

**In the Supreme Court of Nevada**

UNITED HEALTHCARE INSURANCE COMPANY,  
UNITED HEALTH CARE SERVICES, INC., UMR,  
INC., SIERRA HEALTH AND LIFE INSURANCE  
COMPANY, INC., HEALTH PLAN OF NEVADA, INC.,

Petitioners,

*vs.*

THE EIGHTH JUDICIAL DISTRICT COURT of the  
State of Nevada, in and for the County of Clark;  
and THE HONORABLE NANCY L. ALLF, District  
Judge,

Respondents,

and

FREMONT EMERGENCY SERVICES (MANDAVIA),  
LTD., TEAM PHYSICIANS OF NEVADA-MANDAVIA,  
P.C., CRUM STEFANKO AND JONES, LTD.,

Real Parties in Interest.

Electronically Filed  
Oct 20 2021 03:57 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**PETITIONERS' APPENDIX TO NRAP 27(E) EMERGENCY MOTION  
TO STAY ENFORCEMENT OF SUBPOENAS PENDING PETITION**

***and***

**MOTION FOR INTERIM STAY**

**PAGES 1-58**

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## CERTIFICATE OF SERVICE

I certify that on October 20, 2021, I submitted the foregoing  
“Petitioners’ Appendix to NRAP 27(e) Emergency Motion to Stay  
Enforcement of Subpoenas Pending Petition *and* Motion for Interim  
Stay” for filing *via* the Court’s eFlex electronic filing system. Electronic  
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I further certify that I served a copy of this document by mailing a  
true and correct copy thereof, postage prepaid, at Las Vegas, Nevada,  
addressed as follows:

The Honorable Nancy L. Alf  
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*Respondent*

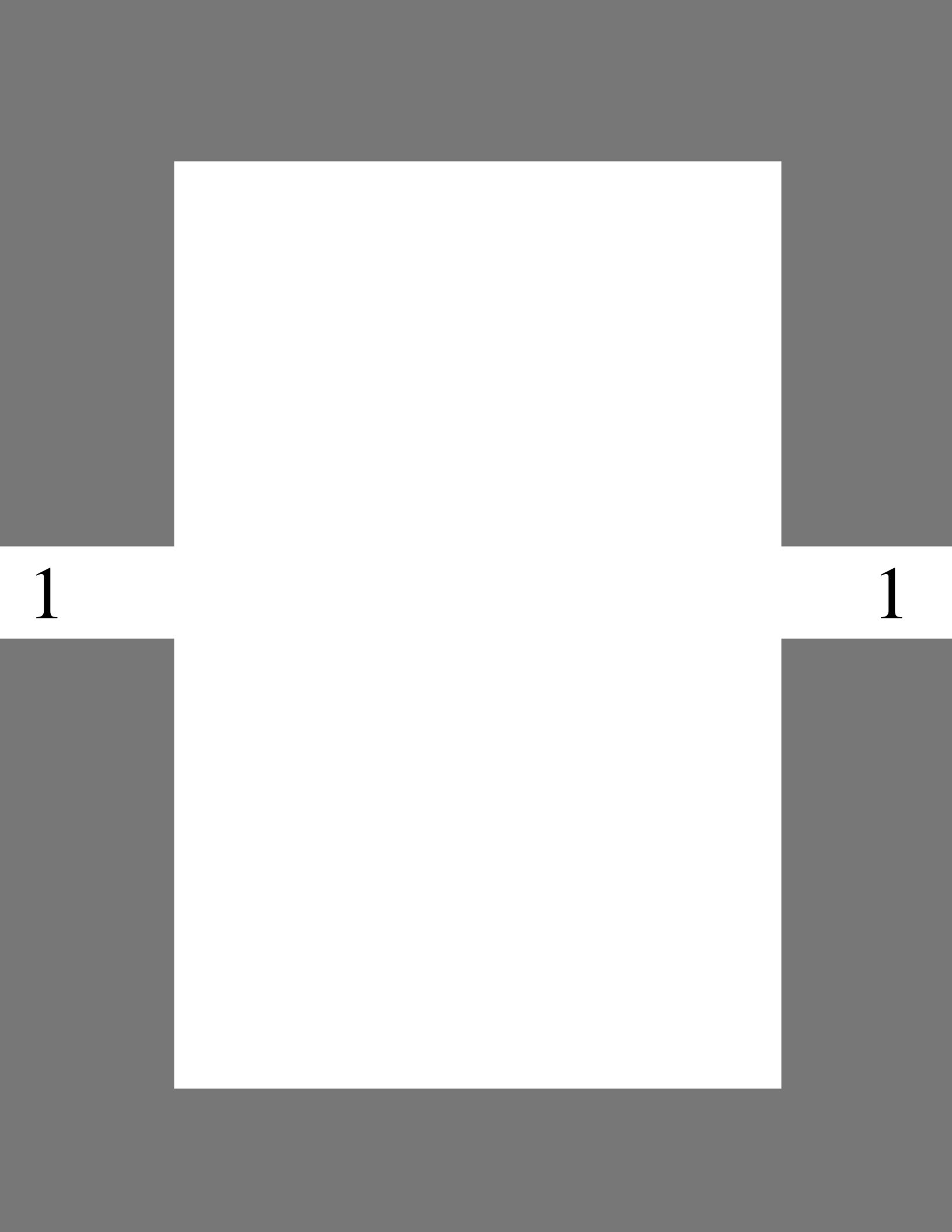
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

Case No.: A-19-792978-B

Dept. No.: 27

**DEFENDANTS' MOTION TO STAY  
ENFORCEMENT OF SUBPOENAS  
ISSUED TO OUT OF STATE  
WITNESSES PENDING RESOLUTION  
OF WRIT PETITION ON ORDER  
SHORTENING TIME**



1 UNITED HEALTHCARE INSURANCE  
 2 COMPANY, a Connecticut corporation; UNITED  
 3 HEALTH CARE SERVICES INC., dba  
 4 UNITEDHEALTHCARE, a Minnesota  
 5 corporation; UMR, INC., dba UNITED  
 6 MEDICAL RESOURCES, a Delaware  
 7 corporation; SIERRA HEALTH AND LIFE  
 8 INSURANCE COMPANY, INC., a Nevada  
 9 corporation; HEALTH PLAN OF NEVADA,  
 10 INC., a Nevada corporation,

11 Defendants.

12 Defendants UnitedHealthcare Insurance Company; United HealthCare Services, Inc.;  
 13 UMR, Inc.; Sierra Health and Life Insurance Company, Inc.; and Health Plan of Nevada, Inc.  
 14 (collectively, "Defendants"), hereby file this Motion to Stay Enforcement of Subpoenas Issued to  
 15 Out of State Witnesses Pending Resolution of Writ Petition On Order Shortening Time.  
 16 Dated this 15th day of October, 2021.

