

**REDACTED**

**EXHIBIT A**

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

ROCHE DIAGNOSTICS CORPORATION and  
ROCHE DIABETES CARE, INC.,

Plaintiffs,

v.

Case No. 2:18-cv-01479-KOB

PRIORITY HEALTHCARE CORPORATION  
D/B/A PRIORITY CARE; PRIORITY CARE  
PHARMACY, LLC; AMORY PRIORITY CARE  
PHARMACY, LLC; PRIORITY CARE  
PHARMACY SERVICES, LLC; PRIORITY  
EXPRESS CARE PHARMACY, LLC; PRIORITY  
CARE PHARMACY SOLUTIONS, LLC; AMORY  
DISCOUNT PHARMACY, LLC; PRIORITY CARE  
PHARMACY AT COTTON GIN POINT, LLC;  
PRIORITY CARE PHARMACY 2, LLC; JASPER  
EXPRESS CARE PHARMACY, LLC; VINCENT  
PRIORITY CARE PHARMACY, LLC D/B/A THE  
MEDICINE CHEST; VINCENT EXPRESS CARE  
PHARMACY, LLC; VICKERS PRIORITY CARE  
PHARMACY, LLC; CARBON HILL EXPRESS  
CARE PHARMACY, LLC; BOWIE'S PRIORITY  
CARE PHARMACY, LLC D/B/A/ BOWIE'S  
DISCOUNT PHARMACY; BOWIE'S EXPRESS  
CARE PHARMACY, LLC; B&K PRIORITY CARE  
PHARMACY, LLC; B&K EXPRESS CARE  
PHARMACY, LLC; TOMBIGBEE PHARMACY,  
LLC; MAIN STREET DRUGS, LLC;  
YELLOWHAMMER PHARMACY SERVICES  
CORPORATION; MEDICAL PARK DISCOUNT  
PHARMACY, LLC; BURNS DISCOUNT DRUG  
STORE LLC; BURNS DISCOUNT DRUG STORE  
LLC; OZARK FAMILY PHARMACY LLC;  
OZARK FAMILY PHARMACY LLC; PRIORITY  
CARE PROFESSIONAL STAFFING, LLC;  
MEDPOINT, INC.; MEDPOINT, LLC; MEDPOINT  
ADVANTAGE, LLC; PROFESSIONAL  
HEALTHCARE STAFFING, LLC; MEDPOINT  
PHARMACY BENEFIT MANAGERS, LLC D/B/A  
MEDPOINT PHARMACY, KONIE MINGA;  
PHILLIP ANTHONY MINGA; WESLEY MINGA;  
CHRISTOPHER DANIEL KNOTTS; DANIEL  
BAKER; WILLIAM H. AUSTIN; SAMMY  
PHILLIP CARSON; KIMBERLY P. CARSON;  
GENEVA OSWALT; MELISSA "MISSY"  
SHEFFIELD; AND ASHLEY TIGRETT,

Defendants.

**AMENDED COMPLAINT**

Plaintiffs Roche Diagnostics Corporation and Roche Diabetes Care, Inc. (together, “Roche”), for their Amended Complaint against Defendants, hereby allege as follows:

**INTRODUCTION**

1. Roche, a manufacturer of medical equipment and diagnostic supplies for patients with diabetes, brings this action in an effort to put a halt to a massive insurance-fraud enterprise that is being carried out by the Defendants.

2. Defendants are a network of pharmacies and related entities located primarily in Alabama and Mississippi, as well as the individuals that formally or informally control and operate the network. Although the pharmacies appear to operate independently, and some of them maintain local storefronts that sell a variety of medical and consumer products over the counter, these pharmacies serve as fronts for a centralized mail-order enterprise and insurance billing mill located in Amory, Mississippi, that specializes in diabetes care. Because many (though not all) of the pharmacies have “Priority Care” in their name, and because they are all affiliated directly or indirectly with Defendant Priority Healthcare Corporation, this enterprise will be referred to here as the “Priority Care” enterprise.

3. As alleged further below, the Priority Care enterprise is engaged in a nationwide scheme to carry out insurance fraud related to diabetes care supplies, specifically the test strips used to monitor the level of glucose in the blood. The Priority Care enterprise bills insurance companies multiple millions of dollars annually for blood-glucose test strips that have different product codes, different price structures, and different eligibilities for insurance reimbursement than the products patients actually receive.

4. In order to conceal this fraud, the Priority Care enterprise continually shifts its billing volume away from pharmacies whose suspicious billing practices attract attention and opens up new ones whose affiliation with Priority Care cannot be easily identified. In this way, the Priority Care enterprise as a whole is able to perpetuate its fraudulent practices even after individual pharmacies within the network are discovered and cut off by insurance companies, by their pharmacy benefit managers (“PBMs”), or by manufacturers such as Roche.

5. As a result of Defendants’ fraudulent billing practices, Roche has lost tens of millions of dollars in profits and paid out tens of million dollars’ worth of unwarranted rebates to insurance companies and their PBMs for blood-glucose test strips that are different from those that patients received. Defendants’ fraud continued unabated until the entry of a stipulated preliminary injunction shortly after the filing of the initial complaint in this action.

6. The Priority Care enterprise is controlled by the individual Defendants, chief among them Defendants Phillip Anthony Minga and Konie Minga. Phillip Minga has previously been convicted of criminal insurance fraud and has been banned by the federal government from providing mail-order diabetes care supplies to patients with Medicare, Medicaid, or any other federal health care benefits.

7. Because of his criminal history, Phillip Minga keeps his involvement in the Priority Care enterprise hidden. Phillip Minga’s wife, Konie Minga, is the nominal owner of Priority Healthcare Corporation and a number of its affiliate pharmacies, and Phillip Minga’s name does not appear on any of the enterprise’s official documents. Priority Care pharmacists, however, have testified that Phillip Minga is personally involved in the Priority Care enterprise and is the “brains behind” the operation.

8. In discovery in this action, Priority Care has produced business records that were falsified to conceal Phillip Minga's involvement in the enterprise. In particular, Priority Care has produced invoices for Roche's Accu-Chek brand test strips with Phillip Minga's name deleted from them. Priority Care did not tell Roche it was doing this. Roche learned of the alterations because versions of the same invoices obtained from third parties have Phillip Minga's name on them.

9. In an action brought by Roche in the U.S. District Court for the Southern District of Indiana against unrelated parties, Roche learned that Priority Care entities purchased not-for-retail-sale Roche Accu-Chek test strips that had been fraudulently diverted from their intended channels of trade. As a result, Roche served non-party subpoenas on several Priority Care-affiliated pharmacies and individuals in connection with that action. Priority Care ignored the subpoenas until after a Court in this District issued an order compelling a response and later held Priority Care entities in contempt for failing to obey that order. The subpoenaed Priority Care entities finally produced documents to Roche on June 27, 2018.

10. In its June 2018 production, Priority Care withheld responsive documents reflecting purchases of hundreds of thousands of boxes of Accu-Chek test strips. As a result, Priority Care's June 2018 production accounted for only a small fraction of the Roche products for which Priority Care had submitted insurance claims. Although they did not account for all of Priority Care's insurance claims, the documents produced by Priority Care in June 2018 demonstrated that Priority Care had committed large-scale insurance fraud. They showed that Priority Care purchased tens of thousands of not-for-retail-sale Roche Accu-Chek products that have different product codes (and different prices) than the retail products for which Priority Care submitted insurance

claims.

11. Roche filed this suit on September 11, 2018. On September 14, 2018, Priority Care entered into a stipulation in which it agreed to a preliminary injunction barring it from purchasing, selling, or submitting insurance claims for Roche test strips. That stipulation also required Priority Care to provide a full accounting of what was dispensed to patients with respect to its each of its insurance claims for Roche's Accu-Chek test strips. The stipulation was ordered by the Court on September 17, 2018.

12. On October 2, 2018, pursuant to the stipulation and order, Priority Care produced additional invoices reflecting the purchases of hundreds of thousands more Roche Accu-Chek products. The invoices produced by Priority Care in October 2018 were responsive to the subpoenas that Priority Care had previously been ordered to comply with, and which it represented that it had complied with. Priority Care has offered no excuse for its failure to comply with the subpoenas.

13. The October 2018 production confirms that Priority Care has committed massive insurance fraud. The newly produced documents show that Priority Care purchased hundreds of thousands of not-for-retail-sale Roche Accu-Chek test strips which it dispensed to patients, but then fraudulently billed their insurance companies for retail test strips. Priority Care submitted hundreds of thousands of these fraudulent insurance claims and received tens of millions of dollars' worth of insurance reimbursements that it was not entitled to.

14. Because Priority Care operates through a complex and deliberately opaque network of corporate entities, and has a demonstrated history of concealing information, even in the face of Court orders, Roche cannot be confident that Priority Care has ceased its fraudulent activities or that the information Priority Care has produced in discovery is

correct. Roche brings this action to obtain a full accounting of Priority Care's fraud and to obtain compensation for the tens of millions of dollars of losses it has suffered as a result of Priority Care's fraud.

**PARTIES**

15. Plaintiff Roche Diagnostics Corporation is a corporation organized under the laws of the State of Indiana, with its principal place of business at 9115 Hague Road, Indianapolis, Indiana 46250.

16. Plaintiff Roche Diabetes Care, Inc. is a corporation organized under the laws of the State of Delaware, with its principal place of business at 9115 Hague Road, Indianapolis, Indiana 46250. Roche Diagnostics Corporation included Roche's U.S. commercial diabetes business until November 2015, when the U.S. commercial diabetes business was transferred to a separate legal entity, Roche Diabetes Care, Inc. Roche Diabetes Care, Inc. is engaged in the business of manufacturing and marketing blood glucose test strips.

17. Defendant Priority Healthcare Corporation d/b/a Priority Care ("PHC") is a corporation organized under the laws of the State of Delaware, with a mailing address at an Alabama Post Office Box and a principal place of business at 1006 Third Street North, Amory, Mississippi 38821. PHC is a holding company that is sole owner of at least one of the Priority Care pharmacy entities.

18. Defendant Priority Care Pharmacy, LLC ("Priority Care Pharmacy") is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 1600 Highland Drive, Amory, Mississippi 38821. Priority Care Pharmacy is owned by or otherwise affiliated with PHC.

19. Defendant Priority Care Pharmacy Services, LLC (“Priority Care Pharmacy Services”) is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 1600 Highland Drive, Amory, Mississippi 38821. Priority Care Pharmacy Services is owned by or otherwise affiliated with PHC.

20. Defendant Amory Priority Care Pharmacy, LLC (“Amory Priority Care Pharmacy”) is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 1600 Highland Drive, Amory, Mississippi 38821. Amory Priority Care Pharmacy is owned by or otherwise affiliated with PHC.

21. Defendant Priority Express Care Pharmacy, LLC (“Priority Express Care Pharmacy”) is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 1600 Highland Drive, Amory, Mississippi 38821. Priority Express Care Pharmacy is owned by or otherwise affiliated with PHC.

22. Defendant Priority Care Pharmacy Solutions, LLC (“Priority Care Pharmacy Solutions”) is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 211 10th Avenue North, Amory, Mississippi 38821. Priority Care Pharmacy Solutions is owned by or otherwise affiliated with PHC.

23. Defendant Amory Discount Pharmacy, LLC (“Amory Discount Pharmacy”) is a limited liability company organized under the laws of the state of Mississippi, with its principal place of business at 60379 Cotton Gin Port Road Suite B, Amory, Mississippi 38821. Amory Discount Pharmacy is owned by or otherwise affiliated with PHC.

24. Defendant Priority Care Pharmacy at Cotton Gin Point, LLC (“Priority Care Pharmacy at Cotton Gin Point”) is a limited liability company organized under the



laws of the State of Delaware, with its principal place of business at 1506 Highway 278 East Suite G, Amory, Mississippi 38821. Priority Care Pharmacy at Cotton Gin Point is owned by or otherwise affiliated with PHC.

25. Defendant Vickers Priority Care Pharmacy, LLC (“Vickers Priority Care Pharmacy”) is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 31040 Northeast First Avenue Suite 5, Carbon Hill, Alabama 35549. Vickers Priority Care Pharmacy is owned by or otherwise affiliated with PHC.

26. Defendant Carbon Hill Express Care Pharmacy, LLC (“Carbon Hill Express Care Pharmacy”) is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 31040 Northeast First Avenue Suite 5, Carbon Hill, Alabama 35549. Carbon Hill Express Care Pharmacy is owned by or otherwise affiliated with PHC.

27. Defendant Vincent Priority Care Pharmacy, LLC d/b/a The Medicine Chest (“Vincent Priority Care Pharmacy”) is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 42747 Highway 25, Vincent, Alabama, 35176. Vincent Priority Care Pharmacy is owned by or otherwise affiliated with PHC.

28. Defendant Vincent Express Care Pharmacy, LLC (“Vincent Express Care Pharmacy”) is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 42747 Highway 25, Vincent, Alabama, 35176. Vincent Express Care Pharmacy is owned by or otherwise affiliated with PHC.

29. Defendant Priority Care Pharmacy 2, LLC (“Priority Care Pharmacy 2”) is a limited liability company organized under the laws of the State of Delaware, with its

principal place of business at 4330 Highway 78 East 109, Jasper, Alabama 35501. Priority Care Pharmacy 2 is owned by or otherwise affiliated with PHC.

30. Defendant Jasper Express Care Pharmacy, LLC (“Jasper Express Care Pharmacy”) is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 4330 Highway 78 East 109, Jasper, Alabama 35501. Jasper Express Care Pharmacy is owned by or otherwise affiliated with PHC.

