

**ESERVE CITATION  
JURY DEMAND**

DC-26-05597

CAUSE NO. \_\_\_\_\_

**SHARP IRON GROUP LLC, and  
TEXAS TRANSLAND, LLC**

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IN THE DISTRICT COURT

Plaintiffs,

95th

v.

\_\_\_\_ JUDICIAL DISTRICT

**BLUE CROSS BLUE SHIELD OF TEXAS,**

Defendant.

DALLAS COUNTY, TEXAS

**PLAINTIFFS ORIGINAL CLASS ACTION PETITION**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Sharp Iron Group LLC ("Sharp Iron") and Texas Transland, LLC ("Transland") (together hereinafter referred to as "Plaintiffs") and files this their Plaintiffs Original Class Action Petition against Defendant Blue Cross and Blue Shield of Texas ("BCBSTX" or "Defendant"), a division of Health Care Service Corporation, a Mutual Legal Reserve Company, and in support thereof would respectfully show the Court the following:

**I. DISCOVERY CONTROL PLAN**

1.1 Discovery should be conducted under Level 3 of the Texas Rules of Civil Procedure 190.

**II. REASON FOR THIS LAWSUIT**

2.1 Musician Bob Dylan's song *Sweetheart Like You* from his 1983 album *Infidels* included a prescient lyric: "steal a little and they throw you in jail, steal a lot and they make you a king."

2.2 In the four decades since, pharmacy benefit managers ("PBMs") have become the dominant intermediary between pharmaceutical manufacturers, retail pharmacies, and insurance

companies, ostensibly delivering value to insureds by reducing drug costs. When those savings — rebated by PBMs to insurance companies — are then pocketed by those insurance companies rather than passed through to plan sponsors, Texans are robbed of billions of dollars in excessive premiums. This case is about that theft. BCBSTX collected gross prescription drug costs from plan sponsors like Sharp Iron, simultaneously received substantial manufacturer rebates through its owned PBM — Prime Therapeutics LLC & AllianceRx Walgreens Prime LLC — and then deliberately reported only the pre-rebate gross costs to plan sponsors when setting premiums, administrative fees, and stop-loss insurance charges. The net effect: BCBSTX presented inflated cost figures to justify higher charges, pocketed the rebate spread as pure profit, and left Texans paying for a cost structure that did not exist.

### **III. THE PARTIES**

#### **A. The Plaintiffs**

3.1 Plaintiff Sharp Iron Group LLC is a Texas limited liability company, with its principal office located at 1206 Hatton Road, Wichita Falls, Wichita County, Texas.

3.2 Plaintiff Texas Transland LLC is a Texas limited liability company, with its principal office located at 1206 Hatton Road, Wichita Falls, Wichita County, Texas.

3.3 Sharp Iron's and Transland's Chief Executive Officer and Managing Partner is James Frank, a citizen and resident of Wichita Falls, Wichita County, Texas. After earning a degree in Finance from Texas A&M University, James Frank began an eleven-year career in banking. In 2000, he left banking and led the acquisition of BW Fabricators, a custom fabrication business with 15 employees. James has also served in the Texas House of Representatives since 2012. His primary focus has been on reforming the Department of Family and Protective Services, including improving efficiency and accountability in the Department. He has also focused on Health and

Human Services, including improvements to the state's Medicaid program and its health insurance delivery systems.

3.4 Sharp Iron Group and Transland, (along with Delta T Thermal Solutions) collectively employ over 150 professional craftsmen and women manufacturing products used across the globe. Sharp Iron (currently d/b/a Sharp Iron Manufacturing) is an ISO-certified contract manufacturer serving the aerospace, energy, medical, defense, and industrial sectors. Transland is the recognized standard in agricultural aviation equipment, used by more than half of worldwide agricultural aviation operators. As associated employers providing health insurance to its workforce, Sharp Iron and Transland are a paradigmatic example of the self-insured plan sponsor class that BCBSTX systematically overcharged.

#### **B. The Defendant**

3.5 Defendant BCBSTX is an insurance company licensed to do and doing business in the State of Texas, with its principal office located in Dallas County, Texas. BCBSTX is the largest health insurer in Texas, holding a dominant market share of 37% or more and serving millions of Texas residents through employer-sponsored, government-sponsored, and individual health benefit plans.

3.6 BCBSTX may be served with process by serving its registered agent for service of process: Corporation Service Company, 211 East 7th Street, Suite 620, Austin, Texas 78701.

### **IV. JURISDICTION AND VENUE**

#### **A. Jurisdiction**

4.1 This Court has subject-matter jurisdiction over this case under Article V, Section 8, of the Texas Constitution, and because the amount in controversy exceeds the minimum jurisdictional limits of this Court pursuant to Tex. Gov't Code Ann. §§ 24.007(b).

4.2 This case is appropriately filed in state court in Texas because this dispute does not arise under the Constitution, laws, or treaties of the United States — federal district courts therefore lack federal question jurisdiction under 28 U.S.C. § 1331. Further, because this suit arises from a dispute between Plaintiffs, Texas citizens, and Defendant, also a Texas citizen, federal district courts lack diversity jurisdiction under 28 U.S.C. § 1332.

4.3 This Court has personal jurisdiction over Defendant because BCBSTX is a Texas insurance company with its principal place of business located in Texas, continuously conducting substantial business in Texas, and because all or a substantial part of the wrongful acts and omissions giving rise to the claims asserted herein occurred in Texas.