17 /s/ D. Lee Roberts, Jr.

18 D. Lee Roberts, Jr., Esq.  
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**DECLARATION OF D. LEE ROBERTS, JR. IN SUPPORT OF  
APPLICATION FOR ORDER SHORTENING TIME**

1. I am over the age of 18, have personal knowledge of the matters set forth herein and I am competent to testify to the same if called upon to do so. I am a partner at Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, counsel for Defendants in the above-captioned matter.

2. On October 15, 2021, Defendants filed a Petition for Writ of Mandamus, or alternatively, Prohibition ("Writ"), with the Nevada Supreme Court seeking review of this Court's order denying Defendants' Motion to Quash Out Of State Trial Subpoenas.

3. Defendants have requested that the Nevada Supreme Court issue a writ of mandamus instructing this Court to quash the subpoenas based on a lack of personal service, or, alternatively, for lack of subpoena power over the Out of State Witnesses.

4. If the Out of State Witnesses are compelled to travel to Nevada before the Nevada Supreme Court grants the relief requested by Defendants, the object of the writ will be defeated.

5. Defendants request that this Motion to Stay Enforcement of Subpoenas Issued to Out of State Witnesses Pending Resolution of Writ Petition be heard at the already scheduled October 19, 2021 hearing or decided in chambers prior to that hearing.

6. Plaintiffs deposed each of the Out of State Witnesses during discovery in this case and have designated portions of the deposition testimony for those witnesses for presentation at trial. Accordingly, there is no prejudice to Plaintiffs from the entry of a stay as if they desire to present testimony at trial from one of the Out of State Witnesses during their case in chief before the Supreme Court rules on the writ, they may do so by deposition.

7. I declare that the foregoing is true and correct under the penalty of perjury under the laws of the state of Nevada.

DATED: October 15, 2021

/s/ D. Lee Roberts, Jr.  
D. Lee Roberts, Jr.



**ORDER SHORTENING TIME**

On application of the declaration of counsel for Defendants and good cause appearing,

IT IS HEREBY ORDERED that Motion to Stay Enforcement of Subpoenas Issued to Out of State Witnesses Pending Resolution of Writ Petition On Order Shortening Time shall be heard on the 19th day of October, 2020 at 9:30 a.m./~~p.m.~~ in Department XXVII of the above entitled Court.

DATED this 15th day of October, 2021.

Dated this 15th day of October, 2021

Nancy L. Alif  
DISTRICT COURT JUDGE

TW

**F7B 2A3 5CAD DA2F**  
**Nancy Alif**  
**District Court Judge**

*Submitted by:*

WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC

/s/ D. Lee Roberts, Jr.

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## MEMORANDUM OF POINTS AND AUTHORITIES

### I. INTRODUCTION

On October 14, 2021, Defendants filed a Petition for Writ of Mandamus, or alternatively, Prohibition (“Writ”), with the Nevada Supreme Court seeking review of this Court’s order denying Defendants’ Motion to Quash Out Of State Trial Subpoenas. *See* Writ, attached as **Exhibit 1**. Defendants have requested that the Nevada Supreme Court issue a writ of mandamus instructing this Court to quash the subpoenas based on a lack of personal service, or, alternatively, for lack of subpoena power over the Out of State Witnesses.

If the Out of State Witnesses are compelled to travel to Nevada before the Nevada Supreme Court grants the relief requested by Defendants, the object of the writ will be defeated. Defendants request that this Motion to Stay Enforcement of Subpoenas Issued to Out of State Witnesses Pending Resolution of Writ Petition be heard at the already scheduled October 19, 2021 hearing or decided in chambers prior to that hearing.

As explained below, a stay should be granted because all of the factors for determining whether to enter a stay pending resolution of a writ petition weigh in favor of entering such a stay in this case. First, if the stay is not entered, the object of the writ petition—relieving the Out of State Witnesses of their obligation to comply with the subpoenas issued by Plaintiff — will be defeated if the witnesses are compelled to travel to Nevada during Plaintiffs’ case in chief before the Nevada Supreme Court rules on the Writ. Second, the stay does not pose any risk of irreparable harm to Plaintiffs because they deposed all of the Out of State Witnesses during discovery in this case and have designated portions of those depositions for use at the upcoming trial. As a consequence, they can choose to present the witnesses by deposition if they wish to present their testimony while the stay is pending. But there may be irreparable harm to the Out of State Witnesses if a stay is not granted. Finally, based on the precedent cited in the Writ, the writ petition has a strong likelihood of success.

### II. STATEMENT OF PERTINENT FACTS

On September 9, 2021, the Plaintiffs hand delivered trial subpoenas to the law firm of Weinberg Wheeler, Hudgins, Gunn and Dial, LLC, counsel for the Petitioners, seeking to compel





1 the trial appearance and testimony of ten out-of-state employees and former employees of  
2 Petitioners (the “Out of State Witnesses”) (*See* Plaintiffs’ trial subpoenas, Exhibit 1 to Motion to  
3 Quash, attached hereto as **Exhibit 2**). The Petitioners filed a Motion to Quash Out Of State Trial  
4 Subpoenas on Order Shortening Time (“Motion”, **Exhibit 2**), which was heard on October 6,  
5 2021.

6 The Petitioners contend that the subpoenas are invalid because the “Out of State  
7 Witnesses” were not personally served and had not expressly appointed Weinberg Wheeler,  
8 Hudgins, Gunn and Dial, LLC as agent to accept service of process. The Petitioners further  
9 contend that the subpoenas are invalid because the “Out of State Witnesses” are not parties to  
10 this action and are not within the subpoena power of the district court.

11 The Court orally denied the Motion on October 6, 2021. (See Hearing Transcript at at  
12 19:7-10, **Exhibit 3**). A written order denying the Motion was entered by the Court on October  
13 13, 2021 (**Exhibit 4**). Notice of Entry was filed on October 13, 2021 (**Exhibit 5**).

