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**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Lina M. Khan, Chairman**
 Rebecca Kelly Slaughter
 Alvaro Bedoya
 Melissa Holyoak
 Andrew N. Ferguson

In the Matter of

**Cooperativa De Farmacias
Puertorriqueñas**

Docket No. C-4374

PETITION TO REOPEN AND SET ASIDE OR MODIFY ORDER

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The following abbreviations and citation forms are used in this Petition:

Coopharma – Cooperativa de Farmacias Puertorriqueñas

COSSEC - Corporación para la Supervisión y Seguro de Cooperativas de Puerto Rico

Act 50 - General Cooperative Associations Act, replaced by Act 239

Act 239 - 2004 General Cooperative Associations Act of Puerto Rico, 5 L.P.R.A. § 4381 *et seq.*

Act 228 - 26 P.R. Laws §§ 3101-3108

NCPA – National Community Pharmacists Association

RUPRI - Rural Policy Research Institute

PUBLIC**CONCISE STATEMENT OF THE CASE****I. INTRODUCTION**

Cooperativa de Farmacias Puertorriqueñas (“Coopharma”) is currently a party to a Decision and Order, dated November 6, 2012 (the “Order”). We write to petition the Commission to reopen and set aside or modify the Order. As set forth below, there has been a significant change in the law. The Puerto Rico Legislature passed Act 228, which was signed into law by the Governor on December 15, 2015. Act 228 directly impacts the underlying conduct on which the Federal Trade Commission (“the Commission”) based its Complaint against, and Order directed to, Coopharma. The Commission has previously recognized that Act 228 is the appropriate vehicle pursuant to which health care provider cooperatives can conduct collective negotiations with third party payors, and there is now state oversight of such negotiations in place by a designated government body that has issued relevant regulations. Accordingly, in light of the change of law, factual and market changes and their impact on the public interest, and the Commission’s own rescission of prior guidance as to Pharmacy Benefit Managers (“PBMs”), the Order is unnecessary and inequitable. We, thus hereby, request that the Commission grant this Petition and reopen and set aside the Coopharma Order.

II. STATEMENT OF FACTS**A. Cooperatives In Puerto Rico And The Legal Framework**

It is important to understand the backdrop in which Coopharma operates, which is unique from other pharmacy groups or associations in the United States. Because Puerto Rico is a small economy, the Commonwealth encourages the development of non-profit business cooperatives. The Puerto Rican Cooperative Movement is a “socioeconomic system which pursues the enfranchisement of human beings and their integrated betterment through economic justice and

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social cooperation. A cooperative is an autonomous association of persons who have united voluntarily to address their common economic, social and cultural needs and aspirations through a jointly-owned and democratically controlled enterprise.”¹ Cooperatives are vital to fostering economic opportunity and the availability of services to consumers.² Since the first adoption of legislation governing the cooperative movement in 1946 in Puerto Rico, there have been hundreds of cooperatives created across the Island in almost every sector of the economy.³ And more recently, “[b]etween 2018 and 2022, the number of members in the Puerto Rican cooperative system increased by roughly 12 percent to more than 1.1 million individuals, and total assets, capital, deposits, and loans have risen by an even greater pace during that same period.”⁴

Puerto Rico has a rich history of creating small business cooperatives and the government has taken numerous actions to foster their development. In 1994, Puerto Rico enacted Act No. 50 (“Act 50”) known as the “General Cooperative Associations Act,” which the Legislature promulgated “to stimulate activities such as production and services through the cooperative structure and to govern ... cooperatives.”⁵ Subsequently, in 2004, the Legislature enacted the

¹ Statement of Motives, General Cooperative Associations Act of 2004, Act No. 239 at 2 (Sept. 1, 2004) (“Act 239”). “The members of such cooperatives exercise the decision-making power in equal standing, regardless of the amount of capital they have contributed.” *Id.* at 2.

² Affidavit of Heriberto Ortiz (“Ortiz Affidavit”), ¶ 5.

³ *Id.* ¶ 6.

⁴ *NCUA–COSSEC Partnership Will Strengthen Supervision of Cooperativas*, <https://ncua.gov/newsroom/press-release/2023/ncua-cossec-partnership-will-strengthen-supervision-cooperativas> (Apr. 2023).

⁵ Statement of Motives, Act No. 239 at 3 (Sept. 1, 2004).

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2004 General Cooperative Associations Act of Puerto Rico, 5 L.P.R.A. § 4381 et seq. (“Act 239”) repealing and replacing Act 50.

Act 239 articulates an unambiguous legislative intent to create and improve the legal framework in support of continued development of Puerto Rican cooperatives: “the Cooperative Movement constitutes an integral piece and a stronghold for the economic and social development of the Island, for which reason, the growth and the strengthening of the cooperative movement in Puerto Rico is highly invested with public interest.”⁶ In its efforts to further the growth of cooperative businesses, Act 239 allows for substantial contracting freedom and provides immunity from business conduct being viewed as restraints of trade.⁷

Puerto Rican law also provides a comprehensive framework for the regulation and oversight of cooperatives in Puerto Rico. Act 239, as amended by Act 247,⁸ provides the Corporación para la Supervisión y Seguro de Cooperativas de Puerto Rico (“COSSEC”),⁹ a regulatory body, with the authority to oversee, supervise and otherwise regulate the creation and operations of cooperatives. COSSEC is the main governmental entity created by the Legislature

⁶ *Id.*

⁷ 5 L.P.R.A. § 4516.

⁸ COSSEC replaced the functions of the Inspector of Cooperatives. *See* Puerto Rico Pharmacy Law, Act No. 247-2004, as amended.

⁹ For example, Act 239 requires regulation over the contents of cooperatives’ articles of incorporation and bylaw (§§ 4403 and 4404); the CDA must forward bylaws and articles of cooperatives to the Inspector of Cooperatives for review and approval (§§ 4415 and 4422); the Inspector of Cooperatives retains the right to reject creation of a cooperative (§4422); CDA has the right to dissolve cooperatives (§4555); the Inspector of Cooperatives is required to ensure that all cooperatives comply with the provisions of Act 239 (§4646); and, the Inspector must annually audit the operations of all cooperatives (§4647). Moreover, Act 239 allows for the direct transfer of goods and services between the government and Cooperatives, without a bidding process required for other third parties (§4528); and cooperatives are not required to pay rent for use of facilities in government offices or public corporations (§4528). *See generally* §§ 4645-4662, Office of the Inspector of Cooperatives.

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to regulate Puerto Rican cooperatives. COSSEC’s mission is to ensure “the integrity and financial strength of the Cooperative Movement of Puerto Rico, through monitoring and oversight . . . of all Cooperatives”¹⁰ and to “promote the safety, soundness and global competitiveness addressed to the socio-economic development of [Puerto Rico], through . . . ensuring balance and fairness . . . [in] the development of cooperation.”¹¹

B. Coopharma Background

Coopharma was formed in 2002 as a cooperative regulated under Act 239.¹² Coopharma was created for the purpose of fostering the growth of independent pharmacies.¹³ It enables small independent pharmacies to compete more effectively by achieving economies of scale and scope that the large chain pharmacies enjoy.¹⁴ Coopharma’s collaborative efforts provide for very efficient group purchasing, joint advertising, negotiation for goods and services, and provision of education services to members in order to improve pharmacy services to patients.¹⁵ Coopharma’s membership consists of approximately 500 independent pharmacies/independent pharmacy owners who typically employ approximately 5-10 individuals in their stores.¹⁶ Coopharma members are dispersed throughout 75 different towns across Puerto Rico. In most of

¹⁰ See “About Us” section of COSSEC’s website, http://www.cossec.com/cossec/det_content.asp?cn_id=802 (as translated to English).

¹¹ *Id.*

¹² Ortiz Affidavit ¶ 7.

¹³ *Id.* ¶ 8.

¹⁴ *Id.*

¹⁵ *Id.* ¶ 9.

¹⁶ *Id.* ¶ 10.

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these towns, large or chain pharmacies are not present, thus, the independent, local pharmacy is the only alternative for patients to be able to obtain their prescription medication and receive proper and timely counsel as to their medications.¹⁷

Coopharma is a cooperative in every sense of the word. It is a non-profit organization whose membership is entirely composed of community pharmacy owners.¹⁸ Unlike private entities in other Commission enforcement actions, Coopharma's concern is for the collective good, providing pharmacy access and lowering prices to patients.¹⁹ Coopharma was formed to address systemic problems in the Puerto Rican health care system, including expanding ready access to pharmaceutical care to thousands of individual across the Island, through collaboration and collective commitment, and pronounces this stated goal publically: "This Cooperative is organized with the following aims and purposes. . . Promote, use and maintain positive attitudes conducive to resolving together adverse situations that may arise in the purchase-sale of medicines, products, articles and services in the market."²⁰ Coopharma's activities have streamlined pharmacy integration services and provided collective vendor purchasing opportunities, thereby lowering operating and purchasing costs, which translates to more choice, more services and lower prices for consumers.²¹

¹⁷ Ortiz Affidavit ¶ 10.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* ¶ 12 (citing and appending Ex. 1, Coopharma Clauses of Incorporation, Art. II, §3).

²¹ *Id.* ¶ 13.

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C. **Coopharma’s Role In Helping To Alleviate Oppressive Conduct By Pharmacy Benefit Managers**

The Consent Order has limited the ability of many independent pharmacies across the Island to obtain favorable contracting terms, leading to many pharmacies being forced out of business.²² There are only a few pharmacy providers left.²³ As the Commission has recently recognized, PBMs often employ an arsenal of unfair tactics toward independent pharmacies.²⁴ *See also, U.S. Federal Trade Commission, Pharmacy Benefit Managers: The Powerful Middlemen Inflating Drug Costs and Squeezing Main Street Pharmacies, Interim Staff Report at 1* (July 2024) (the “Interim FTC Report”) (“PBMs also exert substantial influence over independent pharmacies, who struggle to navigate contractual terms imposed by PBMs that they find confusing, unfair, arbitrary, and harmful to their businesses.”). PBMs are much larger, more sophisticated business entities, which can overpower much smaller, independent pharmacies.²⁵ PBMs unfairly diminish reimbursement rates, reimburse below agreed upon rates, steer patients to affiliated pharmacies or mail order pharmacies located outside of Puerto Rico, marginalize the impact of pharmacy services, and impose onerous terms outside the context of negotiated contracts.²⁶ The Puerto Rican pharmacists who comprise Coopharma’s membership are working

²² Ortiz Affidavit ¶ 16.

²³ *Id.* ¶ 17.

²⁴ *Id.* ¶ 18.

²⁵ *Id.*

²⁶ *Id.*

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pharmacists and not sophisticated businessmen/women.²⁷ Often their knowledge of English is limited or rudimentary.²⁸ PBM contracts are long – often 50-60 pages (with accompanying provider manuals continuing over 100 page of additional requirements for pharmacies to adhere to for participation in the PBM’s network) – and are presented on a take it or leave it basis (as classic contracts of adhesion).²⁹ PBMs also often impose amendments on the same unilateral basis.³⁰ *See also*, Interim FTC Report at 3-4 (“Independent pharmacies generally lack the leverage to negotiate terms and rates when enrolling in PBMs’ pharmacy networks, and subsequently may face effectively unilateral changes in contract terms without meaningful choice and alternatives. The proliferation of complex and opaque contract terms and adjustments has increased uncertainty in pharmacy reimbursements, which can make it difficult for smaller pharmacies to manage basic business operations. For instance, the rates in PBM contracts with independent pharmacies often do not clearly reflect the amount the pharmacy will ultimately be paid.”)

The majority of Puerto Rican pharmacies, including Coopharma members, are set in rural locations with relatively unsophisticated sole proprietors who lack the knowledge and time to decipher these complex agreements.³¹ This makes Coopharma members, as independent

²⁷ Ortiz Affidavit ¶ 19.

²⁸ *Id.*

²⁹ *Id.* (citing *Rumbin v. Utica Mutual Ins. Co.*, 254 Conn. 259, 264 n. 6, 757 A.2d 526 (2000) (“Standardized contracts of insurance continue to be prime examples of contracts of adhesion, whose most salient feature is that they are not subject to the normal bargaining processes of ordinary contracts.”) (Internal quotation marks omitted)).

³⁰ *Id.*

³¹ *Id.* ¶ 20.

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pharmacies primarily located in rural areas of Puerto Rico, particularly vulnerable to PBMs' deceptive conduct and attempts to drive reimbursement rates below competitive levels.³²

Unfortunately, the Order has limited the ability of many of Coopharma's independent pharmacy members across the Island to obtain just contracting terms, leading to many pharmacies being forced out of business and the artificial inflation of prices for consumers.³³ Between 2016 and 2022, the approximate number of pharmacies in Puerto Rico decreased from 1,250 to approximately 900, a decrease of 28%.³⁴ As independent pharmacies located in rural areas make up the majority of Coopharma members, this should be quite alarming to the Commission, which recognizes that “[c]losures of local pharmacies affect not only small business owners and their employees, but also their patients. In some rural and medically underserved areas, local community pharmacies are the main healthcare option for Americans, who depend on them to get a flu shot, an EpiPen, or other lifesaving medicines.” Interim FTC Report at 1. Setting aside the Order would allow pro-competitive activity by Coopharma in the form of negotiations with PBMs overseen by COSSEC, pursuant to regulations that that body issues.³⁵

³² Ortiz Affidavit ¶ 20.

