

IN THE SUPREME COURT OF THE STATE OF NEVADA

Supreme Court Case No.
District Court Case No. A-19-792978

UnitedHealth Group, Inc., United Healthcare Insurance Company, UnitedHealthcare
Care Services, Inc., UMR, Inc., Oxford Health Plans, Inc., Sierra Health-Care
Insurance Company, Inc., Sierra Health-Care Options, Inc., Health Plan of Nevada,
Inc.,
Petitioners

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Aug 25 2020 01:28 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

The Eighth Judicial District Court, State of Nevada, Clark County, and
the Honorable Nancy L. Allf, District Court Judge,
Respondent

and

Fremont Emergency Services (Mandavia), Ltd., Team Physicians of Nevada-
Mandavia, P.C., Crum Stefanko and Jones, Ltd.,
Real Parties in Interest.

PETITIONER'S APPENDIX – VOLUME 1

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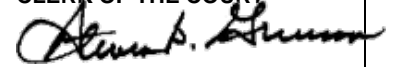
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CASE NO: A-19-792978-C
Department 9

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DISTRICT COURT

CLARK COUNTY, NEVADA

FREMONT EMERGENCY SERVICES
(MANDAVIA), LTD., a Nevada professional
corporation,

Plaintiff,

vs.

UNITED HEALTHCARE INSURANCE
COMPANY, a Connecticut corporation;
UNITED HEALTH CARE SERVICES INC.,
dba UNITEDHEALTHCARE, a Minnesota
corporation; UMR, INC., dba UNITED
MEDICAL RESOURCES, a Delaware
corporation; OXFORD HEALTH PLANS,
INC., a Delaware corporation; SIERRA
HEALTH AND LIFE INSURANCE
COMPANY, INC., a Nevada corporation;
SIERRA HEALTH-CARE OPTIONS, INC., a
Nevada corporation; HEALTH PLAN OF
NEVADA, INC., a Nevada corporation; DOES
1-10; ROE ENTITIES 11-20,

Defendants.

Case No.:
Dept. No.:

COMPLAINT

**Business Court Requested
(EDCR 1.61(a)(2)(ii))**

**Exempt From Arbitration: In Excess of
\$50,000, Declaratory and
Injunctive Relief Requested**

Jury Trial Demanded

Plaintiff Fremont Emergency Services (Mandavia), Ltd. ("Fremont" or "Plaintiff") as
and for its Complaint against defendants United Healthcare Insurance Company ("UHCIC") and
its affiliates United Health Care Services Inc. dba UnitedHealthcare ("UHC Services"); UMR,
Inc. dba United Medical Resources ("UMR"); Oxford Benefit Management, Inc. ("Oxford")

1 together with UHC Services and UMR, the “UHC Affiliates” and with UHCIC, the “UH
2 Parties”); Sierra Health and Life Insurance Company, Inc. (“Sierra Health”); Sierra Health-Care
3 Options, Inc. (“Sierra Options” and together with Sierra Health, the “Sierra Affiliates”); Health
4 Plan of Nevada, Inc. (“HPN”) (collectively “United HealthCare”) hereby complains and alleges
5 as follows:

6 **NATURE OF THIS ACTION**

7 1. This action arises out of a dispute concerning the rate at which United HealthCare
8 reimburses Fremont for the emergency medicine services it has already provided, and continues
9 to provide, to patients covered under the health plans underwritten, operated, and/or
10 administered by United HealthCare (the “Health Plans”) (Health Plan beneficiaries for whom
11 Fremont performed covered services that were not reimbursed correctly shall be referred to as
12 “Patients”).¹

13 **PARTIES**

14 2. Plaintiff Fremont Emergency Services (Mandavia), Ltd. (“Fremont”) is a
15 professional emergency medicine services group practice that staffs the emergency departments
16 at ER at Aliante; ER at The Lakes; Mountainview Hospital; Dignity Health – St. Rose
17 Dominican Hospitals, Rose de Lima Campus; Dignity Health – St. Rose Dominican Hospitals,
18 San Martin Campus; Dignity Health – St. Rose Dominican Hospitals, Siena Campus; Southern
19 Hills Hospital and Medical Center; and Sunrise Hospital and Medical Center located throughout
20 Clark County, Nevada.

21 3. Defendant United HealthCare Insurance Company (“UHCIC”) is a Connecticut
22 corporation with its principal place of business in Connecticut. UHCIC is responsible for
23 administering and/or paying for certain emergency medical services at issue in the litigation. On
24

25
26 ¹ Fremont does not assert any causes of action with respect to any Patient whose health
27 insurance was issued under Medicare Part C (Medicare Advantage) or is provided under the
28 Federal Employee Health Benefits Act (FEHBA). Thus, there is no basis to remove this lawsuit
to federal court under federal question jurisdiction. Fremont also does not assert any claims
relating to United HealthCare’s managed Medicaid business.

1 information and belief, United HealthCare Insurance Company is a licensed Nevada health and
2 life insurance company.

3 4. Defendant United HealthCare Services, Inc. dba UnitedHealthcare (“UHC
4 Services”) is a Minnesota corporation with its principal place of business in Connecticut and
5 affiliate of UHCIC. UHC Services is responsible for administering and/or paying for certain
6 emergency medical services at issue in the litigation. On information and belief, United
7 HealthCare Services, Inc. is a licensed Nevada health insurance company.

8 5. Defendant UMR, Inc. dba United Medical Resources (“UMR”) is a Delaware
9 corporation with its principal place of business in Connecticut and affiliate of UHCIC. UMR is
10 responsible for administering and/or paying for certain emergency medical services at issue in
11 the litigation. On information and belief, UMR is a licensed Nevada health insurance company.

12 6. Defendant Oxford Health Plans, Inc. (“Oxford”) is a Delaware corporation with
13 its principal place of business in Connecticut and affiliate of UHCIC. Oxford is responsible for
14 administering and/or paying for certain emergency medical services at issue in the litigation.

15 7. Defendant Sierra Health and Life Insurance Company, Inc. is a Nevada
16 corporation and affiliate of UHCIC. Sierra Health is responsible for administering and/or
17 paying for certain emergency medical services at issue in the litigation. On information and
18 belief, Sierra Health is a licensed Nevada health insurance company.

19 8. Defendant Sierra Health-Care Options, Inc. (“Sierra Options”) is a Nevada
20 corporation and affiliate of UHCIC. Sierra Options is responsible for administering and/or
21 paying for certain emergency medical services at issue in the litigation. On information and
22 belief, Sierra Options is a licensed Nevada health insurance company.

23 9. Defendant Health Plan of Nevada, Inc. (“HPN”) is a Nevada corporation and
24 affiliate of UHCIC. HPN is responsible for administering and/or paying for certain emergency
25 medical services at issue in the litigation. On information and belief, HPN is a licensed Nevada
26 Health Maintenance Organization (“HMO”).

27 10. There may be other persons or entities, whether individuals, corporations,
28 associations, or otherwise, who are or may be legally responsible for the acts, omissions,

1 circumstances, happenings, and/or the damages or other relief requested by this Complaint. The
2 true names and capacities of Does 1-10 and Roes Entities 11-20 are unknown to Fremont, who
3 sues those defendants by such fictitious names. Fremont will seek leave of this Court to amend
4 this Complaint to insert the proper names of the defendant Doe and Roe Entities when such
5 names and capacities become known to Fremont.

6 JURISDICTION AND VENUE

7 11. The amount in controversy exceeds the sum of fifteen thousand dollars
8 (\$15,000.00), exclusive of interest, attorneys' fees and costs.

9 12. Venue is proper in Clark County, Nevada pursuant to NRS 13.010(1), NRS
10 13.020 and NRS 13.040.

11 FACTS COMMON TO ALL CAUSES OF ACTION

12 *Fremont Provides Necessary Emergency Care*

13 13. This is an action for damages stemming from United HealthCare's failure to
14 properly reimburse Fremont for emergency services provided to members of their Health Plans.

15 14. Fremont is a professional practice group of emergency medicine physicians and
16 healthcare providers that provides emergency medicine services 24 hours per day, 7 days per
17 week to patients presenting to the emergency departments at hospitals and other facilities in
18 Nevada staffed by Fremont. Fremont provides emergency department services at eight hospitals
19 located in Clark County, Nevada.

20 15. Fremont and the hospitals whose emergency departments it staffs are obligated
21 by both federal and Nevada law to examine any individual visiting the emergency department
22 and to provide stabilizing treatment to any such individual with an emergency medical
23 condition, regardless of the individual's insurance coverage or ability to pay. *See* Emergency
24 Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd; NRS 439B.410.
25 Fremont fulfills this obligation for the hospitals which its staffs. In this role, Fremont's
26 physicians provide emergency medicine services to all patients, regardless of insurance coverage
27 or ability to pay, including to patients with insurance coverage issued, administered and/or
28 underwritten by United HealthCare.

1 16. Upon information and belief, United HealthCare operates an HMO under NRS
2 Chapter 695C, and is an insurer under NRS Chapters 679A, 689A (Individual Health Insurance),
3 689B (Group and Blanket Health Insurance), 689C (Health Insurance for Small Employers) and
4 695G (Managed Care Organization). United HealthCare provides, either directly or through
5 arrangements with providers such as hospitals and Fremont, healthcare benefits to its members.

6 17. There is no written agreement between United HealthCare and Fremont for the
7 healthcare claims at issue in this litigation; Fremont is therefore designated as “non-
8 participating” or “out-of-network” for all of the claims at issue in this litigation.
9 Notwithstanding the lack of a written agreement, an implied-in-fact agreement exists between
10 the parties.

11 18. Fremont regularly provides emergency services to United HealthCare’s health
12 plan members.

13 19. Relevant to this action, from July 1, 2017 through the present, Fremont has
14 provided emergency medicine services to United HealthCare’s members as follows: ER at
15 Aliante (approximately July 2017-present); ER at The Lakes (approximately July 2017-present);
16 Mountainview Hospital (approximately July 2017-present); Dignity Health – St. Rose
17 Dominican Hospitals, Rose de Lima Campus (approximately July 2017-October 2018); Dignity
18 Health – St. Rose Dominican Hospitals, San Martin Campus approximately (July 2017-October
19 2018); Dignity Health – St. Rose Dominican Hospitals, Siena Campus (approximately July
20 2017-October 2018); Southern Hills Hospital and Medical Center (approximately July 2017-
21 present); and Sunrise Hospital and Medical Center (approximately July 2017-present).

22 20. Beginning on July 1, 2017, the UHC Parties arbitrarily began drastically reducing
23 the rates at which they paid Fremont for emergency services for some claims, but not others.
24 The UHC Parties paid some of the claims for emergency services rendered by Fremont at far
25 below the usual and customary rates, yet paid other substantially identical claims submitted by
26 Fremont at higher rates.

27 21. Upon information and belief, among other things, the UH Parties generally pay
28 lower reimbursement rates for services provided to members of their fully insured plans and

1 authorize payment at higher reimbursement rates for services provided to members of self-
2 insured plans or those plans under which they provide administrator services only.

3 ***United HealthCare Has Underpaid Fremont for Emergency Services***

4 22. Despite not participating in United HealthCare's "provider network" for the times
5 identified herein, Fremont has continued to provide emergency medicine treatment, as required
6 by law, to patients covered by United HealthCare's plans who seek care at the emergency
7 departments where they provide coverage.

8 23. In emergency situations, patients are likely to go to the nearest hospital for care,
9 particularly if they are transported by ambulance. Patients facing an emergency situation are
10 unlikely to have the luxury of determining which hospitals and physicians are in-network under
11 their health plan. United HealthCare is obligated to reimburse Fremont at the usual and
12 customary rate for emergency services Fremont provided to its Patients, or alternatively for the
13 reasonable value of the services provided.

14 24. United HealthCare's members have received a wide variety of emergency
15 services (in some instances, life-saving services) from Fremont's physicians: treatment of
16 conditions ranging from cardiac arrest, to broken limbs, to burns, to diabetic ketoacidosis and
17 shock, to gastric and/or obstetrical distress.

18 25. From July 2017 to the present, Fremont provided treatment for emergency
19 services to more than 10,800 Patients who were members in United HealthCare's Health Plans.
20 The total underpayment amount for these related claims is in excess of the jurisdictional
21 threshold of \$15,000.00 and continues to grow. United HealthCare has likewise failed to
22 attempt in good faith to effectuate a prompt, fair, and equitable settlement of these claims.

23 26. During this same period, July 2017 to the present, United HealthCare paid some
24 claims at an appropriate rate and others at a significantly reduced rate which is demonstrative of
25 an arbitrary and selective program and motive or intent to unjustifiably reduce the overall
26 amount United Healthcare pays to Fremont. Upon information and belief, United Healthcare
27 has implemented this program to coerce, influence and leverage business discussions regarding
28 the potential for Fremont to become a participating provider.

1 27. For each of the healthcare claims at issue in this litigation, United HealthCare
2 determined the claim was payable; however, it paid the claim at an artificially reduced rate.
3 Thus, the claims at issue involve no questions of whether the claim is payable; rather, they
4 involve only a determination of whether United HealthCare paid the claim at the required usual
5 and customary rate, which it did not.

6 28. United HealthCare has failed to attempt in good faith to effectuate a prompt, fair,
7 and equitable settlement of the subject claims.

8 29. Fremont brings this action to compel United HealthCare to pay it the usual and
9 customary rate or alternatively for the reasonable value of the professional emergency medical
10 services for the for the emergency services that it provided and will continue to provide
11 Members.

12 30. Fremont has adequately contested the unsatisfactory rate of payment received
13 from the UH Parties in connection with the claims that are the subject of this action.

14 31. All conditions precedent to the institution and maintenance of this action have
15 been performed, waived, or otherwise satisfied.

16 **FIRST CLAIM FOR RELIEF**

17 **(Breach of Implied-in-Fact Contract – UH Parties)**

18 32. Fremont incorporates herein by reference the allegations set forth in the
19 preceding paragraphs as if fully set forth herein.

20 33. At all material times, Fremont was obligated under federal and Nevada law to
21 provide emergency medicine services to all patients presenting at the emergency departments
22 they staff, including United HealthCare Patients.

23 34. At all material times, the UH Parties knew that Fremont was non-participating
24 emergency medicine groups that provided emergency medicine services to Patients.

25 35. From July 1, 2017 to the present, Fremont has undertaken to provide emergency
26 medicine services to UH Parties' Patients, and the UH Parties have undertaken to pay for such
27 services provided to UH Parties' Patients.

1 36. At all material times, the UH Parties were aware that Fremont was entitled to and
2 expected to be paid at rates in accordance with the standards established under Nevada law.

3 37. At all material times, the UH Parties have received Fremont's bills for the
4 emergency medicine services Fremont has provided and continue to provide to UH Parties'
5 Patients, and the UH Parties have consistently adjudicated and paid, and continue to adjudicate
6 and pay, Fremont directly for the non-participating claims, albeit at amounts less than usual and
7 customary.

8 38. Through the parties' conduct and respective undertaking of obligations
9 concerning emergency medicine services provided by Fremont to the UH Parties' Patients, the
10 parties implicitly agreed, and Fremont had a reasonable expectation and understanding, that the
11 UH Parties would reimburse Fremont for non-participating claims at rates in accordance with
12 the standards acceptable under Nevada law and in accordance with rates the UH Parties pay for
13 other substantially identical claims also submitted by Fremont.

14 39. Under Nevada common law, including the doctrine of quantum meruit, the UH
15 Parties, by undertaking responsibility for payment to Fremont for the services rendered to
16 United HealthCare Patients, impliedly agreed to reimburse Plaintiffs at rates, at a minimum,
17 equivalent to the reasonable value of the professional emergency medical services provided by
18 Fremont.

19 40. The UH Parties, by undertaking responsibility for payment to Fremont for the
20 services rendered to the UH Parties' Patients, impliedly agreed to reimburse Fremont at rates, at
21 a minimum, equivalent to the usual and customary rate or alternatively for the reasonable value
22 of the professional emergency medical services provided by Fremont.

23 41. In breach of its implied contract with Fremont, the UH Parties have and continue
24 to systemically adjudicate the non-participating claims at rates substantially below both the
25 usual and customary fees in the geographic area and the reasonable value of the professional
26 emergency medical services provided by Fremont to the UH Parties' Patients.

27 42. Fremont has performed all obligations under its implied contract with the UH
28 Parties concerning emergency medical services to be performed for Patients.

52. By paying substantially low rates that did not reasonably compensate Fremont the usual and customary rate or alternatively for the reasonable value of the services provide, the UH Parties performed in a manner that was unfaithful to the purpose of the implied-in-fact contract, or deliberately contravened the intention and sprit of the contract.

7 53. That the UH Parties' conduct was a substantial factor in causing damage to
8 Fremont.

9 54. As a result of the UH Parties' tortious breach of the implied covenant of good
10 faith and fair dealing, Fremont has suffered injury and is entitled to monetary damages from the
11 UH Parties to compensate it for that injury in an amount in excess of \$15,000.00, exclusive of
12 interest, costs and attorneys' fees, the exact amount of which will be proven at the time of trial.

55. The acts and omissions of the UH Parties as alleged herein were attended by circumstances of malice, oppression and/or fraud, thereby justifying an award of punitive or exemplary damages in an amount to be proven at trial.