14 Defendants submit that the Court erred as a matter of law in refusing to quash the  
15 subpoenas. The Court was required to quash subpoenas which were not personally served in  
16 accordance with Nevada law, and an appointment to accept service must be express and cannot  
17 be implied. In addition, the Defendants contend that the Court is acting in excess of its  
18 jurisdiction in seeking to compel nonparties residing outside the State of Nevada to attend trial in  
19 Nevada.

### 20 **III. LEGAL ARGUMENT**

#### 21 **A. Whether a stay pending resolution of a writ petition should be entered turns on 22 the balancing of four factors.**

23 Nevada Rule of Appellate Procedure 8 governs the issuance of a stay pending appeal or  
24 resolution of an original writ proceeding. *See Hansen v. Eighth Judicial Dist. Court ex rel. Cty.*  
25 *of Clark*, 116 Nev. 650, 657, 6 P.3d 982 986 (2000). Rule 8 applies equally to appeals and writ  
26 petitions. *Id.* The Rule instructs that a party generally must first move for a stay in the district  
27 court before moving for a stay in the Supreme Court. *See id.* (citing NRAP 8(a)).

28 Under NRAP 8, courts should consider four factors in deciding whether to issue a stay:  
(1) whether the object of the writ petition would be defeated if the stay is denied, (2) whether the



petitioner will suffer irreparable or serious injury if the stay is denied, (3) whether the real party in interest will suffer irreparable or serious injury if the stay is granted, and (4) whether petitioner is likely to prevail on the merits in the writ petition. *Id.* (citing NRAP 8(c)). While the Nevada Supreme Court has “not ascribed particular weights to any of the stay factors in the civil context,” it has “recognized that depending on the type of appeal, certain factors may be especially strong and counterbalance other weak factors.” *State v. Robles-Nieves*, 129 Nev. 537, 542, 306 P.3d 399, 403 (2013). Further, the Supreme Court has recognized that “if one or two factors are especially strong, they may counterbalance other weak factors.” *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P.3d 36, 38 (2004).

**B. A stay entered pending resolution of Defendants’ writ petition should be entered because each of the four factors weigh in favor of such a stay.**

A stay of this case pending resolution of Defendants’ writ petition is warranted. As explained below, each of the factors weighs heavily in favor of such a stay.

**1. The first factor – the object of the writ petition being defeated if the stay is denied – weighs heavily in favor of a stay.**

In evaluating this first factor, the Court should identify the object of the writ petition and whether it will be defeated by the denial of the stay. *See Hansen*, 116 Nev. at 657–58, 6 P.3d at 986. Here, the object of Defendants’ Writ is to quash the subpoenas based on a lack of personal service, or, alternatively, for lack of subpoena power over the Out of State Witnesses. If the Out of State Witnesses are compelled to travel to Nevada before the Nevada Supreme Court grants the relief requested by Defendants, the object of the writ will be defeated. The harm will be done before the Nevada Supreme Court can address the Writ on the merits.

Without a stay, the entire object of the writ petition would be defeated. Therefore, the first factor weighs heavily in favor of granting the stay.

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**2. The second and third factors – which consider the likelihood of irreparable harm – weigh in favor of granting a stay.**

These factors consider whether the petitioner will suffer irreparable or serious injury if the stay is denied, and whether the real party in interest will suffer irreparable or serious injury if the stay is granted. Balancing these harms weighs in favor of a stay. The stay does not pose any risk of irreparable harm to Plaintiffs because they can choose to present the testimony of the Out of State Witnesses by deposition if they wish to present that testimony while the stay is pending. This is not a case in which the granting of a stay would deprive the Plaintiffs of the ability to present any testimony from the witness to the jury. On the other hand, there will be irreparable harm to the Out of State Witnesses if a stay is not granted, in the form of the travel, time, inconvenience and trouble of traveling from all over the country to the State of Nevada.

**3. The fourth factor weighs in favor of a stay because Defendants' writ petition is likely to prevail on the merits.**

The Out of State Witnesses are not residents of the State of Nevada<sup>1</sup>, were not personally served, and cannot be compelled by to attend trial in Nevada merely because counsel for their corporate employer or former corporate employer was served with process in Nevada. In *Consol. Generator-Nevada, Inc. v. Cummins Engine Co.*, 114 Nev. 1304, 1312, 971 P.2d 1251, 1256 (1998), the Nevada Supreme Court held that personal service on out-of-state employees *and officers* of a corporate defendant cannot be accomplished by serving the attorney for the corporate entity. In denying Defendants' motion to quash, the Court disregarded this controlling case law and refused to quash the subpoenas, inferring that counsel for the corporate defendants had some sort of implied authority to accept person service, which was relied up by Plaintiffs. But authority to accept personal service can only be based on actual authority, which does not exist under the facts of this case. *See Foster v. Lewis*, 78 Nev. 330, 332–34, 372 P.2d 679, 680–81 (1962) (“In the absence of actual specific appointment or authorization, and in the absence of

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<sup>1</sup> These witnesses reside in the states of Florida, Minnesota, Pennsylvania, Connecticut, Texas, and Wisconsin.



1 a statute conferring authority, an agency to accept service of process will not be implied”).  
 2 There is nothing in the record demonstrating that Weinberg Wheeler, Hudgins, Gunn and Dial,  
 3 LLC was ever appointed as agent to receive service of trial subpoenas by the Out of State  
 4 Witnesses.

5 The Court’s order denying the motion to quash is also contrary to the holding of the  
 6 Nevada Supreme Court in *Quinn v. Eighth Jud. Dist. Ct. in & for Cty. of Clark*, 134 Nev. 25, 29,  
 7 410 P.3d 984, 987 (2018), which quashed subpoenas issued to out-of-state nonparty witnesses,  
 8 further holding that “[m]ost states retain strict limits on the reach of the subpoena power, holding  
 9 that subpoena service cannot reach nonparties found outside the state.” *Quinn*, 134 Nev. at 30,  
 10 410 P.3d at 988 (2018).

11 Although this Court disagreed with Defendants’ position, Defendants respectfully submit  
 12 that the writ petition is likely to prevail. Even to the extent the Court disagrees, the strength of  
 13 the first factor (*i.e.*, the purpose of the writ being defeated by the absence of a stay) weighs so  
 14 heavily in favor of a stay that this fourth factor should not be dispositive.

