IN THE CIRCUIT COURT OF COOK COUNTY, LAW DIVISION
COOK COUNTY ILLINOIS

KMART CORPORATION, a Michigan corporation, Plaintiff, v. **CATAMARAN CORPORATION,** a Yukon Territory corporation, **CATAMARAN PBM of Illinois II, Inc.,** f/k/a Catalyst Health Initiatives, an Illinois corporation **CATAMARNAN PBM of Illinois, Inc.,** f/k/a InformedRx, a Delaware corporation, Defendants.	)	JURY TRIAL DEMANDED Case No.

COMPLAINT

1. Since at least 2012, Defendants Catamaran Corporation, Catamaran PBM of Illinois, Inc. and Catamaran PBM of Illinois II, Inc. (collectively "Catamaran") have improperly manipulated prescription reimbursements owed to pharmacies operated by Kmart Corporation ("Kmart") and others, inflating profits to make Catamaran a more inviting acquisition target. Its scheme apparently worked because Catamaran announced on March 30, 2015 that it will be acquired by OptumRx for $12.8 billion and on July 23, 2015, the acquisition closed.

2. Catamaran is a conglomeration of pharmacy benefit management ("PBM") companies that act as "middle men" between retail pharmacies and various health insurance and welfare plans, including managed care organizations. When customers on those health insurance

and welfare plans that have contracted with Catamaran visit Kmart for prescriptions, Catamaran is required to reimburse Kmart for any prescriptions that it fills for those customers.

3. As part of its scheme, Catamaran has cut its payments to Kmart's pharmacies for prescriptions, dragged its heels on reimbursement rate appeals, failed to retroactively make changes even when the appeals were successful, and refused to share pricing lists, even when required to do so by applicable law, all in breach of Catamaran's contracts with Kmart, and the covenant of good faith and fair dealing. As a result of Catamaran's misconduct, Kmart has been unable to forecast financials, Kmart has experienced rapidly declining reimbursement rates from Catamaran, and in many instances, Kmart now ***loses money*** on those prescriptions. Catamaran covered up its scheme by intentionally failing to comply with disclosure and state Prompt Pay Laws and by refusing to provide information requested and owed to Kmart.

4. The cumulative impact of Catamaran's misconduct has caused Kmart to incur at least $38 million in damages. Furthermore, because Catamaran's misconduct is ongoing and, in fact, has worsened over time, Kmart's damages continue to mount. Kmart is not the only victim of Catamaran's scheme: numerous other pharmacies, both large and small, have initiated claims and lawsuits against the company based on the same or substantially similar misconduct. This suit seeks to recover Catamaran's underpayments to Kmart, where those underpayments were not dictated by rates expressly set out in a plan governed by the Employee Retirement Income Security Act of 1974 ("ERISA").

GENERAL ALLEGATIONS

The Parties

5. Plaintiff, Kmart Corporation is a Michigan corporation with its principal place of business located at 3333 Beverly Road, Hoffman Estates, Cook County, Illinois.

6. Kmart operates more than 700 pharmacies in the United States and provides comprehensive pharmacy services in 44 states, including pharmacies in Cook County, Illinois.

7. Defendant Catamaran Corporation, formerly known as SXC Health Solutions Corp., is a corporation organized under the Business Corporations Act of the Yukon Territory, Canada, with its principal place of business in Schaumburg, Illinois. As a result of a merger and acquisition on July 23, 2015, "Catamaran became an indirect wholly owned subsidiary of UnitedHealth Group." Catamaran 8K at 2 (July 23, 2015).

8. Defendant Catamaran PBM of Illinois, Inc., formerly known as InformedRx, Inc. is a Delaware corporation and a wholly-owned subsidiary of Defendant Catamaran. Its principal place of business is in Schaumburg, Illinois.

9. Defendant Catamaran PBM of Illinois II, Inc., formerly known as Catalyst, is an Illinois corporation and a wholly-owned subsidiary of Defendant Catamaran. Its principal place of business is in Schaumburg, Illinois.

Jurisdiction and Venue

10. This Court has jurisdiction because the acts giving rise to this action occurred, in significant part in Illinois, all parties maintain their principal places of business in Illinois, and the contracts between the parties were entered into in Illinois. Catamaran, an Illinois resident, also is subject to personal jurisdiction in this state pursuant to 735 ILCS § 5/2-209. In addition, in Kmart's contract with SXC Health Solutions, Inc. (Catamaran's name prior to its merger with Catalyst Health Solutions, Inc.), [redacted]

11. Venue is proper in this Court pursuant to 735 ILCS § 5/2-101 because Kmart has its principal place of business in Cook County, all parties conduct extensive business in Cook

County with others and with each other, the contracts at issue were executed by Kmart in Cook County, and Kmart pharmacies in Cook County were improperly underpaid by Catamaran, as described below.

Summary of the Case

12. Catamaran is a PBM and as such, acts as an intermediary, or "middle man," between pharmacies on the one hand, and health plans, employers and government entities (collectively "plan sponsors") on the other. In that regard, Catamaran contracts with pharmacies, including Kmart, to provide prescription drugs to members of the plan sponsors that have, in turn, contracted with Catamaran. In its contracts with Kmart, often called Provider Agreements, Catamaran agrees to reimburse Kmart at certain rates for certain drugs. [redacted] Catamaran, in turn, is paid by the plan sponsors. The payments received by Catamaran from plan sponsors exceed Catamaran's payments to pharmacies. Catamaran also receives significant rebates from drug manufacturers which are not passed on to the consumer, to the plan sponsor, or to the pharmacy.