31. Defendant Bowie’s Priority Care Pharmacy, LLC d/b/a Bowie’s Discount Pharmacy (“Bowie’s Priority Care Pharmacy”) is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 5100 Curry Highway, Jasper, Alabama 35503. Bowie’s Priority Care Pharmacy is owned by or otherwise affiliated with PHC.

32. Defendant Bowie’s Express Care Pharmacy, LLC (“Bowie’s Express Care Pharmacy”) is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 5100 Curry Highway, Jasper, Alabama 35503. Bowie’s Express Care Pharmacy is owned by or otherwise affiliated with PHC.

33. Defendant B & K Priority Care Pharmacy, LLC (“B & K Priority Care Pharmacy”) is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 6735 Deerfoot Parkway Suite 101, Pinson, Alabama 35126. B & K Priority Care Pharmacy is owned by or otherwise affiliated with PHC.

34. Defendant B & K Express Care Pharmacy, LLC (“B & K Express Care Pharmacy”) is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 6735 Deerfoot Parkway Suite 101, Pinson,

Alabama 35126. B & K Express Care Pharmacy is owned by or otherwise affiliated with PHC.

35. Defendant Tombigbee Pharmacy, LLC (“Tombigbee Pharmacy”) is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 100 Main Street North, Amory, Mississippi 38821.

Tombigbee Pharmacy is owned by or otherwise affiliated with PHC.

36. Defendant Main Street Drugs, LLC (“Main Street Drugs”) is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 417 Main Street South, Amory, Mississippi 38821. Main Street Drugs is owned by or otherwise affiliated with PHC.

37. Defendant Yellowhammer Pharmacy Services Corporation is a corporation organized under the laws of the State of Alabama, with a mailing address at an Alabama Post Office Box and a principal place of business at 1623 21st Court, Phenix City, Alabama 36867. Yellowhammer Pharmacy Services Corporation owns Medical Park Discount Pharmacy, LLC and is affiliated with PHC.

38. Defendant Medical Park Discount Pharmacy, LLC (“Medical Park Discount Pharmacy”) is a limited liability company organized under the laws of the State of Alabama, with its principal place of business at 1623 21st Court, Phenix City, Alabama 36867. Medical Park Discount Pharmacy is owned by Yellowhammer Pharmacy Services Corporation and affiliated with PHC.

39. Defendant Burns Discount Drug Store LLC (“Burns Discount Drug Delaware”) is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 615 W Commercial Street, Ozark,

Arkansas 72949. Burns Discount Drug Delaware is owned by or otherwise affiliated with PHC.

40. Defendant Burns Discount Drug Store LLC (“Burns Discount Drug Arkansas”) is a corporation organized under the laws of the State of Arkansas, with its principal place of business at 615 W Commercial Street, Ozark, Arkansas 72949. Burns Discount Drug Arkansas is owned by or otherwise affiliated with PHC.

41. Defendant Ozark Family Pharmacy LLC (“Ozark Family Pharmacy Delaware”) is a limited liability company organized under the laws of the State of Delaware, with its principal place of business at 101 South 7th Street, Ozark, Arkansas 72949. Ozark Family Pharmacy Delaware is owned by or otherwise affiliated with PHC.

42. Defendant Ozark Family Pharmacy LLC (“Ozark Family Pharmacy Arkansas”) is a limited liability company organized under the laws of the State of Arkansas, with its principal place of business at 101 South 7th Street, Ozark, Arkansas 72949. Ozark Family Pharmacy Arkansas is owned by or otherwise affiliated with PHC.

43. Defendant Priority Care Professional Staffing, LLC (“Priority Care Professional Staffing”) is a limited liability company organized under the laws of the state of Delaware, with its principal place of business at 1006 Third Street North, Amory, Mississippi 38821. Priority Care Professional Staffing is owned by or affiliated with PHC.

44. Defendant Medpoint, Inc. is a corporation organized under the laws of the state of Delaware, with its principal place of business at 1006 Third Street North, Amory, Mississippi 38821. Medpoint, Inc. is a holding company that owns Defendants Medpoint, LLC and Medpoint Advantage, LLC.

45. Defendant Medpoint, LLC (“Medpoint, LLC”) is a limited liability company organized under the laws of the state of Alabama, with its principal place of

business at 1006 Third Street North, Amory, Mississippi 38821. Medpoint, LLC is owned by Medpoint, Inc. and affiliated with PHC.

46. Defendant Medpoint Advantage, LLC (“Medpoint Advantage”) is a limited liability company organized under the laws of the state of Delaware, with its principal place of business at 1006 Third Street North, Amory, Mississippi 38821. Medpoint Advantage is owned by Medpoint, Inc. and affiliated with PHC.

47. Medpoint Pharmacy Benefit Managers, LLC d/b/a Medpoint Pharmacy (“Medpoint Pharmacy”) was a limited liability company organized under the laws of the state of Alabama, with its principal place of business at 211 10th Avenue North, Amory Mississippi 38821. Medpoint Pharmacy was co-owned by Defendants Konie Minga and Kimberly Carson. Medpoint Pharmacy merged into Defendant Priority Care Pharmacy Solutions, LLC on July 1, 2014.

48. Defendant Professional Healthcare Staffing, LLC (“Professional Healthcare Staffing”) is a limited liability company organized under the laws of the state of Delaware, with its principal place of business at 1006 Third Street North, Amory, Mississippi 38821. Professional Healthcare Staffing is affiliated with PHC.

49. The Defendants identified in paragraphs 17–48 above will be referred to as the “Corporate Defendants.”

50. Defendant Konie Minga is a Mississippi citizen residing in Amory, Mississippi. Konie Minga is President and CFO of Priority Healthcare Corporation and the owner and President of record of most of the Priority Care pharmacies. Konie Minga is married to Defendant Phillip Anthony Minga.

51. Defendant Phillip Anthony Minga is a Mississippi citizen residing in Amory, Mississippi. Phillip Minga is Marketing Director at Medpoint Advantage and

oversees, supervises, and/or directs the affairs of PHC and the Priority Care enterprise.

Phillip Minga is married to Defendant Konie Minga.

52. Defendant Wesley Minga is a Mississippi citizen residing in Saltillo, Mississippi. Wesley Minga oversees, supervises, and/or directs shipping and warehousing operations at PHC. Wesley Minga is a son of Defendants Phillip Minga and Konie Minga.

53. Defendant Christopher Daniel Knotts is a Mississippi citizen residing in Amory, Mississippi. Mr. Knotts oversees, supervises, and/or directs shipping and warehousing operations at PHC. Mr. Knotts is a son-in-law of Defendants Phillip Minga and Konie Minga.

54. Defendant Daniel Baker is an Alabama citizen residing in Hoover, Alabama. Mr. Baker is the Director of Amory Discount Pharmacy. Mr. Baker is the son-in-law of Defendants Phillip Minga and Konie Minga.

55. Defendant William H. Austin is a Mississippi citizen residing in Tupelo, Mississippi. Mr. Austin is the Director of Pharmacy Services at PHC. Mr. Austin is also identified as the Director of Amory Priority Care Pharmacy, Jasper Express Care Pharmacy, Carbon Hill Express Care Pharmacy, Bowie's Priority Care Pharmacy, Bowie's Express Care Pharmacy, B & K Express Care Pharmacy, Tombigbee Pharmacy, Main Street Drugs, and Yellowhammer Pharmacy Services Corporation.

56. Defendant Sammy Phillip Carson is a Mississippi citizen residing in Aberdeen, Mississippi. Mr. Carson was Director of Pharmacy Services at Priority Healthcare Corporation until 2015. Mr. Carson is identified as Pharmacist/Director of Pharmacy for Priority Care Pharmacy, LLC, the Director of Pharmacy Services for Priority Care Pharmacy Solutions, and the Pharmacist/Manager for Medpoint Pharmacy. Mr. Carson is married to Defendant Kimberly P. Carson.

57. Defendant Kimberly P. Carson is a Mississippi citizen residing in Aberdeen, Mississippi. Kimberly Carson co-founded PHC and served as its Vice President and Treasurer. Kimberly Carson is or was the Managing Member of a Priority Care affiliate, Priority Care Medical Supply, LLC. Kimberly Carson is married to Defendant Sammy Phillip Carson.

58. Defendant Geneva Oswald is a Mississippi citizen residing in Smithville, Mississippi. Ms. Oswald is Chief Operations Officer of Medpoint Advantage and the Director of Burns Discount Drug Store Arkansas and Ozark Family Pharmacy Arkansas.

59. Defendant Melissa “Missy” Sheffield is a Mississippi citizen residing in Mantachie, Mississippi. Ms. Sheffield is the Chief Operating Officer of PHC.

60. Defendant Ashley Tigrett is a Mississippi citizen residing in Van Buren, Mississippi. Ms. Tigrett is the Director of Quality Assurance, Licensing, and Credentialing at PHC.

### **JURISDICTION AND VENUE**

61. The Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1332(a)(1).

62. The amount of damages at issue exceeds \$75,000, exclusive of interest and costs.

63. The Court has personal jurisdiction over the Defendants because Defendants have their principal place of business in Alabama; own or exercise control over businesses operating in Alabama; perpetrate fraudulent activities in, and through businesses operating in, Alabama; and/or knowingly participate in a fraudulent scheme employing pharmacies and pharmacists operating in Alabama.

64. Venue is proper in the Northern District of Alabama pursuant to 28 U.S.C. § 1391(a) in that a substantial part of the events or omissions giving rise to the claims occurred in this district, and Defendants are subject to personal jurisdiction in this district.

**FACTS COMMON TO ALL CLAIMS**

**Roche's Blood Glucose Test Strips and How They Are Paid For**

65. Roche is one of the leading manufacturers of blood-glucose test strips, which it sells under the Accu-Chek brand. Millions of people with diabetes depend on Roche's Accu-Chek test strips to monitor their blood sugar. Diabetes patients use Roche's test strips by placing a drop of blood on a strip and inserting the strip into a meter, which provides a blood glucose reading.

66. The vast majority of Accu-Chek blood-glucose test strips dispensed in the United States are covered by health insurance or government programs. In the U.S., there are two major ways that health insurance pays for test strips. A very common type of insurance for test strips is pharmacy benefit insurance, the same type of coverage used for prescription drugs. Pharmacy benefit insurance covers retail test strips. The other major way insurers cover test strips is through a medical benefit, sometimes known as durable medical equipment (DME) benefit, the type of insurance used to cover medical devices such as wheelchairs and catheters.

67. Retail pharmacies do not dispense test strips covered by non-governmental medical benefit insurance. Rather, test strips covered by this type of insurance are distributed by providers, typically mail-order distributors, under special contracts with Roche. As alleged below, Roche's pricing for its retail strips varies from its pricing for test strips covered by medical benefit insurance.



68. Roche Accu-Chek test strips that are intended for sale at retail pharmacies are distinct products, with different packaging and product identifying codes, than test strips that are intended for sale by mail order, or otherwise not-for-retail sale, to medical-benefit beneficiaries. The practice of having distinct packaging and product codes for retail and not-for-retail-sale test strips is common throughout the diabetes care industry.

69. Roche does not ordinarily sell its retail (*i.e.*, pharmacy-bound) blood-glucose test strips directly to independent pharmacies, but rather sells them to authorized wholesalers. The wholesalers sell them to pharmacies, who in turn dispense them to diabetes patients. When the strips are dispensed to patients in a retail pharmacy setting, they are almost always paid for by health insurance under a pharmacy benefit.

70. Pharmacies that dispense test strips to patients receive reimbursement directly from the payer, such as a health insurance company or its pharmacy benefit manager (PBM). In order to receive payment from an insurance company or PBM for a box of test strips that it has dispensed, a pharmacy must submit an insurance claim. The processing of insurance claims for covered products is known as adjudication.

71. Insurance claims must include sufficient information to show that the patient that received the box, and the product they received, are both covered by the relevant insurance policy under a pharmacy benefit. Insurance claims include information about the patient, the prescriber, the pharmacy that dispensed the product, the date on which the product was dispensed, and the specific product that the patient received. The product that is dispensed is identified by a unique numerical identifier, known as a National Drug Code (NDC).

72. Roche's retail blood-glucose test strips, intended for sale in pharmacies, have different NDC numbers than their not-for-retail-sale test strips, intended for sale to

patients with medical-benefit insurance. As an example, one of Roche's most widely used blood glucose test strip products is the Accu-Chek Aviva Plus, most commonly sold in 50-strip vials. The NDC for the retail version is 65702-0407-10, while the NDC for the not-for-retail-sale version of this product is 65702-0436-10. The NDC is printed on each vial's package.

73. The package for the not-for-retail-sale (medical benefit) version of Roche's Aviva Plus test strips features the following warnings, printed in easy-to-read, bolded black lettering on a yellow background: "Not for Sale in Retail Outlets" and "Exclusively for Mail Order Use." These warnings are of course not printed on the package for the retail version of Aviva Plus test strips.

74. The prices that wholesalers pay to Roche for retail test strips, and the reimbursement rates that insurance companies pay to the pharmacies under pharmacy-benefit insurance plans, are substantially higher than the net price Roche receives for the test strips. The difference is made up by rebates and administrative fees that Roche pays to the health insurance companies that pay for the strips (or to their PBMs). This system is not unique to Roche. Most major manufacturers of name-brand test strips provide sizeable back-end rebates to insurance companies and PBMs for test strips paid for by pharmacy-benefit plans.

75. In order to process rebates, Roche receives detailed information from PBMs and insurers about the insurance claims that pharmacies submit for its retail products. For every box of Roche-brand test strips that is adjudicated by a pharmacy, Roche receives information from the insurance company or PBM that paid for the retail test strips. Upon receiving this adjudication information, Roche pays rebates in accordance with the terms of its contracts with insurance companies and PBMs.