³³ *Id.* ¶ 21.

³⁴ See *Pharmacies – Puerto Rico*, STATISTA, <https://www.statista.com/outlook/hmo/pharmacies/puerto-rico#volume> (last accessed November 7, 2023).

³⁵ Ortiz Affidavit ¶ 25.

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Moreover, the Commission is very familiar with the tactics that PBMs use to undermine the competitiveness of independent pharmacies. The Commission's on-going 6(b) study of PBMs explicitly recognizes that:

The largest PBMs are now vertically integrated with the largest health insurance companies and wholly owned mail order and specialty pharmacies. Those who own competing pharmacies have complained that PBMs impose unfair fees and clawbacks, impose byzantine contracts that often reimburse pharmacies less than their costs of acquisition, and steer patients to PBM-owned pharmacies. PBMs have also been accused of harming patients by extracting rebates and fees in exchange for refusing to cover generic and biosimilar drug products, ultimately raising the price that consumers pay for medicines. Doctors have also complained that PBMs impose unnecessary and burdensome prior authorization and other administrative requirements.³⁶

The Complaint in this matter was based on assertions that the Commission believed to be true at the time that, because Coopharma described itself as the “biggest chain of pharmacies in all of Puerto Rico,” it therefore had significant market power to “force Humana to maintain rates.”³⁷ These market forces, whether true at the time of the Complaint or not, have since shifted with the significant vertical consolidation of the PBM industry. PBM's consolidation and increase in market power has been very publicly noted by the Commission and is described herein.

A 2023 health market study commissioned by the Office of the Insurance Commissioner of Puerto Rico showed that the Herfindahl–Hirschman index (HHI)³⁸ for private insurance

³⁶ *Statement of Chair Linda M. Kahn Regarding 6(b) Study of Pharmacy Benefit Managers*, Commission File No. P221200 (June 8, 2022).

³⁷ Complaint, Docket C-4374 ¶¶ 22, 34.

³⁸ DEP'T OF JUSTICE, *Herfindahl-Hirschman Index*, <https://www.justice.gov/atr/herfindahl-hirschman-index#:~:text=The%20term%20%E2%80%9CHHI%E2%80%9D%20means%20the,then%20summing%20the%20r>

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companies was deemed highly concentrated in Puerto Rico and ranged from 6,207 to 9,201 based on the different types of companies in that market.³⁹ It is important to note that over ninety percent (approximately 94.9%)⁴⁰ of the population of Puerto Rico is insured. The Island also has the highest Medicare Advantage plan penetration of U.S. and its jurisdictions, with 60% of Puerto Rican Medicare beneficiaries enrolled in Medicare Advantage plans.⁴¹

Since October 2022, only one PBM, Abarca Health (“Abarca”), provides services to the majority of this vast insured population in the Island under the Medicare health insurance plan called Plan Vital, which is managed by the Puerto Rico Health Insurance Administration (“PRHIA”), commonly referred to as Administración de Seguros de Salud (“ASES”) in

[esulting%20numbers](#) (last accessed June 20, 2024) (defining HHI as a commonly accepted measure of market concentration).

³⁹ See NOTICEL, *Insurance Commissioner Favors Collective Bargaining with Health Providers*, <https://www.noticel.com/ahora/gobierno/top-stories/20230307/comisionado-de-seguros-favorece-negociacion-colectiva-con-proveedores-de-salud/> (Mar. 7, 2023) (as translated to English) (citing Ramón J. Cao García, Ph.D & José J. Cao Alvira, Ph.D, *Un Estudio Económico de las Compañías de Seguros de Salud y sus Proveedores de Servicios para Identificar Posibles Enmiendas a la Regla Núm. 91 de la Oficina del Comisionado de Seguros de Puerto Rico, Estudio Comisionado por la Oficina del Comisionado de Seguros de Puerto Rico*, at 16 (2023)).

⁴⁰ UNITED STATES CENSUS BUREAU, *Result: Without Health Care Coverage in Puerto Rico (2022) is 5.1% (+/- 3%)*, <https://data.census.gov/all?q=health+insurance+puerto+rico> (last accessed June 20, 2024).

⁴¹ See KFF, Nancy Ochieng et al., *Medicare Advantage in 2023: Enrollment Update and Key Trends*, <https://www.kff.org/medicare/issue-brief/medicare-advantage-in-2023-enrollment-update-and-key-trends/> (Aug. 9, 2023) (interpreting data from CMS Medicare Advantage Enrollment Files and March Medicare Enrollment Dashboard, 2013 and 2023).

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Spanish).^{42, 43} This means that Abarca is the middleman between pharmacies, insurers, and customers/beneficiaries for the entire Puerto Rican Medicaid market, which is comprised of over 1.6 million of beneficiaries, or about 50% of the insured population in the Island.⁴⁴

Through Plan Vital, the same PBM provides management services for the second largest Medicare Advantage Organization (“MAO”).⁴⁵ Separately, Abarca has contracted with the

⁴² ABARCA, *Abarca selected as PBM for Vital — an ASES Medicaid program in Puerto Rico*, <https://www.abarcahealth.com/abarca-selected-as-pbm-for-vital-an-ases-medicaid-program-in-puerto-rico/> (Oct. 20, 2022). See also ASES, *Vital Beneficiary Manual*, <https://www.sssvital.com/wp-content/uploads/beneficiary-manual.pdf> (last accessed June 20, 2024); CMS, *Managed Care in Puerto Rico*, <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/delivery-systems/managed-care/downloads/puerto-rico-mcp.pdf> (last accessed June 20, 2024).

⁴³ Per its own admission, in an interview of Jason Borschow, CEO of Abarca Health, the largest PBM in Puerto Rico, on the HealthBiz Podcast with David E. Williams, dated March 17, 2022, Abarca controls approximately 70% of the PBM market and 100% of the State Medicaid Program market in Puerto Rico. See, Interview of Jason Borschow (March 17, 2022), available at <https://www.youtube.com/watch?v=iOD1fER3QgA>.

⁴⁴ ASES, *October 2023 Annual Report to Congress*, https://www.asespr.org/wp-content/uploads/2023/12/Puerto-Rico-2023-Annual-Report-to-Congress_Final.pdf at 7 (Oct. 2023).

⁴⁵ CMS, *Managed Care in Puerto Rico* at 2, <https://www.medicaid.gov/medicaid-chip-program-information/by-topics/delivery-systems/managed-care/downloads/puerto-rico-mcp.pdf> (stating, as of 2021, Plan Vital includes insurers Triple S, First Medical, MMM, and Plan de Salud Menonita). See also MMM, *MMM celebrates 20 years taking care of the health of more than 720,000 members*, <https://www.mmm-pr.com/mmm-celebra> (stating that it is the “leading health services plan in the Medicare Advantage sector in Puerto Rico” with 720,000 insureds) (last accessed June 20, 2024); FAEGRE DRINKER, *Anthem Acquires Puerto Rico-Based MMM Holdings and Affiliates*, <https://www.faegredrinker.com/en/services/experience/2021/6/anthem-acquires-puerto-ricobased-mmm-holdings-and-affiliates> (June 2021) (“MMM is the largest MA plan and the second-largest Medicaid plan in Puerto Rico, with a network that includes over a dozen offices and more than 10,000 health care providers across the island.”).

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largest private health insurance company^{46, 47} and manages the commercial plans for a third health insurer to the Island.⁴⁸ The Office of Monopolistic Affairs of the Puerto Rico Department of Justice is currently investigating Abarca for deceptive practices in its contract negotiations with independent pharmacies in Puerto Rico.⁴⁹

D. Consent Order.

By way of brief background, in August 2012, the Commission, via a Complaint against Coopharma, alleged a violation of Section 5 of the Federal Trade Commission Act, as amended,

⁴⁶ *Insurance Commissioner Favors Collective Bargaining with Health Providers*, <https://www.noticel.com/ahora/gobierno/top-stories/20230307/comisionado-de-seguros-favorece-negociacion-colectiva-con-proveedores-de-salud/> (as translated to English). The Commissioner said:

[The Study] found that the concentration of the market in Puerto Rico - both from the point of view of distribution of written premiums and distribution of subscribers - is not only high, but has been increasing over the past years. In the segment of medical plans in the commercial sector, it was found that a single company currently has 49.2% of the subscribers and two others make up 64.8% of the subscribers in Puerto Rico.

See also García & Alvira, *Un Estudio Económico de las Compañías de Seguros de Salud y sus Proveedores de Servicios*.

⁴⁷ TRIPLE-S MANAGEMENT, <https://management.grupotriples.com/en/our-companies/#:~:text=With%20more%20than%2060%20years,%2C%20commercial%2C%20and%20Medicaid%20markets> (stating company has “approximately 1,000,000 insured in their individual, commercial and Medicare markets”) (last accessed June 20, 2024). *See also* ABARCA, *Abarca renews, expands partnerships for pharmacy benefit services with Triple-S, CareFirst*, <https://www.abarcahealth.com/abarca-expands-two-bcbsa-plans/> (Sept. 30, 2021).

⁴⁸ PR NEWSWIRE, *First Medical Renews, Expands Partnership With Abarca For Pharmacy Benefit Services*, <https://www.prnewswire.com/news-releases/first-medical-renews-expands-partnership-with-abarca-for-pharmacy-benefit-services-301400686.html> (Oct. 14, 2021).

⁴⁹ *See* Department of Consumer Affairs Complaint No. SAN-2022-0012881, *Oficina de Asuntos Monopolísticos del Dept. de Justicia v. Abarca Health LLC*, <https://www.justicia.pr.gov/departamento-de-justicia-presenta-querella-practicadas-enganosas-contra-administrador-de-beneficios-de-farmacia/> (Jan. 26, 2023). At this time, the parties are litigating some procedural matters before the Supreme Court of Puerto Rico and Coopharma is an Amici Curiae in said matter, *see* Docket No. CC-2023-0773.

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15 U.S.C. § 45. More specifically, the Commission alleged that Coopharma acted to fix prices in negotiations with certain third-party payors, including collectively negotiating contracts and contracting jointly. In order to save the time, expense and burden of an Adjudicative Proceeding, Coopharma elected to enter into the Order.⁵⁰

The Order, in pertinent part, requires Coopharma to refrain from engaging in the following activities:

A. Entering into, adhering to, participating in, maintaining, organizing, implementing, enforcing, or otherwise facilitating any combination, conspiracy, agreement, or understanding between or among any Pharmacies with respect to the provision of Pharmacy services:

1. To negotiate on behalf of any Pharmacy with any Payer;
2. To refuse to deal or threaten to refuse to deal with any Payer, in furtherance of any conduct or agreement that is prohibited by any other provision of Paragraph II of this Order;
3. Regarding any term, condition, or requirement upon which any Pharmacy deals, or is willing to deal, with any Payer, including, but not limited to, price terms; or
4. Not to deal individually with any Payer, or not to deal with any Payer other than through Respondent;

B. Exchanging or facilitating in any manner the exchange or transfer of information among Pharmacies concerning any Pharmacy's willingness to deal with a Payer, or the terms or conditions, including price terms, on which the Pharmacy is willing to deal with a Payer;

C. Attempting to engage in any action prohibited by Paragraphs II.A through II.B above; and

⁵⁰ See *In the Matter of Cooperativa de Farmacias Puertorriqueñas ("Coopharma")*, Docket No. C-4374 (Decision and Order, November 6, 2012).

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D. Encouraging, suggesting, advising, pressuring, inducing, or attempting to induce any Person to engage in any action that would be prohibited by Paragraphs II.A through II.C above.⁵¹

The provisions of this Order prevent the above-listed actions for twenty (20) years, terminating on November 6, 2032.⁵²

III. OVERVIEW

RELIEF REQUESTED

For the reasons described below, Coopharma requests the following relief:

1. That the Order be set aside in its entirety;
2. Or, in the alternative, that the Order be amended to permit Coopharma to collectively negotiate contracts with PBMs and other third party payors consistent with Act 228.

If the preceding relief is not granted, Coopharma requests in the alternative such relief as the Commission may deem fitting and just.

COMMISSION STANDARD OF REVIEW

According to the FTC Act Section 5(b), 15 U.S.C. Sec. 45(b), the Commission may at any time “reopen and alter, modify, or set aside, in whole or in part any report or order made or issued by it under this section, whenever in the opinion of the Commission conditions of fact or of law have so changed as to require such action or if the public interest shall so require.” *Id.* In other words, under the FTC Act, the standard is that there must be a “significant change in law or fact”

⁵¹ *Id.* at Section II.

⁵² *Id.* at 6.

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that makes the order “unnecessary, inequitable, or harmful to the competition.”⁵³ Upon a petition or by the Commission’s own action, an order can be reopened and modified or set aside for: (1) changes in fact that matter to competition; (2) changes in law; and (3) the public interest.⁵⁴ Pursuant to FTC Rule 2.51(b), the necessary showing must include affidavits or declarations setting forth admissible facts.⁵⁵

To show that public interest requires a change to an existing Order, “the burden is on the petitioner to make a ‘satisfactory showing’ of a prima facie case that modification is in the public interest.”⁵⁶ Like modifications based on changed conditions, “this showing must be supported by evidence that is credible and reliable.”⁵⁷

ARGUMENT

I. THE CONSENT ORDER SHOULD BE SET ASIDE

A. Change In The Law Warrants Reopening And Setting Aside The Order

1. Act 228 – State Action Doctrine.

In 2015, three (3) years after the entry of the Order, the Puerto Rico Legislature passed Act 228, which became law on December 15, 2015, and is codified at 26 P.R. Laws §§ 3101-3108 (“Act 228”). The Legislature’s desire to pass Act 228 was heightened by its recognition that it

⁵³ FED. TRADE COMM’N, *Putting the Mod in Order Modification*, <https://www.ftc.gov/enforcement/competition-matters/2014/07/putting-mod-order-modification> (2014).

