

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

TURNER BROTHERS, INC. d/b/a  
TURNER DRUGS CELEBRATION,  
1530 Celebration Blvd.  
Celebration, Florida 34747,

ADVANCING HEALTH ACCESS, INC.  
502 North Spring Garden Avenue, Suite 7  
Deland, Florida 32720

Plaintiffs,

-against-

UNITED STATES DEPARTMENT OF  
HEALTH AND HUMAN SERVICES,  
200 Independence Avenue, S.W.  
Washington, D.C. 20201,

MERCALIS INC. f/k/a  
TRIALCARD INCORPORATED,  
2250 Perimeter Park Drive, #300  
Morrisville, North Carolina 27560,

and

PHARMACY DATA MANAGEMENT, INC.,  
8530 Crossroads Drive  
Youngstown, Ohio 44514

Defendants.

Case No.:

**COMPLAINT FOR DAMAGES AND INJUNCTIVE RELIEF**

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Plaintiffs TURNER BROTHERS, INC. d/b/a TURNER DRUGS CELEBRATION (“Turner Drugs”) and ADVANCING HEALTH ACCESS, INC. (“Advancing Health”) allege as follows for their complaint against the UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES (“HHS”), MERCALIS INC., f/k/a TRIALCARD INCORPORATED (“Mercalis”), and PHARMACY DATA MANAGEMENT, INC (“PDMI”).

## NATURE OF ACTION

1. This is an action for breach of contract arising from the sudden termination of Turner Drugs from participation in the “Ready, Set, PrEP” program that Mercalis and PDMI administer on behalf of HHS. Turner Drugs is a party to a “Donation Agreement” among HHS, Health Mart Systems, Inc. (“Health Mart”), and pharmacies, like Turner Drugs, that participate in pharmacy networks established by Health Mart or its affiliates and have executed a Joinder Agreement to the Donation Agreement. The Donation Agreement sets forth the terms of the program and obligations of the parties. HHS retained Mercalis to administer the program under the terms of the Donation Agreement and, upon information and belief, Mercalis retained PDMI to process payments to the participating pharmacies.

2. The Ready, Set, PrEP program is a key element of the initiative announced by HHS in February 2019 to end the HIV epidemic in America by reducing the number of new HIV infections by 75% in five years and 90% in 10 years. See <https://www.hiv.gov/federal-response/ending-the-hiv-epidemic/overview>. Ready, Set, PrEP is a program designed to expand patient access to pre-exposure prophylaxis, or “PrEP,” which is the practice of prescribing drugs that prevent HIV infection in patients who are at substantial risk of acquiring the disease.

3. HHS contracted with Health Mart to distribute PrEP medications to eligible patients through Health Mart’s “participating pharmacies” pursuant to the Donation Agreement.

4. Turner Drugs is an in-house pharmacy for Advancing Health, a nonprofit 340B covered entity that has retained Continuous Care Center, LLC (“Continuous Care”) to operate free medical clinics treating HIV and other infectious diseases in Florida’s homeless and other underserved patient populations. The 340B program allows hospitals and other medical providers, including STD clinics such as those operated by Advancing Health, to purchase medications at

discounts from the manufacturer and be reimbursed by insurers or other payors at market prices. The difference (“340B income”) subsidizes these medical facilities to provide needed medical services to underserved communities.

5. There is an HIV epidemic in Florida’s homeless and poor communities. Continuous Care has partnered with Florida municipalities to help mitigate this epidemic through the treatment of HIV infected patients and the distribution of PrEP medication to those at risk for HIV infection but do not have insurance or other means to obtain the medication. As Advancing Health’s in-house 340B pharmacy, Turner Drugs retained Health Mart Atlas, LLC (“HMA”) as its Pharmacy Services Administrative Organization (“PSAO”), which allowed Turner Drugs to access the Ready, Set, PrEP program as a participating pharmacy under the Donation Agreement.