76. Roche does not receive adjudication data from payers in real time. Rather, payers provide this information to Roche in batches, typically months after the insurance claims are submitted and reimbursements paid.

77. Roche's boxes of mail order and other not-for-retail-sale test strips have unique NDC numbers and sell to wholesalers under contract. Roche does not pay rebates to insurance companies for not-for-retail-sale test strips.

### **Insurance Fraud in the Test-Strip Market**

78. As alleged above, the practice of paying rebates to PBMs and insurers is widespread in the blood-glucose test strip industry. Unfortunately, dishonest pharmacies that are willing to commit fraud can take advantage of this practice to reap tremendous illegitimate profits.

79. One way to exploit this practice through fraud is by dispensing blood-glucose test strips that are not intended for retail sale and then submitting them for reimbursement as retail strips. Not-for-retail-sale test strips are not eligible for rebates from PBMs and insurers and therefore sell for lower prices that do not reflect the rebates paid for retail test strips. By dispensing these not-for-retail-sale test strips and submitting false insurance claims for retail strips, unscrupulous pharmacies can receive the higher insurance reimbursement rates for retail strips without paying the correspondingly higher price to obtain the strips.

### **The Priority Care Enterprise**

80. Priority Care is an association of pharmacies and other entities with overlapping ownership and officers that are located—either physically or nominally—in Alabama or Mississippi, with a recent outpost in Arkansas. The Priority Care enterprise encompasses both brick-and-mortar storefront pharmacies, which service local patients

and walk-in customers, as well as entities whose business exists only on paper, only nominally occupying a physical address.

81. Defendant Priority Healthcare Corporation (PHC)—a Delaware holding company wholly owned by Defendant Konie Minga—lies at the heart of the Priority Care enterprise. PHC employs senior officers and supervisors, and either owns or is affiliated with the Priority Care pharmacies that submit insurance claims. PHC was founded in 2014 by Defendants Konie Minga and Kimberly Carson, who were its initial co-owners.

82. Neither Konie Minga nor Kimberly Carson had any prior business experience or relevant background, education, or expertise in the health care, pharmaceutical, or insurance industries. Their husbands, Defendants Phillip Minga and Sammy Phillip Carson, did have experience in these industries, and actively participated in the management of PHC, but chose not to affiliate their names with the company. Konie Minga now directly or indirectly owns most of the entities constituting the Priority Care enterprise.

83. The registered address of PHC is 1678 Montgomery Highway Suite 344, Birmingham, Alabama 35216, a mailbox rented by Konie Minga at a strip-mall UPS Store. PHC actually operates out of offices and an adjacent mail-order storage and fulfillment complex located in Amory, Mississippi. Its officers, employees, and decision-makers, including many of the individual Defendants, maintain or maintained offices and workplaces there.

84. In addition to PHC, the Priority Care enterprise includes a number of storefront pharmacies, as well as shell pharmacies that have only a corporate form, a mailing address, and a license to dispense blood-glucose test strips. As described in more detail below, the storefront pharmacies and the shell entities both serve as fronts for a

massive mail-order operation and insurance billing mill that operates out of the Amory, Mississippi premises of PHC.

**Priority Care's Storefront Pharmacies**

85. Beginning in 2014, PHC and/or Konie Minga purchased existing, but generally unsuccessful, brick-and-mortar storefront pharmacies in Mississippi and Alabama. PHC's officers exercise ultimate supervisory authority over pharmacists and other employees at these storefront pharmacies. Despite having some common ownership and some shared officers, each Priority Care pharmacy is a separate and distinct limited liability company or corporation.

86. The Priority Care storefront pharmacies are, by all appearances, independent pharmacies. Each has a separate bank account. Each has a distinct presence in the market. Each exercises functional independence, placing its own orders for prescription drugs and retail products it sells over the counter, and purchasing them from distributors of its choosing. Each receives its own shipments, and—with the exception of diabetes supplies, which are channeled through PHC—each manages its own inventory. Each has its own relationships with PBMs and a distinct customer base, to which it tailors its selections of products.

87. This is because most of the Priority Care storefront pharmacies were ordinary independent pharmacies serving local communities before they were acquired by Konie Minga and/or PHC and absorbed into the Priority Care enterprise. For example, what is now Vincent Priority Care Pharmacy operated as “Vincent Pharmacy, Inc.,” an Alabama corporation, from 1996 until 2015, when it was acquired by PHC and/or Konie Minga. Likewise, “Bowie's Discount Pharmacy,” an Alabama sole proprietorship, had operated in Jasper, Alabama for almost forty years before being acquired by PHC in 2016

and reorganized as Bowie's Priority Care Pharmacy. Similarly, "Vickers Pharmacy, Inc.," an Alabama corporation, operated in Jasper, Alabama from 1987 until 2016, when its pharmacy was acquired and became Vickers Priority Care Pharmacy.

88. Unlike legitimate pharmacy networks, which typically seek co-promotional and synergistic benefits by advertising the scope of their network, there is nowhere publicly available a list of Priority Care storefront pharmacies, let alone a longer list of all the Priority Care enterprise's affiliates. The website associated with the Priority Care Network, "prioritycarerx.net," is "Under Construction," and there is no record of any content having ever been hosted there. While many of the Priority Care pharmacies have individual Facebook pages, none advertises their affiliation with the other pharmacies, and the individual pharmacies' websites all display error messages.

89. The reason the Priority Care storefront pharmacies do not hold themselves out as a network of pharmacies is that their true purpose is to operate as surreptitious fronts for the mail-order and billing operation of PHC in Amory, Mississippi. Although the storefront pharmacies do sell products to and fill prescriptions for local customers, their everyday pharmacy business is generally unprofitable. The way they earn their profits is by signing off on thousands of prescriptions for retail blood-glucose test strips supplied to them by the Priority Care enterprise's headquarters in Mississippi.

90. In sworn testimony, pharmacists from Alabama-based Priority Care pharmacies estimated that, on an average day, they dispense approximately 100 to 120 total prescriptions to local customers. This number is for the aggregate total of all prescriptions, including prescription drugs. It includes only a negligible number of blood-glucose test strips.

91. Meanwhile, however, each of the Priority Care storefront pharmacies

allows its name to be used on thousands of insurance claims for blood-glucose test strips that are prepared and submitted from Amory, Mississippi. The pharmacists at the local Priority Care pharmacies never see what, if any, products are actually shipped to patients under their name, and have no way of verifying what those products are.

92. The amount of local business conducted by the Priority Care pharmacies pales in comparison to amount of business they transact through the Priority Care enterprise. For example, in 2014, what was then Vincent Pharmacy, Inc. purchased 28 boxes of Roche's retail test strips from authorized distributors and adjudicated claims for 20 boxes of retail strips. In 2015, after being acquired by Priority Care, the newly christened Vincent Priority Care Pharmacy adjudicated claims for nearly **28,000** boxes of Roche's retail test strips—over a thousand-fold increase in adjudications, and a number 14 times the population of Vincent, Alabama.

93. Three Alabama-based Priority Care pharmacists deposed by Roche described the procedure that their pharmacies followed with respect to test strips. Defendants' test strip scheme relies upon a practice they call "central filling." Amory-based PHC pharmacy technicians upload digitized copies of test-strip prescriptions to a centralized database. These employees then transmit by e-mail or fax a list of mail-order prescriptions to Priority Care pharmacists for each pharmacist to "check" by accessing the database.

94. The storefront pharmacists do little more than review the uploaded prescription to verify that the information entered in Amory appears complete. Lewis Hobbs, pharmacist at Defendant Vincent Priority Care Pharmacy, considered this process "quality control." Once the review is complete, the pharmacists indicate in the database that they have checked and approved the prescription. The pharmacists' approval confirms

only that the data appears superficially correct. At no time do the pharmacists independently verify the identity of the patients or doctors on the prescriptions, nor do they verify what, if anything, is ultimately shipped to the patients.

95. Once the pharmacists approve a prescription, pharmacists and/or pharmacy technicians in PHC's Amory fulfillment facility individually affix a label to the box or boxes of test strips to be shipped to the patient. Although the test strips shipment is packaged in and shipped from Amory, the PHC employees apply labels showing the reviewing storefront pharmacist's initials and the storefront pharmacy's name and address, and apply a return address label with the storefront pharmacy's address. Pharmacists Keith Hobbs and Lisa Waters reported that, for this reason, Vincent Priority Care Pharmacy and Vickers Priority Care Pharmacy would receive returned test strip shipments when patients refused orders or were not home at the time of delivery. They testified that they would typically return these boxes to Mississippi without opening them.

96. Despite the fact that the storefront pharmacists did little more than eyeball digitized documents sent to them from the Priority Care enterprise's Mississippi headquarters, the claims submitted to insurance companies (and later provided to Roche) indicate that the prescriptions are filled by the individual Priority Care pharmacies. The claims give no indication that PHC or Priority Care's Amory, Mississippi operation is involved in any way.

97. Because Priority Care submits fraudulent insurance claims falsely indicating that all the Accu-Check test strips it ships are retail test strips, there is no record of what each of the boxes packaged and shipped from Amory, Mississippi actually contained. As set forth below, however, invoices of Priority Care's purchases make clear



that the majority of patients whose insurance was billed for Roche retail test strips did not in fact receive the test strips that their insurance was billed for.

98. The process of distributing lists of prescriptions from Amory, Mississippi to the Priority Care storefront pharmacies and fulfilling those prescriptions from Amory is formally overseen, supervised, and/or directed by PHC's Director of Pharmacy Services. Defendant Sammy Phillip Carson was PHC's Director of Pharmacy Services until 2015. Defendant William Austin is the PHC's current Director of Pharmacy Services. Defendant Melissa "Missy" Sheffield assists in the above-described process. Defendant Priority Care Professional Staffing, LLC formally employs the technicians and other workers at PHC.

**Priority Care's Shell Pharmacies**

99. In addition to using storefront pharmacies as fronts for its mail-order adjudications, the Priority Care enterprise also uses shell pharmacies with no independent existence to fuel its Amory, Mississippi billing mill and conceal the scope of its fraudulent scheme.

100. PHC periodically establishes new Delaware limited liability companies and—as it does with its storefront pharmacies—registers them as health care providers with the Center for Medicare and Medicaid Services (CMS), thereby obtaining for each a unique National Provider Identifier (NPI). Each of these formally distinct companies is registered with an NPI taxonomic code indicating the category of health care provider. None is registered as a "mail-order pharmacy," although such a code exists. Priority Healthcare also registers shell companies with the National Council for Prescription Drug Programs (NCPDP), obtaining a unique NCPDP ID number.

101. NPI and NCPDP numbers are used to identify health care providers in their interactions with insurance companies and claims processors, including when adjudicating

claims. Manufacturers like Roche also use these numbers to identify entities that acquire and dispense their products.

102. A number of the companies established by Priority Care have their own NPI and/or NCPDP numbers,<sup>1</sup> but are in fact shell entities with no on-the-ground business presence. For example, a single building located at 1600 Highland Drive in Amory, Mississippi is the registered address of four entities within the Priority Care enterprise, each with its own NPI and NCPDP numbers: Defendants Priority Care Pharmacy, Priority Care Pharmacy Services, Amory Priority Care Pharmacy, and Priority Express Care Pharmacy. Although that structure is not subdivided into suites, two of the entities, Priority Care Pharmacy Services and Priority Express Care Pharmacy, are registered as occupying “1600 Highland Drive, Suite A.”

103. Similarly, two different Priority Care entities, B & K Priority Care Pharmacy and B & K Express Care Pharmacy, have registered addresses of “6735 Deerfoot Parkway, Suite 101” and “6735 Deerfoot Parkway, Suite A-101,” respectively. Likewise, Vickers Priority Care Pharmacy and Carbon Hill Express Care Pharmacy have NPI registered addresses of “31040 Northeast First Avenue NE Ste 5” and “31040 First Avenue NE Ste A-5”; and Vincent Priority Care Pharmacy and Vincent Express Care Pharmacy have NPI registered addresses of “42747 Highway 25” and “42747 Highway 25, Ste A.”

104. Roger Hall, pharmacist at Priority Care Pharmacy 2—which has an address of 4330 Hwy 78 E 109 in Jasper, Alabama—testified that he has never heard of Jasper Express Care Pharmacy, which nominally operates at 4330 Highway 78 E Ste 109A. A

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<sup>1</sup> All allegations concerning NPI and NCPDP are at the time of the initial complaint. Some of these numbers appear to have been deactivated since that time.

third Priority Care entity, Priority Care Medical Supply, LLC, is also registered with the Alabama Board of Home Medical Equipment with the address of 4330 Highway 78 East, Ste 109, despite having an NPI registered at a Mississippi address—1600 Highland Drive *Suite B*, Amory, Mississippi.

105. The mailing address of Priority Care Pharmacy Solutions, another Priority Care entity that has submitted insurance claims for retail test strips, is in fact the address of PHC's mail-order storage and fulfillment center: 211 10th Avenue North in Amory, Mississippi. This was also the registered address of Defendant Medpoint Pharmacy until it was merged into Priority Care Pharmacy Solutions. Konie Minga, the nominal owner of PHC, admits that there is not and never has been a pharmacy at that location. Yet Priority Care Pharmacy Solutions is registered with the NPI taxonomic code corresponding to a "Retail/Community Pharmacy," defined as "a pharmacy where pharmacists store, prepare, and dispense medicinal preparations and/or prescriptions for a local patient population[,] . . . counsel patients and caregivers; administer vaccinations; and provide other professional services associated with pharmaceutical care such as health screenings . . . and education classes."

106. Defendant Ashley Tigrett is responsible for maintaining each pharmacy's registration, out-of-state licensing, and credentials, including management of the information in the NCPDP database.