**B. Venue**

4.4 Venue is proper in Dallas County, Texas under Section 15.002(a)(1) of the Texas Civil Practice & Remedies Code because Dallas County is where all or a substantial part of the events or omissions giving rise to this claim occurred.

4.5 Venue is also independently proper in Dallas County under Section 15.002(a)(3) of the Texas Civil Practice & Remedies Code because the principal office of BCBSTX, which is not a natural person, is located at 1001 W. Lookout Drive, Richardson, Texas 75082, in Dallas County, Texas.

**V. BACKGROUND FACTS**

**A. The Texas Health Insurance Market and PBMs**

5.1 Texas has millions of residents covered by health insurance. Self-insured employer plans provide health insurance coverage to approximately 20% of the state's population, through approximately 15,000–25,000 self-insured employers in Texas, ranging from mid-sized companies with 100 or more employees — like Sharp Iron — to large corporations. BCBSTX is the largest

health insurer in Texas, holding a dominant market share of 37% or more, and serves those plan sponsors as both insurer and administrator under comprehensive administrative services agreements.

5.2 A Pharmacy Benefit Manager (PBM) is a third-party administrator that acts as a "middleman" in the U.S. pharmaceutical supply chain, managing prescription drug benefits for insurers, employers, and unions. PBMs process drug claims, create pharmacy networks, maintain formularies, and negotiate rebates and discounts from drug manufacturers purportedly to reduce costs for plan sponsors.

### **B. BCBSTX's Vertical Integration with Its PBM Creates a Structural Conflict of Interest**

5.3 BCBSTX holds a direct and substantial ownership interest in Prime Therapeutics LLC & AllianceRx Walgreens Prime LLC, the PBM through which BCBSTX channels the prescription drug claims of its plan sponsors, including Sharp Iron and all Class members. BCBSTX is one of several Blue Cross Blue Shield plans that collectively own Prime Therapeutics LLC & AllianceRx Walgreens Prime LLC & AllianceRx Walgreens Prime. This vertical integration means BCBSTX profits on both ends of the prescription drug transaction: first, by charging plan sponsors based on gross drug costs, and second, by receiving and retaining manufacturer rebates paid back through Prime Therapeutics LLC & AllianceRx Walgreens Prime. This structural conflict of interest — ownership of the very PBM through which rebates are generated and paid — is the engine of the fraudulent scheme alleged herein.

5.4 The largest insurers' owned PBMs process approximately 85% of prescriptions in the State of Texas (BCBS/Prime Therapeutics LLC & AllianceRx Walgreens Prime LLC & AllianceRx Walgreens Prime, UnitedHealth/OptumRX, CVS/Caremark, Cigna/Express Scripts). Because BCBSTX and similarly situated insurers own the PBMs that process their plans' drug

claims, they possess complete, real-time visibility into the volume and value of manufacturer rebates generated by each plan sponsor's drug spend. This information asymmetry — BCBSTX knowing, and plan sponsors not knowing, the exact rebate amounts (or even that a rebate exists)— is what made the fraudulent concealment scheme possible and sustainable over multiple years.

### **C. BCBSTX's Scheme: Reporting Gross Costs, Concealing Net Costs**

5.5 At the heart of this case is a straightforward but devastating deception: BCBSTX reported prescription drug costs to plan sponsors — including Sharp Iron — using the **gross** amounts paid to PBMs, while deliberately omitting the substantial manufacturer rebates it received back from those same PBMs. The difference between the gross cost reported to plan sponsors and the net cost BCBSTX actually incurred — after accounting for rebates — is the financial injury at the center of this case.

5.6 BCBSTX used those inflated gross cost figures in at least three ways that directly and financially harmed plan sponsors:

- (a) Premium and administrative fee setting: BCBSTX calculated and charged premiums, administrative service fees, and stop-loss insurance premiums based on reported gross drug costs, without deducting the rebates it had already received or was contractually guaranteed to receive. Because rebates typically amount to 15–30% or more of gross drug spend, the cost basis used to set those charges was materially and systematically overstated.
- (b) Year-over-year compounding through claims history: Prior-year claims history plays a substantial role in setting premiums and stop-loss costs for self-insured plans. Because BCBSTX reported inflated gross costs in prior years, those inflated figures became the baseline for the following year's

cost projections, trend calculations, and fee negotiations. Each year of concealed rebates thus compounded the overcharge in subsequent years, creating a cascading financial harm to plan sponsors.

- (c) Stop-loss insurance pricing: Aggregate and specific stop-loss insurance premiums are directly linked to expected drug expenditure and claims history. By understating the true net cost through omission of rebates, BCBSTX caused plan sponsors to purchase stop-loss coverage calibrated to an inflated cost basis — resulting in stop-loss premiums higher than warranted by actual net drug expenditures.

5.7 In sum, plan sponsors like Sharp Iron were charged based on artificially high historic costs that did not reflect the net amounts BCBSTX actually incurred after receiving rebates. The overcharge was not limited to the rebate amounts themselves — it infected every downstream calculation and charge that BCBSTX based on that inflated cost data, compounding Plaintiffs' and Class members' financial injury across multiple plan years.

## **VI. CAUSES OF ACTION**

6.1 Plaintiffs brings suit under five causes of action: (A) conversion; (B) unjust enrichment; (C) fraud; (D) fraudulent concealment (pleaded both as an independent cause of action and as a tolling doctrine); (E) breach of fiduciary duty; and (F) violations of the Texas Deceptive Trade Practices Act ("DTPA"), Tex. Bus. & Com. Code §§ 17.41 et seq. Although Plaintiffs pleads breach of fiduciary duty by reference to duties arising under the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001 et seq., this action arises exclusively under Texas state law and is not preempted by ERISA because BCBSTX's conduct constitutes an insurance practice subject to the Texas savings clause, 29 U.S.C. § 1144(b)(2)(A), and because the claims asserted herein are independently actionable under Texas law without reference to ERISA.