6. Even though Turner Drugs has scrupulously complied with the terms of the Donation Agreement, on Tuesday, March 12, 2024, Mercalis, PDMI, and, upon information and belief, HHS, suddenly terminated Turner Drugs from the Ready, Set, PrEP program without advance warning or written notification. Turner Drugs first learned of the termination because its requests for Ready, Set, PrEP prescription approvals were denied based on their “nonparticipation” in the program. Customer service representatives of Mercalis and PDMI could not explain why the termination had taken place. They also advised that \$3,148,378.46 payments owed to Turner Drugs for 1,488 previously approved Ready, Set, PrEP prescriptions would be withheld.

7. On March 14, 2024, PDMI’s Assistant General Counsel advised Turner Drugs  
Turner Drugs has been blocked due to suspicious activities. An audit on  
Turner Drugs [prescriptions] will be conducted.

*See, infra*, at ¶ 31 (quoting March 14, 2024 email).

8. Yet no attempt to explain these alleged “suspicious activities” was made. Turner Drugs responded by welcoming an audit, but explaining that unless the withheld payments were

released, neither it nor Advancing Health's free clinics could continue operating and almost 900 patients would be cut-off from their medication. Turner Drugs also explained that it had paid over \$1 million for medications that had been distributed to patients Mercalis had certified as eligible.

9. Over the next week, Turner Drugs attempted to negotiate an amicable resolution by, among other things, responding to the audit in only one day, offering to open its books and records to Defendants' representatives, and inviting such representatives to travel to Florida, at Turner Drugs' expense, to inspect the pharmacy and free clinics. Defendants have not accepted these offers and they have made no effort to avoid litigation by, for example, providing an estimate as to when the audit will be completed.

10. Yesterday, March 21, 2024, Mercalis' General Counsel advised:

We are working diligently to get to the bottom of this situation for the benefit of our client (HHS). We will need to await the results of the audit and full investigation before making any final decisions, but *for now the pharmacy will remain blocked with funds withheld. ... Any dispute about payment or nonpayment should be made to (and against) the HHS.*

*See, infra*, at ¶ 39 (quoting March 21, 2024 email) (emphasis added).

11. The Donation Agreement expressly provides that participating pharmacies may not be terminated without first receiving 40-days' notice and an opportunity to cure any alleged breach. Defendants have not provided any such notice. Defendants terminated Turner Drugs without making any attempt to comply with this unambiguous provision. And because Defendants know that Turner Drugs and the free clinics will be forced to start laying-off staff unless payment is released to cover payroll on March 28, 2024, Defendants appear to be acting in bad faith to force Turner Drugs and Advancing Health out of business.

12. In addition, because Turner Drugs has not been able to fill Ready, Set, PrEP prescriptions since March 12, 2024, its 900 patients, most of whom are homeless or otherwise at risk, currently do not have access to their medication. And unless the payments are released to

cover the March 28, 2024 payroll, Turner Drugs and the free clinics will be forced to stop operating, leaving thousands of Florida homeless patients without the PrEP medication they need to prevent a catastrophic spike in the HIV epidemic.

### **THE PARTIES**

13. Plaintiff Turner Brothers, Inc. d/b/a Turner Drugs Celebration (“Turner Drugs”) is a Florida corporation with its principal place of business in Florida.

14. Plaintiff Advancing Health Access, LLC (“Advancing Health”) is a Florida nonprofit corporation that owns Turner Drugs.

15. Defendant United States Department of Health and Human Services (“HHS”) is a cabinet level agency of the United States headquartered in Washington, D.C.

16. Defendant Mercalis Inc. f/k/a TrialCard Incorporated is a North Carolina corporation with its principal place of business in North Carolina.

17. Defendant Pharmacy Data Management, Inc. (“PDMI”) is an Ohio corporation with its principal place of business in Ohio.

### **JURISDICTION AND VENUE**

18. This Court has federal question subject matter jurisdiction under 28 U.S.C. § 1331 because this action seeks interpretation of a contract to which the United States, *i.e.*, HHS, is a party, *see, e.g., United States v. Anderson County*, 705 F.2d 184, 187 (6th Cir.), *cert. denied*, 464 U.S. 1017 (1983), and which provides for the exclusive jurisdiction of this Court, *see* Donation Agreement (Exhibit 1) at ¶ 15.