13. With an apparent eye toward making it a more attractive acquisition target, Catamaran engaged in a scheme to enhance its earnings and its profits by, among other things, improperly manipulating or ignoring the reimbursement formulae in its Provider Agreements with Kmart, and instead reimbursing Kmart at lower rates than required by the relevant Agreement, which, by way of example, included the following:

a. Catamaran failed to reimburse Kmart based on its contracted rates for branded and generic prescription drugs sold at Kmart pharmacies;

b. Catamaran wrongfully created pricing spreads for prescription drugs by unreasonably, unfairly, improperly, and discriminatorily deflating its maximum allowable cost ("MAC") pricing so as to increase its profits;

c. Catamaran improperly charged inflated claims administration fees for the prescriptions;

d. Catamaran routinely failed to respond to and properly credit MAC pricing appeals, resulting in significant losses to Kmart;

e. Catamaran routinely ignored laws requiring it to disclose to Kmart its so-called MAC pricing by drug (stating it is proprietary) and to update that pricing list on a regular basis; and

f. Catamaran routinely ignored state Prompt Pay Laws which require Catamaran to pay interest on claims that are not fully paid within the periods specified in state law.

Factual Background

A. The Role of PBMs in U.S. Health Care Industry

14. PBMs pay for the vast majority of prescriptions filled in the U.S. health care system. The PBM market is highly concentrated, with the top six PBMs, including Catamaran (prior to its acquisition by OptumRx), controlling over 90% of the market.

15. PBMs contract with plan sponsors to manage the coverage of and pay for brand-name and generic drugs dispensed to plan members ("beneficiaries") by retail pharmacies, such as Kmart. PBMs, such as Catamaran, have entered into agreements with drug manufacturers under which the PBMs, including Catamaran, obtain discounts, rebates, and other remuneration from the drug manufacturers.

16. PBMs also charge an administrative fee to the plan sponsor for each prescription processed. PBMs may also charge pharmacies a fee for each prescription transaction. For example, Kmart's contract with Catamaran's predecessor, Catalyst Rx, [redacted] In light of the number of prescriptions processed by PBMs (404 million for Catamaran alone in 2014), revenue from these fees can be substantial. [redacted]

17. PBMs also make money by charging plan sponsors more to have prescriptions filled than the PBMs pay to the pharmacies for filling those prescriptions. For example, it is not uncommon for a PBM to charge a health plan one price for a drug and to pay the pharmacy a lower amount for the same drug, with the PBM keeping the difference. This is called the "spread." PBMs also receive money back from drug manufacturers in the form of rebates. Rebates are payments made by manufacturers to PBMs as a way of ensuring that their drugs are included in the PBM's "formulary" or list of acceptable drugs. Finally, PBMs make money through their mail order pharmacy business.

B. Claim Processing and Adjudication

18. There are approximately 65,000 different drug products in the U.S., including various dosages and package sizes of the same drug and generic versions of brand name products. Prescription drugs are dispensed to patients by or through different types of medical providers, including but not limited to: (a) physicians who administer the drug in their offices; (b) retail and mail order pharmacies; (c) home infusion pharmacies; and (d) other medical providers. Each of these providers regularly submit claims for reimbursement, seeking payment for the drugs from Medicare, Medicaid, private insurers and patients.

19. In the context of retail pharmacy, a PBM's claim processing begins when the beneficiary of a government program or member of a health insurance plan presents a drug prescription and insurance card to the pharmacist. After entering relevant information into the pharmacy's computer system, the pharmacist then submits the claim electronically to the PBM. The PBM determines if there is coverage under the plan for the prescription, including the reimbursement amount owed to the pharmacy and the beneficiary's co-payment, if any.

20. Assuming the prescription is covered by the applicable insurance, the pharmacist fills the prescription and bills the beneficiary the co-payment amount set by the plan sponsor; this amount is electronically communicated to the pharmacist by the PBM. At this point, the pharmacist learns for the first time what the PBM will reimburse the pharmacy for the prescription. Any reimbursement owed by the PBM to the pharmacy is reduced by the amount of any co-pay from the beneficiary.

21. The point at which the PBM transmits the reimbursement information to the pharmacist is referred to as "claim adjudication."

22. Many PBMs, including Catamaran, establish the reimbursement rates for dispensing drugs. For brand-name drugs, PBMs typically use the "Average Wholesale Price" or "AWP" set by drug manufacturers as the basis for reimbursement (i) from plan sponsors to the PBMs for their members' drug purchases, and (ii) from the PBMs to the pharmacies for the purchases made by health plans' beneficiaries. AWP is a benchmark from which thousands of drug prices are derived throughout the pharmaceutical distribution chain.