16 56. Fremont has been forced to retain counsel to prosecute this action and is entitled
17 to receive their costs and attorneys' fees incurred herein.

THIRD CLAIM FOR RELIEF

(Alternative Claim for Unjust Enrichment – UH Parties)

57. Fremont incorporates herein by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

22 || 58. Fremont rendered valuable emergency services to the Patients.

59. The UH Parties received the benefit of having their healthcare obligations to their
plan members discharged and their members received the benefit of the emergency care
provided to them by Fremont.

60. As insurers or plan administrators, the UH Parties were reasonably notified that
emergency medicine service providers such as Fremont would expect to be paid by the UH
Parties for the emergency services provided to Patients.

1 61. The UH Parties accepted and retained the benefit of the services provided by
2 Fremont at the request of the members of its Health Plans, knowing that Fremont expected to be
3 paid a usual and customary fee based on locality, or alternatively for the reasonable value of
4 services provided, for the medically necessary, covered emergency medicine services it
5 performed for the UH Parties' Patients.

6 62. The UH Parties have received a benefit from Fremont's provision of services to
7 its Patients and the resulting discharge of their healthcare obligations owed to their Patients.

8 63. Under the circumstances set forth above, it is unjust and inequitable for the UH
9 Parties to retain the benefit they received without paying the value of that benefit; i.e., by paying
10 Fremont at usual and customary rates, or alternatively for the reasonable value of services
11 provided, for the claims that are the subject of this action and for all emergency medicine
12 services that Fremont will continue to provide to United HealthCare's members.

13 64. Fremont seeks compensatory damages in an amount which will continue to
14 accrue through the date of trial as a result of United Healthcare's continuing unjust enrichment.

15 65. As a result of the UH Parties' actions, Fremont has been damaged in an amount
16 in excess of \$15,000.00, exclusive of interest, costs and attorneys' fees, the exact amount of
17 which will be proven at the time of trial.

18 66. Fremont sues for the damages caused by the UH Parties' conduct and is entitled
19 to recover the difference between the amount the UH Parties paid for emergency care Fremont
20 rendered to its members and the reasonable value of the service that Fremont rendered to the UH
21 Parties by discharging their obligations to their plan members.

22 67. As a direct result of the UH Parties' acts and omissions complained of herein, it
23 has been necessary for Fremont to retain legal counsel and others to prosecute its claims.
24 Fremont is thus entitled to an award of attorneys' fees and costs of suit incurred herein.

25 **FOURTH CLAIM FOR RELIEF**

26 **(Violation of NRS 686A.020 and 686A.310 – UH Parties)**

27 68. Fremont incorporates herein by reference the allegations set forth in the
28 preceding paragraphs as if fully set forth herein.

1 69. The Nevada Insurance Code prohibits an insurer from engaging in an unfair
2 settlement practices. NRS 686A.020, 686A.310.

3 70. One prohibited unfair claim settlement practice is “[f]ailing to effectuate prompt,
4 fair and equitable settlements of claims in which liability of the insurer has become reasonably
5 clear.” NRS 686A.310(1)(e).

6 71. As detailed above, the UH Parties have failed to comply with NRS
7 686A.310(1)(e) by failing to pay Fremont’s medical professionals the usual and customary rate
8 for emergency care provided to UH Parties’ members. By failing to pay Fremont’s medical
9 professionals the usual and customary rate the UH Parties have violated NRS 686A.310(1)(e)
10 and committed an unfair settlement practice.

11 72. Fremont is therefore entitled to recover the difference between the amount the
12 UH Parties paid for emergency care Fremont rendered to their members and the usual and
13 customary rate, plus court costs and attorneys’ fees.

14 73. Fremont is entitled to damages in an amount in excess of \$15,000.00, exclusive
15 of interest, costs and attorneys’ fees, the exact amount of which will be proven at the time of
16 trial.

17 74. The UH Parties have acted in bad faith regarding their obligation to pay the usual
18 and customary fee; therefore, Fremont is entitled to recover punitive damages against the UH
19 Parties.

20 75. As a direct result of the UH Parties’ acts and omissions complained of herein, it
21 has been necessary for Fremont to retain legal counsel and others to prosecute its claims.
22 Fremont is thus entitled to an award of attorneys’ fees and costs of suit incurred herein.

23 **FIFTH CLAIM FOR RELIEF**

24 **(Violations of Nevada Prompt Pay Statutes & Regulations - UH Parties)**

25 76. Fremont incorporates herein by reference the allegations set forth in the
26 preceding paragraphs as if fully set forth herein.

27 77. The Nevada Insurance Code requires an HMO, MCO or other health insurer to
28 pay a healthcare provider’s claim within 30 days of receipt of a claim. NRS 683A.0879 (third

1 party administrator), NRS 689A.410 (Individual Health Insurance), NRS 689B.255 (Group and
2 Blanket Health Insurance), NRS 689C.485 (Health Insurance for Small Employers), NRS
3 695C.185 (HMO), NAC 686A.675 (all insurers) (collectively, the “NV Prompt Pay Laws”).
4 Thus, for all submitted claims, the UH Parties were obligated to pay Fremont the usual and
5 customary rate within 30 days of receipt of the claim.

6 78. Despite this obligation, as alleged herein, the UH Parties have failed to reimburse
7 Fremont at the usual and customary rate within 30 days of the submission of the claim. Indeed,
8 the UH Parties failed to reimburse Fremont at the usual and customary rate at all. Because the
9 UH Parties have failed to reimburse Fremont at the usual and customary rate within 30 days of
10 submission of the claims as the Nevada Insurance Code requires, the UH Parties are liable to
11 Fremont for statutory penalties.

12 79. For all claims payable by plans that the UH Parties insure wherein it failed to pay
13 at the usual and customary fee within 30 days, UH Parties is liable to Fremont for penalties as
14 provided for in the Nevada Insurance Code.

15 80. Additionally, the UH Parties have violated NV Prompt Pay Laws, by among
16 things, only paying part of the subject claims that have been approved and are fully payable.

17 81. Fremont seeks penalties payable to it for late-paid and partially paid claims under
18 the NV Prompt Pay Laws.

19 82. Fremont is entitled to damages in an amount in excess of \$15,000.00 to be
20 determined at trial, including for its loss of the use of the money and its attorneys' fees.

21 83. Under the Nevada Insurance Code and NV Prompt Pay Laws, Fremont is also
22 entitled to recover its reasonable attorneys' fees and costs.

23 **SIXTH CLAIM FOR RELIEF**

24 **(Consumer Fraud & Deceptive Trade Practices Acts – UH Parties)**

25 84. Fremont incorporates herein by reference the allegations set forth in the
26 preceding paragraphs as if fully set forth herein.

27 85. The Nevada Deceptive Trade Practices Act (DTPA) prohibits the UH Parties
28 from engaging in “deceptive trade practices,” including but not limited to (1) knowingly making

1 a false representation in a transaction; (2) violating “a state or federal statute or regulation
2 relating to the sale or lease of goods or services”; (3) using “coercion, duress or intimidation in a
3 transaction”; and (4) knowingly misrepresent the “legal rights, obligations or remedies of a party
4 to a transaction.” NRS 598.0915(15), 598.0923(3), 598.0923(4), NRS 598.092(8), respectively.

5 86. The Nevada Consumer Fraud Statute provides that a legal action “may be
6 brought by any person who is a victim of consumer fraud.” NRS 41.600(1). “Consumer fraud”
7 includes a deceptive trade practice as defined by the DTPA.

8 87. The UH Parties have violated the DTPA and the Consumer Fraud Statute through
9 their acts, practices, and omissions described above, including but not limited to (a) wrongfully
10 refusing to pay Fremont for the medically necessary, covered emergency services Fremont
11 provided to Members in order to gain unfair leverage against Fremont now that they are out-of-
12 network and in contract negotiations to potentially become a participating provider under a new
13 contract in an effort to force Fremont to accept lower amounts than it is entitled for its services;
14 and (b) engaging in systematic efforts to delay adjudication and payment of Fremont’s claims
15 for its services provided to UH Parties’ members in violation of their legal obligations

16 88. As a result of the UH Parties’ violations of the DTPA and the Consumer Fraud
17 Statute, Fremont is entitled to damages in an amount in excess of \$15,000.00 to be determined at
18 trial.

19 89. Due to the willful and knowing engagement in deceptive trade practices, Fremont
20 is entitled to recover treble damages and all profits derived from the knowing and willful
21 violation.

22 90. As a direct result of UH Parties’ acts and omissions complained of herein, it has
23 been necessary for Fremont to retain legal counsel and others to prosecute its claims. Fremont is
24 thus entitled to an award of attorneys’ fees and costs of suit incurred herein.

25 **SEVENTH CLAIM FOR RELIEF**

26 **(Declaratory Judgment – All Defendants)**

27 91. Fremont incorporates herein by reference the allegations set forth in the
28 preceding paragraphs as if fully set forth herein.

1 92. This is a claim for declaratory judgment and actual damages pursuant to NRS
2 30.010 *et seq.*

3 93. As explained above, pursuant to federal and Nevada law, United HealthCare is
4 required to cover and pay Fremont for the medically necessary, covered emergency medicine
5 services Fremont has provided and continues to provide to United HealthCare members.

6 94. Under Nevada law, United HealthCare is required to pay Fremont the usual and
7 customary rate for that emergency care. Instead of reimbursing Fremont at the usual and
8 customary rate or for the reasonable value of the professional medical services, United
9 HealthCare has reimbursed Fremont at reduced rates with no relation to the usual and customary
10 rate.

11 95. Beginning in or about July 2017, Fremont became out-of-network with the UH
12 Parties. Since then, the UH Parties have demonstrated their refusal to timely settle insurance
13 claims submitted by Fremont and have failed to pay the usual and customary rate based on this
14 locality in violation of UH Parties' obligations under the Nevada Insurance Code, the parties'
15 implied-in-fact contract and pursuant to Nevada law of unjust enrichment and quantum merit.

16 96. Beginning in or about March 2019, Fremont became out-of-network with the
17 Sierra Affiliates and HPN. Since then, upon information and belief, the Sierra Affiliates and
18 HPN are failing to timely settle insurance claims submitted by Fremont and to pay the usual and
19 customary rate based on this locality in violation of the Sierra Affiliates' and HPN's obligations
20 under the Nevada Insurance Code, the parties' implied-in-fact contract and pursuant to Nevada
21 law of unjust enrichment and quantum merit.

22 97. An actual, justiciable controversy therefore exists between the parties regarding
23 the rate of payment for Fremont's emergency care that is the usual and customary rate that
24 United HealthCare is obligated to pay.

25 98. Pursuant to NRS 30.040 and 30.050, Fremont therefore requests a declaration
26 establishing the usual and customary rates that Fremont is entitled to receive for claims between
27 July 1, 2017 and trial, as well as a declaration that the UH Parties are required to pay to Fremont
28 at a usual and customary rate for claims submitted thereafter.

1 99. Pursuant to NRS 30.040 and 30.050, Fremont therefore requests a declaration
2 establishing the usual and customary rates that Fremont is entitled to receive for claims between
3 March 1, 2019 and trial, as well as a declaration that the Sierra Affiliates and HPN are required
4 to pay to Fremont at a usual and customary rate for claims submitted thereafter.

5 100. As a direct result of United HealthCare's acts and omissions complained of
6 herein, it has been necessary for Fremont to retain legal counsel and others to prosecute its
7 claims. Fremont is thus entitled to an award of attorneys' fees and costs of suit incurred herein.

8 **REQUEST FOR RELIEF**

9 WHEREFORE, Fremont requests the following relief:

10 A. For awards of general and special damages in amounts in excess of \$15,000.00,
11 the exact amounts of which will be proven at trial;

12 B. For an award of punitive damages, the exact amount of which will be proven at
13 trial;

14 C. A Declaratory Judgment that United HealthCare's failure to pay Fremont a usual
15 and customary fee or rate for this locality or alternatively, for the reasonable value of its services
16 violates the Nevada Insurance Code, breaches the parties' implied-in-fact contract, is a tortious
17 breach of the implied covenant of good faith and fair dealing, and violates Nevada common law;

18 D. An Order permanently enjoining United HealthCare from paying rates that do not
19 represent usual and customary fees or rates for this locality or alternatively, that do not
20 compensate Fremont for the reasonable value of its services; and enjoining United HealthCare
21 from timely paying claims that are not in conformity with Nevada's Prompt Pay statutes and
22 regulations;

23 E. Reasonable attorneys' fees and court costs;

24 F. Pre-judgment and post-judgment interest; and

25 G. Such other and further relief as the Court may deem just and proper.

26 ...

27 ...

28 ...

JURY DEMAND

Fremont hereby demands trial by jury on all issues so triable.

DATED this 15th day of April, 2019.

McDONALD CARANO LLP

By: /s/ Pat Lundvall

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4820-6308-4435, v. 4

Steven D. Grierson

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18 *Insurance Company, United HealthCare Services, Inc.,*

19 *UMR, Inc., Oxford Health Plans, Inc.,*

20 *Sierra Health and Life Insurance Co., Inc.,*

21 *Sierra Health-Care Options, Inc., and*

22 *Health Plan of Nevada, Inc..*

23 **DISTRICT COURT**

24 **CLARK COUNTY, NEVADA**

25 **FREMONT EMERGENCY SERVICES**
26 **(MANDAVIA), LTD., a Nevada professional**
27 **corporation,**

28 **Plaintiff,**

vs.

29 **UNITED HEALTHCARE INSURANCE**
30 **COMPANY, a Connecticut corporation; UNITED**
31 **HEALTH CARE SERVICES INC. dba UNITED**
32 **HEALTHCARE, a Minnesota corporation; UMR,**
33 **INC. dba UNITED MEDICAL RESOURCES, a**
34 **Delaware corporation; OXFORD HEALTH**
35 **PLANS, INC., a Delaware corporation; SIERRA**
36 **HEALTH AND LIFE INSURANCE COMPANY,**
37 **INC., a Nevada corporation; SIERRA HEALTH-**
38 **CARE OPTIONS, INC., a Nevada corporation;**
39 **HEALTH PLAN OF NEVADA, INC., a Nevada**
40 **corporation; DOES 1-10; ROE ENTITIES 11-20,**

Defendants.

Case No.: A-19-792978-B

Dept. No.: 27

**NOTICE OF REMOVAL TO FEDERAL
COURT**




1 **TO THE EIGHTH JUDICIAL DISTRICT COURT:**

2 PLEASE TAKE NOTICE THAT a Notice of Removal of this action was filed by
3 Defendants UnitedHealthcare Insurance Company, United HealthCare Services, Inc., UMR, Inc.,
4 Oxford Health Plans, Inc., Sierra Health and Life Insurance Co., Inc., Sierra Health-Care
5 Options, Inc., and Health Plan of Nevada, Inc. (collectively "Defendants"), on May 14, 2019 in
6 Nevada Federal District Court. A copy of the Notice of Removal is attached to this Notice as
7 **Exhibit 1**, and is served and filed herewith.

8 NOTICE IS FURTHER GIVEN that the filing of the Notice of Removal, together with a
9 copy of the notice with the Clerk of this Court, effectuates the removal of this action in
10 accordance with 28 U.S.C. § 1446(d).

11 Dated this 14 day of May, 2019.

12 

13
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Colby L. Balkenbush, Esq.
Josephine E. Groh, Esq.
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21 *Inc., UMR, Inc., Oxford Health Plans, Inc.,*
22 *Sierra Health and Life Insurance Co., Inc.,*
23 *Sierra Health-Care Options, Inc., and*
24 *Health Plan of Nevada, Inc.*



CERTIFICATE OF SERVICE

I hereby certify that on the 14 day of May, 2019, a true and correct copy of the foregoing **NOTICE OF REMOVAL TO FEDERAL COURT** was electronically filed/served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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EXHIBIT 1

EXHIBIT 1

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10 *UMR, Inc., Oxford Health Plans, Inc.,*

Sierra Health and Life Insurance Co., Inc.,

11 *Sierra Health-Care Options, Inc., and*

12 *Health Plan of Nevada, Inc.*

13
14 UNITED STATES DISTRICT COURT

15 DISTRICT OF NEVADA

16 FREMONT EMERGENCY SERVICES
17 (MANDAVIA), LTD., a Nevada professional
corporation,

18 Plaintiff,

19 vs.

20 UNITED HEALTHCARE INSURANCE
21 COMPANY, a Connecticut corporation; UNITED
22 HEALTH CARE SERVICES INC. dba UNITED
23 HEALTHCARE, a Minnesota corporation; UMR,
24 INC. dba UNITED MEDICAL RESOURCES, a
25 Delaware corporation; OXFORD HEALTH
26 PLANS, INC., a Delaware corporation; SIERRA
HEALTH AND LIFE INSURANCE COMPANY,
INC., a Nevada corporation; SIERRA HEALTH-
CARE OPTIONS, INC., a Nevada corporation;
HEALTH PLAN OF NEVADA, INC., a Nevada
corporation; DOES 1-10; ROE ENTITIES 11-20,

27 Defendants.
28

Case No.:

**DEFENDANTS' UNITEDHEALTHCARE
INSURANCE COMPANY, UNITED
HEALTHCARE SERVICES INC., UMR,
INC., OXFORD HEALTH PLANS, INC.,
SIERRA HEALTH AND LIFE
INSURANCE CO., INC., SIERRA
HEALTH-CARE OPTIONS, INC. AND
HEALTH PLAN OF NEVADA, INC.'S
NOTICE OF REMOVAL**

WEINBERG WHEELER
HUDGINS GUNN & DIAL



PLEASE TAKE NOTICE that Defendants UnitedHealthcare Insurance Company, United HealthCare Services, Inc., UMR, Inc., Oxford Health Plans, Inc., Sierra Health and Life Insurance Co., Inc., Sierra Health-Care Options, Inc., and Health Plan of Nevada, Inc. (collectively "Defendants"), by and through their attorneys of the law firm of Weinberg Wheeler Hudgins Gunn & Dial, LLC, hereby remove this action from the Eighth Judicial District Court for Clark County, Nevada, Case No. A-19-792978-B, to the United States District Court for the District of Nevada.