## **A. Conversion**

6.2 Plaintiffs and all Class members assert a claim for conversion against BCBSTX. Conversion is the unauthorized and wrongful assumption and exercise of dominion and control over the personal property of another, to the exclusion of or inconsistently with the owner's rights. Under Texas law, a Plaintiff states a claim for conversion of money where the funds are specific, are capable of identification, and the defendant is obligated to return those specific funds. Here, BCBSTX received PBM rebates that were generated specifically from prescription drug transactions attributable to Plaintiffs' plan and its employees' pharmacy claims. Those rebates are identifiable, discrete funds that BCBSTX was contractually and equitably obligated to pass through to Plaintiffs as the self-insured employer that bore the underlying drug costs. Instead, BCBSTX wrongfully retained those funds for its own account, exercising dominion over money belonging to Plaintiffs. The amount of PBM rebates attributable to Plaintiffs' plan is determinable through BCBSTX's internal rebate accounting and its contracts with Prime Therapeutics LLC & AllianceRx Walgreens Prime LLC. BCBSTX's retention of these identifiable funds, without disclosure and without consent, constitutes common-law conversion under Texas law. Plaintiffs seeks actual damages in the amount of all rebates wrongfully retained, together with pre-judgment interest, costs of court, and all other relief to which Plaintiffs may be entitled.

## **B. Unjust Enrichment**

6.3 Plaintiffs and all Class members assert a claim for unjust enrichment against BCBSTX. Under Texas law, unjust enrichment occurs when a person obtains a benefit from another by fraud, duress, or the taking of undue advantage, and it would be unconscionable to permit the person receiving the benefit to retain it without paying for it.

6.4 BCBSTX obtained a massive and unjust benefit — hundreds of millions, and potentially billions, of dollars in PBM rebates — by systematically taking undue advantage of the information asymmetry it deliberately cultivated and maintained over Plaintiffs and Class members. Specifically:

- (a) BCBSTX possessed exclusive, real-time knowledge of the volume and value of the manufacturer rebates it received from Prime Therapeutics LLC & AllianceRx Walgreens Prime LLC on each plan sponsor's drug spend. This information was maintained in BCBSTX's internal accounting systems and its contracts with Prime Therapeutics LLC & AllianceRx Walgreens Prime and was never disclosed to plan sponsors in remittance reports, cost statements, renewal proposals, or administrative services agreements.
- (b) BCBSTX deliberately structured its cost reporting to present only gross prescription drug expenditures — the amounts paid to PBMs before rebates — thereby concealing from plan sponsors the fact that BCBSTX was simultaneously receiving substantial rebates that reduced its true net cost of administering the prescription drug benefit.
- (c) The rebates BCBSTX received were economically generated by and directly attributable to the prescription drug spend of Plaintiffs' and Class members' employees. Plaintiffs bore the full gross cost of those prescriptions through inflated premium and administrative fee calculations. BCBSTX was enriched at Plaintiffs' direct and measurable expense by retaining the spread between the gross costs it reported and the net costs it actually incurred.

- (d) The unjust enrichment was compounded across multiple plan years because inflated prior-year cost figures were carried forward as the baseline for successive years' premium calculations, stop-loss pricing, and trend adjustments. Each year of undisclosed rebate retention thus increased the cumulative unjust enrichment of BCBSTX at the expense of plan sponsors.

6.5 It would be unconscionable under Texas law for BCBSTX to retain the rebates it received while Plaintiffs and Class members were paying premiums and administrative charges calculated on an inflated, pre-rebate cost basis. BCBSTX had the means, the contractual authority, and the practical obligation — as the exclusive plan administrator with superior knowledge of all costs and all rebates — to ensure that plan sponsors were charged based on net drug costs. Its failure to do so, and its affirmative concealment of the rebates, renders its enrichment unjust as a matter of law and equity. Plaintiffs seek disgorgement of all amounts by which BCBSTX was unjustly enriched, including all PBM rebates attributable to the drug spend of Plaintiffs' and Class members' plans, together with pre-judgment interest, costs of court, and all other relief to which Plaintiffs may be justly entitled.

### **C. Fraud**

6.6 Plaintiffs and all Class members assert a claim for common-law fraud against BCBSTX. The elements of fraud under Texas law are: (1) the defendant made a material representation; (2) the representation was false; (3) when the representation was made, the defendant knew it was false or made it recklessly without any knowledge of the truth; (4) the defendant intended the Plaintiffs to act on the representation; (5) the Plaintiffs acted in reliance on the representation; and (6) the Plaintiffs suffered injury as a result.

1. **Material Representations**

6.7 BCBSTX made material representations to Plaintiffs and all Class members by reporting prescription drug benefit costs in plan cost statements, remittance reports, renewal proposals, and administrative fee invoices as though those figures represented the actual net amounts incurred by BCBSTX under the plans.