⁵⁴ *See In the Matter of: Toys R Us, Inc.*, 2014 WL 187460, at *11–12 (F.T.C. Jan. 13, 2014).

⁵⁵ 16 C.F.R. § 2.51(b).

⁵⁶ *Id.* at *12.

⁵⁷ *Id.* (citation omitted).

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was becoming increasingly more difficult for Health Care Provider Cooperatives across Puerto Rico, such as Coopharma, to obtain fair contracting terms with, often much larger, and more sophisticated payors.⁵⁸ Prior to the enactment of Act 228, certain activity conducted by Health Care Provider Cooperatives, such as Coopharma, was interpreted to fall under the jurisdiction of the Puerto Rico Insurance Code (“Act 203”).⁵⁹ Act 203 prohibits groups of health care competitors representing greater than 20% of said competitors across Puerto Rico from jointly negotiating for health care service contracts.⁶⁰ It is important to stress that Coopharma believed that it was acting under then-Article 20.5 of Act 239 when it engaged in conduct that allegedly violated Section 5 of the FTC Act and which activity is subject to the Order.⁶¹ Act 228 was enacted to clarify this and other issues of misinterpretation of existing laws regulating both health care providers and Health Service Provider Cooperatives and to set the record straight that the Puerto Rican Legislature intended for Act 239 to control negotiations by Health Service Provider Cooperatives.⁶²

⁵⁸ Statement of Motives, P. de la C. 2440 (“Act 228”) (as translated) at 2 (stating the Legislature passed the law “with the purpose of authorizing [Health Service Provider Cooperatives] . . . to negotiate collectively with Health Service Organizations (HSO) and Third Party Administrators (AT), so that there is a balance in the negotiations of these parties, since currently the contractual terms between these parties are imposed through adhesion contracts.”).

⁵⁹ *See id.* at 1-2 (as translated) (stating that it was “not envisaged” that Health Service Provider Cooperatives would be part of Law 203 because all cooperatives “were already regulated and supervised by specialized cooperative laws, such as Law 239-2004, as amended . . .”).

⁶⁰ *See Analysis of Agreement Containing Consent Order To Aid Public Comment to In the Matter of Coopharma*, File No. 101-0079 at 3-4 (Aug. 21, 2012) (explaining Law 203).

⁶¹ *See id.* at 4 n.5 (August 21, 2012) (The Commission is aware that Law 239, which regulates cooperatives generally, declared that cooperatives “shall not be considered conspiracies or cartels to restrict business.” 5 L.P.R.A. § 4516 (Law 239, § 20.5). The Commission and the Puerto Rico Department of Justice interpret Law 203 (which was passed after Law 239) to supersede Law 239.”).

⁶² *See* Statement of Motives, Act 228 (as translated) at 2.

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According to the Preamble of Act 228, Health Service Provider Cooperatives, which include cooperatives of pharmacies, such as Coopharma, were never meant to be “considered as an organized instrument to reduce competition of any kind, but rather to carry out lawful activities for the benefit of customers and other entities in the market.”⁶³ Thus, Act 228 explicitly called for such cooperatives to no longer be interpreted to be “included under the term of person in [Law 203], so [Health Service Provider Cooperatives] are specifically excluded from” Act 203.⁶⁴

Act 228 specifically recognized the need to amend Act 239 to implement additional language to “fully comply with the Doctrine of State Immunity” (also referred to as the State Action Doctrine), established in *Parker v. Brown*, 317 US 341 (1943) and its progeny.⁶⁵ Accordingly, Act 228 creates a specific State Action Doctrine framework that: (1) “allows health services providers to bargain collectively with [third-party payors]” by expressly articulating the antitrust exemption for Health Service Provider Cooperatives to collectively negotiate and (2) provides active supervision by Puerto Rico’s government agency in charge of cooperatives, COSSEC.⁶⁶

⁶³ Statement of Motives, Act 228 (as translated) at 2.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *See id.*; see also *California Retail Liquor Dealers Ass’n v. Midcal Aluminum, Inc.*, 445 US 97 (1980) (court established a two-prong standard test for a party to satisfy the State Action Doctrine: “the challenged restraint must be one ‘clearly articulated and affirmatively expressed as state policy’” and “the policy must be ‘actively supervised’ by the State itself”) (internal citation omitted).

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2. The COSSEC Letter.

As explained above, Act 239, as amended by Act 247, provides the Corporación para la Supervisión y Seguro de Cooperativas de Puerto Rico (“COSSEC”), a regulatory body, with the authority to oversee, supervise and otherwise regulate the creation and operations of cooperatives.⁶⁷ COSSEC is the main governmental entity created by the Legislature to regulate Puerto Rican cooperatives.⁶⁸ COSSEC’s mission is to ensure “the integrity and financial strength of the Cooperative Movement of Puerto Rico, through monitoring and oversight...of all Cooperatives” and to “promote the safety, soundness and global competitiveness addressed to the socio-economic development of [Puerto Rico], through . . . ensuring balance and fairness . . . [in] the development of cooperation.”⁶⁹

In support of its role in setting regulations and engaging in oversight of Coopharma and all other cooperatives in Puerto Rico, in particular after the change in law, COSSEC Executive President, Mabel Jiménez Miranda, signed an affidavit, dated April 4, 2024, which explains the role of COSSEC (referred to internally as the Corporation).⁷⁰ It states in pertinent part:

For the purpose of complying with the public policy of the Government of Puerto Rico, striking a balance in the negotiations between the HPCs, TAs and HSOs, and improving access and the quality of health care services to the patients of the Government of Puerto Rico, as well as exercising the oversight and supervision

⁶⁷ COSSEC replaced the functions of the Inspector of Cooperatives. *See* Puerto Rico Pharmacy Law, Act No. 247-2004 (“Act 247”), as amended.

⁶⁸ *See* Ortiz Affidavit, ¶ 24, appending Ex. 2, Certification of Mabel Jiménez Miranda (explaining the role of COSSEC as its Executive President).

⁶⁹ *See* “About Us” section of COSSEC’s website, http://www.cossec.com/cossec/det_content.asp?cn_id=802 (as translated).

⁷⁰ *See* Ex. 2 to Ortiz Affidavit, Cert. of Mabel Jiménez Miranda, Executive President of COSSEC.

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powers granted by Act No. 239, on February 5, 2020, the Board of Directors of THE CORPORATION **approved the Regulation for the Supervision and Oversight of Collective Negotiations between Health Care Provider Cooperatives (HPCs) Third-party Administrators (TAs) and Health Care Services Organizations (HSOs), Regulation No. 9161, in order to establish the supervision and oversight procedures of THE CORPORATION on the activities and actions of HPCs during any negotiation process with HSOs and TAs.**⁷¹

As shown by this affidavit, COSSEC's oversight over Coopharma is established and it has issued Regulation No. 9161 for the governance of the cooperative's actions in negotiating with PBMs. This change in law is a significant deviation from the legal scheme under which the Order was issued, and warrants reopening and review of the Order.

3. Regulation No. 9161 demonstrates that there is a regulatory scheme in place for COSSEC's active oversight of Coopharma.

The Order was based in part on the Commission's concerns that there was a lack of oversight such that the State Action Doctrine could not apply.⁷² The Order states that “[u]nder Law⁷³ 203, Puerto Rico has not clearly articulated a policy to displace competition with respect to Coopharma's challenged conduct. Moreover, Puerto Rico has not actively supervised that conduct under the state action doctrine.”⁷⁴

The “Purpose and Scope” of Regulation 9161 now in place provides that:

⁷¹ See Ex. 2 to Ortiz Affidavit at ¶ 5 (emphasis added).

⁷² *Analysis of Agreement Containing Consent Order to Aid Public Comment to In the Matter of Coopharma*, File No. 101-0079 at 3-4 (Aug. 21, 2012).

⁷³ Puerto Rican statutes may be referred to as Act or Law interchangeably.

⁷⁴ *In the Matter of Coopharma*, Docket C-4374, Complaint ¶ 47 (Nov. 7, 2012).

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In the exercise of its functions, COSSEC will ensure that, in and during the negotiation process, a balance permeates the negotiations between the parties, in such a way as to improve access and quality of health services to patients in the Government of Puerto Rico. Specifically, that the [Cooperatives of Health Service Providers] fully comply with all the requirements of the cooperative order and that promote the public policy of the Government of Puerto Rico for the benefit of the orderly development of cooperativism as a business model.⁷⁵

Moreover, the regulation provides for “controls and procedures to avoid” and provides COSSEC with the authority to “investigate and prosecute illicit practices under collective bargaining authorized by the Subchapter 20A of Act No. 239-2004, as amended.”⁷⁶ This language demonstrates the ways in which the promulgation of the regulation has shifted the analysis of the Commission when it initially brought the Complaint against Coopharma, and more recently, the analysis in which the Commission engaged in regard to a previous matter, *In the Matter of Cooperativa de Médicos Oftalmólogos de Puerto Rico*, File No. 141-014. In that “Analysis of Agreement Containing Consent Order to Aid Public Comment,” the Commission acknowledged the passage of Act 228 in Puerto Rico, but stated that “Puerto Rico has neither issued any regulations nor do we have any record to evaluate how Puerto Rico will supervise negotiations. Therefore, the Commission is unable to assess to whether Act 228 complies with state action requirements.”⁷⁷

⁷⁵ See “Regulations for the Supervision and Supervision of Collective Negotiations of the Cooperatives of Health Service Providers (CPSS) with Third Party Administrators (AT) and Health Service Organizations (HSO)”. No. 9161 at Art. IV (Feb. 13, 2020) (as translated to English).

⁷⁶ *Id.*

⁷⁷ See *Analysis of Agreement Containing Consent Order To Aid Public Comment to In the Matter of Cooperativa de Médicos Oftalmólogos de Puerto Rico*, File No. 141-0194 at 4 (Jan. 19, 2017).

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Here, it is clear from the language of the regulation that, not only is there a specific scheme and procedures in place for COSSEC to actively monitor and be engaged in the process of collective negotiations between Health Care Provider Cooperatives and third party payors, but also that COSSEC is actively overseeing such negotiations – namely, the type of negotiations in which Coopharma would engage with PBMs and third party payors. This comports with the standard set forth by the Supreme Court in *Federal Trade Commission v. Ticor Title Insurance Company*, to meet the active supervision prong (and, indeed, both prongs) of the *Midcal* test to qualify for state immunity from the Antitrust Act under the State Action Doctrine.⁷⁸ There is

⁷⁸ See *Federal Trade Commission v. Ticor Title Insurance Company*, 504 U.S. 621, 634 (1992) (stating that the active supervision prong of the *Midcal* test is met if state officials “have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy”) (citation omitted). See also *Morgan v. Div. of Liquor Control, Dep’t of Bus. Regul., State of Conn.*, 664 F.2d 353, 356 (2d Cir. 1981) (finding anticompetitive conduct immune from the Antitrust Act under the State Action Doctrine because the State of Connecticut structured “a detailed mechanism for determining prices for alcoholic beverages” which satisfied the active supervision requirement); *Destec Energy, Inc. v. S. California Gas Co.*, 5 F. Supp. 2d 433, 456 (S.D. Tex. 1997), *aff’d sub nom. Destec Energy v. S. California Gas Co.*, 172 F.3d 866 (5th Cir. 1999) (finding that a state entity which “agreed to modify long-term individually negotiated EOR contracts only upon a finding that the modification was necessitated by the ‘public interest’” satisfied the active supervision prong of the *Midcal* test because there is no requirement that a regulatory agency “must retain unfettered discretion” in order to meet the requirement). The court in *Destec* cited *Ticor* to explain that “the active supervision inquiry is intended to determine whether ‘the State has exercised sufficient independent judgment and control so that the details of the rates or prices have been established as a product of deliberate state intervention, not simply by agreement among private parties.’” *Destec*, 5 F. Supp. 2d at 457–58 (citing *Ticor*, 504 U.S. at 634-35).

Here, COSSEC’s broad and explicit authority to monitor negotiations and, therefore, pharmaceutical reimbursement prices and contracts, between healthcare cooperatives, third party administrators, and health service organizations and to identify illicit practices which do not comply with the law and state policy, as laid out in Regulation No. 9161, satisfies the *Midcal* requirement for active supervision. COSSEC explains that in order to promote the public policy of having functional healthcare cooperatives, it will ensure balance by overseeing negotiations between those cooperatives, third-party administrators, and health care services organizations, to improve the public’s access to quality healthcare services. See Ex. 2 to Ortiz Affidavit (COSSEC letter explaining its role as established by Act 239 and Regulation No. 9161). Compliance with the active supervision prong of the *Midcal* test is further shown because the regulation allows COSSEC to “investigate and prosecute illicit practices under collective bargaining authorized by the Subchapter 20A of Act No. 239-2004, as amended.” See Regulation No. 9161 at Art. IV (as translated to English).