I. INTRODUCTION

1. On or about April 23, 2019, Plaintiff Fremont Emergency Services (Mandavia), LTD. ("Fremont") served a seven count Complaint on Defendants. The Complaint was filed in the Eighth Judicial District Court for Clark County, Nevada. The suit was assigned to Department 27 and assigned Case No. A-19-792978-B ("State Court Action").

2. Defendants remove this action as an action which raises federal questions under 28 U.S.C. § 1331. The State Court Action advances claims which are completely preempted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et. seq.* ("ERISA").

II. NATURE OF THE CASE

3. In its Complaint, Fremont alleges that its physicians provided medical treatment to various patients who presented to the emergency departments of various hospitals around Clark County, Nevada. Complaint at ¶ 14. Fremont alleges that some of the patients it provided emergency medical services to were members of health plans issued and/or administered by the Defendants. *Id.* at ¶¶ 18, 25. Fremont further alleges that, beginning on July 1, 2017, the Defendants began to drastically reduce the amount of money paid to Fremont for the services Fremont was providing to the members of Defendants' health plans. *Id.* at ¶ 20.

4. Based on the Defendants' alleged failure to pay the appropriate amounts for the medical services that Fremont provided to Defendants' members, Fremont alleges various state law claims, including (1) Breach of Implied-in-Fact Contract, (2) Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing, (3) Unjust Enrichment, (4) Violation of NRS 686A.020 and 686A.310, (5) Violation of Nevada Prompt Pay Statutes & Regulations, (6)

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1 Consumer Fraud & Deceptive Trade Practices Acts, and (7) Declaratory Judgment.

2 5. Fremont alleges that no written agreement exists between Defendants and
3 Fremont since Fremont is an out-of-network provider and thus has not alleged a standard breach
4 of contract claim. *Id.* at ¶ 17.

5 6. All of Fremont's claims seek an identical form of relief, i.e. recovery of the
6 amount that Fremont contends is due and owing for the medical services that Fremont rendered
7 to Defendants' members who allegedly had health plan coverage in full force and effect when
8 the services were rendered. All of Fremont's claims take direct aim at the manner in which
9 Defendants' processed and adjudicated claims for health plan benefits. *See generally* Complaint.

10 7. Fremont alleges that, from July 2017 to present, it provided medical services to
11 over 10,800 patients who were members of Defendants' health plans. Complaint at ¶ 25.
12 However, Fremont's Complaint provides only limited identifying information related to the
13 patients or specific health plans at issue. As explained further below, this was almost certainly
14 done in an attempt to conceal the fact that numerous employee welfare benefit plans are
15 implicated by Fremont's claims and thus removal under ERISA's complete preemption doctrine
16 is appropriate.

17 **III. COMPLETE PREEMPTION UNDER ERISA**

18 8. ERISA is a "comprehensive legislative scheme" enacted to protect the interests of
19 participants and beneficiaries in employee benefit plans. 29 U.S.C. § 1001(b); *Aetna Health Inc.*
20 *v. Davila*, 542 U.S. 200, 209 (2004). As part of this comprehensive scheme, Congress created a
21 special civil enforcement mechanism to deal with all claims related to employee benefit plans.
22 That scheme is set forth in 29 U.S.C. § 1132(a) and permits a participant or beneficiary to bring a
23 special statutory ERISA claim over which federal courts have original jurisdiction.

24 9. ERISA defines an "employee welfare benefit plan" or "welfare plan" as follows:

25 [A]ny plan, fund, or program which was heretofore or is hereafter
26 established or maintained by an employer or by an employee organization,
27 or by both, to the extent that such plan, fund, or program was established or
28 is maintained for the purpose of providing for its participants or their
beneficiaries, through the purchase of insurance or otherwise, (A) medical,
surgical, or hospital care or benefits, or benefits in the event of sickness,

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1 accident, disability, death or unemployment . . .

2 29 U.S.C. § 1002(1).

3 10. Under the “well-pleaded complaint” rule a plaintiff ordinarily is entitled to remain
4 in state court if its complaint does not, on its face, affirmatively allege a federal claim. However,
5 complete preemption under ERISA is an exception to this rule. *Beneficial Nat. Bank v.*
6 *Anderson*, 539 U.S. 1, 6, 123 S. Ct. 2058, 2062 (2003). The U.S. Supreme Court has held that
7 “the ERISA civil enforcement mechanism [i.e. 29 U.S.C. § 1132(a)] is one of those provisions
8 with such extraordinary pre-emptive power that it converts an ordinary state common law
9 complaint into one stating a federal claim for purposes of the well-pleaded complaint rule.”
10 *Davila*, 542 U.S. at 209, 124 S. Ct. at 2496.

11 11. Thus, state law claims that relate to an employee welfare benefit plan are properly
12 removed to federal court even where the complaint does not facially state an ERISA cause of
13 action. *Tingey v. Pixley-Richards W., Inc.*, 953 F.2d 1124, 1130 (9th Cir. 1992) (“It follows that
14 although the Tingey’s original four-count state cause of action purported to plead only state law
15 claims, the action was properly removed because the claims fell within the purview of the
16 exclusive remedy provisions in ERISA. This means only a federal court can hear the claims
17 when stripped of their state law disguises. The basis of jurisdiction, even though none of the
18 claims facially stated an ERISA cause of action, was federal question jurisdiction.”),

19 12. The Ninth Circuit has held that ERISA preempts the state law claims of a medical
20 provider suing as the assignee of a beneficiary’s rights under an employee welfare benefit plan
21 governed by ERISA. *Misic v. Bldg. Serv. Employees Health & Welfare Tr.*, 789 F.2d 1374 (9th
22 Cir. 1986) (upholding the dismissal of various state tort law claims and a claim under the
23 California Unfair Insurance Practices Act as preempted by ERISA since the provider had
24 accepted an assignment from the patients and thus had standing to bring an ERISA claim
25 himself).

26 ///

27 ///

28 ///



1 IV. FEDERAL QUESTIONS

2 13. The Complaint makes reference to Fremont making claims/requests for payment
3 to the Defendants and the Defendants failing/refusing to pay the full amount requested. After
4 being served with the Complaint, the Defendants began conducting a preliminary investigation
5 into Fremont's medical claims to determine, among other things, whether any of those claims
6 relate to employee welfare benefit plans governed by ERISA. Although their investigation is
7 ongoing, Defendants have a reasonably certain belief that approximately 90% of Fremont's
8 medical claims were made against employee welfare benefit plans governed by ERISA.
9 Moreover, Defendants have also determined that, for all or nearly all of the medical claims that
10 Fremont made against the employee welfare benefit plans, Fremont received an assignment of
11 benefits from plan members such that Fremont has derivative standing to bring a statutory
12 ERISA claim under 29 U.S.C. § 1132(a). Thus, just as in *Misic*, all or at least some of Fremont's
13 state law claims are completely preempted by ERISA and removal to federal court is appropriate.

14 14. The state law claims in this action are "in reality based on federal law." *Davila*,
15 542 U.S. at 208, 124 S. Ct. at 2495. They "duplicate, supplement, or supplant" the ERISA civil
16 enforcement remedy that Congress intended to be exclusive. *Id.* Instead of proceeding under
17 ERISA's federal enforcement mechanism which allows for the recovery of benefits allegedly due
18 under a plan, Fremont casts its claim under state law principles of implied-in-fact contract, unjust
19 enrichment, state statutory violations, and declaratory relief. Fremont's labels, however, do not
20 control the complete preemption question. Federal courts are "not bound by the labels used in
21 the complaint . . . merely referring to labels affixed to claims to distinguish between preempted
22 and non-preempted claims is not helpful because doing so would elevate form over substance
23 and allow parties to evade the pre-emptive scope of ERISA.'" *Gables Ins. Recovery, Inc. v. Blue*
24 *Cross & Blue Shield of Florida, Inc.*, 813 F.3d 1333, 1337 n.2 (11th Cir. Dec. 1, 2015) (internal
25 quotation omitted); *see also Cleghorn v. Blue Shield of California*, 408 F.3d 1222, 1226 (9th Cir.
26 2005) ("Artful pleading does not alter the potential for this suit to frustrate the objectives of
27 ERISA. The only factual basis for relief pleaded in Cleghorn's complaint is the refusal of Blue
28 Shield to reimburse him for the emergency medical care he received. Any duty or liability that

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Blue Shield had to reimburse him would exist here only because of [Blue Shield's] administration of ERISA-regulated benefit plans.”) (internal citation omitted).

15. As further evidence that removal is appropriate and that Fremont is engaged in artful pleading to avoid federal question jurisdiction, footnote 1 of the Complaint alleges that Fremont does not assert any claims with respect to patients whose health insurance was issued under Medicare Part C or provided under the Federal Employee Benefits Act (FEHBA). Thus, Fremont asserts that “there is no basis to remove this lawsuit to federal court under federal question jurisdiction.” Conspicuously absent from this footnote is any allegation that the lawsuit is not removable under ERISA.

16. Removal of this action which squarely implicates numerous ERISA plans is consistent with ERISA’s purpose “to provide a uniform regulatory regime over employee benefit plans.” *Davila*, 542 U.S. at 208, 124 S. Ct. at 2495. In order to adjudicate Fremont’s claims, it will be necessary for the Court to consult the Defendants’ members’ employer sponsored health plans which are subject to ERISA.

17. Removal of the claims asserted by Fremont is proper on the grounds that Fremont has alleged claims in substance seeking to recover benefits from employee welfare benefit plans. This Court has federal question jurisdiction over such claims pursuant to 28 U.S.C. § 1331 and original jurisdiction over such claims pursuant to ERISA. *See* 29 U.S.C. § 1132(e)(1). Therefore, removal is appropriate pursuant to 28 U.S.C. § 1441(a).

V. SUPPLEMENTAL JURISDICTION

18. To the extent that any claims asserted by Fremont relate to a benefits plan other than one governed by ERISA or are conflict preempted as opposed to completely preempted, those claims come within this Court’s supplemental jurisdiction because they are so related to those other claims that they form part of the same case or controversy under Article III of the United States Constitution. 28 U.S.C. §1367(a); *Beneficial Nat. Bank v. Anderson*, 539 U.S. 1, 8, 123 S. Ct. 2058, 2063, n. 3 (2003) (“Of course, a state claim can also be removed through the use of the supplemental jurisdiction statute, 28 U.S.C. § 1367(a), provided that another claim in the complaint is removable.”); *see also Gaming Corp. of Am. v. Dorsey & Whitney*, 88 F.3d 536, 543

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(8th Cir. 1996) (“Only those claims that fall within the preemptive scope of the particular statute, or treaty, are considered to make out federal questions, but the presence of even one federal claim gives the defendant the right to remove the entire case to federal court.”) (internal citations omitted); *Milwaukee Carpenter’s District Council Health Fund v. Philip Morris*, 70 F.Supp.2d 888 (E.D. Wisc. 1999) (denying remand while noting that “[s]o long as any one claim concerned a federal question, the entire case could be removed” under the ERISA complete preemption doctrine).

VI. CONCLUSION

19. This Notice of Removal is timely because Defendants have filed it within thirty days of being served with Fremont’s Complaint. 28 U.S.C. § 1446.

20. Defendants will file a copy of this Notice of Removal with the Clerk of the Eighth Judicial District Court and will serve a copy on Fremont’s counsel as required by 28 U.S.C. § 1446(d).

21. With this Notice of Removal, Defendants have filed a copy of the process, pleadings and all other papers served upon the Defendants in the State Court Action as required by 28 U.S.C. § 1446(a). See **Exhibit 1**.

Dated this 14 day of May, 2019.

D. Lee Roberts, Jr., Esq.
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CERTIFICATE OF SERVICE

I hereby certify that on the 14 day of May, 2019, a true and correct copy of the foregoing **DEFENDANTS' UNITEDHEALTHCARE INSURANCE COMPANY, UNITED HEALTHCARE SERVICES INC., UMR, INC., OXFORD HEALTH PLANS, INC., SIERRA HEALTH AND LIFE INSURANCE CO., INC., SIERRA HEALTH-CARE OPTIONS, INC. AND HEALTH PLAN OF NEVADA, INC.'S NOTICE OF REMOVAL** was filed through CM/ECF and served by mailing a copy of the foregoing document in the United States Mail, postage fully prepaid, to the following:

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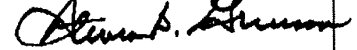


EXHIBIT 1

**Documents filed in
District Court, Clark County, Nevada
Case No. A-19-792978-B**

EXHIBIT 1

Electronically Filed
4/15/2019 5:42 PM
Steven D. Grierson
CLERK OF THE COURT



CASE NO: A-19-792978-C
Department 9

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13 *Attorneys for Plaintiff Fremont Emergency*
14 *Services (Mandavia), Ltd.*

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 **FREMONT EMERGENCY SERVICES**
18 **(MANDAVIA), LTD., a Nevada professional**
19 **corporation,**

20 **Plaintiff,**

21 **vs.**

22 **UNITED HEALTHCARE INSURANCE**
23 **COMPANY, a Connecticut corporation;**
24 **UNITED HEALTH CARE SERVICES INC.,**
25 **dba UNITEDHEALTHCARE, a Minnesota**
26 **corporation; UMR, INC., dba UNITED**
27 **MEDICAL RESOURCES, a Delaware**
28 **corporation; OXFORD HEALTH PLANS,**
INC., a Delaware corporation; SIERRA
HEALTH AND LIFE INSURANCE
COMPANY, INC., a Nevada corporation;
SIERRA HEALTH-CARE OPTIONS, INC., a
Nevada corporation; HEALTH PLAN OF
NEVADA, INC., a Nevada corporation; DOES
1-10; ROE ENTITIES 11-20,

Defendants.

Case No.:
Dept. No.:

COMPLAINT

Business Court Requested
(EDCR 1.61(a)(2)(ii))

Exempt From Arbitration: In Excess of
\$50,000, Declaratory and
Injunctive Relief Requested

Jury Trial Demanded

Plaintiff Fremont Emergency Services (Mandavia), Ltd. ("Fremont" or "Plaintiff") as
and for its Complaint against defendants United Healthcare Insurance Company ("UHCIC") and
its affiliates United Health Care Services Inc. dba UnitedHealthcare ("UHC Services"); UMR,
Inc. dba United Medical Resources ("UMR"); Oxford Benefit Management, Inc. ("Oxford")

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1 together with UHC Services and UMR, the “UHC Affiliates” and with UHCIC, the “UH
2 Parties”); Sierra Health and Life Insurance Company, Inc. (“Sierra Health”); Sierra Health-Care
3 Options, Inc. (“Sierra Options” and together with Sierra Health, the “Sierra Affiliates”); Health
4 Plan of Nevada, Inc. (“HPN”) (collectively “United HealthCare”) hereby complains and alleges
5 as follows:

6 NATURE OF THIS ACTION

7 1. This action arises out of a dispute concerning the rate at which United HealthCare
8 reimburses Fremont for the emergency medicine services it has already provided, and continues
9 to provide, to patients covered under the health plans underwritten, operated, and/or
10 administered by United HealthCare (the “Health Plans”) (Health Plan beneficiaries for whom
11 Fremont performed covered services that were not reimbursed correctly shall be referred to as
12 “Patients”).¹

13 PARTIES

14 2. Plaintiff Fremont Emergency Services (Mandavia), Ltd. (“Fremont”) is a
15 professional emergency medicine services group practice that staffs the emergency departments
16 at ER at Aliante; ER at The Lakes; Mountainview Hospital; Dignity Health – St. Rose
17 Dominican Hospitals, Rose de Lima Campus; Dignity Health – St. Rose Dominican Hospitals,
18 San Martin Campus; Dignity Health – St. Rose Dominican Hospitals, Siena Campus; Southern
19 Hills Hospital and Medical Center; and Sunrise Hospital and Medical Center located throughout
20 Clark County, Nevada.

21 3. Defendant United HealthCare Insurance Company (“UHCIC”) is a Connecticut
22 corporation with its principal place of business in Connecticut. UHCIC is responsible for
23 administering and/or paying for certain emergency medical services at issue in the litigation. On
24

25
26 ¹ Fremont does not assert any causes of action with respect to any Patient whose health
27 insurance was issued under Medicare Part C (Medicare Advantage) or is provided under the
28 Federal Employee Health Benefits Act (FEHBA). Thus, there is no basis to remove this lawsuit
relating to United HealthCare’s managed Medicaid business.