2. **Falsity of Material Representations**

6.8 BCBSTX made false material representations to Plaintiffs and all Class members by reporting prescription drug benefit costs in plan cost statements, remittance reports, renewal proposals, and administrative fee invoices as though those figures represented the actual net amounts incurred by BCBSTX under the plans. In fact, those figures represented only the gross amounts paid to PBMs before deducting the substantial manufacturer rebates that BCBSTX received back from Prime Therapeutics LLC & AllianceRx Walgreens Prime LLC and other affiliated PBMs. Rebates of this type typically amount to 15–30% or more of gross drug spend. BCBSTX presented these inflated gross figures to Plaintiffs and Class members annually, in written plan documents and renewal communications, as the factual basis for setting premiums, administrative service fees, and stop-loss insurance premiums. These representations were false because they omitted a material component of the true cost equation — the rebates — that BCBSTX had already received or was contractually guaranteed to receive at the time each representation was made.

3. **Knowledge of Falsity**

6.9 BCBSTX had actual, contemporaneous knowledge of the falsity of each cost representation at the time it was made. BCBSTX negotiated the rebate contracts with Prime Therapeutics LLC & AllianceRx Walgreens Prime LLC, received the rebate payments, and booked

those amounts as revenue in its own financial statements — all while issuing cost reports to plan sponsors that omitted rebate information entirely. BCBSTX's ownership interest in Prime Therapeutics LLC & AllianceRx Walgreens Prime LLC gave it direct and continuous visibility into rebate volumes and values at the plan-sponsor level. Because BCBSTX simultaneously reported gross costs to plan sponsors and received rebates through its owned PBM, no inference of mistake or negligence is available: these were calculated misstatements made with full knowledge of their falsity.

4. **Intent to Induce Reliance**

6.10 BCBSTX made these false cost representations with the specific intent to induce Plaintiffs and Class members to pay premiums, administrative fees, and stop-loss insurance costs calculated on an inflated and false cost basis. BCBSTX structured its reporting to present only gross costs — and omit net costs — because it understood that plan sponsors set their insurance budgets, evaluate the value of their coverage, and negotiate renewal terms based on the cost figures BCBSTX reported. By presenting inflated gross costs as the true and complete measure of plan expenditures, BCBSTX induced plan sponsors to accept higher charges without demanding rebate pass-throughs or independent audits.

5. **Justifiable Reliance**

6.11 Plaintiffs and Class members justifiably relied on BCBSTX's representations. As plan sponsors, Plaintiffs and Class members had no independent access to BCBSTX's PBM contracts, rebate payment records, or internal accounting systems. BCBSTX was the exclusive administrator of the prescription drug benefit and the sole source of drug cost information provided to plan sponsors. This information asymmetry placed Plaintiffs and Class members in a position of unavoidable and reasonable reliance on the cost data BCBSTX provided. In direct reliance on

BCBSTX's false representations, Plaintiffs and Class members paid excessive premiums, administrative fees, and stop-loss insurance premiums, each of which was calculated using inflated gross drug cost figures that excluded the rebates BCBSTX had already received or was guaranteed to receive.

## 6. **Damages**

6.12 As a direct and proximate result of the facts alleged as elements of fraud in Sections VI(C)(1-5) as stated above in Paragraphs 6.6-6.11, Plaintiffs and Class members suffered substantial economic damages in amounts to be proven at trial.

### **D. Fraudulent Concealment — Independent Cause of Action and Tolling Doctrine**

6.13 Plaintiffs and all Class members assert fraudulent concealment as an independent cause of action and, independently and in the alternative, as a doctrine that tolls the applicable statutes of limitations for all claims asserted herein. Under Texas law, the doctrine of fraudulent concealment tolls the running of limitations when a defendant conceals from the Plaintiff the facts that would give rise to a cause of action.

6.14 **The Core Wrong: Gross vs. Net Cost Reporting.** The central act of fraudulent concealment in this case is BCBSTX's deliberate and systematic practice of reporting prescription drug costs to plan sponsors using gross payout figures — the amounts paid to PBMs before manufacturer rebates — while simultaneously receiving and retaining those rebates without disclosure. This gross-cost reporting method was not a neutral accounting convention; it was an affirmative misrepresentation of economic reality. The true cost of the prescription drug benefit to BCBSTX was the net cost after rebates. By presenting only the gross cost to plan sponsors, BCBSTX concealed the actual net economics of the PBM relationship and used the inflated gross figure to support and justify higher premium charges, higher administrative fees, and higher stop-

loss premiums than would have been warranted by the true net cost. The difference between what BCBSTX reported (gross) and what BCBSTX actually incurred (net) is the measure of the fraudulent overcharge.

6.15 To establish fraudulent concealment, a Plaintiff must show: (1) the defendant had actual knowledge of the wrong; (2) the defendant had a fixed purpose to conceal the wrong or the facts giving rise to the cause of action; and (3) the Plaintiff reasonably relied on the concealment. All three elements are established here.

1. **Actual Knowledge.**

6.16 BCBSTX had actual, contemporaneous knowledge of the wrong it was perpetrating. BCBSTX: (a) negotiated and entered into rebate-sharing contracts with Prime Therapeutics LLC & AllianceRx Walgreens Prime LLC, its owned PBM, that entitled it to guaranteed minimum rebates and performance-based rebates on all prescription drug claims processed through Prime Therapeutics LLC & AllianceRx Walgreens Prime' networks; (b) received periodic rebate payments from Prime Therapeutics LLC & AllianceRx Walgreens Prime and recorded those amounts as revenue in BCBSTX's own financial systems; (c) simultaneously issued cost reports to plan sponsors that presented only the pre-rebate gross drug costs as the measure of plan expenditures; and (d) used those inflated gross figures as the factual predicate for setting premiums, administrative fees, and stop-loss costs that plan sponsors were required to pay. BCBSTX thus knew, at the moment it issued each cost statement and each renewal proposal, that the gross figure it was presenting overstated its true net cost by the amount of the rebates it had already received or was contractually entitled to receive. This is not a case of negligent omission; it is a case of affirmative, knowing misrepresentation.