23. Until recently, AWP was an undefined term that was set by each manufacturer for each drug. Following litigation, most drug manufacturers and publishers of price listings agreed to define the term "AWP" to mean no more than 120% of the Wholesale Acquisition Cost, which

is a term defined for the Medicare program. *See* Social Security Act § 1847A(b)(4)(B), 42 U.S.C. § 1395w–3a(b)(4)(B); *In re Pharmaceutical Indust. Wholesale Price Lit.*, MDL No. 1456 (D. Mass. March 30, 2009).

24. PBMs, like Catamaran, contract with retail pharmacies to pay for brand name drugs using a formula, one parameter of which is usually the drug's AWP, less a specified discount, plus a dispensing fee. [redacted] Because PBMs consider the contracting relationship with retail pharmacies to be confidential, plan sponsors are not informed of the reimbursement rates that Catamaran paid to pharmacies. This enables PBMs to pocket the "spread" between charges paid to pharmacies and amounts collected from plans.

25. For example, excluding filling fees, a plan might be charged the AWP minus 13%, but the retail pharmacy might only receive AWP minus 16.5%, generating an undisclosed "spread" of 3.5% of the AWP for the PBM.

26. Plan sponsors contract with PBMs so that the plans' participants can also obtain generic drugs. As with brand-name drugs, reimbursement for generic drugs is also related to a published AWP for each generic drug manufactured by a generic drug company.

27. In general, generic drug reimbursement is determined using the lower of (i) an AWP parameter in the same manner as for brand-name drugs (*i.e.*, a certain percentage discount off the AWP) or (ii) the maximum allowable cost or "MAC." MAC prices or reimbursement rates are a schedule of pricing for equivalent generic drugs. [redacted]

28. The federal government originally introduced the concept of MAC reimbursement for generic medications as part of its Medicare and Medicaid programs. As part of Medicaid, the Center for Medicare & Medicaid Services ("CMS") issues a MAC price list for generic products that have three or more manufacturers or distributors on the market.

29. The term "cost" in the "maximum allowable cost" is the cost to the provider to provide the item or service. As a result, most state Medicaid MAC lists are directly linked to the pharmacy's acquisition cost of a drug or indirectly linked through other acquisition cost measures such as the Wholesale Acquisition Cost ("WAC") or AWP, which is 1.20 times the WAC. *See* Office of Inspector General, Medicaid Drug Pricing in State Maximum Allowable Cost Programs, OEI-03-11-00640 at 12, Table 2 (Aug. 2013).

30. MAC pricing is supposed to be set in such a way that the pharmacy's acquisition costs are not more than the MAC, otherwise the pharmacy will lose money on every prescription even if its overhead were zero.

31. PBMs, like Catamaran, often use this government-issued MAC reimbursement publication as a basis for their own proprietary MAC list and supplement the list with other generic products or modify it for a variety of purposes, including maximizing profit. Of course, lowering the MAC price for a multi-source drug serves only one purpose – to increase the spread between what is paid by the plan for the prescription and what is reimbursed to the pharmacy. However, as the term MAC connotes, for any PBM there should only be one MAC price for each drug and that price should have a formulaic basis, unless state law or a plan's contract provides otherwise.

32. MAC pricing, like AWP pricing before the AWP litigation (e.g., *In re Pharmaceutical Indust. Wholesale Price Lit.*), is not transparent. Catamaran controls the process

by which MACs are set and thus prevents pharmacies, like Kmart, from knowing the actual reimbursement structures for these drugs except when a claim is adjudicated. Catamaran closely guards its MAC pricing, and has repeatedly refused to provide its MAC lists to Kmart, even though state and federal laws require it to disclose its MAC pricing to pharmacies.

33. Because of the mischief that PBMs like Catamaran have wrought using secret MAC listings that they have unfairly manipulated to maximize their spread, and hence profit, many states have enacted laws to further implement the covenant of good faith and fair dealing by requiring PBMs to share their MAC listings with pharmacies.

34. Under Medicare Part D, for example, plan sponsors and their downstream contractors, such as PBMs, are required "[e]ffective contract year 2009 and subsequent contract years, [to] update any prescription drug pricing standard based on the cost of the drug used for reimbursement of network pharmacies by the Part D sponsor on— (i) January 1 of each contract year; and (ii) Not less frequently than once every 7 days after the date in paragraph (b)(21)(i) of this section." 42 C.F.R. § 423.505(b)(21). CMS has opined that this provision covers drugs reimbursed using a PBM's MAC. *See* 79 Fed. Reg. 1918, 1977 (Jan. 10, 2014).

35. Kmart has requested the MAC lists that Catamaran uses to establish rates to be paid to Kmart, but Catamaran has consistently refused to provide the information even with respect to sales both under Part D and under commercial plans in those states that require Catamaran to share its MAC listing.

36. Catamaran refuses to share its MAC lists so as to conceal from Kmart the way in which it sets unreasonably low MAC prices.

37. In fact, Catamaran manipulates its MAC prices to maximize its profitability and without regard to whether it fully reimburses Kmart or other pharmacies. Catamaran's payment

rates are often less than Kmart's drug costs. As a result, Kmart now loses money on many prescriptions "reimbursed" by Catamaran.

38. This lack of transparency provides an ideal environment for "rigging" the numbers to increase the spread, which is precisely what has occurred here and is reflected in, (i) Catamaran's explosive growth, and (ii) Catamaran's decreasing payments to Kmart that in many cases are below Kmart's cost to fill the prescription.