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sufficient, active oversight because “a detailed structure governs the challenged anticompetitive conduct here.”⁷⁹

That detailed structure of COSSEC’s active oversight of all negotiations by healthcare cooperatives is clear from the language of Regulation No. 9161. Under the regulation, healthcare cooperatives *must* follow strict procedures and notify COSSEC of their intention to negotiate. *See* Reg. No. 9161 § 8.04. There are certain criteria for negotiations, including specific terms and conditions which may be negotiated and those which may not. *Id.* § 8.01. Just as in *Morgan v. Div. of Liquor Control, Dep’t of Bus. Regul., State of Conn.* and *Ports Auth. of Puerto Rico v. Compania Panamena de Aviacion (Copa), S.A.*, *see* footnotes 77 and 78, *supra*, this mandatory fee is set between \$3000 .00 and \$10,000.00 and funds the state supervisory process, thereby promoting state public policy goals. *Id.* § 8.02.

In addition to laying out this formula for fees, which alone could satisfy the active supervision prong of the *Midcal* test, the regulation creates a seven-member Supervisory Committee, which is comprised of representatives from the Department of Health, the Patient Ombudsman, health insurance companies, third-party administrators, cooperatives, an economist who is a certified actuary, and a COSSEC representative. *Id.* § 6.03. The committee is “activated” as soon as the healthcare cooperative notifies it that it intends to collectively negotiate. *Id.* The Supervisory Committee then oversees *every single negotiation* by being

⁷⁹ *Ports Auth. of Puerto Rico v. Compania Panamena de Aviacion (Copa), S.A.*, 77 F. Supp. 2d 227, 236 (D.P.R. 1999) (finding that a “detailed formula for annually adjusting” a Federal Inspection Service Facility fee satisfied the active supervision prong of the *Midcal* test).

Here, Puerto Rico’s Regulation No. 9161 provides for direct oversight by COSSEC over negotiations between healthcare players. This is arguably more stringent than issuing a formula annually, as a court nonetheless found sufficient to satisfy the active supervision prong under *Compania Panamena*.

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present when any negotiation is held and requiring the negotiating parties to write a detailed initial report, progress reports, and a final report. *Id.* § 8.07. The Supervisory Committee must approve *each report at all stages* before the next meeting to negotiate may be held. *Id.* § 8.08.

The regulation also outlines how the Supervisory Committee must evaluate the reports and how it should assess the final report to accept, deny, or request amendments to it. *Id.* § 8.08-8.09. The parties may be referred to COSSEC or the Department of Justice's Office of Monopolistic Affairs if they violate the regulation or engage in an unreasonable restriction on trade, to be prosecuted under Puerto Rico's Antitrust law, Act No. 77-1964. *Id.* § 6.01, 9.01-9.02. The regulation outlines the sanctions and penalties that a cooperative which is prosecuted could suffer for violations of the regulation. *Id.* § 9.04.

It is clear from the foregoing that the change in the law has altered the analysis of Coopharma's collective negotiation activity in a substantial and legally significant way. Any concerns that the Commission had about a lack of oversight are clearly addressed by Act 228 and Regulation No. 9161. Moreover, absent the relief requested, Coopharma will be left in the proverbial "competitive dust" of other similar entities across Puerto Rico. Those entities unaffiliated with Coopharma and, therefore, unbound by the Commission Order, can take advantage of the ability to collectively negotiate contracts with the same payors that Coopharma cannot. This inequity should now be rectified by further Commission action to set aside the Order.

4. Change to Commission Policy – Withdrawal of Previous Guidance on PBMs.

In addition to the change in law described above, the market dynamics concerning PBMs have shifted significantly since twelve (12) years ago when the Order was imposed. In 2012,

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there was a host of guidance, reports, studies and letters authored by the Commission in support of the supposed “procompetitive” impact of PBMs. The policy of such support for PBMs has since been overturned.⁸⁰ In her statement on the matter, Chair Khan said the following:

The FTC is now pursuing an inquiry into the PBM industry, one that is designed to capture and detail the current realities on the ground in this complex marketplace. While we finalize our market study, **we urge the public not to continue to cite or rely on these outdated comments, reports, and studies.**

It is important that the FTC’s work **reflect current market dynamics.** I am pleased that the FTC is alerting the public to the **risks of relying on earlier work based on outdated market conditions and assumptions.**⁸¹

This inquiry into the PBM industry by the Commission is in conjunction with increased state and federal government investigation into PBMs, spurred by independent reporting on the fact that there has been a substantial change in the healthcare/pharmaceutical and health insurance marketplace in the last 10 years.⁸² Such inquiries into the role of PBMs focus on PBM price-

⁸⁰ *Statement of Chair Lina M. Khan Regarding the Policy Statement Concerning Reliance on Prior PBM-Related Advocacy Statements and Reports*, <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/statement-chair-lina-m-khan-regarding-policy-statement-concerning-reliance-prior-pbm-related> (July 20, 2023).

⁸¹ *Id.* at 2 (emphasis added).

⁸² *See, e.g.*, NYS Committee on Investigations and Gov’t Operations, *Final Investigative Report: Pharmacy Benefit Managers in New York*, https://www.nysenate.gov/sites/default/files/article/attachment/final_investigatory_report_pharmacy_benefit_managers_in_new_york.pdf (May 31, 2019). The Committee determined that:

PBMs often employ controversial utilization and management tools to generate revenue for themselves in a way that is detrimental to health plan sponsors, patients, and pharmacies. Such practices include maximum allowable cost lists, direct and indirect remuneration fees, rebates, formularies, and most controversially, spread pricing. The Committee also found evidence that PBMs are undermining patient choice by forcing consumers to use their preferred distributors, which are predominantly their own retail and mail order operations.

Id. at 4-5 (internal citations omitted). *See also* Nat’l Assoc’n of Attys General, *A Bipartisan Coalition of 39 State Attorneys General Urge Congressional Action on Pharmacy Benefit Manager Reform*, <https://www.naag.org/press-releases/a-bipartisan-coalition-of-39-state-attorneys-general-urge-congressional-action-on-pharmacy-benefit->

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fixing schemes and their domineering position over independent pharmacies, which allow PBMs to force independent pharmacies into take-it-or-leave-it contracts designed to depress the competitive ability of independent pharmacies in comparison to PBM-affiliated pharmacies.^{83, 84}

B. The Order Should Be Modified Or Set Aside In The Public Interest

The “public interest” presumptively favors competition, and restraints on competition harm the public interest by depriving consumers of the benefits of competition including for example, lower prices, better products and increased innovation. A Commission order that restrains competition will be in the public interest only if, and to the extent that, the benefits of preventing or deterring relevant anticompetitive activity outweigh the losses to competition and

[manager-reform/](#) (Feb. 21, 2024); Erin Trish, PhD, Karen Van Nuys, PhD & Robert Popovian, PharmD, *U.S. Consumers Overpay for Generic Drugs*, <https://healthpolicy.usc.edu/research/u-s-consumers-overpay-for-generic-drugs/> (White Paper abstract states that “PBMs’ current practices—coupled with market distortions within the pharmaceutical supply chain—have inflated retail generic prices”); JACOBIN, H. Santoro, *Middlemen Are Profiting off the Broken US Pharma System*, <https://jacobin.com/2024/03/pharmacy-benefit-managers-drug-prices-congress> (Mar. 10, 2024) (Title excerpt: “Pharmacy benefit managers push expensive medications and slash drug reimbursement rates, pocketing the profits for themselves. Congress looked set to regulate these shadowy middlemen — but \$50 million in industry lobbying later, the effort has stalled.”).

⁸³ See, e.g., DEP’T OF JUSTICE, *Assistant Attorney General Jonathan Kanter Announces Task Force on Health Care Monopolies and Collusion*, <https://www.justice.gov/opa/pr/assistant-attorney-general-jonathan-kanter-announces-task-force-health-care-monopolies-and> (May 9, 2024); U.S. GOV’T ACCOUNTABILITY OFFICE REPORT TO CONGRESSIONAL REQUESTERS, *Selected States’ Regulation of Pharmacy Benefit Managers*, <https://www.gao.gov/assets/d24106898.pdf> (Mar. 2024) (stating that GAO conducted the study to review the legislation enacted by states in response to “certain PBM practices, such as PBMs retaining a share of the rebates and use of spread pricing,” because every U.S. State has “enacted at least one PBM- related law between 2017 and 2023”); NYS DEP’T OF FINANCIAL SERVS., *DFS Superintendent Adrienne A. Harris Proposes Pharmacy Benefit Manager Regulations to Strengthen Consumer Protections and Address Anti-Competitive Conduct*, https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202402061 (Feb. 6, 2024).

⁸⁴ See, also, Interim FTC Report at 53 (“our initial review of documents received thus far reveals that PBMs can have the ability and incentive to put downward pressure on reimbursement rates for rival, unaffiliated pharmacies—including to a degree that may be unsustainable for small, independent pharmacies.”).

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consumers cause by the restraint.⁸⁵ The Commission will set aside orders which “unnecessarily inhibit[] respondent[s] from engaging in conduct which, in and of itself....may, in certain circumstances, be procompetitive.”⁸⁶ For example, in Nestlé Holdings, the Commission granted a petition to modify an order, explaining:

holding [the petitioner] to the [strict terms of the order, as issued], with the resulting disruption to its operations and ability to compete, would likely diminish [its] competitive effectiveness. It is therefore in the public interest to make the change to enable [the petitioner] to continue to compete in the market without disruption of its operations.⁸⁷

And in Readers’ Digest Association, the Commission eliminated an order provision when “the costs that the [provision] imposes on respondent appear to outweigh any consumer benefits [that it] may confer.”⁸⁸ Similar logic compels modifying or setting aside the Order in this matter.

1. Puerto Rico’s historical/ubiquitous use of Cooperatives renders the setting aside or modifying of the Order a matter of public interest.

The public interest dictates that the Order be reopened and set aside. The Preamble to Act 228 states that its purpose is to authorize Health Service Provider Cooperatives to negotiate collectively with [third-party payors] to prevent the current system of imbalanced negotiations,

⁸⁵ FED. TRADE COMM’N, *Putting the Mod in Order Modification*, <https://www.ftc.gov/enforcement/competition-matters/2014/07/putting-mod-order-modification> (2014) (“The modification process helps keep Commission orders from doing more harm than good when conditions change, and as the public interest requires.”).

⁸⁶ *In the matter of Occidental Petroleum Corp.*, 101 F.T.C. 373, 1974 WL 175259, at *1. FTC Docket C-2492 (F.T.C. Mar, 9, 1983); *see also, e.g., In the matter of Removatron Int’l Corp., et al.*, 114 F.T.C. 715, 719, FTC Docket No. 9200 (F.T.C. 1991) (setting aside order provision when “continued application would be inequitable or harmful to competition”).

⁸⁷ *In the matter of Nestlé Holdings, Inc., et al.*, C-4082, 2005 WL 1786402, at *3 (F.T.C. July 15, 2005).

⁸⁸ *In the matter of the Readers’ Digest Ass’n*. No. C-2075, 102 F.T.C. 1268, 1971 WL 128725, at *2 (Sept. 30, 1983).

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resulting in contracts of adhesion. The Legislature stated that this was intended to “improve access and quality of health services to patients in the Commonwealth of Puerto Rico.”⁸⁹

Puerto Rico suffers from poor health care infrastructure and a rapidly declining health care workforce, rendering the delivery of health care in Puerto Rico severely compromised.⁹⁰ Between 2014 and 2015, approximately 900 physicians left the Island, reducing the number of critical care providers by nearly 36%.⁹¹ And, as a result, Puerto Ricans have fewer physicians than ever before and long wait-times when access health care.⁹² In fact, the Health Resources and Services Administration has deemed 72 of Puerto Rico’s 78 municipalities as medically underserved areas.⁹³ Clearly, the ability to negotiate fair contracts “to improve access and quality of health services to” Puerto Rico patients is vital to the Commonwealth of Puerto Rico. The current Order prevents Coopharma from negotiating lower costs for consumers with PBMs as well being able to provide improved quality pharmacy services desperately needed by the residents of Puerto Rico, which can only be gained through equitable reimbursement and fair treatment under contracts with PBMs.

⁸⁹ Statement of Motives, P. de la C. 2440 (“Act 228”) (as translated) at 2.

⁹⁰ See Ximena Benavides, *Disparate Health Care In Puerto Rico: A Battle Beyond Statehood*, 23 Univ. of Penn. J. of Law and Social Change 163, 175 (2020).

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Id.*

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2. The existence of independent pharmacies is threatened as PBMs have become more dominant in the last 10 years.

Pharmacy advocacy groups such as the National Community Pharmacists Association (“NCPA”) are sounding the alarm about the changing pharmaceutical market and the market power associated with independent pharmacists.⁹⁴ NCPA conducted a survey of 10,000 independent pharmacy owners and managers over 10 days in February 2024 and received 815 responses.⁹⁵ The conclusion NCPA has drawn from this survey, which was focused on negotiations with PBMs over rates for Medicare Part D, is that “[n]early a third of independent pharmacy owners may close their stores this year under pressure from plunging prescription reimbursements by big insurance plans and their pharmacy benefit managers.”⁹⁶ The CEO of the organization, B. Douglas Hoey, pharmacist, MBA, made clear that “[t]his is an emergency.”⁹⁷ Moreover, his conclusion was that “if Congress fails to act again, thousands of local pharmacies could be closed within months and millions of patients could be stranded without a pharmacy.”⁹⁸

In locations where there are very few providers, such as Puerto Rico, the impact of the profit margin growth for PBMs and significantly smaller profits for pharmacies is a dire issue indeed. Although Puerto Rico has a unique infrastructure, as described above, it is also akin to a

⁹⁴ NCPA, *Local Pharmacies on the Brink, New Survey Reveals*, <https://ncpa.org/newsroom/news-releases/2024/02/27/local-pharmacies-brink-new-survey-reveals> (Feb. 27, 2024).