2. **Fixed Purpose to Conceal.**

6.17 BCBSTX had and maintained a fixed purpose to conceal the existence and magnitude of PBM rebates from Plaintiffs and Class members, evidenced by its systematic and sustained practices over multiple years:

- (a) BCBSTX structured its remittance reports, plan cost summaries, and administrative services agreements to present only gross prescription drug expenditures, with no line item, footnote, or disclosure reflecting the rebates BCBSTX simultaneously received through Prime Therapeutics LLC & AllianceRx Walgreens Prime LLC.
- (b) BCBSTX's administrative services agreements with plan sponsors did not include rebate pass-through provisions, rebate disclosure obligations, or audit rights that would have allowed plan sponsors to independently verify the net drug costs BCBSTX actually incurred — despite the fact that BCBSTX possessed the contractual and technical capacity to include such provisions and was aware that doing so would have exposed the rebate retention scheme.
- (c) BCBSTX used the inflated gross cost figures — rather than the true net costs after rebates — as the basis for annual renewal proposals, cost trend analyses, and premium justifications presented to plan sponsors, ensuring that the concealment infected not only the current year's charges but also the historical baseline used in all future premium calculations.
- (d) BCBSTX did not disclose, in any plan document, renewal communication, or cost statement, its ownership interest in Prime Therapeutics LLC &

AllianceRx Walgreens Prime LLC, the magnitude of rebates it received through that PBM, or the fact that those rebates were not being factored into the cost figures used to set plan sponsor charges. This omission was not inadvertent; the financial incentive to conceal the rebate retention — which amounted to hundreds of millions of dollars across the class period — was itself the motive for the fixed purpose to conceal.

3. **Reasonable Reliance on the Concealment.**

6.18 Plaintiffs and Class members reasonably and necessarily relied on BCBSTX's concealment because BCBSTX was their exclusive plan administrator and the sole source of prescription drug cost information. Plaintiffs and Class members had no independent access to BCBSTX's PBM rebate contracts, rebate payment records, or internal accounting systems. BCBSTX was the only entity with visibility into the gross-versus-net cost differential, and it exploited that exclusive position to sustain the concealment over multiple years. A reasonable plan sponsor in Plaintiffs' position, reviewing BCBSTX's cost statements and renewal documents and receiving no disclosure of rebates, would have no basis upon which to suspect that the reported figures omitted a 15–30% rebate that BCBSTX was pocketing. Plaintiffs and Class members therefore reasonably relied on the completeness and accuracy of BCBSTX's cost representations, and that reliance was directly caused and sustained by BCBSTX's fixed purpose to conceal.

4. **Tolling of Limitations.**

6.19 By reason of BCBSTX's fraudulent concealment, the statute of limitations for all claims asserted herein was tolled and did not begin to run until Plaintiffs discovered — or in the exercise of reasonable diligence could have discovered — the facts giving rise to these claims. Plaintiffs did not know, and could not have known through the exercise of reasonable diligence,

that BCBSTX was receiving and retaining undisclosed PBM rebates and using inflated gross cost figures to set plan charges, until those facts became discoverable through investigation that could only be triggered by information not available to plan sponsors in the ordinary course of their administrative relationship with BCBSTX.

6.20 **Discovery Rule — Independent Tolling.** Independently and in the alternative, the discovery rule tolls the applicable statutes of limitations because the nature of BCBSTX's injury to Plaintiffs and Class members was inherently undiscoverable by the exercise of reasonable diligence. The injury — systematic suppression of rebate information buried within opaque plan cost reports and renewal documents — is, by design, not apparent from the face of those documents. No plan cost statement or administrative services agreement issued by BCBSTX contained information that would place a reasonable plan sponsor on notice that a material rebate was being withheld. The discovery rule tolling period runs from the date Plaintiffs first discovered, or in the exercise of reasonable diligence should have discovered, the facts giving rise to the claims herein, which was no earlier than the date of filing of this action.

#### **E. Breach of Fiduciary Duty**

6.21 Plaintiffs and all Class members assert a claim for breach of fiduciary duty against BCBSTX. Under Texas law, a fiduciary relationship arises informally when one party places special trust and confidence in another, who accepts that trust and undertakes a duty to act in the other's interest. BCBSTX's conduct also constitutes a violation of Texas Insurance Code § 541.060 and the duty of good faith and fair dealing implied in the insurer-insured relationship under Texas common law.

6.22 BCBSTX breached its fiduciary duties to Plaintiffs and Class members in multiple, independent respects: (a) BCBSTX failed to disclose its material conflicts of interest arising from

its direct ownership stake in Prime Therapeutics LLC & AllianceRx Walgreens Prime LLC, creating a financial incentive to maximize rebate retention rather than to pass savings through to plan sponsors; (b) BCBSTX breached its duty of loyalty by acting in its own financial interest at the direct and measurable expense of plan sponsors, retaining rebates that belonged economically to the plans; (c) BCBSTX breached its duty of full and fair disclosure by providing cost reports and renewal documents that omitted the existence and magnitude of PBM rebates and presented inflated gross cost figures as the true measure of plan expenditures; and (d) BCBSTX breached its duty of prudence by failing to structure its PBM arrangements to pass through to plan sponsors the full value of rebates generated by each sponsor's plan drug spend.