C. Catamaran's Explosive Growth

39. Through a series of acquisitions and mergers, Catamaran has experienced explosive growth and revenues over the past five years. These acquisitions, coupled with Catamaran's improper reimbursement practices and other bad acts, have resulted in enormous profits for Catamaran and significant lost income for Kmart and other pharmacies.

40. On April 30, 2008, SXC (Catamaran's predecessor-in-interest) acquired National Medical Health Card Systems, Inc., and renamed it InformedRx, which then operated as a subsidiary of SXC.

41. Also in 2008, SXC acquired Zynchros, Inc. for an undisclosed amount, and MedfusionRx, LLC for $100 million in cash.

42. In 2011, Catalyst acquired Walgreens' pharmacy benefit management subsidiary, Walgreens Health Initiatives, Inc. ("WHI"), for $525 million in cash.

43. In January 2012, SXC completed the acquisition of HealthTrans LLC, a Colorado-based PBM, for an undisclosed amount.

44. Shortly thereafter, on or about April 17, 2012, SXC entered into a merger agreement with Catalyst Health Solutions, Inc., through which SXC would acquire Catalyst for

$4.4 billion. In July 2012, following the completion of its merger with Catalyst, SXC changed the name and brand for the combined company to Catamaran Corporation.

45. On October 1, 2013, Catamaran completed the acquisition of Restat, LLC a Milwaukee, Wisconsin-based PBM for $409.5 million.

46. Following these acquisitions and the Catalyst-SXC merger, Catamaran reported that during the year ended December 31, 2013, its gross profit increased $404.1 million, or 62.7%, compared to its gross profit in 2012. This dramatic increase in profitability made it an ideal acquisition target.

47. This year, UnitedHealth, one of the largest health insurers and PBMs in the country, purchased Catamaran through its OptumRX subsidiary for $12.8 billion. The transaction closed on July 23, 2015.

48. As a result of these acquisitions, mergers, and partnerships, Catamaran's revenues have exploded, increasing from $5 billion in 2011, to $9.9 billion in 2012, to $14.8 billion in 2013 and to $21.6 billion in 2014. Catamaran projects revenues of approximately $24 billion in 2015.

49. In 2014, Catamaran was the fourth largest PBM in the United States, with just under 10% of the PBM market share. Catamaran was Kmart's third largest PBM, representing approximately 11% of Kmart's prescription business. At all relevant times, Catamaran and its predecessors-in-interest acted as PBMs responsible for paying Kmart pharmacies for prescription drugs purchased by Kmart customers.

D. Kmart's Contracts with Catamaran and its Predecessors

50. Kmart has operated retail pharmacies in the United States since at least 1968 and currently operates pharmacies in more than 700 stores in 44 states.

51. On July 28, 2008, Kmart entered into a written provider agreement with SXC ("SXC Provider Agreement") [redacted]

52. On October 23, 2008, Kmart entered into a written provider agreement with InformedRx ("Informed Provider Agreement") [redacted]

53. On November 24, 2009, Kmart entered into a written provider agreement with Catalyst ("Catalyst Provider Agreement") [redacted]

[redacted]

54. On May 26, 2009, Kmart entered into a written provider agreement with HealthTrans ("HealthTrans Provider Agreement") [redacted]

55. All of the agreements referenced in Paragraphs 51-54 (collectively referred to as "PBM Agreements") contain provisions [redacted]

56. The PBM Agreements [redacted]

E. Catamaran's Improper Conduct

57. Catamaran's scheme has included, but is not limited to, the following improper conduct directed at Kmart:

i. Catamaran Fails to Fully Reimburse Kmart

58. As noted above, the PBM Agreements detail the reimbursement methodologies for prescription drugs. Catamaran has repeatedly failed to reimburse prescriptions pursuant to the contract terms.

59. In fact, Catamaran's reimbursements to Kmart bear little relationship to the drugs' pricing in the marketplace. In many instances, Catamaran's pricing is significantly less than the WAC and less than Kmart's acquisition costs. This means that Kmart loses money on these prescriptions, even before Kmart's cost for filling the prescription is added.

60. Each Catamaran PBM Agreement requires that Catamaran "reimburse" Kmart. But by setting its pricing below Kmart's drug acquisition costs, Catamaran breached this contractual obligation.

61. Indeed, Catamaran's contractual agreement to use "Maximum Allowable Cost" lists to set pricing logically requires that, at a minimum, it reimburse providers for their costs. PBMs that pay providers less than their costs for generic drugs are not, then, "reimbursing" providers at all. Catamaran's below-cost generic reimbursement is, therefore, fundamentally inconsistent with MAC list pricing.

62. Moreover, Catamaran reimburses drugs under various contracts executed by its predecessors-in-interest. The terms of those contracts vary from entity to entity. On information and belief, Catamaran ignores the rates set in the controlling contracts and instead reimburses under whichever contract specifies the lowest reimbursement for that drug, regardless of whether or not that contract actually applies.