#### 15 IV.

#### 16 RELIEF REQUESTED

17 The test outlined by the Nevada Supreme Court in *Hansen* favors a stay. Based on the  
 18 foregoing, Defendants respectfully request that this matter be stayed pending resolution of their  
 19 writ petition.

20 Dated this 15th day of October, 2021.

21 /s/ D. Lee Roberts, Jr.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 15th day of October, 2021, a true and correct copy of the foregoing **DEFENDANTS' MOTION TO STAY ENFORCEMENT OF SUBPOENAS ISSUED TO OUT OF STATE WITNESSES PENDING RESOLUTION OF WRIT PETITION ON ORDER SHORTENING TIME** 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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2  
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4 CLARK COUNTY, NEVADA

5  
6 Fremont Emergency Services  
7 (Mandavia) Ltd, Plaintiff(s)

CASE NO: A-19-792978-B

8 vs.

DEPT. NO. Department 27

9 United Healthcare Insurance  
10 Company, Defendant(s)

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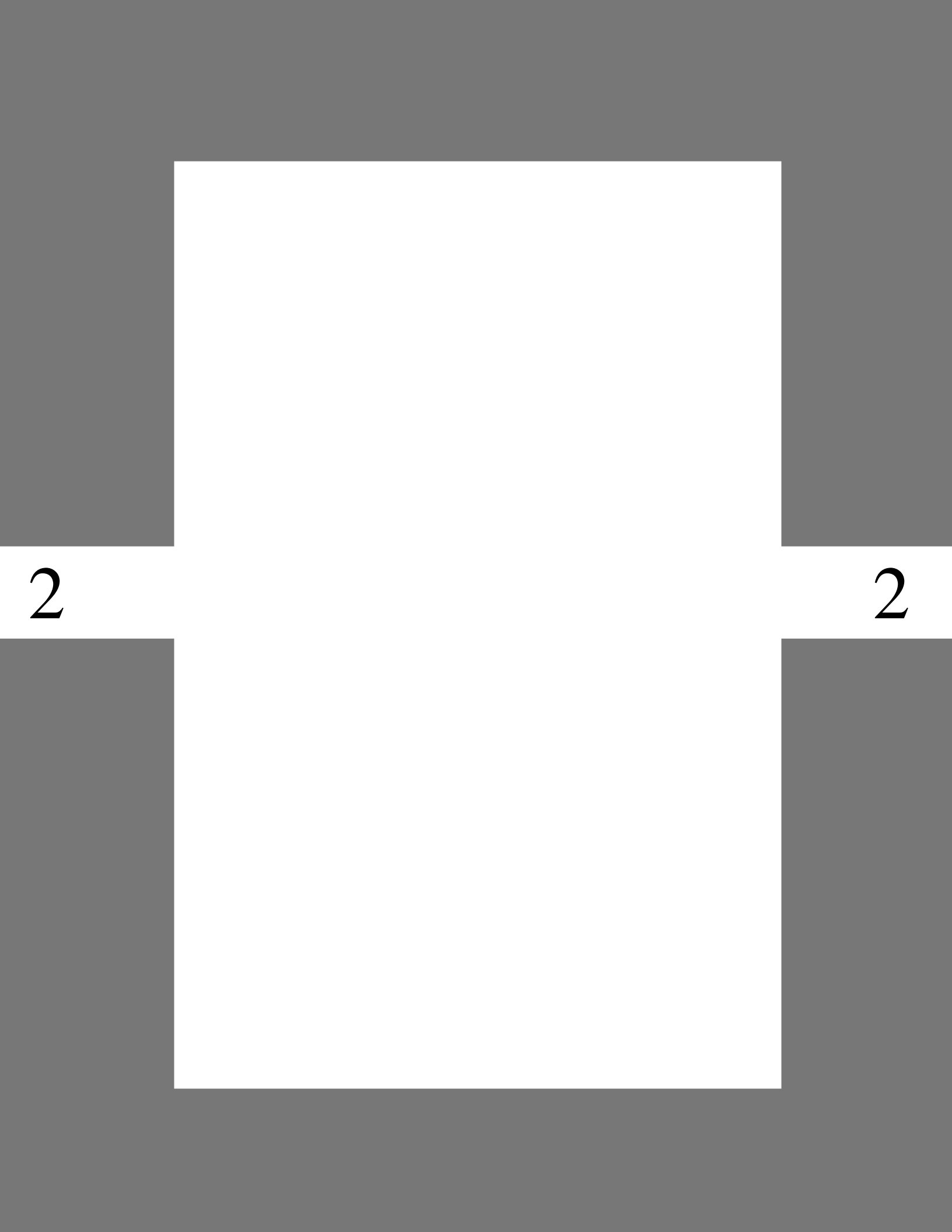
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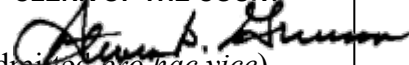
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

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; SIERRA HEALTH AND LIFE  
INSURANCE COMPANY, INC., a Nevada  
corporation; HEALTH PLAN OF NEVADA,  
INC., a Nevada corporation,

Defendants.

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

**PLAINTIFFS' OPPOSITION TO  
DEFENDANTS' MOTION TO STAY  
ENFORCEMENT OF SUBPOENAS  
ISSUED TO TRIAL WITNESSES  
PENDING RESOLUTION OF WRIT  
PETITION**

**Hearing Date: October 19, 2021**

**Hearing Time: 9:30 a.m.**

**McDONALD CARANO**

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Plaintiffs Fremont Emergency Services (Mandavia), Ltd.; Team Physicians of Nevada-Mandavia, P.C.; Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine (collectively the "Health Care Providers") oppose defendants United Healthcare Insurance Company; United HealthCare Services, Inc.; UMR, Inc.; Sierra Health and Life Insurance Co., Inc.; and Health Plan of Nevada, Inc. (collectively, "United") Motion to Stay Enforcement of Subpoenas Issued to Trial Witnesses ("Motion"). United cannot make the required showing under NRAP 8(c) to secure the stay, therefore the Motion should be denied.

This opposition is based upon the record in this matter, the points and authorities that follow, the pleadings and papers on file in this action, and any argument of counsel entertained by the Court.

DATED this 18<sup>th</sup> day of October, 2021.

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## POINTS AND AUTHORITIES

### I. PREFACE.

Throughout the entirety of this case United identified the ten witnesses at issue as reachable only through its Nevada counsel. United also identified each one of the ten witnesses at issue as a witness it expects or may call live at trial. Most of these witnesses are also on the Health Care Providers' list of witnesses it plans to call live at trial.

