

OCT 31 2011

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JERRY BEEMAN AND PHARMACY SERVICES, INC., doing business as Beemans Pharmacy; ANTHONY HUTCHINSON AND ROCIDA INC., doing business as Finleys Rexall Drug; CHARLES MILLER, doing business as Yucaipai Valley Pharmacy; JIM MORISOLI AND AMERICAN SURGICAL PHARMACY INC., doing business as American Surgical Pharmacy; BILL PEARSON AND PEARSON AND HOUSE, on behalf of themselves and all others similarly situated and on behalf of the general public; doing business as Pearson Medical Group Pharmacy,

Plaintiffs - Appellees,

v.

ANTHEM PRESCRIPTION MANAGEMENT, LLC; ARGUS HEALTH SYSTEMS, INC.; BENESCRIPPT SERVICES, INC.; FFI RX MANAGED CARE; FIRST HEALTH SERVICES CORPORATION; MANAGED PHARMACY BENEFITS, INC., formerly known as Cardinal Health MPB Inc.; NATIONAL MEDICAL HEALTH CARD SYSTEMS, INC.;

No. 07-56692

D.C. No. CV-04-00407-VAP

ORDER

PHARMACARE MANAGEMENT SERVICES, INC.; PRIME THERAPEUTICS; RESTAT CORPORATION; RX SOLUTIONS, INC.; TMESYS, INC.; WHP HEALTH INITIATIVES, INC.; MEDE AMERICA CORP.,

Defendants - Appellants.

JERRY BEEMAN AND PHARMACY SERVICES, INC., doing business as Beemans Pharmacy; ANTHONY HUTCHINSON AND ROCIDA INC, doing business as Finleys Rexall Drug; CHARLES MILLER, doing business as Yucaipai Valley Pharmacy; JIM MORISOLI AND AMERICAN SURGICAL PHARMACY INC., doing business as American Surgical Pharmacy; BILL PEARSON AND PEARSON AND HOUSE, on behalf of themselves and all others similarly situated and on behalf of the general public; doing business as Pearson Medical Group Pharmacy,

Plaintiffs - Appellees,

v.

TDI MANAGED CARE SERVICES, INC., doing business as ECKERD HEALTH SERVICES; MEDCO HEALTH SOLUTIONS, INC.;

No. 07-56693

D.C. No. CV-02-01327-VAP

**EXPRESS SCRIPTS, INC.; ADVANCE
PCS, Advance PCS Health, L.P.; RX
SOLUTIONS, INC.,**

Defendants - Appellants.

KOZINSKI, Chief Judge:

Upon the vote of a majority of nonrecused active judges, it is ordered that this case be reheard en banc pursuant to Circuit Rule 35-3. The three-judge panel opinion shall not be cited as precedent by or to any court of the Ninth Circuit.

Within seven days from the date of this order, the parties shall forward to the Clerk of Court twenty-five additional paper copies of the original briefs and excerpts of record.