⁹⁵ NCPA, *NCPA Report for February 2024 Survey of Independent Pharmacy Owners/Managers*, <https://ncpa.org/sites/default/files/2024-02/Feb2024-DIRsurvey.Exec%20Summary.pdf> (Feb. 2024).

⁹⁶ NCPA, *Local Pharmacies on the Brink, New Survey Reveals*, at 1 <https://ncpa.org/newsroom/news-releases/2024/02/27/local-pharmacies-brink-new-survey-reveals> (Feb. 27, 2024).

⁹⁷ *Id.*

⁹⁸ *Id.*

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rural location in the mainland United States. As early as 2016, the then-President and Executive Director of the Puerto Rico Community Pharmacies Association, Idalia Bonilla and Marylis Gavillán Cruz, respectively, drafted a letter to Senator Orrin Hatch, Member of the United States Senate’s Economic Development Task Force and Jose B. Carrión III, President of Puerto Rico’s Financial Oversight and Management Board, to express interest in providing assistance to the Task Force in identifying “ways and means of providing Puerto Rico equitable access to federal health care programs.”⁹⁹ Bonilla and Cruz stated that community pharmacies, which are “characterized by mainly and efficiently serving the beneficiaries of the public health programs,” have seen their ability to continue operations “greatly affected” by, among other causes, “the unjust practices” of PBMs.¹⁰⁰ They articulated that “PBMs’ unjust practices have created local and global concerns, as they directly and significantly increase the cost of medications.”¹⁰¹

An analysis by the Rural Policy Research Institute (“RUPRI”) Center for Rural Health Policy analysis of data collected by the National Council for Prescription Drug Programs on pharmacies in the United States from 2003 to 2021 supports the conclusion that PBMs have been harmful to independent, and particularly rural, pharmacies.¹⁰² RUPRI concluded that “[b]etween 2003 and 2021, the number of independently owned retail pharmacies declined in noncore areas

⁹⁹ Oct. 24, 2016 Letter to Sen. Orrin Hatch and Jose B. Carrión III, [https://www.finance.senate.gov/imo/media/doc/Puerto%20Rico%20Community%20Pharmacies%20Association%20\(Late%20-%20Submission%201\).pdf](https://www.finance.senate.gov/imo/media/doc/Puerto%20Rico%20Community%20Pharmacies%20Association%20(Late%20-%20Submission%201).pdf) (Oct. 24, 2016).

¹⁰⁰ *Id.* at 2.

¹⁰¹ *Id.*

¹⁰² RURAL HEALTH RESEARCH GATEWAY, *Research Alert: Sept. 1, 2022*, <https://www.ruralhealthresearch.org/alerts/504#:~:text=Between%202003%20and%202021%2C%20the,percent%20during%20the%20same%20period> (last accessed June 19, 2024).

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by 16.1 percent, and in micropolitan areas by 9.1 percent, while the number in metropolitan areas increased by 28.2 percent during the same period.”¹⁰³

Moreover, government entities at both the state and federal levels, including the Commission, the Centers for Medicare and Medicaid, and Congress, have recognized the shift in market status/market share for PBMs and the oversized impact and bargaining power they wield, as well as recognizing the increases in consumer pricing resulting from it.¹⁰⁴ Absent the relief requested herein, the inability of Coopharma to negotiate for fair and reasonable contract terms on behalf of its small, independent pharmacy members will lead to the very real possibility of more independent pharmacy closures. This will further diminish the ability of Coopharma’s customers to readily access needed health care services.

3. The Commission has previously recognized that absent the ability to negotiate, an entity without market power cannot compete.

The Commission’s own precedent supports taking action to reopen and set aside the Order in this case. In *In Re Toys ‘R Us*, the Commission amended an Order based on

¹⁰³ RUPRI CENTER FOR RURAL HEALTH POLICY ANALYSIS, *Update on Rural Independently Owned Pharmacy Closures in the United States, 2003-2021*, <https://rupri.public-health.uiowa.edu/publications/policybriefs/2022/Independent%20Pharmacy%20Closures.pdf> (last accessed June 19, 2024).

¹⁰⁴ See notes 78 and 79, *supra*. See also “Letter to Pharmacy Benefit Managers, Medicare Part D Plans, Medicaid Managed Care Plans, and Private Insurance Plans,” <https://www.cms.gov/newsroom/fact-sheets/cms-letter-plans-and-pharmacy-benefit-managers> (Dec. 13, 2023); see also, Sens. Wyden, Crapo Call for Swift Passage of Bipartisan PBM Reforms, <https://www.finance.senate.gov/chairmans-news/wyden-crapo-call-for-swift-passage-of-bipartisan-pbm-reforms> (Mar. 14, 2024).

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recognizing a shift in market circumstances and bargaining power for the toy seller.¹⁰⁵ In pertinent part, the Commission found that:

TRU had market power as a buyer and distributor of toys. TRU has demonstrated that it no longer has market power as a buyer of toys. Walmart and Target have overtaken TRU in competitive strength and market share. TRU has submitted data showing that TRU's loss of competitive position is consistent across product categories.¹⁰⁶

Moreover, it changed the record keeping requirements based on a recognition of the "changes in market conditions."¹⁰⁷ As with that matter, the prohibited conduct here "unnecessarily inhibits respondent from engaging in conduct which, in and of itself, is innocuous and may, in certain circumstances, be procompetitive."¹⁰⁸

Further, the Commission has granted petitions to set aside or modify orders where such orders impose a competitive disadvantages on firms that impairs their ability to offer full, vigorous competition. For example, in the matter regarding *Pendleton Woolen Mills, Inc.*, the Commission reopened and modified an order that put the respondent at a "at a substantial disadvantage" with respect to its competitors who were not subject to the prohibitions on otherwise lawful conduct that was proscribed by the order.¹⁰⁹ And, in the *Onkyo U.S.A. Corp.* matter, the Commission modified an order when, as a result of the objectionable provisions, the

¹⁰⁵ *In Re Toys 'R Us*, Petition to Modify Order, FTC File No. 131-0052, Docket C-4405, at 4, located at <https://www.ftc.gov/sites/default/files/documents/cases/140109toysruspetition.pdf> (Jan. 3, 2014).

¹⁰⁶ *In Re Toys 'R Us*, Modified Order, FTC File No. 131-0052, Docket C-4405, at 4, located at <https://www.ftc.gov/system/files/documents/cases/140415toysrusorder.pdf> (Apr. 11, 2014).

¹⁰⁷ *Id.* at 4.

¹⁰⁸ *See In the Matter of Occidental Petroleum Corp.*, 101 F.T.C. 373, 1974 WL 175259, at *1.

¹⁰⁹ *In the Matter of Pendleton Woolen Mills, Inc.*, 122 F.T.C. 267, 270, FTC Docket No. C-2985 (1996).

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respondent was unable to operate its business as effectively as its competitors and was “thus competitively disadvantaged in a manner that was not contemplated when the order was issued by the Commission.”¹¹⁰

Additionally, the Commission has modified and set aside orders where the order imposes restrictions to that party that are not imposed on other members of the industry, creating a competitive disadvantage. For example, in the *Nat'l Fire Hose Corp* matter, the Commission recognized that “an order should be modified or vacated if changed circumstances of fact or law place a party to the order under restrictions not applicable to other members of the industry. Fairness and the public interest require that the Commission apply its policies consistently and uniformly among all the members of the industry.”¹¹¹ Where every other Health Care Provider Cooperative in Puerto Rico can take advantage of collective negotiations with third party payors pursuant to Act 228, including *Cooperativa de Médicos Oftalmólogos de Puerto Rico*, which is still under a separate Commission Order, Coopharma’s inability to do so is at a competitive disadvantage, both in terms of its position with other Health Care Provider Cooperatives and with its bargaining position with third party payors. This is directly in line with Commission precedent for reopening and setting aside an Order. Third party payors are currently able to take advantage of Coopharma and its members through low reimbursement rates and other conduct that Coopharma, at the moment, is unable to renegotiate to establish fairer terms for its independent pharmacy members. If allowed, these negotiations would, in turn, translate to benefits to consumers. Thus, the Order should be set aside.

¹¹⁰ *In the Matter of Onkyo U.S.A. Corp.*, 122 F.T.C. 325, 326. FTC Docket No. C-3092 (1996).

¹¹¹ *In the Matter of Nat'l Fire Hose Corp.*, No. C-2935, 1978 WL 206076, at *10 (F.T.C. Nov. 1, 1978).

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CONCLUSION

The legal, factual, and market changes described herein are sufficient to meet the Commission's standard to reopen and modify or set aside the Order. First, as stated above, the significant change in law with the enactment of Act 228, in and of itself warrants a modification of the Order. While the Commission recognized, at the time of the Complaint, the applicability of the State Action Doctrine, which Coopharma whole-heartedly believed applied to its conduct given the regulatory scheme of Act 239 and the oversight of cooperative activities by COSSEC,¹¹² the Commission ultimately concluded that Coopharma's activities did not qualify for State Action immunity.¹¹³ However, the Commission cannot now deny the clear establishment of State Action immunity imposed by Act 228, which allows Health Care Provider Cooperatives the benefit of engaging in collective negotiations with third-party payors, coupled with a specific regulatory scheme and COSSEC's direct, active oversight over the exact conduct which underlies the Order. The State Action Doctrine provides that with this State oversight and the regulations that are currently in place, Health Care Provider Cooperative negotiations in

¹¹² See n. 8, *supra*.

¹¹³ See *Analysis of Agreement Containing Consent Order To Aid Public Comment to In the Matter of Coopharma*, File No. 101-0079 at 4 (August 21, 2012). It should also be noted that the Commission has recognized the enactment of and applicable of Act 228 "when negotiating with any Payor in compliance with Act 228." See *In the Matter of Cooperativa de Médicos Oftalmólogos de Puerto Rico*, No. C-4603 at 4 (Decision and Order, Mar. 3, 2017).

Moreover, Act 228 covers all of the conduct which is addressed in the Order, and, in fact goes further than the Order in prohibiting specific conduct. By way of specific example, 26 P.R. Laws § 3107 explicitly states that any "threats to boycott, go on strike or other coordinated action by the providers shall be subject to oversight by the Antitrust Affairs Office of the Department of Justice, in order to determine whether the same is in violation of the provisions of this chapter or the Antitrust Act." The section further authorizes the imposition of civil and/or criminal liability on any Health Care Cooperative engaged in such conduct.

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Puerto Rico are State-sanctioned and, therefore, shielded from the Commission's scrutiny that they are anticompetitive.

Second, the public interest also dictates that the Commission reopen and set aside the Order as a result of the changes in the pharmaceutical market and PBMs' increased market share, which has led to multiple government investigations. Federal and state government entities are currently investigating PBMs' vertical integration and market share consolidation as well as their heavy handed policies and contract terms, which have already forced many independent pharmacies out of business entirely.

In the foregoing paragraphs, Coopharma has provided verified information, which shows PBMs' and individual health insurance companies' unprecedented and outsized accumulation and concentration of market power. This market imbalance has placed Coopharma's members, primarily small, rural businesses, in a unique and precarious position given that the Order's restrictions on negotiations are still in place.

Without the ability to negotiate with PBMs due to the Order, Coopharma also stands at a direct competitive disadvantage to all other entities within Puerto Rico that can, and have, taken advantage of Act 228 to "improve access and quality of health services to patients in the Commonwealth of Puerto Rico. The ability of Puerto Rican independent pharmacies to continue to provide life-sustaining care depends on their ability to collectively negotiate as a cooperative – negotiations which are now regulated and overseen by a State government agency.

For the foregoing reasons, the Commission should reopen and set aside the Consent Order and enter an order in the form attached dismissing the Complaint with prejudice. In the alternative, to the extent the Commission determines that only modification is required, it should

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amend the order to permit Coopharma to engage in negotiations on behalf of its members with third party payors consistent with Act 228.

Respectfully submitted,

Date: August 7, 2024

s/ Bradley A. Wasser
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Eliese R. Herzl-Betz, Esq. (Pa. ID 327899)
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Counsel for Petitioner

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of

**Cooperativa De Farmacias
Puertorriqueñas**

**Docket No. C-4374
Declaration of**

DECLARATION OF HERIBERTO ORTIZ

I, Heriberto Ortiz, hereby affirm the following to be true under penalty of perjury:

I. Background:

1. I am the Executive Director of the Cooperativa de Farmacias Puertorriqueñas (“Coopharma”).

2. I make this affirmation in support of Coopharma’s Petition to Reopen and Set Aside the Order issued by the Commission November 7, 2012.

3. I am familiar with the facts below from my personal experience living and working in Puerto Rico and due to my role as Executive Director of Coopharma.

4. Because Puerto Rico is a small economy the Commonwealth encourages the development of non-profit business cooperatives.

5. Cooperatives are vital to fostering economic opportunity and the availability of services to consumers.

6. Since the first adoption of legislation governing the cooperative movement in 1946 in Puerto Rico, there have been hundreds of cooperatives created across the Island in almost every sector of the economy.