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1 information and belief, United HealthCare Insurance Company is a licensed Nevada health and
2 life insurance company.

3 4. Defendant United HealthCare Services, Inc. dba UnitedHealthcare ("UHC
4 Services") is a Minnesota corporation with its principal place of business in Connecticut and
5 affiliate of UHCIC. UHC Services is responsible for administering and/or paying for certain
6 emergency medical services at issue in the litigation. On information and belief, United
7 HealthCare Services, Inc. is a licensed Nevada health insurance company.

8 5. Defendant UMR, Inc. dba United Medical Resources ("UMR") is a Delaware
9 corporation with its principal place of business in Connecticut and affiliate of UHCIC. UMR is
10 responsible for administering and/or paying for certain emergency medical services at issue in
11 the litigation. On information and belief, UMR is a licensed Nevada health insurance company.

12 6. Defendant Oxford Health Plans, Inc. ("Oxford") is a Delaware corporation with
13 its principal place of business in Connecticut and affiliate of UHCIC. Oxford is responsible for
14 administering and/or paying for certain emergency medical services at issue in the litigation.

15 7. Defendant Sierra Health and Life Insurance Company, Inc. is a Nevada
16 corporation and affiliate of UHCIC. Sierra Health is responsible for administering and/or
17 paying for certain emergency medical services at issue in the litigation. On information and
18 belief, Sierra Health is a licensed Nevada health insurance company.

19 8. Defendant Sierra Health-Care Options, Inc. ("Sierra Options") is a Nevada
20 corporation and affiliate of UHCIC. Sierra Options is responsible for administering and/or
21 paying for certain emergency medical services at issue in the litigation. On information and
22 belief, Sierra Options is a licensed Nevada health insurance company.

23 9. Defendant Health Plan of Nevada, Inc. ("HPN") is a Nevada corporation and
24 affiliate of UHCIC. HPN is responsible for administering and/or paying for certain emergency
25 medical services at issue in the litigation. On information and belief, HPN is a licensed Nevada
26 Health Maintenance Organization ("HMO").

27 10. There may be other persons or entities, whether individuals, corporations,
28 associations, or otherwise, who are or may be legally responsible for the acts, omissions,

1 circumstances, happenings, and/or the damages or other relief requested by this Complaint. The
2 true names and capacities of Does 1-10 and Roes Entities 11-20 are unknown to Fremont, who
3 sues those defendants by such fictitious names. Fremont will seek leave of this Court to amend
4 this Complaint to insert the proper names of the defendant Doe and Roe Entities when such
5 names and capacities become known to Fremont.

6 **JURISDICTION AND VENUE**

7 11. The amount in controversy exceeds the sum of fifteen thousand dollars
8 (\$15,000.00), exclusive of interest, attorneys' fees and costs.

9 12. Venue is proper in Clark County, Nevada pursuant to NRS 13.010(1), NRS
10 13.020 and NRS 13.040.

11 **FACTS COMMON TO ALL CAUSES OF ACTION**

12 ***Fremont Provides Necessary Emergency Care***

13 13. This is an action for damages stemming from United HealthCare's failure to
14 properly reimburse Fremont for emergency services provided to members of their Health Plans.

15 14. Fremont is a professional practice group of emergency medicine physicians and
16 healthcare providers that provides emergency medicine services 24 hours per day, 7 days per
17 week to patients presenting to the emergency departments at hospitals and other facilities in
18 Nevada staffed by Fremont. Fremont provides emergency department services at eight hospitals
19 located in Clark County, Nevada.

20 15. Fremont and the hospitals whose emergency departments it staffs are obligated
21 by both federal and Nevada law to examine any individual visiting the emergency department
22 and to provide stabilizing treatment to any such individual with an emergency medical
23 condition, regardless of the individual's insurance coverage or ability to pay. *See* Emergency
24 Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd; NRS 439B.410.
25 Fremont fulfills this obligation for the hospitals which its staffs. In this role, Fremont's
26 physicians provide emergency medicine services to all patients, regardless of insurance coverage
27 or ability to pay, including to patients with insurance coverage issued, administered and/or
28 underwritten by United HealthCare.

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1 16. Upon information and belief, United HealthCare operates an HMO under NRS
2 Chapter 695C, and is an insurer under NRS Chapters 679A, 689A (Individual Health Insurance),
3 689B (Group and Blanket Health Insurance), 689C (Health Insurance for Small Employers) and
4 695G (Managed Care Organization). United HealthCare provides, either directly or through
5 arrangements with providers such as hospitals and Fremont, healthcare benefits to its members.

6 17. There is no written agreement between United HealthCare and Fremont for the
7 healthcare claims at issue in this litigation; Fremont is therefore designated as “non-
8 participating” or “out-of-network” for all of the claims at issue in this litigation.
9 Notwithstanding the lack of a written agreement, an implied-in-fact agreement exists between
10 the parties.

11 18. Fremont regularly provides emergency services to United HealthCare’s health
12 plan members.

13 19. Relevant to this action, from July 1, 2017 through the present, Fremont has
14 provided emergency medicine services to United HealthCare’s members as follows: ER at
15 Aliante (approximately July 2017-present); ER at The Lakes (approximately July 2017-present);
16 Mountainview Hospital (approximately July 2017-present); Dignity Health – St. Rose
17 Dominican Hospitals, Rose de Lima Campus (approximately July 2017-October 2018); Dignity
18 Health – St. Rose Dominican Hospitals, San Martin Campus approximately (July 2017-October
19 2018); Dignity Health – St. Rose Dominican Hospitals, Siena Campus (approximately July
20 2017-October 2018); Southern Hills Hospital and Medical Center (approximately July 2017-
21 present); and Sunrise Hospital and Medical Center (approximately July 2017-present).

22 20. Beginning on July 1, 2017, the UHC Parties arbitrarily began drastically reducing
23 the rates at which they paid Fremont for emergency services for some claims, but not others.
24 The UHC Parties paid some of the claims for emergency services rendered by Fremont at far
25 below the usual and customary rates, yet paid other substantially identical claims submitted by
26 Fremont at higher rates.

27 21. Upon information and belief, among other things, the UH Parties generally pay
28 lower reimbursement rates for services provided to members of their fully insured plans and

1 authorize payment at higher reimbursement rates for services provided to members of self-
2 insured plans or those plans under which they provide administrator services only.

3 ***United HealthCare Has Underpaid Fremont for Emergency Services***

4 22. Despite not participating in United HealthCare's "provider network" for the times
5 identified herein, Fremont has continued to provide emergency medicine treatment, as required
6 by law, to patients covered by United HealthCare's plans who seek care at the emergency
7 departments where they provide coverage.

8 23. In emergency situations, patients are likely to go to the nearest hospital for care,
9 particularly if they are transported by ambulance. Patients facing an emergency situation are
10 unlikely to have the luxury of determining which hospitals and physicians are in-network under
11 their health plan. United HealthCare is obligated to reimburse Fremont at the usual and
12 customary rate for emergency services Fremont provided to its Patients, or alternatively for the
13 reasonable value of the services provided.

14 24. United HealthCare's members have received a wide variety of emergency
15 services (in some instances, life-saving services) from Fremont's physicians: treatment of
16 conditions ranging from cardiac arrest, to broken limbs, to burns, to diabetic ketoacidosis and
17 shock, to gastric and/or obstetrical distress.

18 25. From July 2017 to the present, Fremont provided treatment for emergency
19 services to more than 10,800 Patients who were members in United HealthCare's Health Plans.
20 The total underpayment amount for these related claims is in excess of the jurisdictional
21 threshold of \$15,000.00 and continues to grow. United HealthCare has likewise failed to
22 attempt in good faith to effectuate a prompt, fair, and equitable settlement of these claims.

23 26. During this same period, July 2017 to the present, United HealthCare paid some
24 claims at an appropriate rate and others at a significantly reduced rate which is demonstrative of
25 an arbitrary and selective program and motive or intent to unjustifiably reduce the overall
26 amount United Healthcare pays to Fremont. Upon information and belief, United Healthcare
27 has implemented this program to coerce, influence and leverage business discussions regarding
28 the potential for Fremont to become a participating provider.

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1 36. At all material times, the UH Parties were aware that Fremont was entitled to and
2 expected to be paid at rates in accordance with the standards established under Nevada law.

3 37. At all material times, the UH Parties have received Fremont's bills for the
4 emergency medicine services Fremont has provided and continue to provide to UH Parties'
5 Patients, and the UH Parties have consistently adjudicated and paid, and continue to adjudicate
6 and pay, Fremont directly for the non-participating claims, albeit at amounts less than usual and
7 customary.

8 38. Through the parties' conduct and respective undertaking of obligations
9 concerning emergency medicine services provided by Fremont to the UH Parties' Patients, the
10 parties implicitly agreed, and Fremont had a reasonable expectation and understanding, that the
11 UH Parties would reimburse Fremont for non-participating claims at rates in accordance with
12 the standards acceptable under Nevada law and in accordance with rates the UH Parties pay for
13 other substantially identical claims also submitted by Fremont.

14 39. Under Nevada common law, including the doctrine of quantum meruit, the UH
15 Parties, by undertaking responsibility for payment to Fremont for the services rendered to
16 United HealthCare Patients, impliedly agreed to reimburse Plaintiffs at rates, at a minimum,
17 equivalent to the reasonable value of the professional emergency medical services provided by
18 Fremont.

19 40. The UH Parties, by undertaking responsibility for payment to Fremont for the
20 services rendered to the UH Parties' Patients, impliedly agreed to reimburse Fremont at rates, at
21 a minimum, equivalent to the usual and customary rate or alternatively for the reasonable value
22 of the professional emergency medical services provided by Fremont.

23 41. In breach of its implied contract with Fremont, the UH Parties have and continue
24 to systemically adjudicate the non-participating claims at rates substantially below both the
25 usual and customary fees in the geographic area and the reasonable value of the professional
26 emergency medical services provided by Fremont to the UH Parties' Patients.

27 42. Fremont has performed all obligations under its implied contract with the UH
28 Parties concerning emergency medical services to be performed for Patients.

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1 51. That Fremont did all or substantially all of its obligations pursuant to the implied-
2 in-fact contract.

3 52. By paying substantially low rates that did not reasonably compensate Fremont the
4 usual and customary rate or alternatively for the reasonable value of the services provide, the
5 UH Parties performed in a manner that was unfaithful to the purpose of the implied-in-fact
6 contract, or deliberately contravened the intention and sprit of the contract.

7 53. That the UH Parties' conduct was a substantial factor in causing damage to
8 Fremont.

9 54. As a result of the UH Parties' tortious breach of the implied covenant of good
10 faith and fair dealing, Fremont has suffered injury and is entitled to monetary damages from the
11 UH Parties to compensate it for that injury in an amount in excess of \$15,000.00, exclusive of
12 interest, costs and attorneys' fees, the exact amount of which will be proven at the time of trial.

13 55. The acts and omissions of the UH Parties as alleged herein were attended by
14 circumstances of malice, oppression and/or fraud, thereby justifying an award of punitive or
15 exemplary damages in an amount to be proven at trial.

16 56. Fremont has been forced to retain counsel to prosecute this action and is entitled
17 to receive their costs and attorneys' fees incurred herein.

18 **THIRD CLAIM FOR RELIEF**

19 **(Alternative Claim for Unjust Enrichment – UH Parties)**

20 57. Fremont incorporates herein by reference the allegations set forth in the
21 preceding paragraphs as if fully set forth herein.

22 58. Fremont rendered valuable emergency services to the Patients.

23 59. The UH Parties received the benefit of having their healthcare obligations to their
24 plan members discharged and their members received the benefit of the emergency care
25 provided to them by Fremont.

26 60. As insurers or plan administrators, the UH Parties were reasonably notified that
27 emergency medicine service providers such as Fremont would expect to be paid by the UH
28 Parties for the emergency services provided to Patients.

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1 61. The UH Parties accepted and retained the benefit of the services provided by
2 Fremont at the request of the members of its Health Plans, knowing that Fremont expected to be
3 paid a usual and customary fee based on locality, or alternatively for the reasonable value of
4 services provided, for the medically necessary, covered emergency medicine services it
5 performed for the UH Parties' Patients.

6 62. The UH Parties have received a benefit from Fremont's provision of services to
7 its Patients and the resulting discharge of their healthcare obligations owed to their Patients.

8 63. Under the circumstances set forth above, it is unjust and inequitable for the UH
9 Parties to retain the benefit they received without paying the value of that benefit; i.e., by paying
10 Fremont at usual and customary rates, or alternatively for the reasonable value of services
11 provided, for the claims that are the subject of this action and for all emergency medicine
12 services that Fremont will continue to provide to United HealthCare's members.

13 64. Fremont seeks compensatory damages in an amount which will continue to
14 accrue through the date of trial as a result of United Healthcare's continuing unjust enrichment.

15 65. As a result of the UH Parties' actions, Fremont has been damaged in an amount
16 in excess of \$15,000.00, exclusive of interest, costs and attorneys' fees, the exact amount of
17 which will be proven at the time of trial.

18 66. Fremont sues for the damages caused by the UH Parties' conduct and is entitled
19 to recover the difference between the amount the UH Parties paid for emergency care Fremont
20 rendered to its members and the reasonable value of the service that Fremont rendered to the UH
21 Parties by discharging their obligations to their plan members.

22 67. As a direct result of the UH Parties' acts and omissions complained of herein, it
23 has been necessary for Fremont to retain legal counsel and others to prosecute its claims.
24 Fremont is thus entitled to an award of attorneys' fees and costs of suit incurred herein.

25 **FOURTH CLAIM FOR RELIEF**

26 **(Violation of NRS 686A.020 and 686A.310 – UH Parties)**

27 68. Fremont incorporates herein by reference the allegations set forth in the
28 preceding paragraphs as if fully set forth herein.

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1 69. The Nevada Insurance Code prohibits an insurer from engaging in an unfair
2 settlement practices. NRS 686A.020, 686A.310.

3 70. One prohibited unfair claim settlement practice is "[f]ailing to effectuate prompt,
4 fair and equitable settlements of claims in which liability of the insurer has become reasonably
5 clear." NRS 686A.310(1)(e).

6 71. As detailed above, the UH Parties have failed to comply with NRS
7 686A.310(1)(e) by failing to pay Fremont's medical professionals the usual and customary rate
8 for emergency care provided to UH Parties' members. By failing to pay Fremont's medical
9 professionals the usual and customary rate the UH Parties have violated NRS 686A.310(1)(e)
10 and committed an unfair settlement practice.

11 72. Fremont is therefore entitled to recover the difference between the amount the
12 UH Parties paid for emergency care Fremont rendered to their members and the usual and
13 customary rate, plus court costs and attorneys' fees.

14 73. Fremont is entitled to damages in an amount in excess of \$15,000.00, exclusive
15 of interest, costs and attorneys' fees, the exact amount of which will be proven at the time of
16 trial.

17 74. The UH Parties have acted in bad faith regarding their obligation to pay the usual
18 and customary fee; therefore, Fremont is entitled to recover punitive damages against the UH
19 Parties.

20 75. As a direct result of the UH Parties' acts and omissions complained of herein, it
21 has been necessary for Fremont to retain legal counsel and others to prosecute its claims.
22 Fremont is thus entitled to an award of attorneys' fees and costs of suit incurred herein.

23 **FIFTH CLAIM FOR RELIEF**

24 **(Violations of Nevada Prompt Pay Statutes & Regulations - UH Parties)**

25 76. Fremont incorporates herein by reference the allegations set forth in the
26 preceding paragraphs as if fully set forth herein.

27 77. The Nevada Insurance Code requires an HMO, MCO or other health insurer to
28 pay a healthcare provider's claim within 30 days of receipt of a claim. NRS 683A.0879 (third

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1 party administrator), NRS 689A.410 (Individual Health Insurance), NRS 689B.255 (Group and
2 Blanket Health Insurance), NRS 689C.485 (Health Insurance for Small Employers), NRS
3 695C.185 (HMO), NAC 686A.675 (all insurers) (collectively, the “NV Prompt Pay Laws”).
4 Thus, for all submitted claims, the UH Parties were obligated to pay Fremont the usual and
5 customary rate within 30 days of receipt of the claim.

6 78. Despite this obligation, as alleged herein, the UH Parties have failed to reimburse
7 Fremont at the usual and customary rate within 30 days of the submission of the claim. Indeed,
8 the UH Parties failed to reimburse Fremont at the usual and customary rate at all. Because the
9 UH Parties have failed to reimburse Fremont at the usual and customary rate within 30 days of
10 submission of the claims as the Nevada Insurance Code requires, the UH Parties are liable to
11 Fremont for statutory penalties.

12 79. For all claims payable by plans that the UH Parties insure wherein it failed to pay
13 at the usual and customary fee within 30 days, UH Parties is liable to Fremont for penalties as
14 provided for in the Nevada Insurance Code.

15 80. Additionally, the UH Parties have violated NV Prompt Pay Laws, by among
16 things, only paying part of the subject claims that have been approved and are fully payable.

17 81. Fremont seeks penalties payable to it for late-paid and partially paid claims under
18 the NV Prompt Pay Laws.

19 82. Fremont is entitled to damages in an amount in excess of \$15,000.00 to be
20 determined at trial, including for its loss of the use of the money and its attorneys' fees.