63. Catamaran also ignores the most favored customer clause in its HealthTrans contract with Kmart. Specifically, Catamaran offers higher reimbursements for drugs to new pharmacy members of the network, but has not extended these more favorable rates to Kmart.

ii. Catamaran Improperly Deflates Its MAC Price

(a) Catamaran's History of Improper Deflation

64. A system that bases its reimbursement rates for drugs on a MAC price depends, to a great extent, on the integrity of the PBMs that control MAC prices. PBMs that promise providers MAC-based pricing implicitly agree to reimburse, at a minimum, reasonable costs of obtaining and filling prescriptions for generic drugs.

65. Catamaran's manipulation of the MAC is designed solely to increase its profits at the expense of Kmart and other pharmacies. Catamaran perpetuated this scheme so that it could earn a substantial profit from the spread between the amount charged to plan sponsors and the amount reimbursed to Kmart.

66. For at least the past three years, Catamaran has improperly manipulated its MAC lists to dramatically reduce the amount of reimbursement to Kmart. By sharply decreasing its MAC price, Catamaran has drastically increased the "spread" in furtherance of a scheme to maximize profits and make it an attractive target for acquisition.

67. For example, for 15 randomly selected generic drugs which were reimbursed off of the MAC list under the SXC contract, the average reimbursement over three years fell from AWP-44% in 2012, to AWP-59% in 2013, to AWP-74% in 2014, to AWP-77% in 2015. SXC's rate schedule in its master agreement, however, varies for generics from AWP-13% to AWP-25%, depending on the nature of the network (e.g., "small chain network" v. "chain network") and whether the prescription was for an 84-day or more supply.

68. Payments for drugs under the Catalyst contract have exhibited a similar downward spiral. For example, for 15 randomly selected generic drugs which were reimbursed off of the MAC list under the Catalyst contract, the average reimbursement fell from AWP-45% in 2012 to AWP-70% in 2013 to AWP-79% in 2014 to AWP-85.7% in 2015. [redacted].

69. Catamaran's MAC prices for the drugs at issue here bear little relationship to the drugs' pricing in the market place. Catamaran's MAC pricing is and has been designed to be significantly less than the Wholesale Acquisition Cost and, in many instances, significantly less than Kmart's acquisition costs. This means that Kmart loses money on these prescriptions, even before Kmart's fill cost – the cost associated with Kmart's overhead in filling the prescription – is added. As such, Catamaran's reimbursements regularly fail to produce margins that would allow Kmart pharmacies to sustain their business.

70. For the 11 of the 15 randomly selected generic drugs noted above, the amount that Catamaran reimbursed Kmart in 2014 under the SXC contract was less than it cost Kmart to purchase the drugs. In 3 of the remaining 4 cases, the amount reimbursed was exactly equal to Kmart acquisition cost and in only case was the SXC reimbursement greater than Kmart's acquisition cost and in that case, the difference was only 4%. In all 15 cases, the reimbursement including the added "fill" payment was less than the cost of the drug and the actual cost to fill the prescription. In short, Kmart lost money on every prescription filled for those 15 drugs.

(b) Catamaran's Contract with CIGNA

71. In June 2013, CIGNA Corporation selected Catamaran to be its exclusive pharmacy benefit partner in a strategic 10-year agreement to service more than 8 million CIGNA members. The agreement went into effect on January 1, 2014. According to Catamaran, the CIGNA contract is responsible for 34% of Catamaran's income.

72. After acquiring PBMs or taking service on behalf of PBMs, Catamaran typically slashes reimbursement rates shortly after the PBMs becomes fully integrated into Catamaran's business.

73. Catamaran's approach to MAC reimbursement was exemplified after it became CIGNA's PBM on January 1, 2014. Catamaran slashed the average MAC reimbursement by about half.

74. The CIGNA situation became apparent almost immediately, as Kmart lost substantial sums on reimbursements under that plan almost immediately after that Catamaran's agreement with CIGNA was finalized.

75. Based on Catamaran's plummeting MAC prices for CIGNA's plans, Kmart has seen reimbursements drop by over 75% since the beginning of 2014 for 15 randomly selected generics.

76. For example, prior to Catamaran acting as CIGNA's PBM, Kmart realized a slight ingredient profit on 15 randomly selected drugs. However, once Catamaran began acting as CIGNA's PBM, Catamaran's reimbursements for ingredients (*i.e.*, drugs only) were less than Kmart's cost of acquisition for all 15 drugs. In 2014, for those 15 drugs, Catamaran reimbursed Kmart an average of AWP-94%. According to Catamaran, CIGNA has sued Catamaran alleging that it failed to pass on kickbacks to CIGNA that Catamaran received from drug manufacturers. *See* Catamaran 10K at p. 19 (March 2, 2015) (copy of relevant pages attached as Exhibit E).

77. The post-CIGNA-contract reimbursement drop is typical of Catamaran's business model. Since SXC purchased Catalyst in 2013, Kmart has seen reimbursement rates fall after that PBM became integrated into Catamaran's operations. The same holds true for Catamaran's acquisition HealthTrans.

78. By arbitrarily setting reimbursement rates for generics on a downward trajectory, Catamaran is able to maximize its exorbitant profits through its ever-increasing spread.

79. Kmart is not the only victim of Catamaran's scheme to unlawfully manipulate its MAC. Numerous other pharmacies have filed claims for breach of contract and related transgressions all arising out of Catamaran's unlawful manipulation of the MAC.

iii. Improper Fee Charges

80. Pursuant to the Provider Agreements, Catamaran charges administrative fees for prescription transactions. Since at least 2012, Catamaran has charged fees in excess of the terms of the contracts.