**Medpoint Advantage, LLC**

107. Although it is impossible to ascertain without discovery exactly how the Priority Care enterprise obtains the prescriptions that it fraudulently fulfills, Defendant Medpoint Advantage, a company affiliated with Priority Care, appears to be involved in obtaining patients for the Priority Care enterprise.

108. The Amory offices occupied by PHC are also used by Medpoint Advantage, and the signs in front of those offices and the adjacent mail-order fulfillment facility say “Medpoint.” Medpoint Advantage, however, is a separate entity with its own employees and officers, and operates a different business in concert with defendant Medpoint, LLC. Defendant Geneva Oswalt is Chief Operating Officer of Medpoint Advantage, and Defendant Professional Healthcare Staffing, LLC employs its workers.

109. Medpoint Advantage maintains a website offering a “\$0 Premium Special Needs Diabetic Plan Available in ALL States, in ALL Counties!” The website advertises, *inter alia*, “no cost to enroll in the plan,” “no plan premiums,” “no up-front cost for supplies,” “no cost for shipping,” “no deductibles,” “no co-insurance,” and “no out of pocket cost.” The only eligibility requirements are that the patient, “by doctors orders, [is] required to check their blood glucose level and [has] Medicare or Medicaid,” but of course those with “Medicare Advantage Plans and private insurance are also eligible to enroll.” Signing up for Medpoint Advantage requires little more than providing basic prescription and insurance information and a prescribing doctor’s name and contact information. Medpoint Advantage also maintains a toll-free telephone number staffed by live operators employed by Medpoint.

110. None of the Priority Care pharmacists Roche deposed were able to identify where the thousands of diabetes test strips prescriptions purportedly filled daily by the Priority Care pharmacies actually came from. Even Konie Minga—the owner, President, and CFO of PHC and most of its related entities—was unable to say where they came from. None were aware of print, radio, or television advertising or recruiting campaigns aimed at either patients or prescribers.

111. Upon information and belief, at least some of the prescriptions filled and

fraudulently adjudicated by the Priority Care enterprise are the result of Medpoint Advantage's recruitment efforts.

**The Priority Care Enterprise's Fraudulent Insurance Claims**

112. Using the names and credentials of its storefront and shell pharmacies, the Priority Care enterprise has submitted hundreds of thousands of false insurance claims for Roche blood-glucose test strips to PBMs and insurance companies..

113. Since 2013, entities within the Priority Care enterprise have submitted insurance claims for more than 750,000 fifty-count equivalent<sup>3</sup> boxes of retail blood-glucose test strips manufactured by Roche. Exhibit A summarizes the number of claims submitted by each Priority Care entity by year (according to data provided by Priority Care). The claims were prepared, reviewed, or submitted from Alabama and Mississippi, to insurance companies or PBMs located in a number of different U.S. States, including CaremarkPCS Health, Express Scripts, Humana, and OptumRX.

114. In each insurance claim, the Priority Care enterprise represented to insurance companies and PBMs that a box or boxes of Roche-made retail test strips had been dispensed to a patient with insurance. The claims identified the specific product that had been dispensed according to its unique NDC code. Specifically, Priority Care represented to insurance companies or PBMs that it dispensed retail Accu-Chek Aviva Plus 50-count boxes (NDC: 65702-0407-10), retail Accu-Chek Aviva Plus 100-count boxes (NDC: 65702-0408-10), retail Accu-Chek SmartView 50-count boxes (NDC: 65702-0492-10), retail Accu-Chek SmartView 100-count boxes (NDC: 65702-0493-10), retail Accu-Chek Compact 51-count boxes (NDC: 50924-0988-50), and retail Accu-Chek

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<sup>3</sup> Roche's test strips have been sold in boxes with 50, 51, 100, or 102, or rarely 25, test strips per box. A box with 100 test strips counts as two fifty-count equivalent boxes; a box with 51 test strips counts as 1.02 fifty-count equivalent boxes, and so forth.

Compact 102-count boxes (NDC: 50924-0884-01).

115. In reliance on these representations, the insurance companies and PBMs reimbursed Priority Care according to their reimbursement rate for these retail test strips. In most cases, Roche then proceeded to rely on Priority Care's representations by paying rebates to the insurance companies and PBMs.

116. Unfortunately, the substantial majority of the Priority Care enterprise's insurance claims were fraudulent. On hundreds of thousands of occasions, Priority Care did not dispense to patients products bearing the retail NDC numbers that Priority Care represented it had dispensed.

117. Although Priority Care represented to insurance companies that its affiliated pharmacies had dispensed over 750,000 fifty-count boxes of retail test strips, Priority Care's invoices indicate that it purchased only about 322,000 fifty-count boxes of retail strips. Records indicate that Priority Care purchased approximately 410,000 boxes of not-for-retail-sale test strips. Priority Care fraudulently adjudicated these not-for-retail-sale test strips as retail test strips.

118. The patients whose insurance companies were billed for retail strips received not-for-retail-sale Roche products, which have different packaging from and bear different NDC numbers than retail strips. The adjudication of not-for-retail-sale Roche test strips as retail test strips constitutes fraud because it requires falsely representing to insurance companies or to PBMs that a product bearing a retail NDC number has been dispensed.

#### **Roche's Subpoenas and Investigation Into Priority Care's Fraud**

119. In May, June, and August 2017, in connection with the separate action filed in Indiana federal court, Roche served third-party subpoenas *duces tecum* on a number of

Priority Care entities seeking records of their purchases and sales of Roche test strips. Specifically, the entities served were PHC, Vickers Priority Care Pharmacy, Vincent Priority Care Pharmacy, Priority Care Pharmacy, Priority Care Pharmacy Services, Priority Care Pharmacy Solutions, Priority Care Pharmacy 2, and Priority Care Pharmacy at Cotton Gin Point. None of these entities responded to Roche's subpoenas.

120. After a series of follow-up letters, Roche finally received from each pharmacy entity an identical letter stating that the entity "[d]oes not have a contract, agreement or documents to produce with regards to [a defendant in the Indiana Action], Roche Diagnostics Corp., or Roche Diabetes Care, Inc." These letters were unresponsive to the subpoenas, as Roche's subpoenas were not limited to documents evidencing a direct relationship between Priority Care and the Indiana defendants.

121. Roche served a second set of subpoenas on February 8, 2018 seeking sales records and correspondence, noting that the Priority Care entities' previous response was "irrelevant and unacceptable." Priority Care pharmacists Keith Hobbs and Roger Hall testified that they received these subpoenas and promptly sent them to Defendants William Austin, Melissa "Missy" Sheffield, and/or Phillip Minga. Nonetheless, Roche received no response to the subpoenas.

122. After notifying the subpoenaed entities of its intention to do so, again with no response, Roche moved on April 4, 2018, to compel compliance with its subpoenas in this Court and the Northern District of Mississippi. The Priority Care entities did not respond to Roche's motions. The motions were granted as to the Alabama entities by the Court's Orders of April 4 and 7, 2018, and the Alabama entities were compelled to produce

documents by April 17, 2018. After the entities failed to comply with these Orders, Roche moved for contempt, and the Court set a show-cause hearing date of May 10, 2018.<sup>4</sup>

123. In response to the order to show cause, the subpoenaed Alabama Priority Care entities submitted letters to the Court postmarked May 1, 2018, which they asserted had been “mailed on April 10, 2018.” The Priority Care entities did not state to whom the letters had allegedly been mailed and Roche has no record of receiving them. These letters stated: “Respectfully in response to the Order, [the relevant Priority Care entity] has researched all records and does not have any documents to produce relating to Roche Diagnostic Corp., Roche Diabetes Care, Inc., [or the Indiana Action defendants]. [The Indiana Defendants] are unknown to [the relevant Priority Care entity] which does not have any contract or agreement with Roche Diagnostic Corp., or Roche Diabetes Care, Inc.” The Alabama-based pharmacies’ letters were sent to the Court in envelopes with each pharmacy’s Alabama return address, but all were postmarked Tupelo, Mississippi. The Priority Care entities then failed to appear at the May 10, 2018 contempt hearing.

124. Noting that the second statement was “non-responsive to the actual request covered by the subpoena . . . despite the court’s order directing it to respond” and that “Priority Care failed to appear for the show cause hearing, . . . cho[osing] instead to again ignore the court’s order,” the Court granted Roche’s motion for sanctions on May 11, 2018, imposing a daily fine of \$1,000 and awarding attorney’s fees incurred in prosecuting the Alabama motions. Priority Care pharmacists Keith Hobbs, Roger Hall, and Lisa Waters all confirmed that they received a copy of this Order, and that they promptly forwarded it to individual Defendants William Austin, Melissa “Missy” Sheffield, and/or Phillip Minga.

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<sup>4</sup> The Mississippi entities were directed by the Mississippi court to respond to Roche’s motion to compel, but never did so. Roche’s motion to compel against those entities was subsequently granted by that court.



125. Nevertheless, it was not until June 27, 2018, that Defendants made a production of documents sought by the subpoena, providing invoices reflecting Priority Care's purchases of Roche test strips. They produced at that time no records of their sales, as required by the Orders. Nor did they produce the communications called for by the subpoenas.

126. The invoices produced by the Priority Care entities on June 27, 2018, accounted for only a small fraction of the over 750,000 Roche-brand retail products for which it submitted insurance claims.

127. Specifically, the invoices indicated that Priority Care purchased a total of only 144,572 fifty-count equivalent boxes of Roche test strips of any kind between July 2014 and the present—retail (67,479), not-for-retail-sale (45,080), or unknown (32,013).<sup>5</sup>

128. Although the invoices that Priority Care produced in June 2018 failed to account for the majority of its insurance claims, they did show that tens of thousands of these claims were fraudulent. The June 2018 production demonstrated that Priority Care submitted at least 45,000 insurance claims falsely representing that Priority Care had dispensed retail test strips when in fact it had dispensed not-for-retail-sale test strips. Subsequently produced information reveals that this was just the tip of the iceberg.

#### **Priority Care's Production of Previously Withheld Invoices**

129. Roche brought this lawsuit on September 11, 2018, seeking a Temporary Restraining Order and Preliminary Injunction to halt Priority Care's fraudulent adjudications of its test strips. By stipulation and this Court's September 17, 2018 Order,

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<sup>5</sup> Data in Roche's possession indicate that Priority Care also purchased approximately 6,000 25-count boxes of retail test strips (3,000 50-count equivalents) during that time period. However, Priority Care submitted only a negligible number of insurance claims—fewer than 10—for 25-count boxes.

Defendants and any associated entities and persons were enjoined from adjudicating, purchasing, selling, distributing, or dispensing any Roche test strips.

130. That Order required, among other things, that Defendants promptly provide an explanation of *what* product (if any) was dispensed to *each* patient corresponding to *each one* of its adjudications of Roche retail strips, and to identify what documents were available containing that information.

131. On October 2, 2018, in response to the Order, Defendants produced nearly a thousand invoices that had not been produced in June. Defendants also produced records of the retail adjudications they submitted to PBMs and insurance companies. The previously unproduced invoices document Priority Care's purchases of an additional 485,000 fifty-count equivalent boxes of test strips beyond what was shown in their June 2018 production. Defendants provided no excuse for their failure to provide these invoices earlier.

132. Priority Care represented that the records it produced are the only existing business records accounting for Priority Care's purchase, dispensing, and adjudication of Roche retail test strips between January 2013 and September 2018.

133. Taken together with the June 2018 production, the invoices show that, from January 2013 to September 2018, Priority Care purchased a total of approximately 632,000 fifty-count equivalent boxes of Roche test strips. Of these, about 322,000 were retail test strips; about 252,000 were not-for-retail-sale test strips; and about 58,000 were test strips that were not designated either retail or not-for-retail-sale. As alleged below, Priority Care also purchased approximately 158,000 additional boxes of not-for-retail-sale test strips directly from Roche, bringing its total number of not-for-retail-sale purchases to approximately 410,000.

134. Defendants produced records showing that, from January 2013 to September 2018, Priority Care submitted insurance claims for only 182 boxes of not-for-retail-sale test strips. All but a negligible number of the not-for-retail-sale test strips that Defendants purchased were falsely adjudicated as retail strips.

**The Newly Produced Retail Invoices Bear Many Indications of Illegitimacy**

135. On their face, Priority Care's invoices demonstrate that it fraudulently adjudicated hundreds of thousands of not-for-retail-sale test strips as retail test strips. The invoices indicate that Priority Care also purchased approximately 300,000 boxes of retail test strips. However, these invoices have many characteristics that are inconsistent with their being purchases of legitimate retail test strips.

136. The prices for purported retail strips in Priority Care's invoices are far lower than would be expected for legitimate secondary-market sales, often less than half the wholesale list price for retail strips. In some cases, the pricing of the purported retail product is the same or virtually the same as the pricing for the corresponding not-for-retail-sale product, even though the wholesale list prices for not-for-retail-sale product are far lower than those for retail product.

137. Secondary market sellers of test strips are known to falsify invoices to indicate that retail product has been sold when in fact not-for-retail-sale product has been sold. In a separate case involving a company that perpetrated a scheme substantially similar to Priority Care's, a lead corporate pharmacist testified that all of her gray-market suppliers created invoices showing the purchase of retail product even though not-for-retail-sale product was delivered, and that this was done expressly to create a false chain of invoices to deceive auditors.

138. In addition, several of Priority Care's largest suppliers of test strips have

characteristics that are inconsistent with their being legitimate distributors of U.S. health care products.

139. One supplier, “██████████,” lists on its invoices the address “██████████ ██████████.” This is the address of “Manhattan Mini Storage”—a self-storage facility. ██████████ has no place of business at this address. The NPI database identifies “██████████” as ██████████’s owner, and provides another address for ██████████, this one a residential apartment in Queens, New York City. When served with a non-party subpoena at this address, an individual identifying himself as a relative of ██████████ stated that ██████████ is a Canadian company and that the Queens address is only used to receive mail.