7. Coopharma was formed in 2002 as a cooperative regulated under Law 239.

How

8. Coopharma was created for the purpose of fostering the growth of independent pharmacies. It enables small independent pharmacies to compete more effectively by achieving economies of scale and scope that the large chain pharmacies enjoy.

9. Coopharma's collaborative efforts provide for very efficient group purchasing, joint advertising, negotiation for goods and services, and provision of education services to members in order to improve pharmacy services to patients.

10. Coopharma's membership consists of approximately 500 pharmacies/independent pharmacy owners who typically employ approximately 5-10 individuals in their stores. Coopharma members are dispersed throughout 75 different towns across Puerto Rico. In most of these towns, large or chain pharmacies are not present, thus, the independent, local pharmacy is the only alternative for patients to be able to obtain their prescription medication and receive proper and timely counsel as to their medications.

11. Coopharma is a non-profit organization whose membership is entirely composed of community pharmacy owners. Unlike private entities in other Commission enforcement actions, Coopharma's concern is for the collective good, providing pharmacy access and lowering prices to patients.

12. Coopharma was formed to address systemic problems in the Puerto Rican health care system through collaboration and collective commitment, and pronounces this stated goal publically: "This Cooperative is organized with the following aims and purposes. . . Promote, use and maintain positive attitudes conducive to resolving together adverse situations that may arise in the purchase-sale of medicines, products, articles and services in the market." *See* Coopharma's Clauses of Incorporation, attached hereto as Ex. 1.

13. Coopharma's activities have streamlined pharmacy integration services and provided collective vendor purchasing opportunities, thereby lowering operating and purchasing costs, which translates to more services and lower prices for consumers.

14. I have extensive experience in the pharmaceutical industry and with cooperatives.

15. Since the Legislature first passed laws allowing for cooperatives in 1946, hundreds of cooperatives have been created across the Island in almost every sector of the economy.

II. The Consent Order

16. The Consent Order has limited the ability of many independent pharmacies across the Island to obtain favorable contracting terms, leading to many pharmacies being forced out of business.

17. Puerto Rico has few pharmacy providers.

18. As the Commission has recognized, PBMs often employ an arsenal of unfair tactics. PBMs are much larger, more sophisticated business entities, which can overpower much smaller, independent pharmacies. PBMs unfairly diminish reimbursement rates, reimburse below agreed upon rates, steer patients to affiliated pharmacies or mail order pharmacies located outside of Puerto Rico, marginalize the impact of pharmacy services, and impose onerous terms outside the context of negotiated contracts.

19. The Puerto Rican pharmacists who comprise Coopharma's membership are working pharmacists and not sophisticated businessmen/women. Often their knowledge of English is limited or rudimentary. PBM contracts are long – often 50-60 pages – and are presented on a take it or leave it basis (as classic contracts of adhesion). *See, e.g., Rumbin v. Utica Mutual Ins. Co.*, 254 Conn. 259, 264 n. 6, 757 A.2d 526 (2000) (“Standardized contracts of insurance continue to be prime examples of contracts of adhesion, whose most salient feature is

that they are not subject to the normal bargaining processes of ordinary contracts.”) (Internal quotation marks omitted). PBMs also often impose amendments on the same unilateral basis.

20. The majority of Puerto Rican pharmacies, including Coopharma members, are set in rural locations with relatively unsophisticated sole proprietors who lack the knowledge and time to decipher these complex agreements. This makes Coopharma members, as independent pharmacies primarily located in rural areas of Puerto Rico, particularly vulnerable to PBMs’ deceptive conduct and attempts to drive reimbursement rates below competitive levels.

21. Under the restrictions in the Order, Coopharma is unable to compete with the price-fixing by PBMs, especially those aligned with insurance companies, which leads to artificially inflated prices for consumers and pharmacies going out of business.

22. Per its own admission, in an interview of Jason Borschow, CEO of Abarca Health, the largest PBM in Puerto Rico, on the HealthBiz Podcast with David E. Williams, dated March 17, 2022, Abarca controls approximately 70% of the PBM market and 100% of the State Medicaid Program market in Puerto Rico. See, Interview of Jason Borshow (March 17, 2022), available at <https://www.youtube.com/watch?v=iQD1fER3QgA>.

23. I am familiar with Act 228 and understand the impetus of the passage of Act 228 was out of a desire to address the bargaining disparity between third party payors and much smaller health care providers.

24. On or about April 4, 2024, I met with the Executive President of COSSEC, Mabel Jiménez Miranda and understand that COSSEC is employing Regulation 9161 and actively engaging in oversight of collective negotiations between Health Care Provider Cooperatives and third party payors in Puerto Rico. *See* Ex. 2, Letter from Mabel Jiménez Miranda, attached.

25. Setting aside the Order would allow pro-competitive activity by Coopharma in the form of negotiations with PBMs overseen by COSSEC, pursuant to regulations that that body issues.

Dated: Aguada, Puerto Rico
August 5, 2024

By: 
Heriberto Ortiz

Affidavit no. 15165

Sworn and signed before me by Heriberto Ortiz, of legal age, married and resident of Juana Diaz, Puerto Rico and whom I CERTIFY to have identified as expressed in Article 17(c) of the Notarial Law. In Aguada, Puerto Rico on August 5, 2024.

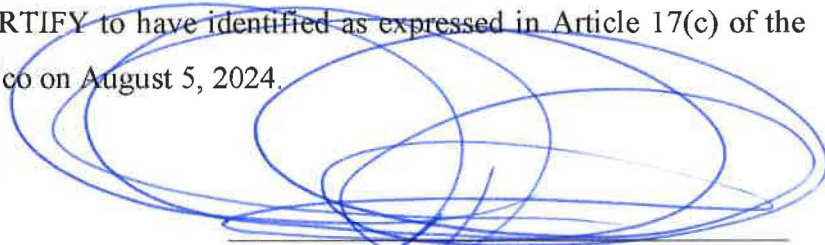






EXHIBIT 1



**ESTADO LIBRE ASOCIADO DE PUERTO RICO
DEPARTAMENTO DE ESTADO
SAN JUAN, PUERTO RICO**

Yo, **GRICEL FALGAS RODRIGUEZ**, Subdirectora, Registro de Corporaciones del Departamento de Estado del Estado Libre Asociado de Puerto Rico,

CERTIFICO: Que **“COOPERATIVA DE FARMACIAS PUERTORRIQUEÑAS (COOPHARMA)”**, registro, **514** es una sociedad de cooperativa organizada el **24 de mayo de 2002 a las 2:13 p.m.** según la Ley General de Sociedades Cooperativas de Puerto Rico, Ley 50 del 4 de agosto de 1994 según enmendada.

EN TESTIMONIO DE LO CUAL, firmo la presente y estampo en ella el Gran Sello del Estado Libre Asociado de Puerto Rico en la Ciudad de San Juan, hoy veintinueve de mayo de dos mil dos.

Grisel Falgás Rodríguez
Subdirectora
Registro de Corporaciones



CLÁUSULAS DE INCORPORACION COOPERATIVA DE FARMACIAS PUERTORRIQUEÑAS

COOPHARMA

CLÁUSULAS DE INCORPORACION

Los que suscriben, todos mayores de edad, dueños de un establecimiento de farmacia operando en Puerto Rico, con la capacidad legal necesaria para ello, y de acuerdo con las disposiciones de la Ley General de Sociedades Cooperativas de Puerto Rico, por la presente redactan y aprueban las siguientes Cláusulas de Incorporación.

ARTÍCULO I – NOMBRE

El nombre de esta Cooperativa es Cooperativa de Farmacias Puertorriqueñas. (COOPHARMA)

ARTÍCULO II – FINES Y PROPÓSITOS

Esta Cooperativa se organiza con los siguientes fines y propósitos.

1. Actuar como comisaría de cada establecimiento que opera el socio para llevar a cabo actividades comerciales y económicas que incluyan la compra y venta de bienes, productos de farmacia (medicinas) y artículos en forma conjunta y para llevar a cabo cualquier gestión, actuación, procedimiento, convenio o contrato.
2. Realizar actividades y contratos de construcción, arrendamiento o compra y venta de edificios, equipos y todo instrumento necesario para realizar el fin principal de actuar unidos como proveedores de productos y servicios de farmacia y artículos al mercado puertorriqueño e internacional en donde las leyes estatales y federales lo permitan.
3. Despertar, utilizar y mantener actitudes positivas que nos lleven a resolver juntos las situaciones adversas que puedan surgir en el mercado de compra-venta de medicinas, de compra-venta de productos, bienes, artículos y servicios.
4. De ser necesario, mantener un Centro de Almacén para compras de bienes y servicios y procesos de logísticas.
5. Promocionar y publicar las actividades y ventas especiales de los distintos socios de esta Cooperativa.
6. Realizar cualquier otra actividad comercial que de beneficio a todos los socios de esta Cooperativa.
7. Servir como ente educativo en las diferentes facetas profesionales que se recojan en los fines y propósitos de esta Cooperativa.
8. Implementar las iniciativas necesarias para contar con la infraestructura (personal, oficina, sistema de comunicación) requerida para que las farmacias que operen los socios de Coopharma se operen como una cadena de farmacias de modo integrado con un plano estratégico común para todos los socios.
9. Participar en adquisiciones de bienes, becas, obras o servicios especializados, que involucran asuntos altamente técnicos y complejos, mediante contratación directa con potenciales clientes privados o dependencias públicas, bajo el andamiaje de entidades gubernamentales central o municipal, para comercializar entre los socios o no socios de la cooperativa de acuerdo a los fines y propósitos de la cooperativa y nuestra naturaleza.
10. Participar en procesos de compras de bienes o servicios por vía de propuestas, subastas y licitación, requeridos por entidades gubernamentales, corporaciones públicas, agencias o dependencias del gobierno central o municipal, entidades exentas, empresas privadas de bienes o servicios que operen con o sin fondos federales o estatales, con el objetivo de brindar servicios o actividad comercial a los socios o no

socios de la cooperativa de acuerdo a los fines y propósitos de la cooperativa y nuestra naturaleza.

Para realizar estos fines y propósitos, esta Cooperativa gozará de todos los poderes y facultades que le confieren las leyes del Estado Libre Asociado de Puerto Rico.

ARTÍCULO III - DURACIÓN

Esta Cooperativa se organiza por tiempo ilimitado.

ARTÍCULO IV - OFICINAS

La oficina principal de esta Cooperativa estará ubicada en la carretera 115 km 24.8 en el barrio Asomante del pueblo de Aguada, Puerto Rico o en aquella otra dirección que en el futuro se designe por la Asamblea General de Socios.

ARTÍCULO V – CAPITAL, SOBANTES Y RESERVAS

El capital autorizado en acciones será ilimitado, representados por acciones comunes de un valor a la par de \$400.00 cada una. El número de acciones suscritas al momento de la incorporación es 100. Esta Cooperativa se incorpora con 24 socios.

Las reservas legales serán determinadas y segregadas antes de cualquier distribución a los socios de los sobrantes siguiendo las disposiciones de la Ley General de Sociedades Cooperativas.

Esta Cooperativa podrá distribuir el remanente o sobrante neto de las reservas al cierre del año fiscal o capitalizar el mismo. La distribución será a base de patrocinio. El patrocinio es definido como la participación de los socios en la compra de productos y servicios de la Cooperativa de Farmacias Puertorriqueñas.

Cuando la Cooperativa opere con pérdidas, deberá distribuir esas pérdidas entre las acciones emitidas en caso de cualquier retiro de acciones. La Cooperativa no deberá desembolsar más por una acción que su valor real.

ARTÍCULO VI – NÚMERO DE SOCIOS AL MOMENTO DE LA INCORPORACIÓN

Sección I

Esta Cooperativa comienza sus operaciones con no menos de 24 socios que cumplen con los siguientes requisitos al momento de la incorporación.

1. Ser mayor de 21 años de edad.
2. Ser una persona natural que sea dueño de un establecimiento de farmacias.
3. Ser una Farmacia Cooperativa dedicada a la venta al detal de medicinas, bienes, servicios y productos directos al consumidor que haya sido incorporada al amparo de la Ley General de Sociedades Cooperativas.
4. Suscribir 5 acciones al momento del ingreso.
5. Las Farmacias Cooperativas deberán presentar copia del último estado financiero auditado.

6. Presentar evidencia de contar en su farmacia con una línea de crédito no menor de \$10,000 de una entidad cooperativa de ahorro y crédito de un banco.
7. No tener interese en conflicto con esta Cooperativa.

En el caso de Farmacias Cooperativas

1. Ser una Farmacia Cooperativa dedicada a la venta al detal de medicinas, bienes, servicios y productos al consumidor que haya sido incorporada al amparo de la Ley General de Sociedades Cooperativas.
2. Presentar copia del último Estado Financiero Auditado.
3. Presentar documento oficial de la Junta de Directores de la Cooperativa designando al funcionario de esa institución que representará a la farmacia aspirante a ser afiliada a Coopharma.