21 83. Under the Nevada Insurance Code and NV Prompt Pay Laws, Fremont is also
22 entitled to recover its reasonable attorneys' fees and costs.

23 **SIXTH CLAIM FOR RELIEF**

24 **(Consumer Fraud & Deceptive Trade Practices Acts – UH Parties)**

25 84. Fremont incorporates herein by reference the allegations set forth in the
26 preceding paragraphs as if fully set forth herein.

27 85. The Nevada Deceptive Trade Practices Act (DTPA) prohibits the UH Parties
28 from engaging in “deceptive trade practices,” including but not limited to (1) knowingly making

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1 a false representation in a transaction; (2) violating “a state or federal statute or regulation
2 relating to the sale or lease of goods or services”; (3) using “coercion, duress or intimidation in a
3 transaction”; and (4) knowingly misrepresent the “legal rights, obligations or remedies of a party
4 to a transaction.” NRS 598.0915(15), 598.0923(3), 598.0923(4), NRS 598.092(8), respectively.

5 86. The Nevada Consumer Fraud Statute provides that a legal action “may be
6 brought by any person who is a victim of consumer fraud.” NRS 41.600(1). “Consumer fraud”
7 includes a deceptive trade practice as defined by the DTPA.

8 87. The UH Parties have violated the DTPA and the Consumer Fraud Statute through
9 their acts, practices, and omissions described above, including but not limited to (a) wrongfully
10 refusing to pay Fremont for the medically necessary, covered emergency services Fremont
11 provided to Members in order to gain unfair leverage against Fremont now that they are out-of-
12 network and in contract negotiations to potentially become a participating provider under a new
13 contract in an effort to force Fremont to accept lower amounts than it is entitled for its services;
14 and (b) engaging in systematic efforts to delay adjudication and payment of Fremont’s claims
15 for its services provided to UH Parties’ members in violation of their legal obligations

16 88. As a result of the UH Parties’ violations of the DTPA and the Consumer Fraud
17 Statute, Fremont is entitled to damages in an amount in excess of \$15,000.00 to be determined at
18 trial.

19 89. Due to the willful and knowing engagement in deceptive trade practices, Fremont
20 is entitled to recover treble damages and all profits derived from the knowing and willful
21 violation.

22 90. As a direct result of UH Parties’ acts and omissions complained of herein, it has
23 been necessary for Fremont to retain legal counsel and others to prosecute its claims. Fremont is
24 thus entitled to an award of attorneys’ fees and costs of suit incurred herein.

25 **SEVENTH CLAIM FOR RELIEF**

26 **(Declaratory Judgment – All Defendants)**

27 91. Fremont incorporates herein by reference the allegations set forth in the
28 preceding paragraphs as if fully set forth herein.

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1 92. This is a claim for declaratory judgment and actual damages pursuant to NRS
2 30.010 *et seq.*

3 93. As explained above, pursuant to federal and Nevada law, United HealthCare is
4 required to cover and pay Fremont for the medically necessary, covered emergency medicine
5 services Fremont has provided and continues to provide to United HealthCare members.

6 94. Under Nevada law, United HealthCare is required to pay Fremont the usual and
7 customary rate for that emergency care. Instead of reimbursing Fremont at the usual and
8 customary rate or for the reasonable value of the professional medical services, United
9 HealthCare has reimbursed Fremont at reduced rates with no relation to the usual and customary
10 rate.

11 95. Beginning in or about July 2017, Fremont became out-of-network with the UH
12 Parties. Since then, the UH Parties have demonstrated their refusal to timely settle insurance
13 claims submitted by Fremont and have failed to pay the usual and customary rate based on this
14 locality in violation of UH Parties' obligations under the Nevada Insurance Code, the parties'
15 implied-in-fact contract and pursuant to Nevada law of unjust enrichment and quantum merit.

16 96. Beginning in or about March 2019, Fremont became out-of-network with the
17 Sierra Affiliates and HPN. Since then, upon information and belief, the Sierra Affiliates and
18 HPN are failing to timely settle insurance claims submitted by Fremont and to pay the usual and
19 customary rate based on this locality in violation of the Sierra Affiliates' and HPN's obligations
20 under the Nevada Insurance Code, the parties' implied-in-fact contract and pursuant to Nevada
21 law of unjust enrichment and quantum merit.

22 97. An actual, justiciable controversy therefore exists between the parties regarding
23 the rate of payment for Fremont's emergency care that is the usual and customary rate that
24 United HealthCare is obligated to pay.

25 98. Pursuant to NRS 30.040 and 30.050, Fremont therefore requests a declaration
26 establishing the usual and customary rates that Fremont is entitled to receive for claims between
27 July 1, 2017 and trial, as well as a declaration that the UH Parties are required to pay to Fremont
28 at a usual and customary rate for claims submitted thereafter.

1 99. Pursuant to NRS 30.040 and 30.050, Fremont therefore requests a declaration
2 establishing the usual and customary rates that Fremont is entitled to receive for claims between
3 March 1, 2019 and trial, as well as a declaration that the Sierra Affiliates and HPN are required
4 to pay to Fremont at a usual and customary rate for claims submitted thereafter.

5 100. As a direct result of United HealthCare's acts and omissions complained of
6 herein, it has been necessary for Fremont to retain legal counsel and others to prosecute its
7 claims. Fremont is thus entitled to an award of attorneys' fees and costs of suit incurred herein.

8 **REQUEST FOR RELIEF**

9 WHEREFORE, Fremont requests the following relief:

10 A. For awards of general and special damages in amounts in excess of \$15,000.00,
11 the exact amounts of which will be proven at trial;

12 B. For an award of punitive damages, the exact amount of which will be proven at
13 trial;

14 C. A Declaratory Judgment that United HealthCare's failure to pay Fremont a usual
15 and customary fee or rate for this locality or alternatively, for the reasonable value of its services
16 violates the Nevada Insurance Code, breaches the parties' implied-in-fact contract, is a tortious
17 breach of the implied covenant of good faith and fair dealing, and violates Nevada common law;

18 D. An Order permanently enjoining United HealthCare from paying rates that do not
19 represent usual and customary fees or rates for this locality or alternatively, that do not
20 compensate Fremont for the reasonable value of its services; and enjoining United HealthCare
21 from timely paying claims that are not in conformity with Nevada's Prompt Pay statutes and
22 regulations;

23 E. Reasonable attorneys' fees and court costs;

24 F. Pre-judgment and post-judgment interest; and

25 G. Such other and further relief as the Court may deem just and proper.

26 ...

27 ...

28 ...

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JURY DEMAND

Fremont hereby demands trial by jury on all issues so triable.

DATED this 15th day of April, 2019.

McDONALD CARANO LLP

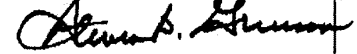
By: /s/ Pat Lundvall

Pat Lundvall (NSBN 3761)
Kristen T. Gallagher (NSBN 9561)
Amanda M. Perach (NSBN 12399)
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Telephone: (702) 873-4100
Facsimile: (702) 873-9966
plundvall@mcdonaldcarano.com
kgallagher@mcdonaldcarano.com
aperach@mcdonaldcarano.com

*Attorneys for Plaintiff Fremont Emergency
Services (Mandavia), Ltd.*

4820-6308-4435, v. 4

Electronically Filed
4/15/2019 5:42 PM
Steven D. Grierson
CLERK OF THE COURT



CASE NO: A-19-792978-C
Department 9

1 **IAFD**
2 PAT LUNDVALL (NSBN 3761)
3 KRISTEN T. GALLAGHER (NSBN 9561)
4 AMANDA M. PERACH (NSBN 12399)
5 McDONALD CARANO LLP
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12 aperach@mcdonaldcarano.com

13 *Attorneys for Plaintiff Fremont Emergency*
14 *Services (Mandavia), Ltd.*

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 **FREMONT EMERGENCY SERVICES**
18 **(MANDAVIA), LTD., a Nevada professional**
19 **corporation,**

20 **Plaintiff,**

21 **vs.**

22 **UNITED HEALTHCARE INSURANCE**
23 **COMPANY, a Connecticut corporation;**
24 **UNITED HEALTH CARE SERVICES INC.,**
25 **dba UNITEDHEALTHCARE, a Minnesota**
26 **corporation; UMR, INC., dba UNITED**
27 **MEDICAL RESOURCES, a Delaware**
28 **corporation; OXFORD HEALTH PLANS,**
INC., a Delaware corporation; SIERRA
HEALTH AND LIFE INSURANCE
COMPANY, INC., a Nevada corporation;
SIERRA HEALTH-CARE OPTIONS, INC.,
a Nevada corporation; HEALTH PLAN OF
NEVADA, INC., a Nevada corporation;
DOES 1-10; ROE ENTITIES 11-20,

Defendants.

Case No.:
Dept. No.:

INITIAL APPEARANCE FEE
DISCLOSURE
(Business Court)

McDONALD CARANO

2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties appearing in the above entitled action as indicated below:

Fremont Emergency Services (Mandavia), Ltd., Plaintiff	<u>\$1,530.00</u>
TOTAL	\$1,530.00

DATED this 15th day of April, 2019.

McDONALD CARANO LLP

By: /s/ Pat Lundvall

Pat Lundvall (NSBN 3761)
Kristen T. Gallagher (NSBN 9561)
Amanda M. Perach (NSBN 12399)
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plundvall@mcdonaldcarano.com
kgallagher@mcdonaldcarano.com
aperach@mcdonaldcarano.com

*Attorneys for Plaintiff Fremont Emergency
Services (Mandavia), Ltd.*

4812-1265-8324, v. 1

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

A-19-792978-B

**DISTRICT COURT
CLARK COUNTY, NEVADA**

NRS Chapters 78-89

COURT MINUTES

April 16, 2019

A-19-792978-B Fremont Emergency Services Mandavia Ltd, Plaintiff(s)
vs.
United Healthcare Insurance Company, Defendant(s)

April 16, 2019 03:00 AM Minute Order

HEARD BY: Cherry, Michael A. **COURTROOM:**

COURT CLERK: Trujillo, Athena

RECORDER:

REPORTER:

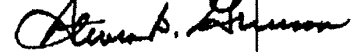
PARTIES PRESENT:

JOURNAL ENTRIES

No parties present.

This matter came before the Court on April 16, 2019. Having reviewed the pleadings, authorities, and exhibits therein, this Court finds this case would be properly litigated in Specialty Court due to its claims and controversies regarding business matters as defined by E.D.C.R 1.61(a)(1), matters in which the primary claims or issues are based on, or will require decision under N.R.S. Chapters 78-92A. Therefore, pursuant to E.D.C.R. 2.49, the Court ORDERS case A-19-792978-C be sent to Master Calendar for random assignment to an appropriate Business/Specialty Court for determination as to whether the matter should be handled on the specialty docket.

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4/16/2019 2:42 PM
Steven D. Grierson
CLERK OF THE COURT



**DISTRICT COURT
CLARK COUNTY, NEVADA**

Fremont Emergency Services Mandavia
Ltd, Plaintiff(s)
vs.
United Healthcare Insurance Company,
Defendant(s)

Case No.: A-19-792978-B

Department 11

NOTICE OF DEPARTMENT REASSIGNMENT

NOTICE IS HEREBY GIVEN that the above-entitled action has been randomly
reassigned to Judge Elizabeth Gonzalez.

☒ This reassignment is due to: Minute Order Re: Business Court Designation Dated 04-16-19.

ANY TRIAL DATE AND ASSOCIATED TRIAL HEARINGS STAND BUT MAY BE
RESET BY THE NEW DEPARTMENT.

PLEASE INCLUDE THE NEW DEPARTMENT NUMBER ON ALL FUTURE
FILINGS.

STEVEN D. GRIERSON, CEO/Clerk of the Court

By: /s/ Salevao Asifoa
S.L. Asifoa, Deputy Clerk of the Court

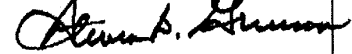
CERTIFICATE OF SERVICE

I hereby certify that this 16th day of April, 2019

☒ The foregoing Notice of Department Reassignment was electronically served to all
registered parties for case number A-19-792978-B.

/s/ Salevao Asifoa
S.L. Asifoa, Deputy Clerk of the Court

Electronically Filed
4/17/2019 11:38 AM
Steven D. Grierson
CLERK OF THE COURT



1 **CHLG**
2 PAT LUNDVALL (NSBN 3761)
3 KRISTEN T. GALLAGHER (NSBN 9561)
4 AMANDA M. PERACH (NSBN 12399)
5 McDONALD CARANO LLP
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11 kgallagher@mcdonaldcarano.com
12 aperach@mcdonaldcarano.com

13 *Attorneys for Plaintiff Fremont Emergency*
14 *Services (Mandavia), Ltd.*

15
16 **DISTRICT COURT**
17 **CLARK COUNTY, NEVADA**

18 **FREMONT EMERGENCY SERVICES**
19 **(MANDAVIA), LTD., a Nevada professional**
20 **corporation,**

21 **Plaintiff,**

22 **vs.**

23 **UNITED HEALTHCARE INSURANCE**
24 **COMPANY, a Connecticut corporation;**
25 **UNITED HEALTH CARE SERVICES INC.,**
26 **dba UNITEDHEALTHCARE, a Minnesota**
27 **corporation; UMR, INC., dba UNITED**
28 **MEDICAL RESOURCES, a Delaware**
corporation; OXFORD HEALTH PLANS,
INC., a Delaware corporation; SIERRA
HEALTH AND LIFE INSURANCE
COMPANY, INC., a Nevada corporation;
SIERRA HEALTH-CARE OPTIONS, INC.,
a Nevada corporation; HEALTH PLAN OF
NEVADA, INC., a Nevada corporation;
DOES 1-10; ROE ENTITIES 11-20,

Defendants.

Case No.: A-19-792978-B
Dept. No.: 11

PEREMPTORY CHALLENGE
OF JUDGE

Pursuant to Supreme Court Rule 48.1 and EDCR 1.61(d), plaintiff Fremont Emergency Services (Mandavia), Ltd. files a Notice of Peremptory Challenge of Judge in the above-captioned matter. This case has been assigned to Business Court. See Minute Order Re: Business Court

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

McDONALD CARANO

2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

1 Designation dated April 16, 2019.

2 The judge to be challenged is the Honorable Elizabeth Gonzalez.

3 DATED this 17th day of April, 2019.

4 McDONALD CARANO LLP

5 By: /s/ Kristen T. Gallagher

6 Pat Lundvall (NSBN 3761)

7 Kristen T. Gallagher (NSBN 9561)

8 Amanda M. Perach (NSBN 12399)

9 2300 West Sahara Avenue, Suite 1200

10 Las Vegas, Nevada 89102

11 Telephone: (702) 873-4100

12 Facsimile: (702) 873-9966

13 plundvall@mcdonaldcarano.com

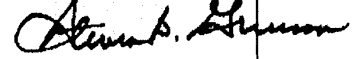
14 kgallagher@mcdonaldcarano.com

15 aperach@mcdonaldcarano.com

16 *Attorneys for Plaintiff Fremont Emergency*
17 *Services (Mandavia), Ltd.*

18 4814-5128-7444, v. 1

Electronically Filed
4/17/2019 2:32 PM
Steven D. Grierson
CLERK OF THE COURT



DISTRICT COURT
CLARK COUNTY, NEVADA

1

2

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4

5

FREMONT EMERGENCY SERVICES

MANDAVIA LTD, PLAINTIFF(S)

VS.

UNITED HEALTHCARE INSURANCE

COMPANY, DEFENDANT(S)

Case No.: A-19-792978-B

DEPARTMENT 27

6

NOTICE OF DEPARTMENT REASSIGNMENT

7

NOTICE IS HEREBY GIVEN that the above-entitled action has been randomly reassigned to
Judge Nancy Allf.

8

☒ This reassignment follows the filing of a Peremptory Challenge of Judge Elizabeth Gonzalez.

9

ANY TRIAL DATE AND ASSOCIATED TRIAL HEARINGS STAND BUT MAY BE RESET BY THE
NEW DEPARTMENT. PLEASE INCLUDE THE NEW DEPARTMENT NUMBER ON ALL FUTURE
FILINGS.

10

STEVEN D. GRIERSON, CEO/Clerk of the Court

11

By: /S/ Ivonne Hernandez

Ivonne Hernandez,
Deputy Clerk of the Court

12

CERTIFICATE OF SERVICE

13

I hereby certify that this 17th day of April, 2019

14

☒ The foregoing Notice of Department Reassignment was electronically served to all registered
parties for case number A-19-792978-B.

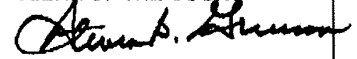
15

/S/ Ivonne Hernandez

Ivonne Hernandez
Deputy Clerk of the Court

16

Electronically Filed
4/25/2019 3:15 PM
Steven D. Grierson
CLERK OF THE COURT



1 PSER
2 PAT LUNDVALL (NSBN 3761)
3 KRISTEN T. GALLAGHER (NSBN 9561)
4 AMANDA M. PERACH (NSBN 12399)
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13 *Attorneys for Plaintiff Fremont Emergency*
14 *Services (Mandavia), Ltd.*

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 **FREMONT EMERGENCY SERVICES**
18 **(MANDAVIA), LTD., a Nevada professional**
19 **corporation,**

20 **Plaintiff,**

21 **vs.**

22 **UNITED HEALTHCARE INSURANCE**
23 **COMPANY, a Connecticut corporation;**
24 **UNITED HEALTHCARE SERVICES INC.**
25 **dba UNITEDHEALTHCARE, a Minnesota**
26 **corporation; UMR, INC. dba UNITED**
27 **MEDICAL RESOURCES, a Delaware**
28 **corporation; OXFORD HEALTH PLANS,**
INC., a Delaware corporation; SIERRA
HEALTH AND LIFE INSURANCE
COMPANY, INC., a Nevada corporation;
SIERRA HEALTH-CARE OPTIONS, INC.,
a Nevada corporation; HEALTH PLAN OF
NEVADA, INC., a Nevada corporation;
DOES 1-10; ROE ENTITIES 11-20,

Defendants.