140. The fact that ██████████ is a Canadian company operating out of dummy addresses in the United States raises serious questions as to whether the test strips Current Trade sold to Priority Care were imported from Canada. The Accu-Chek test strips that Roche sells in Canada do not bear U.S. NDC numbers. Submitting insurance claims for U.S. retail test strips but dispensing Canadian test strips would constitute fraud.

141. Two of Priority Care’s other largest suppliers of Roche test strips—██████████ and H&H Wholesale—have been sued by another manufacturer of blood glucose test strips, Abbott Laboratories, for selling international versions of their test strips, and have been enjoined from doing so. Priority Care entities PHC and Priority Care Pharmacy have also been sued by Abbott in that action for purchasing international version of its strips from both ██████████ and H&H, and are subject to the same injunction.

142. Other major Priority Care suppliers, such as “██████████” and “██████████,” list addresses on their invoices that have turned out to be private residences. One such supplier—“██████████,” ostensibly located at ██████████,

██████████—appears not to exist at all.

**Priority Care’s Direct Mail-Order Purchases from Roche**

143. Priority Care also purchased hundreds of thousands of not-for-retail-sale test strips directly from Roche. These not-for-retail-sale products were falsely adjudicated as retail test strips.

144. Pursuant to a contract negotiated by Defendant Phillip Minga and signed in March 2016 by Defendant Konie Minga on behalf of PHC, Roche shipped approximately 157,680 boxes of not-for-retail-sale test strips to Priority Care in 2016. These test strips were not included in any of the invoices that Priority Care produced in June or in October 2018.

145. In order to prevent pharmacies from purchasing not-for-retail-sale, mail-order test strips and falsely adjudicating them as retail strips, Roche does not offer mail-order test strips for sale on an unrestricted basis. Rather, Roche sells these products only to authorized customers pursuant to contracts that strictly prohibit them from reselling or providing the products to anyone not approved by Roche.

146. Roche’s mail-order test strip contract with PHC was such a contract. In order to appear eligible to participate in the arrangement, Priority Care represented that it dispensed test strips to large numbers of mail-order DME patients. Accordingly, the contract required PHC to distribute mail-order, not-for-retail-sale test strips exclusively by mail to patients with insurance that covered test strips through a medical benefit. The contract strictly prohibited selling the not-for-retail-sale test strips through pharmacies or dispensing them to patients whose insurance paid for test strips through a pharmacy benefit.

147. In March 2016, soon after the execution of the contract, Roche reinforced to Defendant Phillip Minga the importance of selling not-for-retail-sale products only to medical-benefit patients by mail order and not through retail pharmacies. Phillip Minga responded that they understood the importance to Roche of “maintaining a separation” between not-for-retail-sale mail-order and retail product.

148. Roche’s mail-order test strip contract with PHC required PHC to submit detailed utilization reports to Roche. Pursuant to the contract, PHC submitted data to Roche indicating that it had sold approximately 146,000 fifty-count boxes of mail-order test strips to patients covered by medical benefit insurance. This constituted the vast majority of the 157,000 mail-order boxes that PHC purchased from Roche.

149. The utilization reports Priority Care submitted to Roche were false. The records that Priority Care produced in 2018 show that it processed only 182 insurance claims for not-for-retail-sale product. The not-for-retail-sale test strips that Priority Care purchased directly from Roche in 2016 were falsely adjudicated as retail test strips.

**Summary of Priority Care’s Fraud**

150. Between January 2013 and September 2018, Priority Care submitted over 750,000 insurance claims for retail test strips. Attached as Exhibit A is a table summarizing data produced by Priority Care showing the number of such claims that were submitted by specific Priority Care entities according to year.

151. The invoices Defendants produced in 2018, coupled with records of their direct purchases from Roche, show that Defendants purchased approximately 410,000 boxes of not-for-retail-sale test strips and fewer than 322,000 boxes of retail test strips during that time, as well as about 58,000 boxes that the invoices do not identify as either retail or not-for-retail-sale.

152. At a minimum, approximately 410,000 of the insurance claims Priority Care submitted for Roche's retail Accu-Chek test strips were fraudulent in that Priority Care dispensed not-for-retail-sale test strips rather than retail test strips to the patients on whose behalf the claims were submitted.

153. Because Priority Care's records falsely indicate that virtually all the Accu-Chek products it dispensed were retail test strips, and because Priority Care keeps no accurate records of which products were actually dispensed to patients, there is no way to identify which of its insurance claims correspond to not-for-retail-sale shipments to patients and which correspond to retail shipments.

**Priority Care's Efforts to Hide Its Fraud**

154. Beyond the direct evidence that Priority Care purchased not-for-retail-sale test strips and falsely billed them as retail test strips, there are many additional indicators that Priority Care enterprise is involved in a massive insurance fraud scheme. One of these is Priority Care's practice of continually phasing out old billing entities and opening new ones in an effort to hide its fraudulent activities from PBMs and Roche.

155. In recent years, members of the Priority Care enterprise have been audited by major PBMs such as CVS/Caremark, OptumRx, and Humana. As a result of discrepancies revealed by those audits, these PBMs have cut off those pharmacies, ceasing to reimburse them for prescriptions adjudicated at those locations. Roche itself has also withheld rebates in connection with insurance claims submitted by known Priority Care affiliates.

156. For example, in late 2017 and early 2018, CVS/Caremark's audit of claims adjudicated between October 1, 2016 and November 30, 2017 and attributed to Bowie's Priority Care Pharmacy discovered "[m]ember(s) [who] denied having received

prescriptions billed to CVS Caremark Plan Sponsors” and “[b]illing for claims that are being compounded and dispensed out of a different location.” The audit found, all told, nearly \$3.1 million in discrepant claims.

157. Similarly, a pharmacist at a different Priority Care pharmacy, Roger Hall, testified that every PBM that had audited his pharmacy, Priority Care Pharmacy 2, cut off the pharmacy as a result of their findings. He understood that they did not do so because of misconduct involving, or discrepancies in, the prescriptions he had personally dispensed and filled at the brick-and-mortar location. Rather, the PBMs’ primary concern was “the mail-order business”—the dispensing of test strips out of Amory, Mississippi in the name of Priority Care Pharmacy 2.

158. As a result of PBMs’ audits, a number of Priority Care pharmacies, such as Vincent Priority Care Pharmacy, can no longer fill *any* prescriptions covered by pharmacy-benefit insurance plans that are serviced by Caremark, OptumRx, or Humana. Losing the ability to fill prescriptions may mean that the pharmacy loses the business of local patients covered under those plans, and those patients lose the ability to shop at their preferred community pharmacy.

159. Unlike the local patients serviced by Priority Care pharmacies, the much larger population of diabetes patients whose insurance is actually billed through Priority Care’s Amory, Mississippi location but attributed to the pharmacies generally do not stop receiving supplies when a PBM cuts off a given pharmacy. Instead, Priority Care simply assigns that patient to a different Priority Care pharmacy and continues to submit false insurance claims for that patient’s test strips.

160. Adjudication records that Roche receives from PBMs illustrate how claim submissions shift from Priority Care pharmacy to Priority Care pharmacy in a



cat-and-mouse game with PBMs, and with Roche. After Bowie's Priority Care Pharmacy was cut off by CVS/Caremark, and after Vickers Priority Care Pharmacy suffered a similar steep drop in the test strip prescriptions it billed, for example, the rate of adjudications at another Priority Care pharmacy, B & K Priority Care Pharmacy, skyrocketed. Similarly, preliminary data from 2018 indicates that a steep drop in adjudications from B & K Priority Care Pharmacy was immediately followed by a surge in adjudications from Tombigbee Pharmacy, Main Street Drugs, and Medical Park Discount Pharmacy.

161. Priority Care also appears to have switched billing entities in response to inquiries from Roche. In late 2016, Roche ceased selling mail-order test strips to PHC based on concerns about the large number of retail adjudications at the Priority Care pharmacies whose existence had been disclosed to Roche by Priority Care. Roche communicated its concerns over the volume of pharmacy retail adjudications to Priority Care.

162. Roche's subsequent investigation revealed that a number of other pharmacies appeared to have connections with PHC and the known Priority Care pharmacies, and had also been adjudicating large numbers of retail test strips. On February 9 and 16, 2017, Roche sent letters challenging these adjudications to seven Priority Care entities: Priority Care Pharmacy, Priority Care Pharmacy Services, Priority Care Pharmacy Solutions, Priority Care Pharmacy 2, Priority Care Pharmacy at Cotton Gin Point, Vickers Priority Care Pharmacy, and Vincent Priority Care Pharmacy. In these letters, Roche asserted that it believed that these entities were fraudulently adjudicating not-for-retail-sale test strips as retail test strips. Roche expressly informed Priority Care that it paid rebates to insurers and PBMs in connection with insurance claims for retail test strips, and that the fraudulent adjudication of retail test strips directly harmed Roche.

163. Priority Care failed to respond to Roche's letters. Around the same time, however, Priority Care created new billing entities to replace the entities that Roche had challenged. A Delaware Certificate of Formation for Amory Priority Care Pharmacy was filed on February 10, 2017. An NPI number had been established for Amory Priority Care Pharmacy on January 27, 2017, and one was established for Priority Express Care Pharmacy on February 15, 2017. NCPDP numbers for both were created in March 2017.

164. In April and May 2017, Priority Care Pharmacy Services and Priority Care Pharmacy LLC, both located at 1600 Highland Drive, Amory, Mississippi, ceased submitting insurance claims for retail test strips. Immediately thereafter, in May 2017, the two recently-created entities, Amory Priority Care Pharmacy and Priority Express Care Pharmacy, both nominally located at the exact same address, began adjudicating claims at comparable volume.

**Priority Care's Efforts to Expand the Enterprise**

165. In an effort to perpetuate its fraud, Priority Care continues to add new billing entities to its enterprise that have not yet been targeted by PBMs or Roche. This is an enterprise-wide strategy. At his August 2017 job interview in Jasper, Alabama, Roger Hall was told by Defendant William Austin that PHC was "planning on expanding" its network of entities and was "actively pursuing new stores to purchase."

166. In its recent expansions, Priority Care has begun taking measures to make it more difficult for investigators to ascertain that new Priority Care entities are associated with Priority Care. Whereas most Priority Care pharmacies used to include the term "Priority Care" in their names, the most recently opened ones do not, and take additional measures to avoid detection.

167. For example, in or about March 2018, Priority Care acquired yet another long-established storefront pharmacy—Medical Park Pharmacy, Inc., in Phenix City, Alabama—and absorbed it into a new entity, “Medical Park Discount Pharmacy.” Soon thereafter, it formed a separate Alabama corporation called “Yellowhammer Pharmacy Services Corporation” for the purpose of acquiring Medical Park Discount Pharmacy. Defendant William Austin is the Director of Yellowhammer Pharmacy Services Corporation.

168. This was done to deliberately establish distance between the new pharmacy and the existing Priority Care pharmacies. On behalf of “Medical Park Pharmacy, LLC,” William Austin emailed a Roche employee on March 16, 2018, attempting to set up an account to purchase lower-cost varieties of Accu-Chek test strips directly from Roche. In that email, he represented that the pharmacy “currently services a large population of diabetic patients under contract in Arkansas, Alabama, Mississippi, and Tennessee.”

169. The new pharmacy, its parent company, and Defendant William Austin all announced no affiliation with “Priority Care.” Medical Park Discount Pharmacy nonetheless followed the familiar Priority Care pattern. Between 2011 and 2017, before its acquisition by Priority Care, Medical Park Pharmacy submitted insurance claims for between twenty and fifty-three 50-count boxes of Roche test strips per year. In the first quarter of 2018, Medical Park Pharmacy submitted twenty-two claims for Roche test strips. In the second quarter of 2018, however, after its acquisition by Priority Care, the pharmacy submitted claims for at least 10,627.40 fifty-count boxes—an annualized rate of over 42,000 boxes per year. This represents an increase of approximately one-thousand-fold from previous years.

170. In another effort to avoid scrutiny, Priority Care's most recent shell pharmacies, created on December 19, 2017, were given names falsely suggesting that they are actual retail pharmacies: "Main Street Drugs" and "Tombigbee Pharmacy." In fact, these entities are shell companies with no on-the-ground business. They exist only to submit insurance claims processed by the Priority Care enterprise at its headquarters.

171. In an additional move to avoid detection, Priority Care has assigned these shell corporations their own addresses, rather than using the same address as an existing Priority Care pharmacy. For example, the address registered for Main Street Drugs (which is in fact a shell company) is 417 Main Street, Amory, Mississippi, which is not associated with any other Priority Care entity. This address, however, is a vacant strip mall storefront that is not open for business. The owner of these entities, Defendant Konie Minga, conceded at her deposition that Main Street Drugs and Tombigbee Pharmacy have no actual business and that there is no one on the PHC payroll associated with them.

172. Nevertheless, NPI and NCPDP numbers were established for these entities in December and January 2018. Although there are no pharmacists at those locations to perform even cursory checks of the prescriptions, Main Street Drugs and Tombigbee Pharmacy began submitting insurance claims for Roche retail test strips in March 2018 and have continued to do so in high volume. In the first quarter of 2018, while they were in the process of being set up, these entities submitted insurance claims for fifty-four and forty-eight 50-count boxes of Roche test strips, respectively. In the second quarter of 2018, however, Tombigbee Pharmacy submitted claims for at least 17,028.16 50-count boxes of Roche test strips, while Main Street Drugs submitted claims for at least 11,193.24 50-count boxes of Roche test strips.