NRS 50.115 gives the district courts considerable discretion over the mode and order of interrogating witnesses and presenting evidence at the time of trial. Specifically, NRS 50.115(1) provides:

1. The judge shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence:
  - (a) To make the interrogation and presentation effective for the ascertainment of the truth;
  - (b) To avoid needless consumption of time; and
  - (c) To protect witnesses from undue harassment or embarrassment.

In declining to quash the subpoenas at issue the Court exercised its considerable discretion over the interrogation of witnesses at the upcoming trial, essentially requiring any witness to take the witness stand once during trial so to give all parties to this case equal opportunity to examine those witnesses live at trial. Doing so accomplishes all goals of NRS 50.115(1). This is a common practice in our State, in Nevada Federal Courts and throughout many other jurisdictions.

United, through its original motion to quash and now via its ill-fated writ of prohibition to the Nevada Supreme Court, claims the Court abused its considerable discretion in establishing the mode of witness interrogation at trial. And somehow, United construes that exercise of discretion as one requiring immediate appellate review. Well, United is wrong. But more importantly for purposes of this opposition, United cannot make the requisite showing to obtain the stay requested, aka delay of trial, something that United has repeatedly sought throughout this entire case.

### II. THE OBJECT OF UNITED'S WRIT OF PETITION IS NOT A LEGITIMATE OBJECT.

Let's be clear: United's true object under its writ petition is to deny the Health Care

Providers an opportunity to call the witnesses at issue during its case in chief. But an object of a writ must be legitimate before being construed as protectable. United's object of its writ is not legitimate.

At its core, United's requested stay is really a motion for reconsideration without attempting to meet the higher standard required by seeking reconsideration.<sup>1</sup> By waiting too long after the Court's ruling before filing its writ and seeking a stay, with now fewer than ten calendar days until trial, United has created a scenario by which it hopes to obtain a backdoor reversal of the Court's clear ruling denying United's prior motion to quash. United's requested relief—staying the enforcement of the subpoenas—allows the trial to proceed as though the subpoenas were quashed and the witnesses are not required to attend until called by United. By doing so, United, yet again, challenges the authority and discretion of this Court.<sup>2</sup>

By taking this tactical delayed approach, United is asking the Court for a free pass so it will not need to bring its witnesses to trial until it chooses. That's precisely what United wanted in seeking to quash the subpoenas in the first place. United is not entitled to that free pass.

Not once has United said it lacks control over these witnesses. Not once has United said it will not be bringing these witnesses to trial (some of whom were United's corporate representatives in depositions). Not once have the witnesses sought the protection of the Court, but instead United seeks protection on their behalf demonstrating these witnesses are within United's control. Not once did United take advantage of the Court's proffer to show that it genuinely did not have control over these witnesses. And United cannot deny that the subpoenas were served on the addresses United disclosed for these witnesses to be contacted. The Court held the Health Care Providers relied on that disclosure and were entitled to do so. United cannot get out of that now by obtaining a last-minute stay.

<sup>1</sup> As the Court knows, in order for United to justify reconsideration, United must show this Court was "clearly erroneous" or that there is "substantially different evidence" to introduce. *Masonry & Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 O.2d 486, 489 (1997). United can do neither.

<sup>2</sup> This has been a persistent pattern throughout this case. Time and again, from ignored discovery orders to unpaid sanctions, United has tried to set aside virtually every decision this Court has made.

1 Granting United's stay request would effectively grant the writ before the Nevada  
2 Supreme Court has the chance to rule. Accordingly, the first factor does not favor United.  
3 *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89 P.2d 36, 39 (2004).

4 **III. THE BALANCE OF IRREPARABLE HARM WEIGHS IN FAVOR OF THE**  
5 **HEALTH CARE PROVIDERS.**

6 To begin, United makes no claim that it will suffer irreparable harm. Instead, United  
7 claims "there may be irreparable harm to the Out-of-State Witnesses." Motion p.5:23-24.  
8 United then goes on to claim that such harm is "in the form of the travel, time, inconvenience  
9 and trouble of traveling from all over the country to the state of Nevada." Motion p.8:10-11.  
10 However, the Nevada Supreme Court has been unequivocal in holding that such grounds are not  
11 irreparable harm, and are not a legitimate ground upon which to request a stay. *Hansen v. Eighth*  
12 *Jud. Dist. Ct.* 116 Nev.650, 658, 6 P.3d 982, 986-87 (2000).

13 United then argues that "the stay does not pose any risk of irreparable harm to Plaintiffs,"  
14 but that is untrue. By asking this Court to reconsider its decision to allow the Health Care  
15 Providers to call these witnesses live during their case in chief, United is asking the Court to  
16 deny the Health Care Providers their ability to effectively and efficiently present their case. There  
17 is no substitute for live testimony. What United seeks, is the ability to shield its witnesses from  
18 cross-examination while retaining the ability to call them on United's own terms. Because the  
19 Health Care Providers bear the burden of proof, this would be irreparable harm to allow United  
20 to dictate the presentation of the Health Care Providers' case in chief by obtaining a stay.

21 United had every opportunity, in the nine-day delay before filing its motion to stay, to  
22 accept the Court's invitation and present evidence establishing the non-party witnesses being as  
23 United's control. Tellingly, United did not do so. United simply wants it both ways: to hide  
24 behind purported non-party witness status so as to avoid the subpoenaed witnesses being called  
25 in the Health Care Providers' case; *and*, to retain control over these witnesses so United can call  
26 them in its case. While that may be United's preferred course of action, it is no justification for  
27 granting a stay and it does not prove that United's writ is meritorious.

Under Rule 16.1 of the Nevada Rules of Civil Procedure, United was required to disclose “the name and, if known, the address and telephone number of each individual likely to have information discoverable under Rule 26(b),” and a duty to “timely supplement” those disclosures if they were incomplete or incorrect. NRCP 16.1(a)(1)(A); NRCP 26(e)(1). All these witnesses were originally United employees, but United sought to shield these witnesses so United designated all the witnesses as reachable through its counsel. By designating the witnesses as available only through United’s counsel, and indicating to the Health Care Providers that it did not believe subpoenas were necessary for party-affiliated witnesses, United misled the Health Care Providers into believing that these witnesses would be available for trial and represented they had authority to accept a subpoena issued pursuant to NRCP 45.<sup>3</sup>

For these reasons, the second and third factors weigh heavily against a stay.