19. Venue is proper under 28 U.S.C. § 1393(b)(3) because there is no district in which an action may otherwise be brought as provided in 28 U.S.C. § 1393(b), and HHS is subject to the Court’s personal jurisdiction in this district.

## BACKGROUND

### **A. Turner Drugs is an In-house Pharmacy for Advancing Health’s Free Medical Clinics Serving Florida Homeless and Underserved Patients.**

20. Turner Drugs is an in-house pharmacy for Advancing Health, a Florida nonprofit corporation that is a covered entity under the 340B Drug Pricing Program operated by the United States Health Resources & Services Administration (“HRSA”), an operating division of HHS. The 340B Program provides subsidies to covered entities to serve eligible patient populations. Advancing Health has retained Continuous Care to operate medical clinics providing free services to homeless and underprivileged patient populations in Florida.

21. As Advancing Health’s in-house pharmacy, Turner Drugs is obligated to reimburse Advancing Health for the prepaid cost of medication distributed to the clinic’s patients and pay most its remaining 340B revenue to Continuous Care, which depends on that income to provide its services at no cost to the community and those patients most at risk. The clinics’ primary source of revenue is the 340B income from Advancing Health’s in-house and contract pharmacies, most of which comes from prescriptions written by the clinic’s medical providers and filled by Turner Drugs.

### **B. The Ready, Set, PrEP Program.**

22. Turner Drugs is a participating pharmacy in the Ready, Set, PrEP program that Mercalis (formerly known as TrialCard Incorporated) administers on behalf of HHS. *See* TrialCard Press Release dated December 22, 2021 (Exhibit 2) (HHS names TrialCard as prime contractor for Ready, Set, PrEP program). Upon information and belief, Mercalis retained PDMI as a subcontractor to process payments to participating pharmacies in the Ready, Set, PrEP program. The terms and conditions of the program are set forth in the Donation Agreement and annexed Joinder Agreement executed by Turner Drugs, which is annexed as Exhibit 1.



23. When a medical provider working for one of Advancing Health's free clinics prescribes PrEP to an eligible patient, the prescription is sent to Turner Drugs, which fills the prescription. Before doing so, Turner Drugs confirms that the patient meets the eligibility criteria for the Ready, Set, PrEP program and then obtains a specific approval from Mercalis to fill the prescription. In the few instances when Mercalis' telephone approval line is down, Turner Drugs obtains a specific approval from Mercalis upon the next refill of the prescription. The pharmacy then fills the prescription from its stock of medications, for which Advancing Health has already paid. Turner Drug then delivers the medication to the clinic, which distributes it to the patient. HMA expressly approved this procedure in a March 2022 email exchange annexed hereto as Exhibit 3.

24. PDMI then pays Turner Drugs through its PSAO, HMA, for approved and filled prescriptions approximately every two weeks. Before the pharmacies receive payment, however, they are obligated to purchase replacement medication from their pharmaceutical wholesaler, McKesson, Inc., at the 340B discounted price. Thus, Advancing Health must advance substantial resources for each Mercalis-approved prescription weeks before Turner Drugs receive payment for the prescriptions.

**C. Turner Drugs' Termination in Violation of the Donation Agreement.**

25. Under the Donation Agreement and the Joinder Agreement executed Turner Drugs, a participating pharmacy may be terminated in the event of a material breach of their obligations, but only if it fails to cure the breach within 40 days after receiving written notice:

Pharmacy, HHS or Health Mart may terminate this Joinder in the event of a material breach of the terms of the Pharmacy Donation Agreement by any other Party. Such termination shall be effective forty (40) calendar days after the non-breaching Party gives written notice of the material breach to the other Party specifying the breach, unless the breach has been cured before the end of the forty (40) calendar-day period.

Donation Agreement (Exhibit 1) at Exhibit A (Joinder Agreement).