Sección II

Los Requisitos para la admisión de nuevos socios son:

1. Ser mayor de 21 años de edad.
2. Ser una persona natural que sea dueño de una o más farmacias de comunidad.
3. Suscribir cinco acciones al momento del ingreso.
4. Tener una dirección postal vigente así como una dirección de correo electrónico las cuales serán principales vías de comunicación entre Coopharma y sus socios.
5. No tener intereses en conflicto con esta Cooperativa.
6. Estar en cumplimiento con todos los requisitos contenidos en el Contrato de Afiliación aprobado por la Junta de Directores.
7. No pertenecer a algún grupo de compras en Puerto Rico o Estados Unidos que afecte negativamente a Coopharma.
8. Someter certificado de antecedentes penales del candidato a socio.
9. Firmar affidavit delegando la capacidad legal y designando al “Pharmacy Services Administration Organization” (PSAO) de Coopharma como el ente representante para negociar acuerdos con cualquier “Pharmacy Benefit Manager” a nombre del socio.
10. No pertenecer a ningún otro PSAO en Puerto Rico ni fuera de Puerto Rico que no sea el de Coopharma o el PSAO que Coopharma expresamente designe para la representación de sus socios en negociaciones.

Requisitos para la Admisión de Farmacias Cooperativas

1. Ser una Farmacia Cooperativa dedicada a la venta al detal de medicinas, bienes, servicios y productos al consumidor que haya sido incorporada al amparo de la Ley General de Sociedades Cooperativas.
2. Presentar copia del último Estado Financiero Auditado.
3. Presentar documento oficial de la Junta de Directores de la Cooperativa designado al funcionario de esa institución que representará a la farmacia aspirante a ser afiliada a Coopharma.

ARTÍCULO VII – INCORPORADORES Y PRIMERA JUNTA DE DIRECTORES

El nombre y dirección postal de los incorporadores y el número de acciones son como sigue:

NOMBRE	DIRECCION POSTAL	ACCIONES SUSCRITAS
1. Sr. Giovanni Brignoni	HC 56 Box 5028 Aguada, PR 00602	5
2. Lcdo. Ricardo Frontera	P.O. Box 1827 Moca, PR 00676	5
3. Sr. Víctor García Caban	P.O. Box 991 Aguada, PR 00602	5
4. Lcdo. Jaime Babilonia	P.O. Box 1578 Moca, PR 00676	5
5. Sr. Ángel Varela	P.O. Box 250-489 Ramey, PR 00604	5
6. Sr. José del Río	P.O. Box 27 San Sebastian, PR 00685	5
7. Lcda. Iliá M. Acevedo	Calle Colon #90 Aguada, PR 00602	5
8. Sr. Carlos Díaz Montes	Ave. de Diego #418 Arecibo, PR	5
9. Sr. Ángel R. Burgos	457 Ave. Felisa Rincón Vega Baja, PR	5
10. Sr. Jaime Burgos	18 Palmer Ciales, PR 00638	5
11. Lcdo. Armando Rodríguez	P.O. Box 517 Isabela, PR 00602	5
12. Lcdo. Ángel F. Nieves	P.O. Box 244 Rincón, PR 00677	5
13. Lcda. Gladys M. Soto	Calle Concepción #509 Moca, PR 00676	5
14. Sr. Mario de Jesús	P.O. Box 907 Aguadilla, PR 00605	5
15. Sr. Carlos A. Matos	P.O. Box 516 Rincón, PR 00677	5
16. Sr. Héctor Matos	P.O. Box 875 Aguada, PR 00602	5
17. Sr. Osvaldo Aldarondo	P.O. Box 8000 Isabela, PR 00662	5
18. Lcda. Rosa M. Irizarry	P.O. Box 765 Isabela, PR 00662	5
19. Lcda. Viviam Moro	P.O. Box 658 Moca, PR 00676	5
20. Lcda. Migdalia Quiles	PMB 126 P.O. Box 6011 Suite 128 Carolina, PR 00984	5
21. Lcdo. Ramón A. Ortiz	Calle Colon #228 Aguada, PR 00602	5
22. Sra. Wanda J. Ruiz	12 Calle Infazón Camuy, PR 00627	5
23. Lcdo. Javier López	Ave. Agustín Ramos #7032 Isabela, PR 00662	5
24. Sr. José E. Varela	P.O. Box 583 San Antonio, PR 00690	5

Los siguientes son las firmas, dirección postal de los incorporadores y el número de acciones al momento de incorporarse:

NOMBRE	DIRECCION POSTAL	ACCIONES SUSCRITAS
[Firma]	Hc-56-Box 5029 Aguada P.R. 00602	5
[Firma]	PO BOX 1827 MOCA P.R. 00676	5
Victor Garcia Cabau	Apt 991 Aguada P.R. 00602	5
[Firma]	Box 1578 Moca P.R. 00676	5
[Firma]	P.O. Box 250-489 Kameh P.R. 0064	5
Jose DEL Rio	Box 27 SAN SEBASTIAN P.R.	5
[Firma]	Aguada 90 Calle Colon Aguada	5
[Firma]	Apt 2125 St 418 Aguada	5
[Firma]	457 Ave. Felisa Rincon Vega Baya P.R.	5
[Firma]	13 PA/MER C/MER 00638	5
[Firma]	PO Box 715, ISABELA P.R. 00602	5
[Firma]		
[Firma]	Apt 244 RINCON P.R. 00674	5
[Firma]	509 Calle Concepcion Vega, P.R.	5
[Firma]	P.O. Box 907 Aguada P.R.	5
[Firma]	P.O. Box 516 Rincon P.R. 00677	5
[Firma]	P.O. Box 275 Aguada P.R. 00602	5
[Firma]	PO BOX 8000 P.R. 222 ISABELA P.R.	5
[Firma]	P.O. Box 765 LOABELA 00662	5
Vivian Mora Hernandez	P.O. Box 658 Moca, P.R. 00676	5
[Firma]	MB 126 PO BOX 6011, Carolina P.R. 00984	5
[Firma]	Calle Colon 228 Aguada 00602	5
[Firma]	12 Calle Intención Camuy P.R. 00627	5
SAVIER LOPEZ HENDEZ	7032 AVE. AGUSTIN R.R. ROS CALETO ISABELA, P.R. 00602	5
Jose E. Varela Rosario	P.O. Box 583 San Antonio, P.R. 00650	5

Nombres de la Primera Junta de Directores (2002)	Puesto
1.Lic. Jaime Babilonia	Presidente
2. Ricardo Frontera	1er Vicepresidente
3. Sr. José Varela	2do Vicepresidente
4. Sr. Víctor García	Secretario
5. Sr. Giovanni Brignoni	Tesorero
6. Lic. Gladys Vélez	Vocal
7. Lic. Javier López	Vocal
8. Sra. Raisa E. Rivera	Vocal
9. Lic. Gladys Soto	Vocal

ARTÍCULO VIII – SOLICITUDES DE INGRESO COMO SOCIO

Toda persona que desee ser admitida como socio deberá presentar la solicitud de admisión, así como los documentos solicitados, ante la Junta de Directores de esta Cooperativa. Debe asegurarse de cualificar de acuerdo a los requisitos establecidos en el Reglamento de esta Cooperativa.

La Junta de Directores podrá designar en un funcionario de la Cooperativa la responsabilidad de visitar a los candidatos a socios para validar su nivel de cumplimiento con las condiciones del Contrato de Afiliación. El insumo de este Proceso será presentado a la Junta de Directores por el Director designado y considerado por la Junta de Directores en su evaluación de los solicitantes en reunión ordinaria de Junta de Directores. No se aceptará como socio a quien no esté en cumplimiento con el Contrato de Afiliación. La Junta de Directores evaluará la solicitud y será requisito el que 2/3 partes de los miembros de la Junta apruebe la admisión.

ARTÍCULO IX – DERECHOS DE LOS SOCIOS

Los Socios tendrán los siguientes derechos:

1. Participar con voz y voto en las Asambleas sobre bases de igualdad. Este derecho deberá ser ejercido personalmente y no por apoderado. En el caso de los representantes de las farmacias cooperativas este voto será ejercido por la persona designada por la Junta de Directores de la Cooperativa socia.
2. Nominar candidatos, elegir y ser elegidos para desempeñar cargos en la Junta de Directores, comité de supervisión y comités auxiliares.
3. Utilizar los servicios de esta Cooperativa de conformidad con las normas establecidas y cooperar con los demás socios en las actividades que sean útiles a la misma.
4. Solicitar información sobre la marcha de la Cooperativa a la Junta de Directores o al Comité de Supervisión.
5. Formular denuncias por incumplimiento de la Ley, las Cláusulas de Incorporación o el Reglamento ante el Comité de Supervisión.
6. Solicitar la convocatoria de la Asamblea General, en cumplimiento con las condiciones que requieran la Ley y el Reglamento.
7. Someter enmiendas de las Cláusulas y el Reglamento para la consideración de la Asamblea General, siempre que se sometan de forma que cumplan con los términos y condiciones de las Cláusulas y el Reglamento.

ARTÍCULO X – RETIRO Y EXPULSIÓN DE UN SOCIO

Renuncia de Socios

Cuando un socio desee renunciar a la Cooperativa deberá:

1. Presentar su renuncia por escrito ante la Junta de Directores de la Cooperativa.
2. Liquidar toda deuda u obligación contraída con la Cooperativa.
3. Estar dispuesto a reunirse con los miembros del Comité Educativo con el propósito de buscar alternativas para que pueda mantenerse en la calidad de socio.
4. Todo Socio que renuncie y desee reingresar, tendrá un tiempo de espera de 24 meses naturales a partir del día de su renuncia. En caso de que la renuncia sea por causas ajenas al socio, su reingreso será evaluado por la Junta de Directores.
5. La persona que haya cesado como socio de la cooperativa continuará siendo responsable por cualquier deuda contraída con la cooperativa, que sea mayor al pago

y/o reclamación de pago en liquidación que le corresponda, incluyendo cualquier balance negativo al “Central Pay”.

Cuando el socio, luego de escuchar al Comité, insista en renunciar, la Junta de Directores deberá considerar el caso dentro de los primeros 30 días laborables y al aceptar la renuncia procederá a liquidar los haberes dentro de los próximos 90 días subsiguientes.

Separación Involuntaria de un Socio

La Junta de Directores, por mayoría simple, podrá separar un socio y privarle de sus derechos y beneficios cuando se de uno de los siguientes casos:

1. Cuando el socio esté actuando en contra de los intereses de esta Cooperativa o de sus fines y propósitos.
2. Cuando el socio no cumpla con sus compromisos y obligaciones con la Cooperativa.
3. Cuando el socio efectúe actividades económicas en conflicto con las de la Cooperativa.
4. Cuando el socio expida, cobre o haya cobrado, a través de la Cooperativa, cheques fraudulentos o sin fondos suficientes para su pago.
5. Cuando el socio ha infringido las disposiciones de la Ley 239 “Ley General de Sociedades Cooperativas de Puerto Rico 2004”.
6. Cuando el socio ha incurrido en cualquier falta considerada por el Reglamento como causa de separación.
7. Cuando el socio se hace miembro de cualquier otro PSAO que no sea el de Coopharma.
8. Cuando el socio no apoye negociaciones o contratos de droguerías y otros suplidores de bienes y servicios asumidos por la Cooperativa que afecten negativamente la imagen, administración y/o económicamente a la Cooperativa o sus socios.

ARTÍCULO XI - ASAMBLEA

Los socios se reunirán en Asamblea Ordinaria por lo menos una vez al año. La Asamblea se celebrará dentro de los seis (6) meses siguientes al cierre de su año fiscal de la Cooperativa en el sitio, fecha y hora que determine la Junta de Directores, según dispuesto en la Ley 239 “Ley General de Sociedades Cooperativas de Puerto Rico de 2004”.

Toda Asamblea Ordinaria y Extraordinaria se regirá por la última edición revisada del manual de procedimientos parlamentarios del autor Reece B. Bothwell.

En caso de que una primera convocatoria no se pueda lograr el quórum requerido, se emitirá una segunda convocatoria para la Asamblea, en la que constituirán quórum los socios presentes. La segunda convocatoria nunca será anterior a una hora más tarde de la primera convocatoria siempre y cuando la primera y segunda convocatoria haya sido expresamente señaladas en las notificaciones escritas remitidas a los socios con una indicación expresa de que en la segunda convocatoria constituirán quórum los presentes.

En esta Asamblea Anual se elegirán los miembros de la Junta de Directores que hayan vencido o renunciado de acuerdo a las disposiciones del Reglamento General de esta Cooperativa. Se informará a los Socios sobre los trabajos realizados durante el año y se discutirán los Estados Financieros de esta Cooperativa.

La Junta de Directores convocará la celebración de Asamblea Extraordinaria cuando:

1. La Junta lo estime necesario y conveniente.
2. Cuando el 10% del número total de socios de esta Cooperativa lo solicite por escrito evidenciando el documento con sus firmas.
3. Cuando el Comité de Supervisión lo solicite especificando los asuntos por tratar.

Toda solicitud presentada ante la Junta de Directores para la celebración de una Asamblea Extraordinaria deberá especificar los asuntos a ser tratados.

ARTÍCULO XII – CUERPOS DIRECTIVOS

La Junta de Directores estará compuesta por nueve (9) socios, el Comité de Supervisión estará compuesto por no menos de tres (3) socios y la Junta designará anualmente un Comité de Educación compuesto por no menos de cinco (5) socios.

Los deberes y facultades de los Cuerpos Directivos son aquellos dispuestos en la Ley y en el Reglamento General de esta Cooperativa.

ARTÍCULO XIII – DISOLUCIÓN O LIQUIDACIÓN

Para solicitar una disolución o liquidación voluntaria de esta Cooperativa deberán votar 2/3 partes de los socios presentes en una Asamblea Extraordinaria convocada a esos efectos.