6.23 As a direct and proximate result of these breaches, Plaintiffs and Class members suffered substantial economic damages in amounts to be proven at trial.

#### **F. Violations of the Texas Deceptive Trade Practices Act**

6.24 Plaintiffs and all Class members assert claims against BCBSTX for violations of the Texas Deceptive Trade Practices Act ("DTPA"), Tex. Bus. & Com. Code §§ 17.41 et seq. Plaintiffs and Class members are "consumers" within the meaning of DTPA § 17.45(4) because they are entities who sought or acquired by purchase goods or services — namely, health insurance coverage and related plan administration services — from BCBSTX. BCBSTX is a "person" within the meaning of DTPA § 17.45(3). The health insurance and plan administration services provided by BCBSTX are "services" within the meaning of DTPA § 17.45(2).

6.25 Although DTPA § 17.49(a) exempts certain claims arising under insurance policies, BCBSTX's DTPA violations arise from its conduct as a plan administrator and service provider — not from the terms of any insurance policy — and specifically from BCBSTX's use of false, inflated gross cost data to determine and justify the administrative fees, stop-loss premiums, and

plan charges it collected from Plaintiffs and Class members. This conduct is distinct from any insurance contract obligation and falls outside the DTPA insurance exemption.

6.26 BCBSTX violated the DTPA in the following independent respects:

- (a) DTPA § 17.46(b)(5) — Misrepresentation of Characteristics or Benefits of Services: BCBSTX represented that its plan administration services included transparent, accurate, and complete cost reporting — specifically, that the drug cost figures it provided to plan sponsors represented the actual, net costs of administering the prescription drug benefit. In fact, those figures represented only gross costs and omitted the PBM rebates BCBSTX was simultaneously receiving and retaining. This misrepresentation of the nature and quality of BCBSTX's administrative services constitutes a per se DTPA violation.
- (b) DTPA § 17.46(b)(7) — Misrepresentation of Quality of Services: BCBSTX represented that its plan administration services were of the quality of transparent, cost-efficient, and plan-sponsor-aligned administration. In fact, BCBSTX's administration was structured to maximize its own financial benefit through undisclosed rebate retention, at the direct expense of plan sponsors. The quality represented — neutral, transparent, cost-minimizing administration — was false.
- (c) DTPA § 17.46(b)(12) — Misrepresentation of Agreement to Comply with Obligation: To the extent BCBSTX's administrative services agreements represented or implied that BCBSTX would account for and apply PBM rebates for the benefit of plan sponsors, BCBSTX had no intention of doing

so. BCBSTX entered those agreements with the pre-formed intent to retain rebates and conceal them from plan sponsors, rendering its representations concerning plan administration false at the time they were made.

- (d) DTPA § 17.45(5) and § 17.50(a)(3) — Unconscionable Action or Course of Action: BCBSTX's sustained, multi-year scheme of concealing PBM rebates while using inflated gross costs to justify higher charges to plan sponsors constitutes an unconscionable action or course of action within the meaning of the DTPA. BCBSTX exploited Plaintiffs' and Class members' lack of access to rebate information, their complete dependence on BCBSTX as the exclusive plan administrator, and the complexity of the PBM rebate marketplace, to impose charges grossly in excess of those that would have been imposed had the true net drug costs been disclosed. This exploitation was sustained over multiple years and across tens of thousands of plan sponsors, making it a particularly egregious course of unconscionable conduct.

6.27 BCBSTX's DTPA violations were committed knowingly and intentionally, as that term is defined by DTPA § 17.45(9), entitling Plaintiffs and Class members to recover up to three times their actual economic damages under DTPA § 17.50(b)(1).

6.28 Plaintiffs and Class members are also entitled to recover their reasonable and necessary attorneys' fees under DTPA § 17.50(d).

## **VII. CLASS ACTION ALLEGATIONS**

7.1 Plaintiffs makes the following class action allegations pursuant to Rule 42 of the Texas Rules of Civil Procedure.

## **A. Class Definition**

7.2 Plaintiffs Sharp Iron and Transland bring this action on behalf of themselves and a Class consisting of:

*All employers in Texas that procured health insurance or plan administration services from BCBSTX from March 1, 2006 to the present (the "Class Period").*

7.3 Excluded from the Class are: the Court and its employees; BCBSTX; any parent, subsidiary, or affiliate of BCBSTX; any entity in which BCBSTX has a controlling interest; and all employees, officers, and directors of BCBSTX who are or were employed by BCBSTX during the Class Period. Plaintiffs reserves the right to amend the Class definition prior to class certification.

7.4 Plaintiffs seeks to represent the Class for and damages and injunctive relief. Plaintiffs assert claims against BCBSTX individually and on behalf of all Class members for the violations of law alleged herein.

## **B. Numerosity**

7.5 The numerosity requirement of Texas Rule of Civil Procedure 42(a)(1) is satisfied. The proposed Class is so numerous and geographically dispersed that joinder of all members is impracticable. BCBSTX is the largest health insurer in Texas, with a dominant market share of 37% or more. There are estimated to be hundreds of thousands of Texas employers that purchased health insurance or plan administration services from BCBSTX during the Class Period, making the members of the Class so numerous that individual joinder is not feasible.