26. Notwithstanding that express contractual provision, on Tuesday, March 12, 2023, Turner Drugs was suddenly, and without warning, terminated from filling Ready, Set, PrEP prescriptions. The Mercalis and PDMI customer service staff professed ignorance as to what had happened and, as set forth in the next section, Turner Drugs' efforts to find a compromise and avoid litigation failed.

27. In the meantime, PDMI is overdue in making payments of \$3,148,378.46 owed to Turner Drugs for 1,488 previously approved Ready, Set, PrEP prescriptions. *See* Spreadsheet (Exhibit 4). Advancing Health previously paid \$1,292,023.42 for the medication used to fill those prescriptions.

28. Unless PDMI releases these payments by next Thursday, March 28, 2024, Turner Drugs and Continuous Care will not be able to cover payroll, which will force them and Advancing Health's free clinics to continue operating.

**D. Turner Drugs' Efforts to Compromise to Avoid Litigation.**

29. In January 2023, two 340B contract pharmacies that filled prescriptions for the free clinics operated by Continuous Care were suddenly terminated under similar circumstances. Shortly after litigation was commenced, the parties reached a reasonable settlement. *See, infra*, at Background § E (describing litigation and settlement).

30. Accordingly, Turner Drugs initially expected to be able to negotiate a similar resolution to its termination without the need to commence litigation. On March 13, 2024, Turner Drugs' counsel sent the following email to the General Counsels of Mercalis and PDMI:

Yesterday, Turner Drugs' participation in the [Ready, Set, PrEP] program was abruptly, and without notice, interrupted in violation of the Donation Agreement. In addition, Turner Drugs did not receive a substantial payment

that was due two weeks ago and another substantial payment is due this Friday, March 15, 2024....

Could you please investigate and advise me when Turner Drug's participation in the program will resume? *Turner Drugs and its patients are being irreparably harmed every hour that its participation in the program remains interrupted....*

*... this situation appears similar to the one Kay Pharmacy and Luxe Health Pharmacy confronted in January 2023. The interruption of Turner's participation in the program may also be an error, which I hope can be corrected without litigation. I'm available at any time to discuss this matter.*

March 13, 2024 email (Exhibit 5) (emphasis added).

31. On March 14, 2024, PDMI's Associate Counsel sent the following email:

Turner Drugs has been *blocked due to suspicious activity*. An audit on Turner Drugs' claims will be conducted.

March 14, 2024 12:31 pm email (Exhibit 6) (emphasis added).

32. Despite the curt nature of this response, Turner Drugs welcomed an audit because such an audit played a central role in the settlement of the prior litigation with the two contract pharmacies. Turner Drugs responded:

*Turner Drugs welcomes an audit, but the payment suspension and interruption from program participation is unacceptable and violates the Donation Agreement. Your failure to specify the allegedly "suspicious activity" is also unreasonable.*

*Turner Drugs would agree to a reserve of 5% of the payments pending completion of the audit, but the remaining payments must be released, and program participation restored. Otherwise, Turner Drugs will seek emergency relief from the District Court for the District of Columbia.*

Please let me know if this is something we can amicably resolve before starting litigation. As I said, Turner Drugs and hundreds of patients are being irreparably harmed by this interruption.

March 14, 2024 1:12 pm email (Exhibit 7) (emphasis added).

33. The proposed reserve of 5% of the withheld payments tracked the prior settlement terms. *See, infra*, at Background § E. Unfortunately, PDMI rejected that proposal and again refused to specify any activity alleged to be suspicious with the following email:

We appreciate your client's perceived urgency, but this is a serious matter than needs serious attention. As HHS is Mercalis' (fka TrialCard) client, and PDMI is the processor for this program, it is our obligation to promptly report the unusual activity to HHS (which is a party to the Donation Agreement). *Given the scope of what we're seeing so far, it would not be in the government's best interest for us to release any funds without their specific approval.*

As to any allegation of violation of the Donation Agreement, neither PDMI nor Mercalis are a party to that agreement, and therefore cannot be in violation of such agreement.