173. In addition to using deceptive names and unique addresses, the Priority Care enterprise has recently begun registering new entities in the names of individuals other than Konie Minga. On April 24, 2018, a Mississippi Certificate of Formation was filed for “Amory Discount Pharmacy, LLC.” The Certificate identifies the filer as “Kristen Knotts,” a “Member” of the LLC. Kristen Knotts is the daughter of Defendants Phillip and Konie Minga and the wife of Defendant Christopher Daniel Knotts. The Certificate gives her address as 1006 Third Street North in Amory—*i.e.*, the PHC offices. And the “business email” address associated with the application is “**pminga@att.net.**”

174. The NPI and NCPDP numbers for Amory Discount Pharmacy were created in June and July 2018, and the NPI database identifies as the Director Defendant Daniel Baker—who is married to Defendants Phillip and Konie Minga’s other daughter Heather.

175. Because of the time lag before it receives adjudication information from payers, Roche does not yet know whether Amory Discount Pharmacy has submitted any insurance claims for retail strips. Clearly, however, that was the purpose of opening up this new entity. Publicly available information suggests that Amory Discount Pharmacy is now open for business.

176. Priority Care pharmacist Roger Hall also testified that pharmacies in Tennessee and Arkansas, including a “Burns Pharmacy,” were part of or otherwise affiliated with the Priority Care enterprise. Indeed, in late June 2018, new Arkansas and Delaware limited liability companies—Defendants Burns Discount Drug Store and Ozark Family Pharmacy—were established in Ozark, Arkansas, home of the existing “Burns Drugstore, Inc.”

177. One of these new entities was registered with an address corresponding to the existing Burns Drugstore; the other with an address at the exact same intersection, but

corresponding to the building's position on the cross-street. An NPI number for Ozark Family Pharmacy LLC was established soon after. The incorporator and director identified for Burns Discount Drug Store Arkansas and Ozark Family Pharmacy Arkansas is Defendant Geneva Oswalt.

**Phillip Minga's History of Fraud**

178. Another indicator that Priority Care is engaged in fraud is that its *de facto* leader, Defendant Phillip Minga, has an extensive history of illegal business practices and insurance fraud—including a felony conviction and, most recently, a citation for health insurance fraud in connection with sales of diabetes care products.

179. For example, in 1997, Phillip Minga, at that time an insurance agent, was discovered selling unregistered promissory notes in violation of the Mississippi Securities Act. Minga twice failed to pay administrative penalties for the offense, and indeed continued to sell unregistered promissory notes in violation of a cease-and-desist order, using fraud and deceit to induce purchase of the notes.

180. In 2008, Phillip Minga was indicted in the Northern District of Mississippi on sixteen counts of mail fraud, wire fraud, and monetary-instrument laundering in connection with a separate scheme to fraudulently inflate the price of in-state and out-of-state businesses' workers' compensation insurance policies. He pleaded guilty to one count of wire fraud in 2010.

181. Most recently, in late 2016, the Office of Inspector General of the U.S. Department of Health and Human Services reported that:

On October 17, 2016, Phillip A. Minga, the owner of a durable medical equipment (DME) company, agreed to be excluded from participation in all Federal health care programs for a period of ten years under 42 U.S.C. § 1320a-7(b)(7) and 42 U.S.C. § 1320a-7(b)(16).

OIG's investigation revealed that Minga knowingly caused claims to be

submitted to Medicare for diabetes supplies that were not delivered, were the result of unsolicited Medicare beneficiary contact, in violation of the Social Security Act's DME Telemarketing Provisions and not covered by applicable exceptions, or were the result of a kickback. OIG's investigation further revealed that Minga knowingly retained or caused the retention of an overpayment owed to the Center for Medicare and Medicaid Services as a result of a Medicare Benefit Integrity Post-Payment Review conducted by Zone Program Integrity Contractor AdvanceMed.

OIG's investigation also revealed that Minga knowingly made or caused to be made an omission or misrepresentation of a material fact in the applications of a DME company and its affiliates to participate or enroll as a supplier under Medicare, including organizations under Part C and D, when: (a) Minga was omitted as a managing employee; and (b) as a managing employee, Minga was not disclosed as having been convicted of a felony offense within the 10 years preceding enrollment or revalidation of enrollment.

182. Presumably because of this history, Phillip Minga does not officially own any Priority Care pharmacies or hold any official title in them. As described below, however, the evidence of his involvement in the enterprise is extensive.

183. For her part, Defendant Konie Minga, who was deposed by Roche on June 27, 2018, professes to know very little about the Priority Care business.

#### **Defendants' Continuing Misconduct**

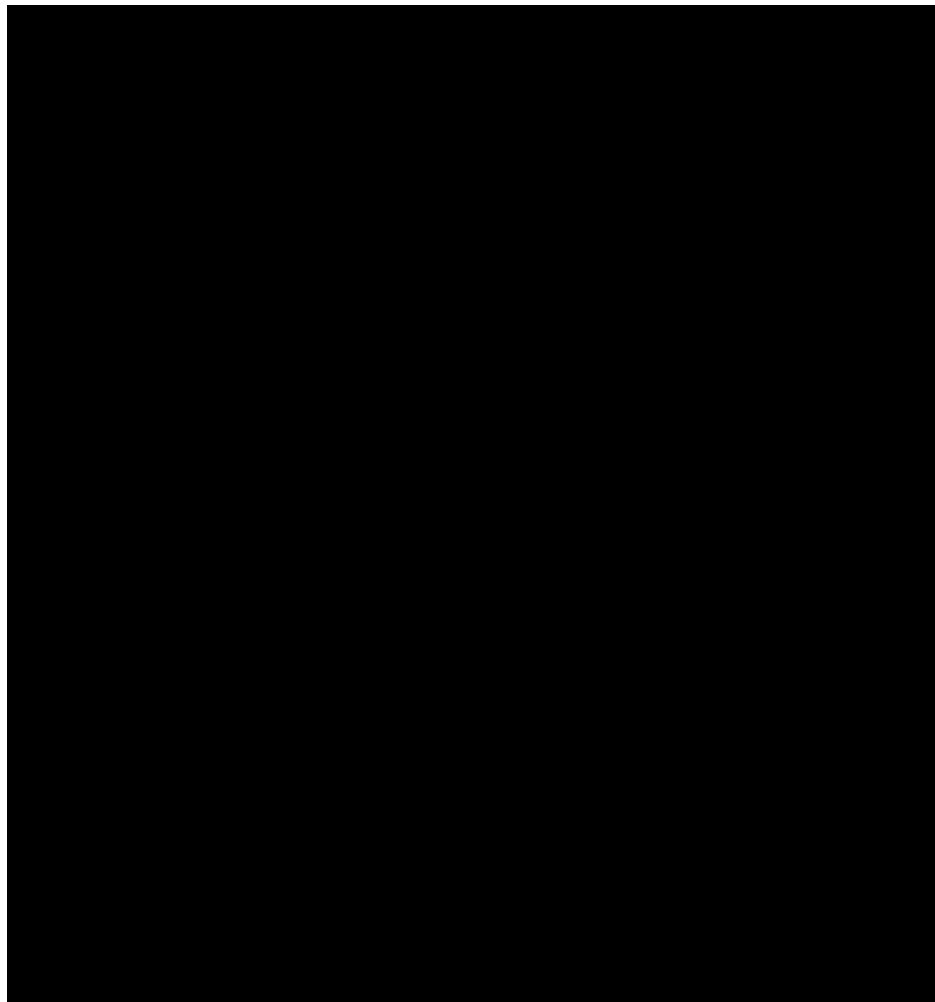
184. Since the filing of the initial complaint in this action, Priority Care has continued to obstruct Roche's investigation into its fraud.

185. Pursuant to the September 17, 2018 Order, Defendants were required to identify "the names, addresses, and contact information of all pharmacies or businesses since January 1, 2013 that any Defendant has, or had, a direct or indirect ownership interest in, or has directly or indirectly directed or controlled."

186. Priority Care produced a list purporting to comply with this provision of the Order. That list, however, failed to name several businesses that Roche had independently identified through its own investigation. Those businesses were added to the list only after

Roche noted the deficiency.

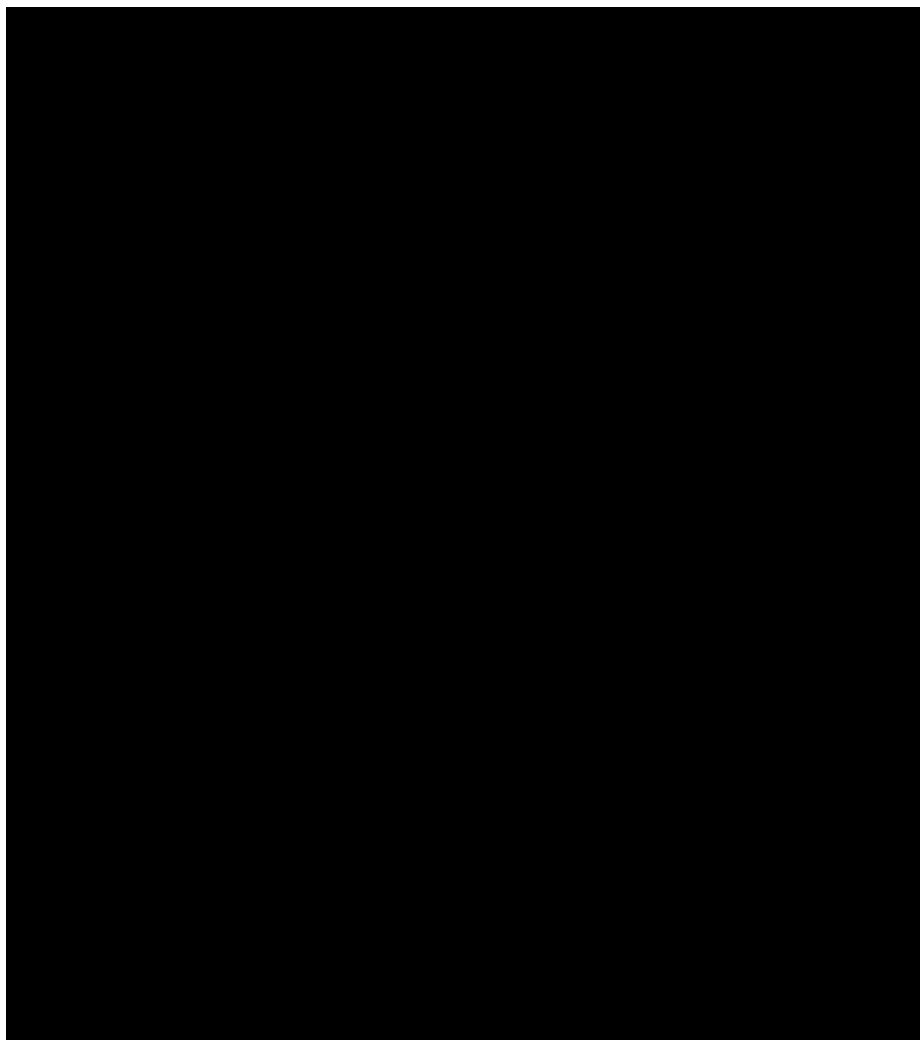
187. In addition, Defendants have produced falsified documents to Roche. Among the invoices produced on October 2, 2018 were six invoices showing a Priority Care enterprise entity's purchases of Roche test strips from the gray-market supplier "██████████". Under "Bill To," these six invoices listed the entity "██████████" with a space above its name, as illustrated by the example below:



188. Pursuant to a non-party subpoena, Roche obtained copies of the corresponding invoices from ██████████. The ██████████ production included emails to Phillip Minga attaching the same version of the invoices produced by Defendants. On those



copies, the name “Phil Minga” appears in the space above “[REDACTED],” as shown in the example below:



189. Priority Care removed Phillip Minga’s name from the [REDACTED] invoices that it produced to Roche. It did so in order to conceal Phillip Minga’s involvement in the Priority Care enterprise.

**The Individual Defendants’ Role in the Priority Care Enterprise’s Fraud**

190. Each individual Defendant is or has been an officer, supervisor, or employee at PHC or another member of the Priority Care enterprise. As such, they were personally involved in running the Priority Care enterprise and actively participated in and approved of the fraud that accounted for a large portion of PHC’s and its affiliated entities’

profits.

191. Defendant Konie Minga is the co-founder, owner, President, and Chief Financial Officer of PHC, and is the President and direct or indirect owner of most of the Priority Care entities. Among other things, she reviews and pays by check and wire transfer all invoices for the Roche not-for-retail-sale test strips that Priority Care orders from gray-market diverters and fraudulently seeks reimbursement for as retail strips, [REDACTED]. She also signs and submits (or causes to be submitted), by mail and over the internet, registrations for out-of-state business licenses for Priority Care pharmacies, including Utah registrations dated February 13 and February 15, 2017.

192. Defendants Wesley Minga and Christopher Daniel Knotts participate in, oversee, direct, and/or supervise the receipt and storage of diabetes treatment products, including Roche not-for-retail-sale test strips, at the PHC mail-order fulfillment center.

[REDACTED] Mr. Knotts is the addressee on numerous invoices reflecting purchases of thousands of boxes of Roche not-for-retail-sale strips. In addition, he delivers invoices to Konie Minga for payment, and has also provided assistance on-site at Vincent Priority Care Pharmacy.

193. As the named Director of Amory Discount Pharmacy, Defendant Daniel Baker operates one of the Priority Care enterprise's false-front pharmacies. He thereby operates and actively participates in the fraudulent activities of the Priority Care enterprise.