Case No.: A-19-792978-B
Dept. No.: 27

SUMMONS –

UMR, INC. dba UNITED MEDICAL
RESOURCES

SUMMONS

NOTICE! YOU HAVE BEEN SUED, THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 31 DAYS. READ
THE INFORMATION BELOW.

McDONALD CARANO

2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

McDONALD CARANO

2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873-4100 • FAX 702.873.9966

1 **TO THE DEFENDANT(S):**

2 **UMR, INC. dba UNITED MEDICAL RESOURCES**
3 **c/o Nevada Division of Insurance**
4 **3300 W. Sahara Avenue, Suite 275**
5 **Las Vegas, NV 89102**

6 A civil Complaint has been filed by the Plaintiff against you for the relief set forth in the
7 Complaint.

- 8 1. If you intend to defend this lawsuit, within **31 days** after this Summons is served,
9 exclusive of the day of service, you must do the following:
- 10 (a) File with the Clerk of this Court, whose address is shown below, a formal
11 written response to the Complaint in accordance with the rules of the Court,
12 with the appropriate filing fee.
- 13 (b) Serve a copy of your response upon the attorney whose name and address
14 is shown below.
- 15 2. Unless you respond, your default will be entered upon application of the Plaintiff(s)
16 and failure to so respond will result in a judgment of default against you for the
17 relief demanded in the Complaint, which could result in the taking of money or
18 property or other relief requested in the Complaint.
- 19 3. If you intend to seek the advice of an attorney in this matter, you should do so
20 promptly so that your response may be filed on time.
- 21 4. The State of Nevada, its political subdivisions, agencies, officers, employees,
22 board members, commission members and legislators each have 45 days after
23 service of this Summons within which to file an Answer or other responsive
24 pleading to the Complaint.

25 Submitted by:

26 McDONALD CARANO LLP

STEVEN D. GRIERSON
CLERK OF THE COURT

27 By: /s/ Kristen T. Gallagher
28 PAT LUNDVALL (NSBN 3761)
KRISTEN T. GALLAGHER (NSBN 9561)
AMANDA M. PERACH (NSBN 12399)
McDONALD CARANO LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Telephone: (702) 873-4100
Facsimile: (702) 873-9966
plundvall@mcdonaldcarano.com
kgallagher@mcdonaldcarano.com
aperach@mcdonaldcarano.com

By: Chaunte Pleasant 4/18/2019
Deputy Clerk Chaunte Pleasant Date:
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89101

*Attorneys for Plaintiff Fremont Emergency
Services (Mandavia), Ltd.*

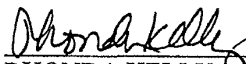
PROOF OF SERVICE

I hereby declare that on this day I served a copy of the Summons and Complaint upon the following defendant in the within matter, by shipping a copy thereof, via Certified mail, return receipt requested, to the following:

UMR, Inc.
Attn: Kristin Erickson
9700 Health Care Ln., MN017-E300
Minnetonka, MN 55343
CERTIFIED MAIL NO. 7018 0680 0002 0258 3262

I declare, under penalty of perjury, that the foregoing is true and correct.

DATED this 22nd day of April, 2019.


RHONDA KELLY
Employee of the State of Nevada
Department of Business and Industry
Division of Insurance

RE: Fremont Emergency Services (Mandavia), Ltd. vs. United Healthcare Insurance Company, et al.
District Court, Clark County, Nevada
Case No. A-19-792978-B



NOTED FOR THE COURT
First delivered to the court by the clerk of the court
on 04/22/19 at 10:00 AM
by the clerk of the court

Date: 4/22/19 By: 

Electronically Filed
4/25/2019 3:15 PM
Steven D. Grierson
CLERK OF THE COURT



1 PSER
2 PAT LUNDVALL (NSBN 3761)
3 KRISTEN T. GALLAGHER (NSBN 9561)
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13 *Attorneys for Plaintiff Fremont Emergency*
14 *Services (Mandavia), Ltd.*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 **FREMONT EMERGENCY SERVICES**
18 **(MANDAVIA), LTD., a Nevada professional**
19 **corporation,**

20 **Plaintiff,**

21 **vs.**

22 **UNITED HEALTHCARE INSURANCE**
23 **COMPANY, a Connecticut corporation;**
24 **UNITED HEALTHCARE SERVICES INC.**
25 **dba UNITEDHEALTHCARE, a Minnesota**
26 **corporation; UMR, INC. dba UNITED**
27 **MEDICAL RESOURCES, a Delaware**
28 **corporation; OXFORD HEALTH PLANS,**
INC., a Delaware corporation; SIERRA
HEALTH AND LIFE INSURANCE
COMPANY, INC., a Nevada corporation;
SIERRA HEALTH-CARE OPTIONS, INC.,
a Nevada corporation; HEALTH PLAN OF
NEVADA, INC., a Nevada corporation;
DOES 1-10; ROE ENTITIES 11-20,

Defendants.

Case No.: A-19-792978-B
Dept. No.: 27

SUMMONS –

UNITED HEALTH CARE SERVICES
INC. dba UNITEDHEALTHCARE

SUMMONS

NOTICE! YOU HAVE BEEN SUED, THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 31 DAYS. READ
THE INFORMATION BELOW.

McDONALD CARANO

2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

McDONALD CARANO

2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

1 **TO THE DEFENDANT(S):**

2 **UNITED HEALTH CARE SERVICES INC. dba UNITEDHEALTHCARE**
3 **c/o Nevada Division of Insurance**
4 **3300 W. Sahara Avenue, Suite 275**
5 **Las Vegas, NV 89102**

6 A civil Complaint has been filed by the Plaintiff against you for the relief set forth in the
7 Complaint.

- 8 1. If you intend to defend this lawsuit, within **31 days** after this Summons is served,
9 exclusive of the day of service, you must do the following:
- 10 (a) File with the Clerk of this Court, whose address is shown below, a formal
11 written response to the Complaint in accordance with the rules of the Court,
12 with the appropriate filing fee.
- 13 (b) Serve a copy of your response upon the attorney whose name and address
14 is shown below.
- 15 2. Unless you respond, your default will be entered upon application of the Plaintiff(s)
16 and failure to so respond will result in a judgment of default against you for the
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18 property or other relief requested in the Complaint.
- 19 3. If you intend to seek the advice of an attorney in this matter, you should do so
20 promptly so that your response may be filed on time.
- 21 4. The State of Nevada, its political subdivisions, agencies, officers, employees,
22 board members, commission members and legislators each have 45 days after
23 service of this Summons within which to file an Answer or other responsive
24 pleading to the Complaint.

25 Submitted by:

26 McDONALD CARANO LLP

STEVEN D. GRIERSON
CLERK OF THE COURT

27 By: /s/ Kristen T. Gallagher
28 PAT LUNDVALL (NSBN 3761)
KRISTEN T. GALLAGHER (NSBN 9561)
AMANDA M. PERACH (NSBN 12399)
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Facsimile: (702) 873-9966
plundvall@mcdonaldcarano.com
kgallagher@mcdonaldcarano.com
aperach@mcdonaldcarano.com

By: Chaunte Pleasant 4/18/2019
Deputy Clerk Chaunte Pleasant Date
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89101

*Attorneys for Plaintiff Fremont Emergency
Services (Mandavia), Ltd.*


PROOF OF SERVICE

I hereby declare that on this day I served a copy of the Summons and Complaint upon the following defendant in the within matter, by shipping a copy thereof, via Certified mail, return receipt requested, to the following:

United Healthcare Services, Inc.
Attn: Kristin Erickson
9700 Health Care Ln., MN017-E300
Minnetonka, MN 55343
CERTIFIED MAIL NO. 7018 0680 0002 0258 3279

I declare, under penalty of perjury, that the foregoing is true and correct.

DATED this 22nd day of April, 2019.


RHONDA KELLY
Employee of the State of Nevada
Department of Business and Industry
Division of Insurance

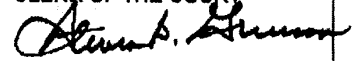
RE: Fremont Emergency Services (Mandavia), Ltd. vs. United Healthcare Insurance Company, et al.
District Court, Clark County, Nevada
Case No. A-19-792978-B



NOTED AT 10:11 AM APR 22 2019
THIS DOCUMENT IS A PUBLIC RECORD
IT IS AVAILABLE TO THE PUBLIC
AND IS NOT TO BE REPRODUCED
WITHOUT PERMISSION

4/22/19 Rhonda Kelly

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4/25/2019 3:15 PM
Steven D. Grierson
CLERK OF THE COURT



1 PSER
2 PAT LUNDVALL (NSBN 3761)
3 KRISTEN T. GALLAGHER (NSBN 9561)
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12 aperach@mcdonaldcarano.com

13 *Attorneys for Plaintiff Fremont Emergency*
14 *Services (Mandavia), Ltd.*

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

17 **FREMONT EMERGENCY SERVICES**
18 **(MANDAVIA), LTD., a Nevada professional**
19 **corporation,**

20 **Plaintiff,**

21 **vs.**

22 **UNITED HEALTHCARE INSURANCE**
23 **COMPANY, a Connecticut corporation;**
24 **UNITED HEALTHCARE SERVICES INC.**
25 **dba UNITEDHEALTHCARE, a Minnesota**
26 **corporation; UMR, INC. dba UNITED**
27 **MEDICAL RESOURCES, a Delaware**
28 **corporation; OXFORD HEALTH PLANS,**
INC., a Delaware corporation; SIERRA
HEALTH AND LIFE INSURANCE
COMPANY, INC., a Nevada corporation;
SIERRA HEALTH-CARE OPTIONS, INC.,
a Nevada corporation; HEALTH PLAN OF
NEVADA, INC., a Nevada corporation;
DOES 1-10; ROE ENTITIES 11-20,

Defendants.

Case No.: A-19-792978-B
Dept. No.: 27

SUMMONS –

UNITED HEALTHCARE INSURANCE
COMPANY

SUMMONS

NOTICE! YOU HAVE BEEN SUED, THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 31 DAYS. READ
THE INFORMATION BELOW.

McDONALD CARANO

2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

1 **TO THE DEFENDANT(S):**

2 **UNITED HEALTHCARE INSURANCE COMPANY**
3 **c/o Nevada Division of Insurance**
4 **3300 W. Sahara Avenue, Suite 275**
5 **Las Vegas, NV 89102**

6 A civil Complaint has been filed by the Plaintiff against you for the relief set forth in the
7 Complaint.

- 8 1. If you intend to defend this lawsuit, within **31 days** after this Summons is served,
9 exclusive of the day of service, you must do the following:
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- 21 4. The State of Nevada, its political subdivisions, agencies, officers, employees,
22 board members, commission members and legislators each have 45 days after
23 service of this Summons within which to file an Answer or other responsive
24 pleading to the Complaint.

25 Submitted by:

26 McDONALD CARANO LLP

STEVEN D. GRIERSON
CLERK OF THE COURT

27 By: /s/ Kristen T. Gallagher
28 PAT LUNDVALL (NSBN 3761)
KRISTEN T. GALLAGHER (NSBN 9561)
AMANDA M. PERACH (NSBN 12399)
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plundvall@mcdonaldcarano.com
kgallagher@mcdonaldcarano.com
aperach@mcdonaldcarano.com

By: Chaunte Pleasant 4/18/2019
Deputy Clerk
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89101

*Attorneys for Plaintiff Fremont Emergency
Services (Mandavia), Ltd.*


PROOF OF SERVICE

I hereby declare that on this day I served a copy of the Summons and Complaint upon the following defendant in the within matter, by shipping a copy thereof, via Certified mail, return receipt requested, to the following:

United Healthcare Insurance Company
Attn: Kristin Erickson
185 Asylum St.
Hartford, CT 06103
CERTIFIED MAIL NO. 7018 0680 0002 0258 3286

I declare, under penalty of perjury, that the foregoing is true and correct.

DATED this 22nd day of April, 2019.


RHONDA KELLY
Employee of the State of Nevada
Department of Business and Industry
Division of Insurance

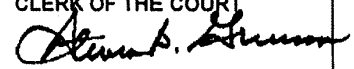
RE: Fremont Emergency Services (Mandavia), Ltd. vs. United Healthcare Insurance Company, et al.
District Court, Clark County, Nevada
Case No. A-19-792978-B



NOTED FOR SERVICE
DATE OF SERVICE: 4/22/19
BY: [Signature]
I, [Signature], am the undersigned
clerk of the court.

Date: 4/22/19 By: 

Electronically Filed
4/30/2019 10:59 AM
Steven D. Grierson
CLERK OF THE COURT



1 AOS
2 PAT LUNDVALL (NSBN 3761)
3 KRISTEN T. GALLAGHER (NSBN
4 9561) AMANDA M. PERACH (NSBN
5 12399) McDONALD CARANO LLP
6 2300 West Sahara Avenue, Suite 1200 Las
7 Vegas, Nevada 89102
8 Telephone: (702) 873-4100
9 Facsimile: (702) 873-9966
10 plundvall@mcdonaldcarano.com
11 kgallagher@mcdonaldcarano.com
12 aperach@mcdonaldcarano.com

13 *Attorneys for Plaintiff Fremont Emergency*
14 *Services (Mandavia), Ltd.*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 **FREMONT EMERGENCY SERVICES**
18 **(MANDAVIA), LTD., a Nevada professional**
19 **corporation,**

20 **Plaintiff,**

21 **vs.**

22 **UNITED HEALTHCARE INSURANCE**
23 **COMPANY, a Connecticut corporation;**
24 **UNITED HEALTHCARE SERVICES INC.**
25 **dba UNITEDHEALTHCARE, a Minnesota**
26 **corporation; UMR, INC. dba UNITED**
27 **MEDICAL RESOURCES, a Delaware**
28 **corporation; OXFORD HEALTH PLANS,**
INC., a Delaware corporation; SIERRA
HEALTH AND LIFE INSURANCE
COMPANY, INC., a Nevada corporation;
SIERRA HEALTH-CARE OPTIONS, INC.,
a Nevada corporation; HEALTH PLAN OF
NEVADA, INC., a Nevada corporation;
DOES 1-10; ROE ENTITIES 11-20,

Defendants.

Case No.: A-19-792978-B
Dept. No.: 27

SUMMONS –

HEALTH PLAN OF NEVADA, INC.

SUMMONS

NOTICE! YOU HAVE BEEN SUED, THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 21 DAYS. READ
THE INFORMATION BELOW.

McDONALD CARANO

2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

MCDONALD CARANO

2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

1 **TO THE DEFENDANT(S):**

2 **HEALTH PLAN OF NEVADA, INC.**
3 **CT Corporation System-Registered Agent**
4 **701 South Carson Street, Suite 200**
5 **Carson City, Nevada 89701**

6 A civil Complaint has been filed by the Plaintiff against you for the relief set forth in the
7 Complaint.

- 8 1. If you intend to defend this lawsuit, within **21 days** after this Summons is served
9 on you, exclusive of the day of service, you must do the following:
- 10 (a) File with the Clerk of this Court, whose address is shown below, a formal
11 written response to the Complaint in accordance with the rules of the Court,
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 - 13 (b) Serve a copy of your response upon the attorney whose name and address
14 is shown below.
- 15 2. Unless you respond, your default will be entered upon application of the Plaintiff(s)
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18 property or other relief requested in the Complaint.
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20 promptly so that your response may be filed on time.
- 21 4. The State of Nevada, its political subdivisions, agencies, officers, employees,
22 board members, commission members and legislators each have 45 days after
23 service of this Summons within which to file an Answer or other responsive
24 pleading to the Complaint.

25 Submitted by:

26 MCDONALD CARANO LLP

STEVEN D. GRIERSON
CLERK OF THE COURT

27 By: /s/ Kristen T. Gallagher
28 PAT LUNDVALL (NSBN 3761)
KRISTEN T. GALLAGHER (NSBN 9561)
AMANDA M. PERACH (NSBN 12399)
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Facsimile: (702) 873-9966
plundvall@mcdonaldcarano.com
kgallagher@mcdonaldcarano.com
aperach@mcdonaldcarano.com

By: Chauo' Plund 4/18/2019
Deputy Clerk/Naunte Pleasant Date
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89101

*Attorneys for Plaintiff Fremont Emergency
Services (Mandavia), Ltd.*

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

DECLARATION OF SERVICE

Robert Deale, declares and says: That at all times herein declarant was and is a citizen of the United States, over 18 years of age, not a party to nor interested in the proceedings in which this declaration is made, and is licensed to serve process in Nevada under License #1088. That declarant received 1 copy(ies) of the SUMMONS and COMPLAINT in Case No. A-19-792978-B on the 22nd day of April, 2019 and served the same at 12:35 PM on the 23rd day of April, 2019 by:

(Declarant must complete the appropriate paragraph)

1. delivering and leaving a copy with the defendant _____ at _____

2. serve the defendant _____ by personally delivering and leaving a copy with _____, a person of suitable age and discretion residing at the defendant's usual place of abode located at _____

(Use paragraph 3 for serve upon agent, completing A or B)

3. serving the defendant HEALTH PLAN OF NEVADA, INC. by personally delivering and leaving a copy at The Corporation Trust Company of Nevada, Registered Agent, 701 S. Carson St, Suite 200, Carson City, Nevada 89701

- a. With Danielle Naki as Admin., an agent lawfully designated by statute to accept service of process;
- b. With _____, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the registered agent as shown on the current certificate of designation filed with the Secretary of State.