81. Catamaran has rejected Kmart's efforts to analyze the fees issue thoroughly by refusing to provide detailed data regarding transaction fees.

82. Based on limited information provided by Catamaran, Kmart has identified overcharges for fees charged by Catamaran.

iv. Failure to Respond to MAC Pricing Appeals

83. Catamaran's Provider Manual, [redacted]

[redacted]

84. When faced with a MAC appeal, Catamaran routinely failed to timely respond to MAC pricing appeals; sometimes it did not respond at all, and it failed to reimburse retroactively, even where the MAC pricing appeal was successful in prompting a price adjustment.

85. The Catalyst Provider Manual [redacted]

> [redacted]

[redacted]

86. During the period June 2014 through May 2015, Kmart submitted more than 27,867 MAC pricing appeals. Catamaran made adjustments to only 5% of these (and many of these continued to be appealed because the adjustment was still below Kmart's acquisition cost).

87. Even when a MAC pricing appeal is allowed, Catamaran often reverts back to the original pricing that prompted the appeal rather than adopting the new pricing, requiring Kmart to file multiple MAC appeals for the same drug. For example, Kmart successfully appealed the MAC pricing for Ursodiol (300 mg), but thereafter, Catamaran reverted to the MAC pricing that had been the subject of the successful requiring Kmart to file new MAC appeals between August 28, 2014 and February 23, 2015.

v. **Refusal to Share MAC Pricing Lists**

88. As Kmart became aware of the precipitous declines in reimbursement outlined above, it repeatedly requested Catamaran's MAC pricing lists, but Catamaran has consistently refused to disclose its MAC pricing lists to Kmart.

89. Catamaran refuses to share its MAC pricing lists even though it is required to do so under federal law and the law of various states. CMS was "surprised to learn that pharmacies do not routinely request PBMs' most utilized maximum allowable cost lists, and wonder if pharmacies do not realize that they are available upon request." 79 Fed. Reg. 29,844, 29,883 (May 23, 2014). Kmart was not one of those pharmacies; instead Kmart requested the information, and Catamaran refused to provide it.

F. Kmart's Attempts to Resolve these Issues with Catamaran

90. For more than a year, Kmart has in good faith attempted to resolve these disputes with Catamaran, consistent with the terms of the governing contracts only to be consistently rebuffed.

91. By way of example, the Provider Agreement between SXC and Kmart contains [redacted]

[redacted]

[redacted]

[redacted]

92. The SXC Agreement also notes [redacted]

[redacted]

[redacted]

93. Kmart's Master Services Agreement with HealthTrans LLC dated May 26, 2009, contains [redacted]

[redacted]

[redacted]

Exhibit C.

94. Kmart's Pharmacy Provider Agreement with Catalyst, dated November 24, 2009, contains [redacted]

i. **Kmart's Communications with Catamaran**

95. Kmart's attempts to resolve its dispute with Catamaran in good faith date back to at least July 2014, when Kmart first requested a meeting with Catamaran to discuss a variety of issues of concern to Kmart, including the MAC appeal process, MAC protection and minimum reimbursements, reduced transaction fees and quarterly summary and detail reports. Rather than acting in good faith and promptly meeting with Kmart, Catamaran embarked on sustained practice of denial and delay that continued until shortly before the filing of this lawsuit.

96. On September 20, 2014, after numerous requests to meet, Kmart personnel finally met in-person with Catamaran. During this meeting, Catamaran agreed to look into the possibility of increasing Kmart's reimbursement, which had been falling for several years. Catamaran indicated that minimum reimbursement and transaction fee improvement could be a part of the increased reimbursement to Kmart and also agreed to consider whether it would provide the requested MAC lists.

97. However, during a subsequent meeting on November 19, 2014 with Kmart, Catamaran indicated that it was unwilling to modify its MAC pricing even if it was unreasonable and bore no relationship to Kmart's acquisition cost or any other pricing parameter defined in federal law, and even though its MAC pricing did not truly reimburse Kmart for its acquisition costs. Catamaran suggested that the fact that Kmart was losing money was not relevant to Catamaran. Further, Catamaran stated it would not modify its MAC appeal process to comport with the terms of the Provider Manuals and would not provide Kmart its MAC lists.

98. From December 2014 through March 2015, Kmart made several requests to meet with Catamaran. In April 2015, Catamaran finally agreed to meet again to discuss Kmart's concerns. Kmart suggested a mutual exchange of data to help the parties understand Kmart's falling reimbursements and other issues.

99. On May 29, 2015, Kmart provided Catamaran with a narrowly tailored data request, seeking select data for the period July 2012 to the present. Kmart also proposed to hold a meeting on June 11, 2015 to discuss the results of Kmart's analysis. Almost immediately, Catamaran rejected Kmart's proposal, indicating that "going back to 2012 is not a good use of [Catamaran's] resources in the middle of our pending transaction [with UnitedHealth]." Instead, Catamaran offered to provide only data for 2014 and 2015.