194. Defendant Sammy Phillip Carson was PHC's Director of Pharmacy Services until 2015, prior to which he served in a similar capacity with respect to

Medpoint's pharmaceutical sales. In that position, he oversaw, supervised, and/or directed the practice of fraudulently submitting insurance claims for retail test strips while shipping not-for-retail-sale test strips to patients. [REDACTED]

[REDACTED] In July 2014, Mr. Carson hired Lisa Waters to work at Priority Care Pharmacy 2 in Jasper, Alabama; in his role as Director of Pharmacy Services, he regularly visited at least one Alabama pharmacy and communicated directly with it on matters such as audits. Konie Minga testified that the founding of PHC was, at least in part, on Mr. Carson's initiative.

According to his public LinkedIn profile, Mr. Carson had been a pharmacist or manager of retail pharmacies since at least 2009.

195. Defendant Kimberly Carson is the co-founder and former co-owner of PHC. [REDACTED]

[REDACTED] She also served as the initial Vice President and Treasurer of PHC. In that capacity, she was responsible for operating, managing, and actively participating in PHC's fraud. [REDACTED]

196. Defendant William Austin is currently PHC's Director of Pharmacy Services. He oversees, supervises, and directs the Priority Care enterprise's practice of fraudulently submitting insurance claims for retail test strips while shipping not-for-retail-sale test strips to patients. Along with Defendant Phillip Minga, he has interviewed in Alabama at least one job applicant for a pharmacy located in Alabama. During that August 2017 interview of John Hall, which took place in Jasper, Alabama, Mr.

Austin specifically discussed Priority Care’s centralized mail-order operations and plans for expansion. Mr. Austin is also Director of Yellowhammer Pharmacy Services Corporation, formed as a holding company for Medical Park Discount Pharmacy, and he emailed Roche on March 16, 2018 seeking to establish on behalf of Medical Park Discount Pharmacy an account to purchase lower-cost test strips. According to his public LinkedIn profile, Mr. Austin had been a pharmacist in charge at several retail pharmacies—where he “processed and dispensed written, oral, and electronic prescriptions” and “verified [the] accuracy and completeness of [the] information on prescription and refill requests”—for over 25 years before taking the Priority Care position.

197. Defendant Geneva Oswalt serves as the director of Burns Discount Drug Store Arkansas and Ozark Family Pharmacy Arkansas. In that capacity, she actively participates in the Priority Care enterprise’s fraudulent practices, including the opening of false-front pharmacies to conceal the fraud. She also serves as Chief Operations Officer of Medpoint Advantage, which is believed to help collect prescriptions to fuel the fraudulent scheme.

198. Defendant Melissa “Missy” Sheffield is Chief Operations Officer of PHC. She oversees, supervises, and/or directs the fraudulent adjudication of insurance claims with retail strip NDC numbers. She also communicates with PBMs concerning audits and has attended audits at Priority Care pharmacies in Mississippi and Alabama. For example, she was present on-site for multiple audits of Bowie’s Priority Care Pharmacy in Jasper, Alabama, including an audit that took place on September 28, 2017. According to her public LinkedIn profile, Ms. Sheffield was previously Chief Executive Officer at Mantachie Rural Health Clinic, Inc., a full-service outpatient medical clinic.

199. Defendant Ashley Tigrett is Director of Quality Assurance, Licensing, and Credentialing at PHC. In that capacity, she actively participates in operationalizing the Priority Care enterprise's fraudulent activities. Among other things, Ms. Tigrett manages the Priority Care enterprise's credentialing with PBMs. For example, on February 23, 2018, she submitted to CVS Caremark a re-credentialing questionnaire on behalf of Bowie's Priority Care Pharmacy. She also manages each pharmacy's out-of-state business licenses, which enable PHC to ship not-for-retail-sale test strips to patients across the country after attributing the fraudulent adjudications to those pharmacies. Furthermore, although she is based in Amory, her email address—atigrett@prioritycarerx.net—is listed as the NCPDP database "physical location" contact for various Priority Care entities, including Priority Care Pharmacy Solutions, which is falsely designated a retail/community pharmacy.

200. Although he has no formal title at Priority Care, Defendant Phillip Minga has been and remains intimately involved in directing the affairs of PHC and directing and carrying out the Priority Care enterprise's fraud.

201. Testimony from Priority Care pharmacists makes clear that Phillip Minga plays an instrumental role in running the business. Pharmacist Roger Hall testified that Phillip Minga was the "brains of" the Priority Care enterprise and that he and William Austin were the only two Priority Care representatives conducting Roger Hall's August 2017 job interview in Jasper, Alabama. In early 2018, Phillip Minga also reached out to Hall to intercede in and help resolve a personnel dispute with a pharmacy technician at Priority Care Pharmacy 2. Tellingly, along with Defendant Melissa "Missy" Sheffield, Phillip Minga was one of two people Mr. Hall notified when Priority Care Pharmacy 2 received a third-party subpoena from Roche. And Phillip Minga accompanied pharmacist





**The Irreparable Harm Caused by Priority Care's Fraud**

209. As described above, Defendants are actively pursuing expansion of the Priority Care enterprise by acquiring new storefront pharmacies and establishing new shell pharmacies. The extent of Defendants' current holdings is unknown, as is their capacity to conceal or transfer their assets among unknown entities.

210. Given the Priority Care enterprise's extensive history of obscuring the true nature of its activities and the identities of the individuals that control its business; Defendant Phillip Minga's extensive history of fraud and recidivism; the dishonesty Defendants have displayed during Roche's investigation of their conduct; and the extent of Roche's damages, it is unlikely that a monetary judgment will suffice to fully remedy its damages.

211. Absent an injunction, there is serious ongoing threat that Priority Care will resume its fraudulent adjudications through as-yet-unknown pharmacies or shell companies. That threat is compounded by the lag time between when pharmacies submit reimbursement claims to insurers and when Roche receives usable adjudication data from payers seeking rebates. Several months can pass and hundreds of thousands of dollars of claims can occur before Roche is even notified of them.

212. The harm caused by Priority Care's business practices is not limited to Roche and other manufacturers of test strips. Patients are also burdened by them. For example, on March 16, 2016, patient Chuck Johnson, whose Facebook profile indicates he lives in Minnesota, posted on the Facebook page for "Priority Care Pharmacy Amory," one of the four entities occupying 1600 Highland Drive in Amory:

I have responded and said I do not need!!! And they keep sending & sending... I already have enough for about 4-5 [years] and they keep sending??? How in the hell do you stop them from sending? Now I need to figure out how to send back like 3 boxes worth. This is a waste of my time!!! Piss[es] me off... REALLY!



213. On January 29, 2018, a “self-verified patient” posted a review of B & K Express Care Pharmacy on the website [vitals.com](http://vitals.com), asserting that the pharmacy was a “Fr[au]d” and explaining, “Received unordered RX medical supplies with Doctors name evidently forged on prescriptions. Billed to and paid by insurance. Pharmacy very uncooperative and hostile when contacted. Beware!!!”

214. Patients frustrated by Priority Care’s shipping and billing practices for Roche’s Accu-Chek test strips may associate Priority Care’s wrongdoing with Roche or the Accu-Chek brand, causing irreparable damage to Roche’s goodwill. Further, patients may be receiving international versions of Roche test strips containing instructions or product descriptions in different languages, or expired or damaged product, further threatening Roche’s goodwill.

215. The Priority Care enterprise’s fraud is also causing harm to Roche’s business relationships with payers such as insurance companies and PBMs. These payers are extremely important to Roche’s business, paying for the large majority of the diabetes products that Roche sells in the United States. In an effort to mitigate its losses from Priority Care’s large-scale fraud, however, Roche has withheld some rebate payments from payers. This has put Roche in an adversarial relationship with some of its important business partners. That is a detriment to Roche’s business that is difficult or impossible to quantify in monetary terms.

216. For the above reasons, Roche is entitled to injunctive relief putting a permanent end to the Priority Care enterprise’s fraudulent activities, in addition to compensation for its financial losses.

**FIRST CLAIM FOR RELIEF**

**Violation of Federal RICO, 18 U.S.C. § 1962(c)  
(Against PHC, Konie Minga, Phillip Minga, Sammy Phillip Carson, William Austin,  
and Melissa “Missy” Sheffield)**

217. Roche hereby repeats and realleges the allegations in paragraphs 1 to 216 above as if set forth fully herein.

218. At all relevant times, Roche Diagnostics Corporation and Roche Diabetes Care, Inc. were “persons” within the meaning of RICO, 18 U.S.C. §§ 1961(3) & 1964(c).

219. At all relevant times, PHC and Konie Minga, Phillip Minga, Sammy Phillip Carson, William Austin, and Melissa “Missy” Sheffield (collectively the “RICO Defendants”) were “persons” within the meaning of RICO, 18 U.S.C. §§ 1961(3) & 1962(c).

220. The RICO Defendants operated and managed an association-in-fact for the purpose of obtaining medical products, including blood-glucose test strips, as cheaply as possible; selling them at maximum profit, regardless of legality; and concealing the nature of this scheme from insurance companies, PBMs, and manufacturers like Roche. This association-in-fact was an “enterprise” within the meaning of RICO, 18 U.S.C. § 1961(4). The RICO Defendants organized their RICO enterprise into a continuing and cohesive unit with specific and assigned responsibilities. This association-in-fact enterprise comprises PHC as well as:

- A. Priority Care’s individually operating storefront pharmacies (including Priority Care Pharmacy, LLC; Priority Care Pharmacy at Cotton Gin Point, LLC; B&K Priority Care Pharmacy, LLC; Priority Care Pharmacy 2, LLC; Vickers Priority Care Pharmacy, LLC; Vincent Priority Care Pharmacy, LLC d/b/a The Medicine Chest; Medical Park Discount Pharmacy, LLC; and Burns Discount Drug Store, LLC) (the “Storefront Pharmacies”);
- B. Priority Care’s shell pharmacies (including Tombigbee Pharmacy, LLC; Main Street Drugs, LLC; Priority Care Pharmacy Services,

LLC; Amory Priority Care Pharmacy, LLC; Priority Express Care Pharmacy, LLC; Priority Care Pharmacy Solutions, LLC; Jasper Express Care Pharmacy, LLC; Carbon Hill Express Care Pharmacy, LLC; Vincent Express Care Pharmacy, LLC; and B & K Express Care Pharmacy, LLC) (the “Shell Pharmacies”);

- C. Entities supporting Priority Care’s operations (including Yellowhammer Pharmacy Services Corporation; Priority Care Professional Staffing, LLC; and Professional Healthcare Staffing, LLC);
- D. The Medpoint organization (Medpoint, Inc.; Medpoint, LLC; and Medpoint Advantage, LLC); and
- E. Phillip and Konie Minga.

221. The RICO Defendants participated in the operation and management of the enterprise. At all relevant times, this enterprise was engaged in, and its activities affected, interstate and foreign commerce, within the meaning of RICO, 18 U.S.C. § 1962(c).

222. Each RICO Defendant, by engaging in the acts set forth above, conducted or participated, directly or indirectly, in the conduct of the enterprise’s affairs through a “pattern of racketeering activity” within the meaning of RICO, 18 U.S.C. § 1961(1) & (5), in violation of RICO, 18 U.S.C. § 1962(c).

223. The RICO Defendants, on multiple occasions, and in furtherance of their scheme to defraud and to obtain money by means of false and fraudulent pretenses, knowingly caused to be sent and delivered across state lines by commercial interstate carrier shipments of products that were represented to be Roche retail blood-glucose test strips but in fact were different products. The RICO Defendants’ purchase and receipt by interstate carrier of Roche or other blood-glucose test strips was also integral to the operation and maintenance of the scheme. These acts constituted violations of the federal mail fraud statute, 18 U.S.C. § 1341.

224. The RICO Defendants, on multiple occasions and in furtherance of their

scheme to defraud and to obtain money by means of false and fraudulent pretenses, knowingly caused to be transmitted, by means of wire communication in interstate or foreign commerce, writings, signs, signals, pictures, and sounds, in violation of the federal wire fraud statute, 18 U.S.C. § 1343. Specifically, each false insurance reimbursement claim was transmitted by means of wire communication in interstate or foreign commerce and constituted a separate violation of 18 U.S.C. § 1343, and a separate act of racketeering. The RICO Defendants' use of interstate wire communications to place orders with and make payments to suppliers; to continually upload, transmit, and receive information regarding prescriptions to and from Priority Care entities; to create and maintain NPI and NCPDP database entries regarding the Priority Care entities; and/or to establish additional Priority Care entities was also integral to the scheme and the operation and maintenance of the enterprise.

225. Each RICO Defendant committed or participated in the commission of two or more of these racketeering acts in violation of 18 U.S.C. §§ 2, 1341, and/or 1343. Defendants' racketeering acts were and are multiple, repeated, and continuous.

226. These multiple racketeering acts were related and constituted a "pattern of racketeering activity" within the meaning of 18 U.S.C. § 1961(5). The acts alleged were related to each other by virtue of common participants; common victims (Roche and the insurance companies covering those products); a common method of commission; and the common purpose and common result of defrauding Roche and insurers, and of enriching the RICO Defendants while concealing their fraudulent activities. The pattern of racketeering activity continued until September 17, 2018, and may continue to date.

227. Roche was directly and proximately injured by the RICO Defendants' pattern of racketeering activity because Defendants' fraudulent adjudication data was

passed directly from pharmacy-benefit insurance companies and PBMs to Roche and served as the basis and justification for Roche's payment of rebates to those pharmacy-benefit insurance companies and PBMs.

228. As a result of their misconduct, the RICO Defendants are liable to Roche for these injuries.

229. The scope of the RICO Defendants' fraudulent enterprise is not known, and the RICO Defendants' demonstrated pattern of deceptiveness indicates they may seek to perpetuate their scheme through entities as yet unknown, and to conceal or dissipate their assets before a judgment can be secured.