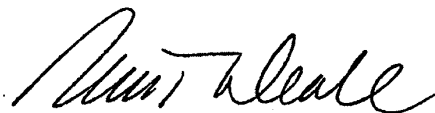
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_____ ordinary mail
_____ certified mail, return receipt requested
_____ registered mail, return receipt requested

addressed to the defendant _____ at the defendant's last known address which is _____

Per NRS 53.045: I declare under penalty of perjury that the foregoing is true and correct.

Executed on: April 23, 2019.

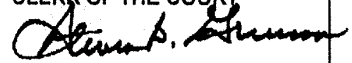


Signature of Process Server, Robert Deale

American Process Service
10580 N. McCarran Blvd., Suite 115-130
Reno, Nevada 89503
775-337-1117
Nevada License 1088A

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4/30/2019 10:59 AM
Steven D. Grierson
CLERK OF THE COURT



1 AOS
2 PAT LUNDVALL (NSBN 3761)
3 KRISTEN T. GALLAGHER (NSBN 9561)
4 AMANDA M. PERACH (NSBN 12399)
5 McDONALD CARANO LLP
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12 aperach@mcdonaldcarano.com

13 *Attorneys for Plaintiff Fremont Emergency*
14 *Services (Mandavia), Ltd.*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 FREMONT EMERGENCY SERVICES
18 (MANDAVIA), LTD., a Nevada professional
19 corporation,

20 Plaintiff,

21 vs.

22 UNITED HEALTHCARE INSURANCE
23 COMPANY, a Connecticut corporation;
24 UNITED HEALTHCARE SERVICES INC.
25 dba UNITEDHEALTHCARE, a Minnesota
26 corporation; UMR, INC. dba UNITED
27 MEDICAL RESOURCES, a Delaware
28 corporation; OXFORD HEALTH PLANS,
INC., a Delaware corporation; SIERRA
HEALTH AND LIFE INSURANCE
COMPANY, INC., a Nevada corporation;
SIERRA HEALTH-CARE OPTIONS, INC.,
a Nevada corporation; HEALTH PLAN OF
NEVADA, INC., a Nevada corporation;
DOES 1-10; ROE ENTITIES 11-20,

Defendants.

Case No.: A-19-792978-B
Dept. No.: 27

SUMMONS -

**SIERRA HEALTH-CARE OPTIONS,
INC.**

SUMMONS

**NOTICE! YOU HAVE BEEN SUED, THE COURT MAY DECIDE AGAINST YOU
WITHOUT YOUR BEING HEARD UNLESS YOU RESPOND WITHIN 21 DAYS. READ
THE INFORMATION BELOW.**

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

1 **TO THE DEFENDANT(S):**

2 **SIERRA HEALTH-CARE OPTIONS, INC.**
3 **CT Corporation System-Registered Agent**
4 **701 South Carson Street, Suite 200**
5 **Carson City, Nevada 89701**

6 A civil Complaint has been filed by the Plaintiff against you for the relief set forth in the
7 Complaint.

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24 pleading to the Complaint.

25 Submitted by:

26 McDONALD CARANO LLP

STEVEN D. GRIERSON
CLERK OF THE COURT

27 By: /s/ Kristen T. Gallagher
28 PAT LUNDVALL (NSBN 3761)
KRISTEN T. GALLAGHER (NSBN 9561)
AMANDA M. PERACH (NSBN 12399)
McDONALD CARANO LLP
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Facsimile: (702) 873-9966
plundvall@mcdonaldcarano.com
kgallagher@mcdonaldcarano.com
aperach@mcdonaldcarano.com

By: Chaunte Pleasant 4/18/2019
Deputy Clerk Chaunte Pleasant Date
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89101

*Attorneys for Plaintiff Fremont Emergency
Services (Mandavia), Ltd.*

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

DECLARATION OF SERVICE

Robert Deale, declares and says: That at all times herein declarant was and is a citizen of the United States, over 18 years of age, not a party to nor interested in the proceedings in which this declaration is made, and is licensed to serve process in Nevada under License #1088. That declarant received 1 copy(ies) of the SUMMONS and COMPLAINT in Case No. A-19-792978-B on the 22nd day of April, 2019 and served the same at 12:35 PM on the 23rd day of April, 2019 by:

(Declarant must complete the appropriate paragraph)

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2. serve the defendant _____ by personally delivering and leaving a copy with _____, a person of suitable age and discretion residing at the defendant's usual place of abode located at _____

(Use paragraph 3 for serve upon agent, completing A or B)

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 - a. With Danielle Naki as Admin., an agent lawfully designated by statute to accept service of process;
 - b. With _____, pursuant to NRS 14.020 as a person of suitable age and discretion at the above address, which address is the address of the registered agent as shown on the current certificate of designation filed with the Secretary of State.

4. personally depositing a copy in a mail box of the United States Post Office, enclosed in a sealed envelope postage prepaid (check appropriate method):

_____ ordinary mail
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Per NRS 53.045: I declare under penalty of perjury that the foregoing is true and correct.

Executed on: April 23, 2019.

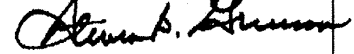


Signature of Process Server, Robert Deale

American Process Service
10580 N. McCarran Blvd., Suite 115-130
Reno, Nevada 89503
775-337-1117
Nevada License 1088A

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Steven D. Grierson
CLERK OF THE COURT



1 AOS
2 PAT LUNDVALL (NSBN 3761)
3 KRISTEN T. GALLAGHER (NSBN 9561)
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13 *Attorneys for Plaintiff Fremont Emergency*
14 *Services (Mandavia), Ltd.*

15 **DISTRICT COURT**
16 **CLARK COUNTY, NEVADA**

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19 **corporation,**

20 **Plaintiff,**

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23 **COMPANY, a Connecticut corporation;**
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25 **dba UNITEDHEALTHCARE, a Minnesota**
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a Nevada corporation; HEALTH PLAN OF
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DOES 1-10; ROE ENTITIES 11-20,

Defendants.

Case No.: A-19-792978-B
Dept. No.: 27

SUMMONS –

SIERRA HEALTH AND LIFE
INSURANCE COMPANY, INC.

SUMMONS

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McDONALD CARANO

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PHONE 702.873.4100 • FAX 702.873.9966

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26 **McDONALD CARANO LLP**

STEVEN D. GRIERSON
CLERK OF THE COURT

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By: Chaunte Pleasant 4/18/2019
Deputy Clerk
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89101

*Attorneys for Plaintiff Fremont Emergency
Services (Mandavia), Ltd.*

STATE OF NEVADA)
) ss.
COUNTY OF WASHOE)

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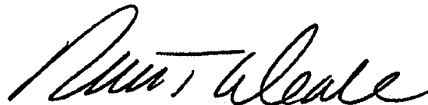
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Executed on: April 23, 2019.

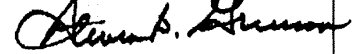


Signature of Process Server, Robert Deale

American Process Service
10580 N. McCarran Blvd., Suite 115-130
Reno, Nevada 89503
775-337-1117
Nevada License 1088A

PA000072

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5/6/2019 9:33 AM
Steven D. Grierson
CLERK OF THE COURT



1 AOS
2 PAT LUNDVALL (NSBN 3761)
3 KRISTEN T. GALLAGHER (NSBN 9561)
4 AMANDA M. PERACH (NSBN 12399)
5 McDONALD CARANO LLP
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12 aperach@mcdonaldcarano.com

13 *Attorneys for Plaintiff Fremont Emergency*
14 *Services (Mandavia), Ltd.*

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 FREMONT EMERGENCY SERVICES
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21 vs.

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DOES 1-10; ROE ENTITIES 11-20,

Defendants.

Case No.: A-19-792978-B
Dept. No.: 27

SUMMONS –

OXFORD HEALTH PLANS, INC.

SUMMONS

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McDONALD CARANO
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McDONALD CARANO

2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

1 **TO THE DEFENDANT(S):**

2 **OXFORD HEALTH PLANS, INC.**
3 **Corporation Trust Center – Registered Agent**
4 **1209 Orange Street**
5 **Wilmington, Delaware 19801**

6 A civil Complaint has been filed by the Plaintiff against you for the relief set forth in the
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26 McDONALD CARANO LLP

STEVEN D. GRIERSON
CLERK OF THE COURT

27 By: /s/ Kristen T. Gallagher

28 PAT LUNDVALL (NSBN 3761)
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kgallagher@mcdonaldcarano.com
aperach@mcdonaldcarano.com

By: Chaunte Pleasant 4/18/2019
Deputy Clerk Chaunte Pleasant Date
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89101

*Attorneys for Plaintiff Fremont Emergency
Services (Mandavia), Ltd.*

AFFIDAVIT OF SERVICE

State of Nevada

County of Clark

District Court

Case Number: A-19-792978-B

Plaintiff:

FREMONT EMERGENCY SERVICES (MANDAVIA), LTD., a Nevada professional corporation

vs.

Defendants:

UNITED HEALTHCARE INSURANCE COMPANY, a Connecticut corporation; et al.

Received by Bullet Legal Services on the 18th day of April, 2019 at 10:17 am to be served on **OXFORD HEALTH PLANS, INC., c/o Corporation Trust Center, 1209 Orange Street, Wilmington, DE 19801. I, DENORRIS BRITT**, being duly sworn, depose and say that on the 25 day of APRIL, 2019 at 1230 P.m., executed service by delivering a true copy of the **SUMMONS and COMPLAINT** in accordance with state statutes in the manner marked below:

☒ **CORPORATION:** By serving AMY MCLAREN as MANAGING AGENT, an agent designated by statute to accept service of process.

☐ **RECORDS CUSTODIAN:** By serving _____ as _____, an agent designated by statute to accept service of process.

☐ **PUBLIC AGENCY:** By serving _____ as _____ of the within-named agency.

☐ **OTHER SERVICE:** As described in the Comment below by serving _____ as _____, who stated they were authorized to accept.

☐ **NON SERVICE:** For the reasons detailed in the Comments below.

COMMENTS: _____

Age 40 Sex ☒ F Race WHITE Height 5'5 Weight 130 Hair BROWN Glasses N

AFFIDAVIT OF SERVICE For A-19-792978-B

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

State of DE

County of NEW CASTLE

Subscribed and Sworn to before me on the 25
day of APRIL 2019 by the affiant who
is personally known to me.

NOTARY PUBLIC

KEVIN DUNN
NOTARY PUBLIC
STATE OF DELAWARE
My Commission Expires September 14, 2020

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DENORRIS BRITT
PROCESS SERVER # 1958
Appointed in accordance with State Statutes

Bullet Legal Services
1930 Village Center Circle, #3-965
Las Vegas, NV 89134
(702) 823-1000

Our Job Serial Number: 2019001243

PA000076



1 D. Lee Roberts, Jr., Esq.
Nevada Bar No. 8877
2 *lroberts@wwhgd.com*
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12 *Sierra Health-Care Options, Inc., and*
13 *Health Plan of Nevada, Inc.*

14
15 UNITED STATES DISTRICT COURT
16 DISTRICT OF NEVADA

17 FREMONT EMERGENCY SERVICES
(MANDAVIA), LTD., a Nevada professional
18 corporation; TEAM PHYSICIANS OF
NEVADA-MANDAVIA, P.C., a Nevada
19 professional corporation; CRUM, STEFANKO
AND JONES, LTD. dba RUBY CREST
20 EMERGENCY MEDICINE, a Nevada
21 professional corporation

22 Plaintiff,

23 vs.

24 UNITEDHEALTH GROUP, INC., a Delaware
corporation; UNITED HEALTHCARE
INSURANCE COMPANY, a Connecticut
25 corporation; UNITED HEALTH CARE
SERVICES INC. dba UNITEDHEALTHCARE, a
26 Minnesota corporation; UMR, INC. dba UNITED
MEDICAL RESOURCES, a Delaware
27 corporation; OXFORD HEALTH PLANS, INC.,
a Delaware corporation; SIERRA HEALTH AND
28 LIFE INSURANCE COMPANY, INC., a Nevada

Case No.: 2:19-cv-00832-JCM-VCF

**DECLARATION OF SANDRA WAY IN
SUPPORT OF DEFENDANTS'
OBJECTIONS TO FREMONT'S
REQUESTS FOR PRODUCTION,
INTERROGATORIES AND REQUESTS
FOR ADMISSIONS**



corporation; SIERRA HEALTH-CARE
OPTIONS, INC., a Nevada corporation;
HEALTH PLAN OF NEVADA, INC., a Nevada
corporation; DOES 1-10; ROE ENTITIES 11-20,

Defendants.

I, Sandra Way, declare under penalty of perjury that the foregoing is true and correct:

1. I am employed as the Claim & Appeal Regulatory Adherence Business Manager for United Healthcare Employer & Individual. I have worked for United for 10 years. My job responsibilities include providing oversight of regulatory related functions for E&I Claim & Appeal Operations.

2. I understand that, according to Fremont, there are approximately 15,210 claims at issue in this litigation which are identified in a spreadsheet produced by Fremont that is bates numbered FESM000011.

3. For each of the claims at issue, I understand that Fremont has submitted written discovery requests to Defendants, including requests for production, interrogatories and requests for admissions. While each request often asks for a slightly different piece of information related to the claims, taken together, the requests ask for any and all information related to the claims at issue, including all documents and communications related to the claims.

4. Many of Fremont's requests essentially ask for information that collectively constitutes what is often called the "administrative record" for each claim.

5. To produce the administrative record for each claim, United must locate and produce the following categories of documents from their records for each individual claim, to the extent that any such documents exist:

- a. Member Explanations of Benefits ("EOBs");
- b. Provider EOBs and/or Provider Remittance Advices ("PRAs");
- c. Appeals documents;
- d. Any other documents comprising the administrative records, such as correspondence or clinical records submitted by Plaintiffs;
- e. The plan documents in effect at the time of service.



1 6. These documents are not stored together and are spread across at least four
2 separate systems within United.

3 7. The documents from categories *a*; and *b*, are stored on a United electronic
4 storage platform known as EDSS. "EDSS" stands for Enterprise Data Storage System. The
5 documents from category *d* may be stored in another United electronic storage platform known
6 as IDRS. "IDRS" stands for Image Document Retrieval System. When using EDSS or IDRS,
7 documents must be individually searched for and pulled. The process for doing so looks like this:

8 *First*, a United employee must access EDSS or IDRS from their computer.

9 *Second*, the employee must select the type of document that they wish to pull from a drop
10 down menu: claim form, letter, EOB, etc.

11 *Third*, the employee must run a query for that document for each individual claim at
12 issue, based on some combination of claim identifying information (e.g., the claim
13 number, member ID number, dates of services, social security number, provider tax
14 identification number, etc.).

15 *Fourth*, the employee must download the documents returned by their query.

16 *Fifth*, the employee must open and review the downloaded documents to confirm that
17 they pertain to one of the at-issue claims.

18 *Sixth*, if the documents do pertain to an at-issue claim, the employee must migrate those
19 documents to a United shared drive specific to this litigation, from which the documents
20 will be transferred to United's outside counsel for this matter.

21 8. Documents from category *c* are located on a United electronic escalation tracking
22 platform known as ETS. "ETS" stands for Escalation Tracking System. Pulling documents from
23 ETS, which is done on an individual claim-by-claim basis, substantially mirrors the process for
24 pulling documents from EDSS and IDRS.

25 9. My team has previously pulled documents from categories *a*, *b*, *c*, and *d* in
26 connection with other provider-initiated litigation. Based on the documents that we pulled
27 previously, we have developed estimates of the average time that it takes to pull each category of
28 document:



- a. Member Explanations of Benefits ("EOBs"): *45 minutes*.¹
- b. Provider EOBs and/or Provider Remittance Advice ("PRAs"); *20 minutes*.
- c. Appeals documents: *30 minutes*.
- d. Other documents comprising the administrative records: *15 minutes*.

10. I understand that Plaintiffs in this case have questioned the above time estimates, based on their very different experience accessing PRAs, claiming that it only takes Plaintiffs two minutes to pull a PRA from the UHC Portal for providers. These are completely different enterprises, and it is to be expected that it would take substantially less time for a provider to access their own, pre-sorted records through the UHC Portal, than it would for United to (1) search for and locate the records of health plan members based on varying pieces of data, (2) verify that the located records are the correct ones, and further contain no extraneous material, in accordance with United's rigorous standards for ensuring that HIPAA-protected information is not improperly disclosed, and (3) process that information for external production in accordance with United's prescribed process for court-ordered discovery production. My estimates are based on substantial experience locating, verifying, and processing records for many hundreds of discovery productions. I stand by them, and stand ready as necessary to provide supporting testimony under oath.

