member Has Answered “No”**

If the Member answers “no,” or “not really” or otherwise indicates that the response does not fully satisfy her concerns then Customer Service will respond as follows:

- I understand. Given your situation and concerns, I will input an exemption into our records so that you can fill your HIV/AIDS Specialty Medication prescription on an in-network basis at a local in-network retail pharmacy. Let me enter that for you now. As soon as I am finished, you will be able to fill your HIV/AIDS Specialty Medication prescription at that retail pharmacy. Keep in mind that you must obtain your HIV/AIDS Specialty Medications from the in-network retail pharmacy you designate to benefit from in-network pricing. I will also give you a Confirmation Number at the end of this call.”
- Please give me the name and address of the local retail pharmacy you would like to use. You may change your selection of the in-network retail pharmacy you use at any time and for any reason, including because you are travelling.

Customer Service then inputs that information into the system, and provides the Member with a Confirmation Number when the exemption is entered and complete.

### **B. Where Member Has Answered “Yes”**

If the Member answers “Yes” when asked whether her concerns have been addressed, Customer Service will ask the Member for any information needed to address the Member’s specific concerns.

# EXHIBIT 8

**HIV/AIDS Specialty Medications Exemption Form**

If you do not want to obtain your HIV/AIDS Specialty Medications by mail for one or more of the following three reasons, please check the applicable box[es] below, sign and date this form, and provide your name, address, telephone number, and membership identification number where indicated.

1. I am concerned about my privacy in connection with receiving medication packages where I live or work.

2. I am concerned about the timing, accuracy or other problems with the delivery of my medications from OptumRx.

3. I am unable to effectively discuss my condition over the phone with OptumRx due to an HIV-related neurocognitive disorder or other significant HIV-related impairment that is being monitored or treated.

If you checked any of the boxes above, please identify the in-network retail pharmacy near you from which you would like to obtain your HIV/AIDS Specialty Medications on an in-network basis. (Note: you may provide us at any time with the name of a different in-network retail pharmacy from which you would like to obtain your HIV/AIDS Specialty Medications on an in-network basis ):

Name of Pharmacy: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

\_\_\_\_\_  
Signature

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

Please Print:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Membership Identification Number: \_\_\_\_\_

-----  
**Optional – Please help us serve you better**

If you checked any of the boxes above, please explain your concerns: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

# EXHIBIT 9

**Change In Retail Pharmacy Designation Form**

If you already have an exemption from the Specialty Pharmacy prescription drug program that enables you to obtain HIV/AIDS Specialty Medications on an in-network basis from an in-network retail pharmacy, you may use this form to change the retail pharmacy from which you obtain your HIV/AIDS Specialty Medications. You may also change the retail pharmacy by calling us at 1-888-XXX-XXXX.

**IF YOU DO NOT ALREADY HAVE AN EXEMPTION, BUT WOULD LIKE TO OBTAIN ONE, DO NOT USE THIS FORM.** Instead, please use the HIV/AIDS Specialty Medications Exemption Form or contact us at 1-888-XXX-XXXX.

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To change the in-network retail pharmacy from which you would like to obtain your HIV/AIDS Specialty Medications on an in-network basis, please identify below the new in-network retail pharmacy you would like to use, sign and date this form, and provide your name, address, telephone number and membership identification number where indicated. (Note: you may provide us at any time with the name of a different in-network retail pharmacy from which you would like to obtain your HIV/AIDS Specialty Medications on an in-network basis ):

Name of Pharmacy:

Address:

Telephone Number:

\_\_\_\_\_  
Signature

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

Please Print:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Membership Identification Number: \_\_\_\_\_