100. On June 8, 2015, Catamaran provided a "high level Kmart trend analysis" dating back only to 2014, not 2012 as Kmart had requested. This high level trend analysis failed to provide any of the information Kmart had requested and ultimately prevented Kmart from conducting its own analysis of Catamaran's data.

101. On June 10, 2015, Kmart Pharmacy's Senior Vice President Philip Keough spoke with Albert Thigpen of Catamaran. During this call, Kmart specifically outlined its primary concerns with Catamaran. These included, by way of example, (1) Catamaran's failure to apply the proper contract terms (e.g., Catalyst, Restat, HealthTrans) to a given prescription, selecting instead the contract that generated the lowest payment – with the result that Kmart was underpaid by Catamaran for a significant number of prescriptions; (2) Catamaran's overcharging Kmart for certain fees and the lack of claim-level detail to justify fees; (3) Catamaran's slow MAC appeal decisions, improper MAC appeal rejections, failure to maintain MAC pricing after adjustments forcing re-appeals, and failure to adjust MAC pricing in response to pricing fluctuations; and (4) Catamaran's use of MAC pricing that had no relationship to Kmart acquisition cost or any other defined parameter. Following this call, Catamaran provided limited data relating to fees charged by Catamaran for Kmart prescriptions but none of the other data that Kmart had requested.

102. On July 3, 2015, consistent with the informal dispute resolution procedure outlined in Section 9.1 of the SXC Agreement, Kmart summarized its complaints with Catamaran and made a written proposal for a mechanism to resolve those complaints informally with Catamaran: "[W]e [Kmart] propose that Catamaran provide us the data we previously requested from 2012 forward by July 20 [2015]. Kmart would respond to any reasonable request for information from Catamaran within the same period. Both Kmart and Catamaran will review the data with a goal of sharing their analysis and positions by August 1 [2015]. And then we can then schedule an in-person meeting to go over the results of our analysis and move toward resolution of these complaints."

103. By email dated July 6, 2015, Catamaran rejected Kmart's proposed mechanism for informally resolving Kmart's complaints. In particular, Catamaran rejected Kmart's request for a mutual exchange of data as "[c]learly, a one-sided discussion from [Catamaran's] perspective." Catamaran refused to provide data dating back to 2012 as Kmart requested, and demanded a formal response from Kmart "alleging the issues, dates and exactly what portion of the agreement, or agreements have been allegedly breached."

104. On July 10, 2015, Kmart complied with that request by providing significant detail regarding the amounts due and owing under its agreements with Catamaran and its predecessors. Based on its preliminary analysis, Kmart believes the reimbursement shortfall to be in excess of $38.5 million involving more than 4.9 million claims. In the same communication, Kmart provided a clear proposal to resolve the dispute – an exchange of data relating to each of the key issues, followed by analysis and discussion.

105. Catamaran has categorically rejected Kmart's proposed mechanisms for resolving Kmart's complaints. Kmart's efforts to negotiate in good faith with Catamaran to resolve these

disputes informally have been rejected by Catamaran at every turn. As a result, Kmart has no other recourse but to file this lawsuit.

COUNT I
BREACH OF CONTRACT
Against All of the Defendants

106. Kmart incorporates by reference and restates each and every allegation above as if fully alleged herein.

107. Contractual relationships exist between the parties under the Provider Agreements (copies of which are attached as Exhibits A - D), which, along with the Provider Manuals (Exhibits F - H) set forth all the essential terms of the parties' agreement.

108. Catamaran breached its contracts with Kmart by, among other misconduct, failing to fully and properly reimburse Kmart for drugs, reimbursing Kmart under the incorrect contract using the incorrect formula, reimbursing drugs below Kmart's cost; overcharging Kmart various fees, failing to timely hear reimbursement rate appeals, imposing non-retroactive changes to successful appeals, failing to continue forward MAC appeal determinations and intentionally and improperly setting the MAC below either below the acquisition costs or so low as to be commercially unreasonable, all in breach of its contracts and in breach of its duty of good faith and fair dealing.

109. Kmart has fully performed its obligations under the applicable contracts.

110. As a result of Catamaran's breaches of contract, Kmart has been damaged in an amount to be proven at trial.

COUNT II
VIOLATION OF STATE PROMPT PAY LAWS
Against All of the Defendants

111. Kmart incorporates by reference and restates each and every allegation above as if fully alleged herein.

112. Plaintiff and Defendant do business in the states of Arkansas, Arizona, California, Colorado, Connecticut, District of Columbia, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Maryland, Maine, Minnesota, Mississippi, Missouri, New Jersey, New Mexico, New York, Nevada, Ohio, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, and West Virginia, among others.