11. By way of example, as stated above, it takes 45 minutes on average to locate, verify, and process a member EOB. Allow me to explain.

- a. United stores EOBs as images that are stored in EDSS and marked with "Film Locator Numbers" or "FLNs".
- b. To locate the correct EOB for a given claim, we must first determine the correct FLN by running queries in the system based on the data given to us by the provider. This process can take substantial time, because United-administered plans have tens of millions of members, each of whom is likely to see multiple

¹ Searching member EOBs is more time consuming than searching provider EOBs/PRAs due to the volume of United members and member records.



1 providers on multiple dates of service, and even a single date of service can result
2 in the generation of numerous EOBs. Moreover, if we are required to rely on
3 member name and date of service information to identify the correct records,
4 United typically has numerous members with the same or similar names that need
5 to be sorted through to determine a match. In addition, this process is further
6 complicated by the fact that the data given to us by providers in litigation
7 frequently contains nicknames or misspellings of names—and sometimes
8 transposed digits and other inaccuracies—that does not match our systems data
9 and significantly complicates the process.

- 10 c. Once we use the claim data that is furnished to us by the provider to identify what
11 we believe to be the correct FLN, we must then enter that FLN into EDSS to pull
12 up and download the EOB in question.
- 13 d. Once the targeted EOB has completed downloading, our rigorous HIPAA
14 protection protocol requires us to review the entire downloaded document to
15 ensure (1) that it is the correct EOB that matches the claim at issue in the
16 litigation and (2) that there are no extraneous pages included that might result in
17 the inadvertent but unauthorized disclosure of HIPAA-protected information.
18 Some EOB records are simple, but others may contain several pages, and the
19 process of confirming a match and confirming that no extraneous information is
20 included takes substantial time.
- 21 e. Once the EOB has been verified, we must take the additional step of processing
22 and uploading it to the specific share drive that has been established for the
23 particular instance of litigation.

24 12. For each individual EOB, the above-described process may take more or less than
25 45 minutes, but across a large volume of records, my experience confirms that 45 minutes is the
26 average. As set forth in paragraph 9 above, EOBs take the longest time to locate, verify, and
27 process because of the massive volume of member records and the difficulties that are typically
28 encountered using member data to locate the requested records. Similar processes govern the



1 location, verification, and processing of the other records identified in Paragraph 9, however, and
2 the completion of those processes typically takes meaningful time.

3 13. Thus, I estimate that it will take, on average, about **2 hours** to pull a full set of the
4 **a, b, c, and d** category documents for a single claim, which would need to be done for each of the
5 15,210 claims at issue claim (for a total of approximately **30,420 hours**). Based on the forgoing
6 time estimates, it would take a team of four people working full-time on nothing other than
7 gathering documents for this case over **3 years** to pull the documents related to categories **a, b, c,**
8 **and d**. This does not account for other factors that could complicate the collection process, such
9 as any at-issue claims that have not been successfully “mapped” to a unique United claim
10 number,² or archived documents that may have to be located and pulled from other sources or
11 platforms.

12 14. If a provider includes an accurate Claim Number and Member Number in their
13 claim data, the average time listed above for identifying EOBs can be substantially shortened.
14 That is because accurate Claim Number and Member Number information avoids the need to
15 search through multiple duplicative member names and multiple and frequently overlapping
16 dates of service to identify the specific claim at issue. I estimate that having accurate Claim
17 Number and Member Number information would reduce the time it typically takes to locate,
18 verify, and process an EOB from 45 minutes to 30 minutes, and the time that it would take to
19 pull all of the documents described in Paragraph 9 from 2 hours to 1.5 hours. Based on my
20 review of Fremont’s list of claims (FESM000011), Fremont appears to have provided some, but
21 not all of the claim numbers and member numbers for the claims it is seeking information on. I
22 have not yet been able to verify the accuracy of these numbers.

23 15. My group does not handle documents from category **e** and I do not have personal
24 knowledge of the processes utilized to locate and pull plan documents. Nonetheless I have been
25 informed of the relevant processes by colleagues whose job functions do include locating and
26

27 ² Lack of a valid United claim number can make searching for many of the document categories described
28 much more time consuming and complicated. In some instances, it can also make it impossible to
identify and collect the right documents.



1 pulling these documents. I understand that plan documents for *current* United clients can be
2 accessed through a United database. First, the team must access the appropriate database, locate,
3 and pull all of the relevant documents for each plan implicated by the at-issue claims. Once
4 pulled, a United employee must then open each document, confirm that the document relates to
5 the plan covering the at-issue claim, label the file, and migrate the document to the appropriate
6 shared drive location related to this litigation. The colleagues who have informed me have
7 previously pulled plan documents in connection with other provider-initiated litigation where
8 only 500 claims were at issue. Based on the documents that they pulled previously and the
9 15,210 claims at issue here, it is estimated that it will take approximately *6,996 hours* to collect
10 the relevant plan documents. Because plan documents will be handled by a team that is separate
11 from my team handling the claim and appeal document collection, this time estimate will run
12 concurrently to the time estimate for pulling documents pertain only to pulling documents related
13 to categories *a, b, c, and d*.

14 16. The above time estimates for plan documents pertain only to pulling documents
15 related to *current* United clients. Documents related to former clients may be far more difficult
16 and time consuming to access. I understand that archived plan documents may be located in off-
17 site storage. In other instances, I understand that these archived documents may be stored in
18 legacy systems that use outdated file formats that are not readable on today's computers; in these
19 instances the documents would need to be converted to PDFs before a United employee can even
20 verify whether the document is relevant to this litigation. We do not currently know how many
21 of the at-issue claims will require accessing archived documents.

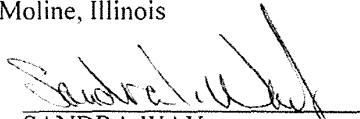
22 17. The above statements regarding the estimated amount of time to locate and
23 produce documents that are responsive to certain of Fremont's written discovery requests apply
24 to documents in the possession of the United Health Defendants (United HealthGroup, Inc.,
25 United Healthcare Insurance Company, and United Health Care Services, Inc.), the Sierra
26 Defendants (Sierra Health and Life Insurance Company, Inc., Sierra Health-Care Options, Inc.,
27 and Health Plan of Nevada, Inc.) and Defendant UMR, Inc. In regard to the United Health
28 Defendants, I have personal knowledge of the processes utilized to locate and pull claim



1 documents except in regard to category *e*, as previously discussed in paragraph 15 of this
2 Declaration. In regard to the Sierra Defendants and UMR, Inc., I do not have personal
3 knowledge of the processes utilized to locate and pull claim documents. Nonetheless I have been
4 informed of the relevant processes for the Sierra Defendants and UMR, Inc. by colleagues whose
5 job functions do include locating and pulling these documents. I understand that the process
6 utilized by the Sierra Defendants and UMR, Inc. to locate and pull the documents described in
7 paragraph 5 of this Declaration is substantially similar to the process utilized by the United
8 Health Defendants. I further understand that, just as with the documents that are in the
9 possession of the United Health Defendants, it takes the Sierra Defendants and UMR, Inc.
10 approximately 2 hours of time to locate and pull the administrative record for a claim.

11 18. I declare under penalty of perjury that the foregoing is true and correct.

12 Executed on January 29th, 2020 in Moline, Illinois

13 
14 SANDRA WAY
15 Business Manager
16 Claim & Appeal Regulatory Adherence
17 United Healthcare
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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

FREMONT EMERGENCY SERVICES
(MANDAVIA), LTD., et al.,

Plaintiff(s),

v.

UNITEDHEALTH GROUP, INC., et al.,

Defendant(s).

Case No. 2:19-CV-832 JCM (VCF)

ORDER

Presently before the court is plaintiffs' Fremont Emergency Services; Team Physicians of Nevada-Mandavia; Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine ("plaintiffs") amended motion to remand. (ECF No. 49). Defendant United Healthcare Insurance Company ("United") filed a response (ECF No. 64), to which plaintiffs replied (ECF No. 71).

I. Background

Plaintiffs are professional emergency medical service groups that staff the emergency departments at hospitals and other facilities throughout Nevada. (ECF No. 40 at 5). Plaintiffs have been providing emergency services and care to patients in the emergency department, regardless of an individual's insurance coverage or ability to pay. *Id.*

United and plaintiffs have never had a written agreement governing the rates of reimbursement for emergency services rendered. *Id.* at 6. Nonetheless, plaintiffs have submitted claims to United seeking reimbursement for emergency care and United has routinely paid them.

1 *Id.* at 10. From 2008–2017, United normally paid plaintiffs at a range of 75–90%. *Id.* However,
 2 beginning in 2019, United continued to pay the claims submitted but reduced the rates of
 3 reimbursement to levels ranging from 12–60%, below the usual and customary rates. *Id.*

4
 5 Plaintiffs’ amended complaint asserts eight state law causes of action, all stemming from
 6 United’s alleged underpayment of claims. *Id.* at 32–44. Plaintiffs originally brought suit against
 7 United in the Eighth Judicial District Court, and United timely removed the action. (ECF No. 1).
 8 Plaintiffs now move to remand the case. (ECF No. 49).

9 **II. Legal Standard**

10 Pursuant to 28 U.S.C. § 1441(a), “any civil action brought in a State court of which the
 11 district courts of the United States have original jurisdiction, may be removed by the defendant
 12 or the defendants, to the district court of the United States for the district and division embracing
 13 the place where such action is pending.” 28 U.S.C. § 1441(a). “A federal court is presumed to
 14 lack jurisdiction in a particular case unless the contrary affirmatively appears.” *Stock West, Inc.*
 15 *v. Confederated Tribes of Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989).
 16

17
 18 Upon notice of removability, a defendant has thirty days to remove a case to federal court
 19 once he knows or should have known that the case was removable. *Durham v. Lockheed Martin*
 20 *Corp.*, 445 F.3d 1247, 1250 (9th Cir. 2006) (citing 28 U.S.C. § 1446(b)(2)). Defendants are not
 21 charged with notice of removability “until they’ve received a paper that gives them enough
 22 information to remove.” *Id.* at 1251.

23
 24 Specifically, “the ‘thirty day time period [for removal] . . . starts to run from defendant’s
 25 receipt of the initial pleading only when that pleading affirmatively reveals on its face’ the facts
 26 necessary for federal court jurisdiction.” *Id.* at 1250 (quoting *Harris v. Bankers Life & Casualty*
 27 *Co.*, 425 F.3d 689, 690–91 (9th Cir. 2005) (alterations in original)). “Otherwise, the thirty-day
 28

1 clock doesn't begin ticking until a defendant receives 'a copy of an amended pleading, motion,
2 order or other paper' from which it can determine that the case is removable. *Id.* (quoting 28
3 U.S.C. § 1446(b)(3)).

4 A plaintiff may challenge removal by timely filing a motion to remand. 28 U.S.C. §
5 1447(c). On a motion to remand, the removing defendant faces a strong presumption against
6 removal, and bears the burden of establishing that removal is proper. *Sanchez v. Monumental*
7 *Life Ins. Co.*, 102 F.3d 398, 403–04 (9th Cir. 1996); *Gaus v. Miles, Inc.*, 980 F.2d 564, 566–67
8 (9th Cir. 1992).

10 **III. Discussion**

11 As an initial matter, United bears the burden of proving that plaintiffs' complaint contains
12 a cause of action within this court's jurisdiction. "In scrutinizing a complaint in search of a
13 federal question, a court applies the well-pleaded complaint rule." *Ansley*, 340 F.3d at 861
14 (citing *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987)). "For removal to be appropriate
15 under the well-pleaded complaint rule, a federal question must appear on the face of a properly
16 pleaded complaint." *Id.* (citing *Rivet v. Regions Bank of La.*, 522 U.S. 470, 475 (1998)).

17 The "well-pleaded complaint rule" governs federal question jurisdiction. This rule
18 provides that district courts can exercise jurisdiction under 28 U.S.C. § 1331 only when a federal
19 question appears on the face of a well-pleaded complaint. *See, e.g., Caterpillar Inc. v. Williams*,
20 482 U.S. 386, 392 (1987). Thus, a plaintiff "may avoid federal jurisdiction by exclusive reliance
21 on state law." *Id.* Moreover, "an anticipated or actual federal defense generally does not qualify
22 a case for removal[.]" *Jefferson County v. Acker*, 527 U.S. 423, 431 (1999).

23 Although plaintiffs bring claims solely under state law, United argues that removal is
24 proper under 28 U.S.C. § 1441 based on the exception of complete preemption by § 502(a) of
25

1 ERISA. For the reasons set forth below, the court finds that defendant's asserted basis for
2 removal is improper and grants plaintiffs' motion to remand.

3 "ERISA is one of only a few federal statutes under which two types of preemption may
4 arise: conflict preemption and complete preemption." *Conn. State Dental Ass'n v. Anthem*
5 *Health Plans, Inc.*, 591 F. 3d 1337, 1343 (11th Cir. 2009). While conflict preemption is a
6 defense to preempted state law claims, the doctrine does not normally allow for removal to
7 federal court. *See Aetna Health Inc. v. Davila*, 542 U.S. 200, 207 (2004). On the other hand,
8 complete preemption is a judicially recognized exception to the well-pleaded complaint rule that
9 allows removal of claims within the scope of ERISA § 502(a) to federal court. *Davila* 542 U.S.
10 at 209; *Marin General Hosp. v. Modesto & Empire Traction Co.*, 581 F.3d 941, 945 (9th Cir.
11 2009).

12 In *Davila*, the Supreme Court established a two-pronged test to determine whether a state
13 law claim is completely preempted by ERISA. *Davila*, 542 U.S. at 210. Complete preemption
14 exists only when (1) a plaintiff "could have brought his claim under ERISA § 502(a)(1)(b)," and
15 (2) "there is no other independent legal duty that is implicated by a defendant's actions." *Id.* at
16 210. The test is conjunctive; a claim is completely preempted only if both prongs are satisfied.
17 *Marin*, 581 F.3d at 947.

18 Under prong 1 of the *Davila* test, the Ninth Circuit has distinguished between claims
19 involving the "right to payment" and claims involving the proper "amount of payment." *Blue*
20 *Cross of Cal. v. Anesthesia Care Assocs. Med. Grp., Inc.*, 187 F.3d 1045, 1051 (9th Cir. 1999).
21 Claims involving the "right to payment" generally fall within the scope of § 502(a)(1)(b), while
22 claims involving the "amount of payment" generally fall outside the scope of § 502(a)(1)(b). *Id.*
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1 Although *Blue Cross* preceded *Davila*, the Ninth Circuit has expressly found that its analysis and
2 holding are consistent with the *Davila* framework and remain good law. *Marin*, 581 F.3d at 948.

3 Here, plaintiffs allege claims disputing the amount of payment from United. (ECF No.
4 40). They do not contend they are owed an additional amount from the patients' ERISA plans.
5 *See id.* Instead, they allege these claims arise from their alleged implied-in-fact contract with
6 United. *Id.*

7
8 United attempts to distinguish the implied-in-fact contract from other types of contracts
9 referenced in the case law. (ECF No. 64). However, Nevada courts have found that implied-in-
10 fact agreements and express agreements have the same legal effects. *See Magnum Opes Constr.*
11 *v. Sanpete Steel Corp.*, 2013 WL 7158997 (Nev. 2013); *Certified Fire Prot. Inc. v. Precision*
12 *Constr.*, 283 P. 3d 250, 256 (Nev. 2012).

13
14 Consequently, the court finds that plaintiffs' claims fall outside the scope of § 502(a) of
15 ERISA, failing prong 1 of the *Davila* test. No further analysis under *Davila* is necessary.
16 Plaintiffs' motion to remand is granted.

17
18 Additionally, while plaintiffs correctly indicate that 28 U.S.C § 1447(c) allows the court
19 to impose attorney's fees and costs on a party who improperly removes a case to federal court,
20 "Congress has unambiguously left the award of fees to the discretion of the district court." *Gotro*
21 *v. R & B Realty Group*, 69 F.3d 1485, 1487 (9th Cir. 1995) (citing *Moore v. Permanente Medical*
22 *Group*, 981 F.2d 443, 446 (9th Cir. 1992). There was a reasonable dispute concerning whether
23 the complete preemption exception under ERISA § 502 applied to the claims. Therefore, the
24 court declines to award attorney's fees to the plaintiffs.

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28 ...

1 **IV. Conclusion**

2 Accordingly,

3 IT IS HEREBY ORDERED, ADJUDGED, and DECREED that plaintiffs' amended
4 motion to remand (ECF No. 49) be, and the same hereby is, GRANTED.
5

6 IT IS FURTHER ORDERED that the matter of *Fremont Emergency Services*
7 (*Mandavia*), *Ltd. v. United Healthcare Insurance Company et al.*, case number 2:19-cv-00832-
8 JCM-VCF, be, and the same hereby is, REMANDED to the Eighth Judicial District Court.

9 The clerk shall close the case accordingly.

10 DATED February 20, 2020.
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12 
13 UNITED STATES DISTRICT JUDGE
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James C. Mahan
U.S. District Judge