ARTÍCULO XIV – ENMIENDAS

La Cooperativa se reserva el derecho de enmendar, alterar, derogar, cualquier disposición contenida en estas Cláusulas y todos los derechos que se confieren a los socios por estas Cláusulas de Incorporación se entenderán conferidos con sujeción a esta reserva. Disponiéndose, que las enmiendas propuestas deberán circular entre los socios con no menos de diez (10) días de anticipación a la Asamblea Anual o Asambleas Extraordinarias. Disponiéndose además, que en ningún caso podrá el capital autorizado de esta Cooperativa reducirse a una cantidad menor del capital pagado al momento de aprobarse una enmienda. Las enmiendas entrarán en vigor después de su aprobación por dos terceras (2/3) partes de los socios presentes en una Asamblea Ordinaria o Extraordinaria legalmente constituida y de la aprobación por el Inspector de Cooperativas.

*Aprobado por primera vez el día 10 de enero de 2002.
Enmendado en la Asamblea General de Socios celebrado el día 24 de junio de 2007.
Enmendado en la Asamblea General de Socios celebrado el día 29 de junio de 2008.
Enmendado en Asamblea Extraordinaria de Socios celebrado el día 9 de agosto de 2009.
Enmendado en la Asamblea General de Socios celebrado el día 16 de mayo de 2010.
Enmendado en la Asamblea General de Socios celebrado el día 25 de junio de 2011.
Enmendado en la Asamblea General de Socios celebrado el día 24 de junio de 2012.
Enmendado en la Asamblea General de Socios celebrado el día 28 de junio de 2015.
Enmendado en la Asamblea General de Socios celebrado el día 26 de junio de 2016.
Enmendado en la Asamblea General de Socios celebrada el día 13 de junio de 2021.*

EXHIBIT 2

GOBIERNO DE PUERTO RICO
CORPORACIÓN PÚBLICA PARA LA SUPERVISIÓN Y
SEGURO DE COOPERATIVAS DE PUERTO RICO (COSSEC)

CERTIFICACIÓN

Yo, Mabel Jiménez Miranda, Presidenta Ejecutiva de La Corporación para la Supervisión y Seguro de Cooperativas de Puerto Rico, mayor de edad, casada, y vecina de San Juan, Puerto Rico, en virtud de los poderes y autoridad que me concede la Ley, CERTIFICO:

PRIMERO: Que mi nombre y circunstancias personales son las antes expresadas.

SEGUNDO: La Corporación Pública para la Supervisión y Seguro de Cooperativas de Puerto Rico (en adelante "COSSEC" o "Corporación"), se creó en virtud de la Ley Núm. 114 de 17 de agosto de 2001, según enmendada, conocida como "Ley de la Corporación Pública para la Supervisión y Seguro de Cooperativas de Puerto Rico" en adelante "Ley Núm. 114".

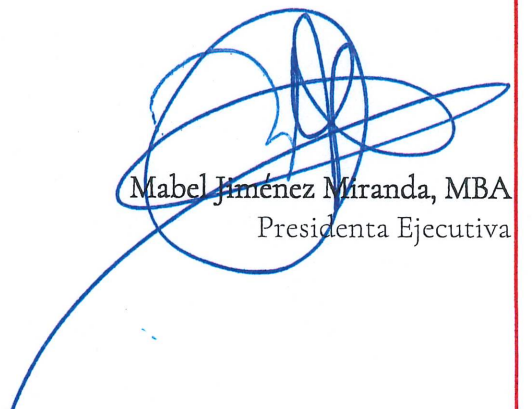
TERCERO: El Artículo 4 (d) (10) (a) de la Ley Núm. 114, según enmendada por la Ley Núm. 247 de 10 de agosto de 2008, mejor conocida como "Ley Orgánica de la Comisión de Desarrollo Cooperativo de Puerto Rico", en adelante "Ley Núm. 247", faculta a la Corporación a funcionar como organismo fiscalizador de todas las cooperativas.


CUARTO: Que, en conformidad con el Subcapítulo 20(A) de la Ley Núm. 239 de 1 de septiembre de 2004, según enmendada, conocida como la Ley General de Sociedades Cooperativas de 2004, LA CORPORACIÓN, tiene la facultad para atender, supervisar y fiscalizar las negociaciones colectivas de las Cooperativas de Proveedores de Servicios de Salud (CPSS) con los Administradores de Terceros (AT) y las organizaciones de Servicios de Salud (OSS)

QUINTO: Con el propósito de cumplir con la política pública del Gobierno de Puerto Rico y crear un balance en las negociaciones de las CPSS con los AT y OSS y mejorar el acceso y la calidad de los servicios de salud a los (as) pacientes del Gobierno de Puerto Rico, y cumplir con las facultades de supervisión y fiscalización otorgadas en la Ley 239, la Junta de Directores de LA CORPORACIÓN, aprobó el 5 de febrero de 2020, el Reglamento para la Supervisión y Fiscalización de las Negociaciones Colectivas de las Cooperativas de Proveedores de Servicios de Salud (CPSS) con los Administradores de Terceros (AT) y las Organizaciones de servicios de Salud, Reglamento Numero 9161, con el propósito de establecer los procedimientos de supervisión y fiscalización de LA CORPORACIÓN sobre las actividades y actuaciones de la CPSS durante cualquier proceso de negociación con las OSS y AT.

Y PARA QUE ASI CONSTE, expido la presente Certificación bajo mi firma, en la ciudad de San Juan, Puerto Rico, hoy, 4 de abril de 2024.




Mabel Jiménez Miranda, MBA
Presidenta Ejecutiva

CERTIFICACION
Certifico que la presente es copia fiel y exacta del original que
obra en autos el cual consta de 1 página.
Expedo la misma a petición de:
Pharma Coop / CLS Legal
4-4-24
Por:  Representante Autorizado

CERTIFIED TRANSLATION

**COMMONWEALTH OF PUERTO RICO
CORPORATION FOR THE SUPERVISION AND
INSURANCE OF COOPERATIVES OF PUERTO RICO (COSSEC)**

CERTIFICATION

I, Mabel Jiménez Miranda, Executive President of the Corporation for the Supervision and Insurance of Cooperatives of Puerto Rico, of legal age, married, and resident of San Juan, Puerto Rico, by virtue of the powers and authorities vested in me by Law, hereby **CERTIFY:**

FIRST: That my name and personal circumstances are those stated above.

SECOND: The Corporation for the Supervision and Insurance of Cooperatives of Puerto Rico (hereinafter, "COSSEC" or "Corporation" was created by virtue of Act No. 114 of August 17, 2001, as amended, known as the "Public Corporation for the Supervision and Insurance of Cooperatives in Puerto Rico Act," hereinafter "Act No. 114."

THIRD: Section 4 (d) (10) (a) of Act No. 114, as amended by Act No. 247 of August 10, 2008, better known as the "Puerto Rico Cooperative Development Commission Organic Act," hereinafter "Act No. 247" empowers the Corporation to operate as the supervisory body of all cooperatives.

FOURTH: That, in accordance with Subchapter 20(A) of Act No. 239 of September 1, 2004, as amended, known as the General Cooperative Associations Act of 2004, THE CORPORATION, has authority to address, supervise, and oversee collective negotiations between Health Care Provider Cooperatives (HPCs), Third-party Administrators (TAs) and Health Care Services Organizations (HSOs).


FIFTH: For the purpose of complying with the public policy of the Government of Puerto Rico, striking a balance in the negotiations between the HPCs, TAs and HSOs, and improving access and the quality of health care services to the patients of the Government of Puerto Rico, as well as exercising the oversight and supervision powers granted by Act No. 239, on February 5, 2020, the Board of Directors of THE CORPORATION approved the Regulation for the Supervision and Oversight of Collective Negotiations between Health Care Provider Cooperatives (HPCs) Third-party Administrators (TAs) and Health Care Services Organizations (HSOs), Regulation No. 9161, in order to establish the supervision and oversight procedures of THE CORPORATION on the activities and actions of HPCs during any negotiation process with HSOs and TAs.

IN WITNESS WHEREOF, I issue this Certification under my signature, in the city of San Juan, Puerto Rico, this 4th day of April, 2024.

[Seal: Corporation for the Supervision and Insurance of Cooperatives of Puerto Rico
COSSEC
Government of Puerto Rico]

[Signed]
Mabel Jiménez Miranda, MBA
Executive President

CERTIFICATION
I hereby certify that this is a true copy of the original document on file which has 1 page.
I issue the same at the request of:
Pharma Coop 1 CLS legal
On this 4-4-24
By: [Illegible signature]
Authorized Representative

 I, Juan E. Segarra, USCCI #06-067/translator, certify that the foregoing is a true and accurate translation, to the best of my abilities, of the document in Spanish which I have seen.

FEDERAL TRADE COMMISSION
 WASHINGTON, D.C. 20580

NOTICE OF APPEARANCE



CASE NAME In the Matter of Cooperativa de Farmacias Puertorriqueñas	FILE/DOCKET NUMBER Docket No. C-4374
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Pursuant to Section 4.1 of the Commission's Rules of Practice, I (we) am (are) entering in the above proceeding the appearance of

- counsel supporting the complaint (Complete Items 1, 3, 4, and 5 below)
- counsel or representative for the respondent (Complete Items 1, 2, 4, and 5 below)
- counsel or representative for a third party (Complete Items 1, 2, 4, and 5 below)

1. COUNSEL OR REPRESENTATIVE	2. RESPONDENT(S) OR THIRD PARTY(IES)
<p><small>Include the name, address, email address, and telephone number of each counsel or representative entering an appearance in the above proceeding,</small></p> <div style="border: 1px solid black; padding: 10px; min-height: 400px;"> <p>Bradley R. Wasser, Esq. (Pa. ID 308804) DUANE MORRIS LLP 30 S. 17th Street Philadelphia, PA 19103 Telephone: (215) 979-1953 e: BAWasser@duanemorris.com</p> <p>Eliese R. Herzl-Betz, Esq. (Pa. ID 327899) DUANE MORRIS LLP 30 S. 17th Street Philadelphia, PA 19103 Telephone: (215) 979-1888 e: ERHerzIBetz@duanemorris.com</p> <p>Counsel for Petitioner Coopharma</p> </div>	<p><small>Include the address and telephone numbers of all persons, partnerships, corporations, or associations on whose behalf this Notice of Appearance is being filed.</small></p> <div style="border: 1px solid black; padding: 10px; min-height: 400px;"> <p>Cooperativa De Farmacias Puertorriqueñas ("Coopharma") Multiservicios Cooperativo de Aguada 2 Calle Colón Suite #4, Aguada, PR 00602 Telephone: (787) 252-2048</p> </div>

3. ASSOCIATE/ASSISTANT DIRECTOR

4. SIGNATURE OF SENIOR COUNSEL s/ Bradley R. Wasser	5. DATE SIGNED 8/7/2024
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Return this form to: **Federal Trade Commission**
 Room H-113
 600 Pennsylvania Avenue, N.W.
 Washington, D.C. 20580

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of

**Cooperativa De Farmacias
Puertorriqueñas**

Docket No. C-4374

STATEMENT OF GOOD STANDING PURSUANT TO 16 C.F.R. § 4.1

In connection with the Notice of Appearance filed on August 7, 2024, and pursuant to 16 C.F.R. § 4.1 (d), I state that I am eligible to practice before the Commission as a member of the Bar of the State of Pennsylvania (Bar No. 308804). As requested by 16 C.F.R. § 4.1 (d), I further state that I am a member of good standing within the legal profession.

Respectfully submitted,

Date: August 7, 2024

/s/ Bradley A. Wasser
Bradley A. Wasser, Esq. (Pa. ID 308804)
DUANE MORRIS LLP
30 S. 17th Street
Philadelphia, PA 19103
Telephone: (215) 979-1953
e: BAWasser@duanemorris.com

*Counsel for Petitioner, Cooperativa De
Farmacias Puertorriqueñas
("Coopharma")*

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of

**Cooperativa De Farmacias
Puertorriqueñas**

Docket No. C-4374

STATEMENT OF GOOD STANDING PURSUANT TO 16 C.F.R. § 4.1

In connection with the Notice of Appearance filed on August 7, 2024, and pursuant to 16 C.F.R. § 4.1 (d), I state that I am eligible to practice before the Commission as a member of the Bar of the State of Pennsylvania (Bar No. 327899). As requested by 16 C.F.R. § 4.1 (d), I further state that I am a member of good standing within the legal profession.

Date: August 7, 2024

/s/ Eliese R. Herzl-Betz
Eliese R. Herzl-Betz, Esq. (Pa. ID 327899)
DUANE MORRIS LLP
30 S. 17th Street
Philadelphia, PA 19103
Telephone: (215) 979-1888
e: ERHerzlBetz@duanemorris.com

Counsel for Petitioner Coopharma

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2024, after being unable to file via the FTC's electronic filing system, I caused the foregoing Notice of Appearance of Bradley A. Wasser, Esq. and Eliese R. Herzl-Betz, Esq., and the attached Petition to Reopen and Set Aside or Modify Order, with affidavit and exhibits, to be served via email to the following:

April Tabor
Office of the Secretary
Federal Trade Commission
600 Pennsylvania Avenue, NW
Suite CC-5610
Washington, DC 20580
ElectronicFilings@ftc.gov

Kenneth A. Libby
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, DC 20580
Email: KLIBBY@ftc.gov

Dated: August 7, 2024

Respectfully submitted,

/s/ Bradley A. Wasser

Bradley A. Wasser

Counsel for Petitioner Coopharma