*We will be in touch as soon as we hear back from HHS.*

March 14, 2024 3:13 pm email (Exhibit 8) (emphasis added).

34. While that email doesn't provide any specific information about the allegedly "suspicious activity," Turner Drugs interpreted the reference to "the scope of what we're seeing" as possibly referring to a significant increase in the volume of Ready, Set, PrEP prescriptions filled by Turner Drugs beginning in February 2024. That volume increase came about because Advancing Health only recently acquired Turner Drugs as its in-house pharmacy.

35. Prior to February 2024, the free clinics operated by Continuous Care received most of their 340B income from a contract pharmacy, Yvonne Enterprises, Inc. d/b/a Kay Pharmacy ("Kay Pharmacy"), one of the two pharmacies involved in the prior litigation with Mercalis, then known as TrialCard, and PDMI. In early 2023, HMA informed Kay Pharmacy that HMA could no longer function as Kay Pharmacy's PSAO, which would present obstacles for Kay Pharmacy to receive Ready, Set, PrEP payments because PDMI makes payments to participating pharmacies only through HMA. HMA explained that Kay Pharmacy had not done anything improper, but HMA's policies required its "participating pharmacies" to prescribe a wider variety of medication than Kay Pharmacy's practice would allow. Over the course of last year, HMA assisted Kay Pharmacy and Continuous Care find a solution, which ultimately was for Advancing Health to acquire Turner Drugs as its in-house pharmacy to take over Kay Pharmacy's role of filling Ready,

Set, PrEP prescriptions. Advancing Health's purchase of Turner Drugs closed on October 16, 2023, but because HMA continued to serve as Kay Pharmacy's PSAO for several more months, the transition to Turner Drugs did not occur until February 2024.

36. Accordingly, Turner Drugs responded to PDMI's email with that explanation:

Thank you for your message.... [W]e may understand the problem. If you recall, early last year Health Mart Atlas ("HMA") notified Kay Pharmacy that HMA would no longer act as Kay Pharmacy's PSAO, not because of any improper conduct but [for other reasons].... HMA worked with Kay Pharmacy, however, to extend the termination date until December 31, 2023 and to try to find a [solution].

[The solution was for] Advancing Health Access, Inc. [to] purchased Turner Drugs, an HMA pharmacy that was already a Ready, Set, PrEP participant.... The purpose of this acquisition was to permit Kay Pharmacy's patients to fill their prescriptions through Turner Drugs.

Accordingly, [in February], patients whose prescriptions were formerly filled through Kay Pharmacy started filling their prescriptions through Turner Drugs. If PDMI and Mercalis (f/k/a TrialCard) were unaware of that history, they may have considered Turner Drug's sudden increase in Ready, Set, PrEP prescriptions to be "suspicious." In fact, Turner Drugs is simply continuing to serve the same homeless and other vulnerable patient populations in Florida as Kay Pharmacy formerly did....

I hope this information helps resolve this situation and avoids the necessity of litigation. Could you please explain these circumstances to HHS and let us know when it expects to respond.

March 14, 2024 6:33 pm email (Exhibit 9) (emphasis added).

37. That should have been a complete and adequate explanation, especially considering the prior litigation with Kay Pharmacy described in the next section. Unfortunately, Defendants ignored that email and several follow-up emails until March 18, 2024 when Mercalis' General Counsel informed Turner Drugs that she was meeting with HHS to discuss the situation and would report on the following day. On March 19, 2024, she sent the following email:

*The meeting was productive, and the government is equally concerned by the activity we described, noting in particular that this volume is completely out of the norm of ANY other pharmacy in the program. Based on that*

*discussion, the hold will continue to remain in place and no funds paid pending both (a) passing of the audit AND (b) the OK by the government.*

If you and your client dispute this decision, I suggest you seek recourse under the Donation Agreement, to which we are not a party. Our client is the US Department of Health and Human Services, to which we owe a fiduciary obligation to protect their funds.

March 19, 2024 email (Exhibit 10) (emphasis added).