## **C. Commonality**

7.6 The commonality requirement of Texas Rule of Civil Procedure 42(a)(2) is satisfied because there are questions of law and fact common to all members of the Class, including:

- (a) Whether BCBSTX received manufacturer rebates from Prime Therapeutics LLC & AllianceRx Walgreens Prime LLC or other PBMs on prescription drug claims attributable to Class members' plans;
- (b) Whether BCBSTX reported gross prescription drug costs to Class members without disclosing or deducting the rebates it received;
- (c) Whether BCBSTX used inflated gross drug costs as the basis for setting premiums, administrative fees, and stop-loss insurance premiums charged to Class members;
- (d) Whether BCBSTX's conduct constitutes fraud, fraudulent concealment, unjust enrichment, conversion, breach of fiduciary duty, or violation of the DTPA under Texas law; and
- (e) The appropriate measure of damages and the proper method for calculating compensatory, consequential, and exemplary damages on a class-wide basis.

**D. Typicality**

7.7 The typicality requirement of Texas Rule of Civil Procedure 42(a)(3) is satisfied. Plaintiffs' claims arise from the same course of conduct by BCBSTX — the systematic reporting of gross drug costs without disclosing PBM rebates, and the use of those inflated figures to justify higher charges — and are based on the same legal theories as the claims of all Class members. All Class members have been the subject of Defendant's unfair and unlawful business practices as described herein. The relief sought is common, unitary, and class-wide in nature. The same material facts that BCBSTX withheld from Plaintiffs were withheld from all Class members. Plaintiffs seeks the same forms of relief as all other Class members. More specifically, Plaintiffs

Sharp Iron's claims are typical of the claims of members of the Class. Therefore, the "typicality" requirement of Texas Rule of Civil Procedure 42.01(a)(3) is satisfied.

#### **E. Adequacy**

7.8 The adequacy requirement of Texas Rule of Civil Procedure 42(a)(4) is satisfied. Plaintiffs' Chairman and CEO, James Frank, has recently become uniquely expert in health insurance delivery issues by virtue of his legislative service on Health and Human Services committees and his experience as the principal officer of a self-insured employer plan sponsor as alleged in Paragraph 3.2 above.

7.9 Plaintiffs are committed to the vigorous prosecution of this action and have retained competent counsel with extensive experience in complex and class action litigation. Plaintiffs have no conflicts with, and no interests antagonistic to, the interests of other members of the Class they seek to represent who have been damaged as a result of the conduct alleged herein.

#### **F. Predominance**

7.10 Moreover, this action meets the requirements of Texas Rule of Civil Procedure 42(b)(3). Common questions of law and fact, including those set forth above, exist as to all Class members' claims. Common questions of law and fact predominate over questions affecting only individual Class members.

7.11 Without limitation, as a result of Defendant's conduct alleged herein, Plaintiffs and members of the Class were: (a) injured; and (b) sustained pecuniary loss in an ascertainable amount to be proven at the time of trial. The proposed Class has a well-defined community of interest in the questions of fact and law to be litigated, including the liability issues, the relief issues, and the anticipated affirmative defenses.

### **G. Superiority and Manageability**

7.12 A class action is the superior — and, as a practical matter, the only — method for the fair and efficient adjudication of this controversy. Class treatment will permit large numbers of Texas employers similarly situated to prosecute their respective claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, and expense that numerous individual actions would produce. Class adjudication will conserve judicial resources and avoid the possibility of inconsistent rulings. Moreover, there are members of the Class who are unlikely to join or bring an action due to, among other reasons, their reluctance to sue Defendant and/or their inability to afford a separate action. Equity dictates that all persons who stand to benefit from the relief sought herein should be subject to the lawsuit and hence subject to an order spreading the costs of the litigation among the members of the Class in relationship to the benefits received. Even if the members of the class themselves could afford individual litigation, the court system could not. Individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and the court system presented by the complex legal and factual issues of the case. By contrast, the class action device presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

7.13 This action is manageable as a class action. Notice may be provided to members of the Class by first-class U.S. Mail and through alternative means, including publication. Texas law will apply uniformly to all proposed Class members. The superiority and manageability requirements of Texas Rule of Civil Procedure 42(b)(3) are satisfied.

## **H. Class Counsel**

7.14 Plaintiffs' counsel satisfies the requirements of Texas Rule of Civil Procedure 42(g) to serve as Class counsel. Plaintiffs' counsel has identified and thoroughly investigated the claims set forth herein, and are highly experienced in the management and litigation of complex class actions and health insurance litigation. Plaintiffs' counsel has extensive knowledge of the applicable law and possesses the resources necessary for vigorous prosecution of this action on behalf of Plaintiffs and all Class members.

## **VIII. DAMAGES SOUGHT**

### **A. Statement of Monetary Relief Sought**

8.1 Pursuant to Rule 47(c)(4) of the Texas Rules of Civil Procedure, Plaintiffs states that it seeks monetary relief over \$1,000,000.

### **B. Nature of Damages Sought**

8.2 Plaintiffs seeks the following categories of damages: (1) excessive premiums paid based on inflated gross drug costs; (2) repayment or disgorgement of PBM rebates retained by BCBSTX through unjust enrichment; (3) treble damages under the DTPA; and (4) exemplary damages.

#### **1. Excessive Premiums and Administrative Fees Paid**

8.3 Plaintiffs paid premiums, administrative service fees, and stop-loss insurance premiums that were higher than the amounts warranted by BCBSTX's true net drug costs, because those charges were calculated using gross drug cost figures that excluded the PBM rebates BCBSTX was simultaneously receiving and retaining. The overcharge compounded across multiple plan years as inflated prior-year costs were used as the baseline for successive premium

calculations. Plaintiffs seeks repayment of all excessive premiums and fees paid on an inflated cost basis, in amounts to be proven at trial.