#### IV. UNITED’S WRIT IS NOT LIKELY TO SUCCEED ON THE MERITS.

The Court has already examined the merits of this issue and found against United. The substance of the Court’s denial of United’s motion to quash falls within the scope of Court’s consideration discretion over the mode and presentation of evidence. NRS 50.115. United wishes to substitute its own preferences for those of the Court by requiring the Health Care Providers to play depositions while United can then re-call the witnesses during its case in chief. This is duplicative and wasteful. There is no abuse of discretion in the Court’s ruling.

United’s argument that express authority is required to designate someone for service of a trial subpoena is wrong. United designated these witnesses as being reachable care of United’s own attorney, and United represented that it had authority to accept service of deposition subpoenas (which are also governed by Rule 45) on behalf of the witnesses. This Court was well within its discretion to resolve that question of fact in favor of the Health Care Providers.

Accordingly, this fourth factor also weighs against a stay.

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<sup>3</sup> The Court properly determined that the Health Care Providers relied on these representations, and that United could not seek relief from a situation of its own making. This distinguishes the case at hand from any of the authority cited by United.

**V. CONCLUSION**

United created this situation. United should not get a second chance to obtain the substantive relief it has already been denied by way of a stay. The stay factors do not weigh in favor of staying the case and preventing the Health Care Providers from putting their case on at trial.

DATED this 18th day of October, 2021.

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## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 18th day of October, 2021, I caused a true and correct copy of the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO STAY ENFORCEMENT OF SUBPOENAS ISSUED TO TRIAL WITNESSES PENDING RESOLUTION OF WRIT PETITION** to be served via this Court's Electronic Filing system in the above-captioned case, upon the following:

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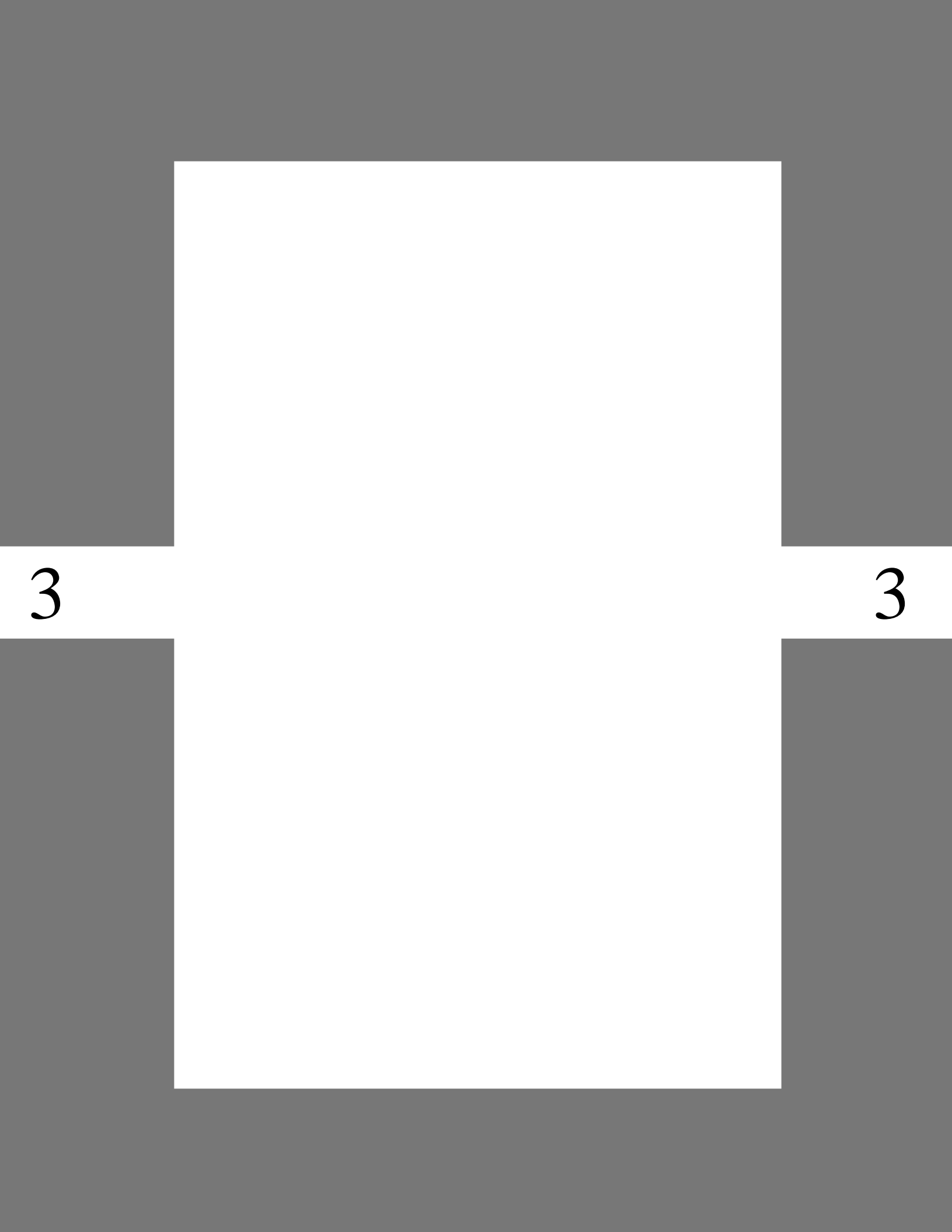
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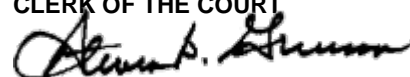
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CLERK OF THE COURT



**TRAN**

DISTRICT COURT

CLARK COUNTY, NEVADA

FREMONT EMERGENCY SERVICES	)	
(MANDAVIA) LTD.,	)	CASE NO: A-19-792978-B
	)	
Plaintiff(s),	)	
	)	
vs.	)	DEPT. XXVII
	)	
UNITED HEALTHCARE INSURANCE	)	
COMPANY,	)	
	)	
Defendant(s) .	)	
=====	)	

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

TUESDAY, OCTOBER 19, 2021

**AMENDED TRANSCRIPT OF PROCEEDINGS**

**RE: MOTIONS**

SEE PAGE 2 FOR APPEARANCES

**SEE PAGE 3 FOR MATTERS**

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DANIEL F. POLSENBERG, ESQ. (Blue Jeans)

1 MR. POLSENBURG: I can hear you, yes, thank you.

2 MR. BLALACK: But it did not switch to me?

3 MR. POLSENBURG: No. I get no visual whatsoever. And  
4 I don't know whether that's the court or me. But --

5 THE COURT: Let me suggest that -- let's go ahead  
6 and --

7 MR. POLSENBURG: You certainly don't need to take a  
8 break for this.

9 THE COURT: Well, I'm going to suggest that you log  
10 out and log back in. You might have turned off your video by  
11 error.