113. Each of these states has a Prompt Pay Law that requires PBMs, such as Catamaran, to pay providers, including pharmacies, the full amount that is due and owing within a specific time or pay specified interest accruing from the date after the deadline. *See* Ark. Code Ann. § 20-66-215; Ariz. Rev. Stat. Ann. § 20-3102; Calif. Health & Safety Code §§ 1371 & 1371.35; Colo. Rev. Stat. § 10-16-106.5; Conn. Gen. Stat. §§ 38a-477, 38a-815; Code Del. Regs. 18, § 1300 *et seq*; D.C. Code Ann. § 31-3132; Fla. Rev. Stat. §§ 627.6131 & 641.3155; Ga. Code Ann. § 33-25-59.14; Idaho Code § 41-5602; Ind. Code § 27-8-5.7-5; Kan. Stat. Ann. § 40-2441; Ky. Rev. Stat. Ann. § 304.17A-702 & 806 & Ky. Admin. Regs. § 17-310; 215 Ill. Comp. Stat. § 5/368a; Me. Rev. Stat. 24-A, § 2436; Md. Ins. Code § 15-1005; Minn. Stat. § 62Q.75; Miss. Code Ann. § 73-21-155; Mo. Stat. § 376.383 *et seq*; N.J. Admin. Code § 11:22-1.5; N.M. Stat. Ann. § 59A-16-21.1; N.Y. Ins. Law § 3224-a; Nev. Rev. Stat. § 683A.0879; Ohio Rev. Code Ann. §§ 3901.38 *et seq*; 40 Pa. Cons. Stat. Ann. § 991.2166; R.I. Gen. Laws §§ 27-18-61, 27-19-52, 27-20-47, 27-41-64; S.D. Codified Laws § 58-12-20; Tenn. Code Ann. § 56-7-109; Tex. Ins. Code Ann. § 1301.101 et seq. & § 843.001 *et seq*; Utah Code Ann. § 31A-26-301.6; Vt. Stat. Ann. 221, § 9418; Va. Code Ann. § 38.2-3407; and W.Va. Code § 33-45-2.

114. Catamaran has failed to comply with the Prompt Pay Laws in those states and therefore, with respect to non-ERISA plans, in addition to the damages set forth in above Counts, owes interest and penalties to Kmart in accordance with each state's governing statute.

COUNT III
VIOLATION OF STATE MAC DISCLOSURE LAWS
Against All of the Defendants

115. Kmart incorporates by reference and restates each and every allegation above as if fully alleged herein.

116. Many of the states in which Catamaran and Kmart do business have enacted legislation requiring PBMs to share their MAC lists and MAC pricing or methodology with pharmacies either on regular basis or when requested by the pharmacy. *See, e.g.*, Arkansas (Ark. Code Ann. § 17-92-507), Colorado (Colo. Rev. Stat. § 25-37-103.5), Iowa (Iowa Code §§ 510B.4, 510B.7), Kentucky (Ky. Rev. Stat. § 304.17A-162), Louisiana (La. Rev. Stat. § 22:1863-65), Maryland (Md. Code Ann., Ins. § 15-1628.1), Minnesota (Minn. Stat. § 151.71), New Mexico (N.M. Stat. Ann. § 59A-61, *et seq.*), Oklahoma (Okla. Stat. Ann. 59, § 357 *et seq.*), Oregon (Or. Rev. Stat. Ann. § 735.534), Tennessee (Tenn. Code §§ 56-7-3106 - 3108), Texas (1 Tex. Admin. Code § 355.8545), Utah (Utah Code Ann. § 31A-22-640), and Washington (Wash. Rev. Code § 19.340.100).

117. Catamaran violated these statutes by refusing to disclose its MAC pricing when requested to do so by Kmart. These violations forced Kmart to play a guessing game as to whether MAC prices would change to reflect either increases in acquisition costs or the results of successful MAC appeal and to devote additional resources to monitor Catamaran payments.

118. Had Catamaran complied with the laws, its scheme to improperly reduce MAC payments would have not have succeeded. This is especially so given that there should only be a

single Catamaran MAC list, excluding MAC pricing dictated by state Medicaid programs or commercial plans, and that revealing the MAC price list in compliance with the law of one jurisdiction would be the same as revealing the list for all jurisdictions.

119. As a proximate cause of these violations of state disclosure laws, Kmart has suffered irreparable harm in the form of additional monitoring and overhead costs described above. Catamaran would have suffered no harm by complying with state law.

120. As such, Kmart seeks to permanent injunction requiring Catamaran to comply with state and federal laws by disclosing to Kmart its MAC lists and updating those lists on a regular basis.

WHEREFORE, Plaintiff prays this Honorable Court:

(a) For judgment in its favor in an amount in excess of $38 million dollars ($38,000,000) including interest, prompt pay interest, and allowable costs;

(b) A permanent injunction requiring Catamaran to comply with state and federal laws by disclosing to Kmart its MAC lists and updating those lists on a regular basis;

(c) For judgment in its favor and against Catamaran for attorneys' fees and costs;

(d) Injunctive relief compelling Catamaran to comply with state MAC disclosure laws;

(e) A complete accounting from Catamaran; and

(f) For such other relief as it deems necessary and just.

KMART CORPORATION

Dated: August 31, 2015

By: /s/ Matthew A.C. Zapf
Matthew A.C. Zapf

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AFFIDAVIT PURSUANT TO SUPREME COURT RULE 222(b)

Pursuant to Supreme Court Rule 222(b), the undersigned counsel for Plaintiff **KMART CORPORATION** certifies that the total of money damages sought by Plaintiff in this action exceeds $50,000.

Dated: August 31, 2015

By: ____________________
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JURY DEMAND

Plaintiff KMART CORPORATION demands trial by jury in the above-captioned matter on all issues so triable.

Dated: August 31, 2015

By: *_/s/ Matthew A.C. Zapf_*
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