230. Pursuant to 18 U.S.C. § 1964(c), Plaintiffs are entitled to recover threefold their damages plus costs and attorneys' fees. Pursuant to 18 U.S.C. § 1964(a), Plaintiffs are entitled to an order permanently enjoining the RICO Defendants and other members of the enterprise from engaging in the unlawful behavior described above and from dissipating any assets heretofore acquired from fraudulent adjudications of Roche products.

### **SECOND CLAIM FOR RELIEF**

#### **Conspiracy to Violate Federal RICO, 18 U.S.C. § 1962(d) (Against all Defendants)**

231. Roche hereby repeats and realleges the allegations in paragraphs 1 to 230 above as if set forth fully herein.

232. At all relevant times, Roche Diagnostics Corporation and Roche Diabetes Care, Inc. were "persons" within the meaning of RICO, 18 U.S.C. §§ 1961(3) & 1964(c).

233. At all relevant times, each Defendant was a "person" within the meaning of RICO, 18 U.S.C. §§ 1961(3) & 1962(c).

234. Each Defendant was associated with the Priority Care enterprise described

above, and agreed and conspired to violate 18 U.S.C. § 1962(c), that is, agreed to conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise through the pattern of racketeering activity described herein, in violation of 18 U.S.C. § 1962(d). Defendants all agreed to the overall objective and/or committed and caused to be committed a series of overt acts in furtherance of the conspiracy and to affect the objects thereof, including but not limited to the acts set forth above.

235. Defendants' scheme depended upon the participation of all Defendants, including, among other things, (a) the Priority Care pharmacies knowingly "checking" prescriptions that would be filled and fraudulently adjudicated centrally in Mississippi; (b) the Priority Care pharmacies' willingly serving as false fronts to which fraudulent adjudications could be attributed; (c) the submission of fraudulent insurance claims to insurers and PBMs for the purposes of obtaining undeserved reimbursements; and (d) the establishment and service as officers of new entities ostensibly unrelated to Priority Care.

236. Roche was directly and proximately injured by Defendants' pattern of racketeering activity because Defendants' fraudulent adjudication data was passed directly from pharmacy-benefit insurance companies and PBMs to Roche and served as the basis and justification for Roche's payment of rebates to those pharmacy-benefit insurance companies and PBMs.

237. As a result of their misconduct, Defendants are liable to Roche for these injuries.

238. Pursuant to 18 U.S.C. § 1964(c), Plaintiffs are entitled to recover threefold their damages plus costs and attorneys' fees.

**THIRD CLAIM FOR RELIEF**

**Common Law Fraud**

**(Against PHC, the Storefront Pharmacies, Main Street Drugs, Tombigbee Pharmacy, Konie Minga, Phillip Minga, Sammy Phillip Carson, William Austin, and Melissa “Missy” Sheffield)**

239. Roche hereby repeats and realleges the allegations in paragraphs 1 to 238 above as if set forth fully herein.

240. PHC, the Storefront Pharmacies, Main Street Drugs, Tombigbee Pharmacy, and Defendants Konie Minga, Phillip Minga, Sammy Phillip Carson, William Austin, and Melissa “Missy” Sheffield (collectively the “Fraud Defendants”) knowingly and intentionally made and caused to be made hundreds of thousands of false insurance reimbursement claims to insurance companies and PBMs. These insurance reimbursement claims falsely stated that Defendants had sold Roche’s retail blood-glucose test strips to patients when in fact they had not. The Fraud Defendants knowingly and intentionally deprived Roche of sales of retail test strips, and also caused the insurance companies to submit rebate claims to Roche based on fraudulent insurance claims.

241. The Fraud Defendants made or caused to be made those false representations with the intent to defraud. Specifically, these Defendants made or caused to be made those false representations in order to profit from the high insurance reimbursement rates that result from the rebates Roche pays to insurers for retail test strips.

242. Defendants Konie Minga, Phillip Minga, Sammy Phillip Carson, William Austin, and Melissa “Missy” Sheffield, as owners, officers, and/or employees of the Corporate Defendants, were personally involved in and approved of the fraudulent schemes. These Defendants had actual knowledge of, and substantially assisted in, the fraudulent schemes to fraudulently obtain reimbursements from insurance companies and PBMs.

243. Roche and the insurance companies and PBMs reasonably relied on the Fraud Defendants' misrepresentations and were unaware of Defendants' fraud because the claims submitted were facially valid and Defendants took active steps to conceal their pharmacies and evade detection.

244. As a result of Defendants' evasiveness and obfuscation, Roche only discovered the facts constituting Defendants' fraud on June 27, 2018, the date on which the invoices Priority Care produced showed that Priority Care adjudicated hundreds of thousands more retail test strips than it had purchased from any source.

245. Defendants' fraud was gross, oppressive, and malicious, and as a result of the Fraud Defendants' conduct, Roche was injured in an amount to be determined at trial.

#### **FOURTH CLAIM FOR RELIEF**

**Statutory Fraud and Deceit Under Ala. Code §§ 6-5-101 and 6-5-104  
(Against PHC, the Storefront Pharmacies, Main Street Drugs, Tombigbee Pharmacy, Konie Minga, Phillip Minga, Sammy Phillip Carson, William Austin, and Melissa "Missy" Sheffield)**

246. Roche hereby repeats and realleges the allegations in paragraphs 1 to 245 above as if set forth fully herein.

247. The Fraud Defendants knowingly and intentionally made and caused to be made hundreds of thousands of false insurance reimbursement claims to insurance companies. These insurance reimbursement claims falsely stated that Defendants had sold Roche's retail blood-glucose test strips to patients when in fact they did not. The Fraud Defendants knowingly and intentionally deprived Roche of sales of Roche's retail test strips, and also caused the insurance companies to submit rebate claims to Roche based on fraudulent insurance claims.

248. The Fraud Defendants made or caused to be made those false representations with the intent of defrauding Roche. Specifically, the Fraud Defendants



made or caused to be made those false representations in order to profit from the high insurance reimbursement rates that result from the rebates Roche pays to insurers.

249. Defendants Konie Minga, Phillip Minga, Sammy Phillip Carson, William Austin, and Melissa “Missy” Sheffield, as owners, officers, and/or employees of the Corporate Defendants, were personally involved in and approved of the fraudulent schemes. These Defendants had actual knowledge of, and substantially assisted in, the fraudulent schemes to fraudulently obtain reimbursements from insurance companies and PBMs.

250. Roche and the insurance companies and PBMs reasonably relied on the Fraud Defendants’ misrepresentations and were unaware of Defendants’ fraud because the claims submitted were facially valid and Defendants took active steps to conceal their pharmacies and evade detection.

251. As a result of Defendants’ evasiveness and obfuscation, Roche only discovered the facts constituting Defendants’ fraud on June 27, 2018, the date on which the invoices Priority Care produced showed that Priority Care adjudicated hundreds of thousands more retail test strips than it had purchased from any source.

252. The Fraud Defendants’ fraud was gross, oppressive, and malicious, and as a result of Defendants’ conduct, Roche was injured in an amount to be determined at trial.

**FIFTH CLAIM FOR RELIEF**

**Civil Conspiracy to Commit Fraud  
(Against All Defendants)**

253. Roche hereby repeats and realleges the allegations in paragraphs 1 to 252 above as if set forth fully herein.

254. The Defendants unlawfully, knowingly, and willfully combined, conspired, confederated and agreed together to defraud Plaintiffs and the insurance companies. All Defendants adopted the goal of furthering and facilitating this conspiracy.

255. Defendants each committed and caused to be committed a series of overt acts in furtherance of the conspiracy and to achieve the objects thereof, including but not limited to the acts set forth above.

256. Defendants' scheme depended upon, among other things, (a) the Priority Care pharmacies knowingly "checking" prescriptions that would be filled and fraudulently adjudicated centrally in Mississippi; (b) the Priority Care pharmacies' willingly serving as false fronts to which fraudulent adjudications could be attributed; (c) the submission of fraudulent insurance claims to insurers and PBMs for the purposes of obtaining undeserved reimbursements; and (d) the establishment and service as officers of new entities ostensibly unrelated to Priority Care.

257. Roche and the insurers and PBMs reasonably relied on Defendants' misrepresentations and were unaware of Defendants' fraud.

258. As a result of Defendants' conduct, Roche was injured in an amount to be determined at trial.

## **SIXTH CLAIM FOR RELIEF**

### **Negligent Misrepresentation (Against All Defendants)**

259. Roche hereby repeats and realleges the allegations in paragraphs 1 to 260 above as if set forth fully herein.

260. Defendants misrepresented and caused to be misrepresented to insurers and PBMs that they were selling Roche's retail blood-glucose test strips when in fact they were not. These statements of fact and material omissions were false and misleading.

261. These statements and omissions were negligent because Defendants did not exercise reasonable care in verifying the accuracy of these statements or in ensuring that they did not fail to make material disclosures, yet represented that they knew the statements to be true. Indeed, Defendants made these statements recklessly, without regard to their truth or falsity.

262. Defendants did not take any affirmative steps to correct their materially false statements or material omissions.

263. Defendants had a duty to provide the insurance companies and PBMs with accurate information because they knew and intended the insurance companies and PBMs would rely on their false representations and material omissions in providing reimbursements to Defendants. Defendants further knew and intended Roche would rely on Defendants' false representations and material omissions in providing rebates to insurance companies and PBMs.

264. The insurance companies and PBMs and Roche reasonably relied upon Defendants' misrepresentations and material omissions and were unaware that they were false.

265. As a result of Defendants' conduct, Roche was injured in an amount to be determined at trial.

### **SEVENTH CLAIM FOR RELIEF**

#### **Unjust Enrichment (Against All Defendants)**

266. Roche hereby repeats and realleges the allegations in paragraphs 1 to 266 above as if set forth fully herein.

267. As set forth above, Defendants misrepresented, caused to be misrepresented, and/or conspired to misrepresent to insurance companies and PBMs that

they were selling Roche's retail blood-glucose test strips, when in fact they were not. These misrepresentations were passed along by the insurance companies to Roche, directly causing Roche to pay the insurers millions of dollars in unwarranted rebates.

268. As a result of these false representations and material omissions, all Defendants wrongfully obtained a monetary benefit to which they were not legally entitled.

269. Defendants have no right to retain these unjust gains.

270. If Defendants are permitted to keep this monetary benefit, it would be manifestly unjust.

271. Roche is therefore entitled to the remedies of disgorgement and restitution in the amount by which Defendants were unjustly enriched, or the imposition of a constructive trust over Defendants' assets to that extent in order to prevent Defendants' enjoyment of that benefit. Roche is also entitled to an order permanently enjoining Defendants from dissipating any profits or benefits heretofore received and which continue to be received from fraudulent adjudications of Roche products insofar as such profits and benefits are rightfully Roche's.

### **EIGHTH CLAIM FOR RELIEF**

#### **Money Had and Received (Against All Defendants)**

272. Roche hereby repeats and realleges the allegations in paragraphs 1 to 273 above as if set forth fully herein.

273. For the reasons stated above, all Defendants have profited from the fraudulent misrepresentations that the Defendants made and caused to be made and conspired to make to insurance companies and PBMs and Roche.

274. In equity and good conscience, Defendants ought not to retain those profits because in justness and fairness they belong to Roche.

275. Roche is therefore entitled to the remedies of disgorgement and restitution in the amount of money Defendants have received at Roche's expense or the imposition of a constructive trust over Defendants' assets to that extent in order to prevent Defendants' enjoyment of the money so received. Roche is also entitled to an order permanently enjoining Defendants from dissipating any profits or benefits heretofore received and which continue to be received from fraudulent adjudications of Roche products insofar as such profits and benefits are rightfully Roche's.

**PRAYER FOR RELIEF**

WHEREFORE, Roche demands judgment against all Defendants as follows:

- (a) an order entering judgment in favor of Roche against Defendants, jointly and severally;
- (b) an order permanently enjoining Defendants from engaging in the unlawful behavior described above;
- (c) an order awarding Roche damages in an amount to be determined;
- (d) an order awarding Roche trebling of damages;
- (e) an order awarding Roche pre-judgment and post-judgment interest;
- (f) an order awarding Roche punitive damages;
- (g) an order awarding Roche reasonable attorneys' fees and other costs; and
- (h) for such additional relief as the Court finds just, equitable, and appropriate.

DATED:        Birmingham, Alabama  
                  December 19, 2018

Respectfully submitted,  
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# **EXHIBIT A**

**Exhibit A: Adjudications of Roche Retail Test Strips by the Priority Care Pharmacies (50-Count Equivalents)**

<u>Pharmacy</u>	2013	2014	2015	2016	2017	2018 (Q1-Q3)	TOTAL
Amory Priority Care Pharmacy					██████	██████	██████
B&K Priority Care Pharmacy					██████	██████	██████
Bowie's Priority Care Pharmacy				██████	██████	██████	██████
Burns Discount Drug Store						██████	██████
Main Street Drugs						██████	██████
Medical Park Discount Pharmacy						██████	██████
Medpoint Pharmacy Benefit Managers	██████	██████					██████
Priority Care Pharmacy, LLC		██████	██████	██████	██████		██████
Priority Care Pharmacy 2		██████	██████	██████	██████	██████	██████
Priority Care Pharmacy at Cotton Gin Point			██████	██████	██████	██████	██████
Priority Care Pharmacy Services				██████	██████		██████
Priority Care Pharmacy Solutions		██████	██████	██████	██████	██████	██████
Priority Express Care Pharmacy					██████	██████	██████
Tombigbee Pharmacy						██████	██████
Vickers Priority Care Pharmacy				██████	██████	██████	██████
Vincent Priority Care Pharmacy			██████	██████	██████	██████	██████
<b>TOTAL</b>	██████	██████	██████	██████	██████	██████	██████

Source: Data Produced by Priority Care