12 MR. POLSENBURG: My computer crashed so that may have  
13 been it. So I'll give it one more try. But I'll wait until  
14 after the stay motion.

15 THE COURT: All right.

16 So Mr. Roberts, go ahead, please.

17 MR. ROBERTS: Thank you, Your Honor.

18 THE COURT: Will you just recite the name of the  
19 motion for the court clerk, because I didn't find it on my  
20 list here. I know it's here, but -- it was Motion to Stay  
21 enforcement of the order regarding subpoenas.

22 THE CLERK: Motion to Stay enforcement of subpoenas  
23 issued to out-of-state witnesses pending resolution of writ  
24 petition on order.

25 THE COURT: Got it. That's it.

1 THE CLERK: Is that correct?

2 MR. ROBERTS: That is it. That's exactly the name.

3 THE COURT: All right. Thank you.

4 MR. ROBERTS: Thank you, Your Honor.

5 I'm here on behalf -- Lee Roberts, on behalf of United  
6 Healthcare.

7 And I am here to request that the Court issue a stay  
8 on the enforcement of the subpoenas which this Court declined  
9 to quash in a recent hearing, which I also argued before the  
10 Court. And I'm going to not repeat the same arguments that I  
11 made there or the ones in the writ, but will instead would  
12 like to address the factors.

13 Is this annoying, Your Honor? Could you hear me  
14 better with this, just using this mic?

15 THE COURT: I could hear you guys without the  
16 microphone, so --

17 THE COURT REPORTER: It's just the recording doesn't  
18 pick it up well enough [indiscernible].

19 THE COURT: It's -- can you --

20 MR. ROBERTS: If I stay close to this, am I going to  
21 be okay on the recording?

22 THE COURT RECORDER: If you speak up, yes.

23 MR. ROBERTS: If I speak up. Okay. I'll try that,  
24 Your Honor.

25 THE COURT: Okay.

1           MR. ROBERTS: So I wanted to address the factors which  
2 the Supreme Court ruled of Appellate Procedure Rule 8  
3 generally say that the Supreme Court will address. And  
4 because the Rule 8 also requires us to seek a stay first in  
5 the district court, I believe those same factors should apply  
6 here.

7           The factors from NRAP 8 include, first, whether the  
8 object of the appeal or writ petition will be defeated if the  
9 stay or injunction is denied; whether the appellant, slash,  
10 petitioner will suffer irreparable or serious injury if the  
11 stay or injunction is denied; whether the respondent, slash,  
12 real party in interest will suffer irreparable or serious  
13 injury if the stay or injunction is granted; and finally,  
14 whether the appellant, slash, petitioner is likely to prevail  
15 on the merits of the appeal.

16           The Supreme Court has recognized that the most  
17 important element is usually whether the object of the appeal  
18 or writ would be destroyed in the absence of the stay. And  
19 that squarely applies here, Your Honor.

20           We cite to *Micon Gaming* 89 P.3d 36 at page 40, a 2004  
21 decision. But we don't quote from it. And I think some of  
22 the key takeaways from that case -- which is also cited in the  
23 opposition -- is where the Court says in the context of an  
24 appeal seeking to compel arbitration, because the object of an  
25 appeal seeking to compel arbitration will be defeated if a

1 stay is denied, and irreparable harm will seldom figure into  
2 the analysis, a stay is generally warranted.

3 And this is consistent with case law from the federal  
4 courts, which say that the -- defeating the purpose of the  
5 appeal or petition is usually the main factor, unless it's  
6 out -- unless it's counterbalanced by a strong showing on one  
7 of the other factors.

8 And as to the likelihood of success on the merits, I  
9 think it's important that the Court doesn't have to find that  
10 the Court was likely wrong and the Supreme Court will most  
11 likely find that the arguments we're raising justify a writ of  
12 mandamus back to this Court. And Micon is instructive on that  
13 purpose, where it says, Therefore, the party opposing the stay  
14 motion can defeat the motion by making a strong showing that  
15 appellant relief is unattainable, in particular if the appeal  
16 appears frivolous or if the appellant apparently filed the  
17 stay motion purely for dilatory purposes, the Court should  
18 deny the stay.

19 I think what you can take from that is the Court  
20 doesn't have to actually find that we're likely to written on  
21 the writ. You just have to find that there's a reasonable  
22 shot that there will -- that there's a good faith issue  
23 prevented -- presented to the appellate Court that it's not  
24 frivolous. And we think Your Honor that we meet that standard  
25 here.



1           So looking first at whether the object of the writ  
2 will be defeated, if this is not stayed and the witnesses are  
3 compelled to show up at the beginning of their case in chief  
4 on November 1st, the writ will become moot. There is no  
5 relief that could then be granted by the Supreme Court.

6           In their opposition, they argued that, wait a minute,  
7 they're trying to win just by filing a Motion to Stay, and  
8 they waited too long and it's not timely. And I would like to  
9 address that issue, because the written order denying the  
10 Motion to Quash was not filed by this Court until  
11 October 13th. And a written order is generally required in  
12 order to appeal and have a timely appeal. And Mr. Polsenberg  
13 tells me is also required to file a valid writ petition.

14           Notice of entry was filed the same day. The writ was  
15 filed the very next day, October 14th, although after 5 p.m.  
16 The file stamped copy was provided by the clerk on  
17 October 15th, and this Motion to Stay was filed on  
18 October 15th.

19           I think the record demonstrates that we filed the writ  
20 the day after the written order was issued, and you seek to  
21 stay immediately, the same day upon filing the writ, I think  
22 we've acted timely.

23           And looking at the issue of that likelihood of success  
24 and the arguable merit. Although I don't want to repeat the  
25 arguments that we raised in the writ petition, in fairness to

1 the Court, I do want to point out one additional case that we  
2 cited in the writ petition.