38. That left Turner Drugs with little choice other than to prepare this Complaint and an emergency motion for injunctive relief. Nevertheless, Turner Drugs responded with the following email in a further attempt to avoid litigation:

Unfortunately, Turner Drugs has no choice but to seek judicial relief, especially since there are no funds to cover payroll due next Thursday. Unless payment is received before then, layoffs will have to be made and the continued viability of the free clinics will be threatened.

*In the meantime, in the spirit of cooperation and compromise, Turner Drugs and Continuous Care, the company that operates the free clinics, invite you and/or representatives of Mercalis, Codoxo, PDMI, and HHS to visit the pharmacy and free clinics in Florida. They will cover travel expenses and will provide full cooperation in connection with a review of their procedures and records.*

March 20, 2024 email (Exhibit 11) (emphasis added).

39. On March 21, 2024, Mercalis' General Counsel responded with the following email, which led Turner Drugs to commence this lawsuit:

We are working diligently to get to the bottom of the situation for the benefit of our client (HHS). *We will need to await the results of the audit and full investigation before making any final decisions, but for now the pharmacy will remain blocked with funds withheld.*

As previously noted, Mercalis is not a party to the Donation Agreement – we are but a vendor to the government. HHS is our client and we have contractual obligations to HHS to ensure money is paid out in accordance with the rules we have been provided. Any dispute about payment or nonpayment should be made to (and against) the HHS.

March 21, 2024 email (Exhibit 12) (emphasis added).

**E. The Prior Litigation with Kay Pharmacy and Luxe Health Pharmacy.**

40. As noted above, the explanation that Turner Drugs is essentially a successor pharmacy to Kay Pharmacy should have been a complete and satisfactory answer to any concerns over the volume of Turner Drugs' Ready, Set, PrEP prescriptions. In January 2023, Mercalis, then known as TrialCard, and PDMI suddenly terminated Kay Pharmacy and another 340B contract pharmacy, Luxe Health, Inc. d/b/a Luxe Health Pharmacy ("Luxe Health Pharmacy"), also in direct violation of the Donation Agreement. At that time, PDMI withheld \$5,415,546.64 in payments due to those pharmacies. The pharmacies were forced to start a lawsuit in this Court and seek emergency injunctive relief. *See Yvonne Enterprises, et al. v. TrialCard, et al.*, 1:23-cv-175-RC (D.D.C.).

41. Before the Court had to rule on the motion for injunctive relief, however, the parties agreed to a settlement under which Kay Pharmacy and Luxe Health Pharmacy were immediately reinstated as participating pharmacies and \$4,645,191.09 of the withheld payments was released. The remaining overdue payment amount of \$770,355.55 was held pending an audit on 400 randomly selected prescriptions. That Settlement Agreement, which is not confidential, is annexed hereto as Exhibit 13. Significantly, the audit resulted in a finding that *all 400 prescriptions were valid Ready, Set, PrEP prescriptions delivered to eligible patients*. The remaining withheld funds, \$770,355.55, was therefore released.

**FIRST CAUSE OF ACTION  
(Breach of Contract)**

42. Turner Drugs and Advancing Health repeat the allegations set forth in paragraphs 1 through 41.

43. The Donation Agreement and Joinder Agreement executed by Turner Drugs constitute binding contracts between Turner Drugs, on one hand, and HHS, its assignee Mercalis,

and Mercalis's assignee, PDMI, on the other.

44. Turner Drugs has complied with all material terms of the Donation Agreements.

45. HHS, Mercalis, and PDMI have breached the Donations Agreements by:

- (i) Terminating Turner Drugs as participating pharmacies in the Ready, Set, PrEP program without written notice specifying a material breach and without providing them with 40 days to cure any such breach; and
- (ii) failing to make \$3,148,378.46 in overdue payments for Ready, Set, PrEP prescriptions that Mercalis previously approved and for which Advancing Health has already paid \$1,292,023.42.

46. Turner Drugs has incurred damages at least equal to the \$3,148,378.46 in payments being improperly withheld by PDMI for previously approved and already-paid-for prescriptions.