**2. Disgorgement of PBM Rebates — Unjust Enrichment**

8.4 As a direct consequence of BCBSTX's scheme of receiving and retaining PBM rebates without disclosure or pass-through to plan sponsors, Plaintiffs seeks disgorgement of all rebates attributable to the prescription drug claims of Plaintiffs' and Class members' plans that BCBSTX received from Prime Therapeutics LLC & AllianceRx Walgreens Prime LLC or any other PBM and failed to pass through or account for to plan sponsors.

**3. Exemplary Damages**

8.5 The actions of Defendant BCBSTX constitute "fraud" within the meaning of Section 41.001(6) of the Texas Civil Practice and Remedies Code, and were specifically intended to cause substantial injury or harm to Plaintiffs Sharp Iron and all Class members, thereby constituting "malice" within the meaning of Section 41.001(7) of the Texas Civil Practice and Remedies Code. BCBSTX's fraudulent scheme was not a single transaction or inadvertent error; it was a systematic, multi-year course of conduct executed through deliberately designed cost-reporting practices that concealed hundreds of millions — if not billions — of dollars in PBM rebates from tens of thousands of Texas employers. BCBSTX acted with specific intent to deceive plan sponsors and to enrich itself at their expense, satisfying both the fraud and malice prongs of Section 41.003(a) of the Texas Civil Practice and Remedies Code and entitling Plaintiffs and Class members to recover exemplary damages in an amount sufficient to punish BCBSTX and to deter similar conduct in the future.

8.6 Plaintiffs Sharp Iron, individually and on behalf of all Class members, seeks the recovery of exemplary damages against Defendant BCBSTX under Section 41.003(a)(1) and (2) of the Texas Civil Practice and Remedies Code.

8.7 The statutory cap on exemplary damages otherwise provided by Section 41.008(b) of the Texas Civil Practice and Remedies Code is inapplicable here because BCBSTX's conduct constitutes felonies committed knowingly and intentionally, pursuant to Section 41.008(c)(10) and (11), as follows:

- (a) Misapplication of Fiduciary Property, Tex. Penal Code § 32.45: BCBSTX acted as a fiduciary with respect to plan funds and plan assets belonging to Plaintiffs and Class members. As plan administrator entrusted with those assets, BCBSTX was obligated to apply PBM rebates — which were generated by and attributable to the drug spend of plan participants — for the benefit of the plan and its participants. Instead, BCBSTX knowingly and intentionally misapplied those fiduciary funds by diverting them for its own enrichment, in a manner that involved substantial risk of financial loss to Plaintiffs and Class members. The value of the funds misapplied vastly exceeds \$300,000 in the aggregate, making this conduct a first-degree felony under Section 32.45 of the Texas Penal Code.
- (b) Fraudulent Securing of Document Execution, Tex. Penal Code § 32.46: BCBSTX knowingly and intentionally deceived Plaintiffs and Class members into executing and renewing administrative services agreements and health benefit plan documents by: (i) concealing the existence and magnitude of PBM rebates that BCBSTX was simultaneously receiving and

retaining; (ii) presenting cost data in renewal proposals that materially overstated actual net drug expenditures; and (iii) causing Plaintiffs and Class members to execute plan agreements and renewal documents under the false belief that the reported costs represented the true, net costs of the prescription drug benefit. But for BCBSTX's material misrepresentations and omissions, Plaintiffs and Class members would not have executed or renewed those agreements on the terms offered, or would have demanded that the agreements include express rebate pass-through and disclosure provisions. The value of the property obtained by deception in connection with those document executions exceeds \$300,000 in the aggregate, making this conduct a first-degree felony under Section 32.46 of the Texas Penal Code.

- (c) Accordingly, the exemplary damages cap of Section 41.008(b) does not apply, and Plaintiffs and Class members are entitled to recover exemplary damages in an amount determined by the jury to be just and appropriate.

8.8 Because BCBSTX's conduct is extreme and outrageous in its scope, its duration, and its deliberateness, a substantial judgment of exemplary damages is warranted. Plaintiffs intend to assign all exemplary damages recovered herein to its affected hard-working employees.

### **IX. DEMAND FOR JURY TRIAL**

9.1 Plaintiffs demand a jury trial under Texas Rule of Civil Procedure 216.

9.2 Plaintiffs are tendering the jury fee to the clerk of the court as required by Texas Rule of Civil Procedure 216.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that Defendant BCBSTX be cited to appear and answer herein, and that upon final hearing of this matter, the Court enter judgment in favor of Plaintiffs and the Class and against Defendant BCBSTX, and award to Plaintiffs and the Class:

- a) Actual damages, in an amount to be determined at trial.
- a) Exemplary damages.
- b) Prejudgment and post-judgment interest at the maximum rate allowed by law.
- c) Costs of court.
- d) Any other relief to which Plaintiffs and the Class may be justly entitled at law or in equity.

Dated: March 31, 2026.

Respectfully submitted,

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**ATTORNEYS FOR PLAINTIFFS SHARP IRON GROUP LLC,  
TEXAS TRANSLAND LLC AND THE PROPOSED CLASS**

### **Automated Certificate of eService**

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Cindy Wilson on behalf of Mikal Watts  
Bar No. 20981820  
cindy@wattslp.com  
Envelope ID: 113069706  
Filing Code Description: Original Petition  
Filing Description:  
Status as of 4/2/2026 1:36 PM CST

#### Case Contacts

<b>Name</b>	<b>BarNumber</b>	<b>Email</b>	<b>TimestampSubmitted</b>	<b>Status</b>
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