**SECOND CAUSE OF ACTION  
(Specific Performance -- Injunctive Relief)**

47. Turner Drugs and Advancing Health repeat the allegations set forth in paragraphs 1 through 46.

48. The stated purpose of the Donation Agreement is to assist HHS's initiative to end the HIV epidemic by expanding access to PrEP medications to at-risk patients who otherwise would not have access to them. Donation Agreement (Exhibit 1) at pp. 1-2 ("Recitals"). The work that Turner Drugs performs as the in-house pharmacy for 340B covered entity Advancing Health's free clinics contribute to that effort.

49. Turner Drugs is entitled to specific performance of Defendants' obligations under the Donation Agreement because the terms and conditions of the Donation Agreement are definite and certain and, without specific performance, Turner Drugs lacks an adequate legal remedy.

50. Indeed, unless HHS and Mercalis authorize PDMI to make the \$3,148,378.46 in payments owed to Turner Drugs and HHS and Mercalis reinstate Turner Drugs as a participating



pharmacy in the Ready, Set, PrEP program, Turner Drugs will not be able to continue operating and Advancing Health will be unable to continuing operating its free clinics serving Florida's homeless and other underserved populations. These dire consequences constitute irreparable injury not only to Turner Drugs, but to the thousands of homeless and poor patients who count on Advancing Health's free clinics to provide PrEP medication. Specific performance to avoid such irreparable injury is also consistent with the purpose and intent of the Donation Agreement.

51. Turner Drugs is entitled to preliminary injunctive relief and a temporary restraining order directing Defendants to stop withholding payments and to reinstate Turner Drugs as a participating pharmacy in the Ready, Set, PrEP program because:

- (i) There is a substantial likelihood that Turner Drugs will succeed on the claim for specific performance of the Donation Agreement;
- (ii) Injunctive relief is necessary to prevent irreparable harm;
- (iii) The injury to Turner Drugs outweighs any injury to Defendants; and
- (iv) The injunction would serve the public interest.

**THIRD CAUSE OF ACTION  
(Negligent Misrepresentation)**

52. Turner Drugs and Advancing Health repeat the allegations set forth in paragraphs 1 through 51.

53. Mercalis, acting on behalf of HHS, approved each Ready, Set, PrEP prescription filled by Turner Drugs before Turner Drugs filled the prescription and Advancing Health paid for the prescribed medication.

54. The approvals were made during business transactions between Mercalis acting on behalf of HHS, on one hand, and Turner Drugs acting on behalf of Advancing Health, on the other.

55. Turner Drugs and Advancing Health justifiably relied on the approvals from

Mercalis acting on behalf of HHS when Turner Drugs filled the prescriptions and Advancing Health advanced \$1,292,023.42 to pay for the prescriptions.

56. Advancing Health has incurred losses of at least \$1,292,023.42 by its justifiable reliance on the prescription approvals of Mercalis acting on behalf of HHS.

57. Mercalis acting on behalf of HHS failed to exercise reasonable care or competence in communicating the approvals.

### **PRAYER FOR RELIEF**

WHEREFORE Turner Drugs and Advancing Health demand judgment as follows:

- (i) Specific performance of the Donation Agreement requiring HHS and Mercalis to authorize PDMI to make all payments due to Turner Drugs and to reinstate Turner Drugs as a participating pharmacy in the Ready, Set, PrEP program;
- (ii) An award of damages in an amount to be proven at trial but at least equal to the total overdue payments owed to Turner Drugs;
- (iii) Pending final judgment, a Temporary Restraining Order and Preliminary Injunction requiring Defendants to make all payments due to Turner Drugs and to reinstate Turner Drugs as a participating pharmacy in the Ready, Set, PrEP program; and
- (iv) Costs, including reasonable legal fees and expenses, and such other legal and equitable relief as the Court may deem equitable and just.

### **JURY DEMAND**

Plaintiffs demand a jury.

Dated: March 22, 2024

Respectfully submitted,

THE GRIFFITH FIRM

*/s/Edward Griffith*

By: \_\_\_\_\_

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