3 THE COURT: So I don't take any offense that if you  
4 criticize my ruling. I understand that's your job.

5 MR. ROBERTS: Thank you, Your Honor.

6 In the writ petition, we cited one additional case  
7 that's *Spinosa v. Rowe*, because we thought it was particularly  
8 applicable to the Court's finding that we're -- we said you  
9 can't presume that you have authority to accept service of  
10 process of a cross-subpoena, simply because we had previously  
11 agreed to accept service of a deposition subpoena and had  
12 listed them in care of our office on a 16.1. And *Spinosa* --  
13 it's an older case from 1971. But in the *Spinosa* case, the  
14 attorney for a party was served. And there was a letter that  
15 was relied upon in that case, where *Spinosa* claimed that  
16 Mr. Morris had agreed prior to the commencement of the action  
17 to accept service. So the lawyer for the party had allegedly  
18 agreed to accept service.

19 But then when service was actually made on him, he  
20 wrote a letter in footnote to July 8th. This is in reference  
21 to the complaint served upon me in the above matter, I hereby  
22 inform you, I have no authority to acknowledge service on the  
23 defendant Virginia Rowe. And the Court reversed the default  
24 judgment.

25 And what this case stands for is exactly what we

1     argue, that you can't presume service. Even where an attorney  
2     allegedly says, I have authority to accept service. If once  
3     he got the service, he said, no, I don't have authority to  
4     accept this.

5             And the Supreme Court therefore reversed, because  
6     under the case that we cited, *Consolidated Generator*,  
7     authority to accept service of process has to be express.  
8     There has to be an actual point that they accept service.  
9     Authority to accept service cannot be implied from the facts  
10    and it cannot be implied from conduct. It has to be express.

11            And there's not any evidence in this case that we had  
12    actual authority to accept service of trial subpoenas on  
13    behalf of these out-of-state witnesses.

14            And the arguments that we've made about *Quinn* are the  
15    same ones that we made here. We emphasized a little bit more  
16    that in *Consolidated Generator*, the subpoenas were served on  
17    counsel for the corporate party; and they were employees and  
18    officers of the corporate entity from out of state.

19            So the whole argument that there's this distinction  
20    between a nonparty witness, which counsel doesn't have  
21    authority to accept; or a party witness, which you  
22    automatically do, is rebutted by the *Consolidated Generator*  
23    case which found that even though they were officers, counsel  
24    was not assumed to be authorized to accept service for these  
25    out-of-state individuals.

1           Going to the balancing of harms, we believe that's the  
2   least important factor, but the harms to the witnesses, once  
3   they travel here, it's going to be done. Whatever  
4   convenience, whatever burden, this travel to out of state will  
5   impose on them is going to be done, versus we believe there is  
6   no harm for the plaintiffs to have to put on their  
7   depositions, if they want to call them before the Court  
8   resolves this case.

9           That's why out-of-state depositions are taken to  
10   preserve trial testimony. People have to put on deposition  
11   testimony of unavailable witnesses all the time. Therefore,  
12   that harm is not so irreparable that it should overcome the  
13   fact that if these witnesses are forced to come before the  
14   Supreme Court can rule on the case, it's going to be a done  
15   deal. The purpose of the writ will be defeated.

16           And therefore, we request that the Court issue a stay,  
17   just until the Court, the Supreme Court can rule on this  
18   issue.

19           THE COURT: Thank you.

20           MR. ROBERTS: Thank you, Your Honor.

21           THE COURT: And the opposition, please.

22           MS. LUNDVALL: Thank you, Your Honor. Pat Lundvall  
23   from McDonald Carano, again on behalf of the Health Care  
24   Providers.

25           What is at issue here, just simply to remind the

1 Court, is can witnesses -- and whether or not that they're  
2 going to be obliged then to provide live testimony at the time  
3 of trial. These 10 witnesses for over two years were  
4 represented, not only to us, but to you, to the Court, to be  
5 only reachable by and through counsel. That's what that they  
6 repeated. I think there were 17 Rule 16.1 disclosures to us.  
7 And they were represented, like we said, not only to us, but  
8 to you, to only be reachable by and through counsel.

9 When it came time for us to serve deposition  
10 subpoenas, we were asked, Why are you doing this? Deposition  
11 subpoenas are issued pursuant to Rule 45, no different than  
12 trial subpoenas are. The defendant said, Why are you doing  
13 this? You don't need to. We can accept those, but they are  
14 party affiliated witnesses. And there doesn't need to be any  
15 type of a deposition subpoena that is needed.

16 When you look at their trial disclosure, each and  
17 every one of these 10 witnesses is either on their may call or  
18 their will call list, to present live testimony to the jury at  
19 the time of trial.

20 And those same witnesses are on our either may or will  
21 call list.

22 Now, one of the things that our opposition -- and I  
23 would like to confirm that the Court did receive -- all right.  
24 I figured so, but just wanted to confirm.

25 But NRS 50.115, subsection 1 gives this Court

1 considerable discretion over the mode and the order of  
2 presentation, not only of witnesses, but also of evidence at  
3 the time of trial.

4 And I will tell you that across 32 years of practice  
5 and between 75 and maybe 80 trials, each and every time that  
6 the issue came up as to whether or not a witness was supposed  
7 to grace the witness stand once versus twice, the trial court  
8 uniformly said, We want the witness on the stand one time.  
9 If, in fact, that witness is going to present testimony at the  
10 time of trial, that witness should grace the stand one time.  
11 Why? It's time efficient.

12 It is efficient not only for the Court's time, but  
13 also for purposes of the jury's time. This is in state  
14 courts. It's in federal courts. It is in state and federal  
15 courts across the nation.

16 It is something that is within the Court's discretion.

17 And so now, what they have done is they have tried to  
18 suggest that somehow you abused your considerable discretion  
19 by saying these witnesses will be presented once at the time  
20 of trial, and that these witnesses then should be presented in  
21 accord then with the subpoenas, that we had served.

22 So what you would like to do is to go through each one  
23 of the factors and can demonstrate why not one of the four  
24 factors inures to the benefit then of the defense in trying to  
25 obtain a stay of enforcement.

1           The first one is whether or not that the object of  
2   their writ would be denied.

3           Now, first and foremost, the Nevada Supreme Court says  
4   that the object of your writ has to be a legitimate object.  
5   Not an illegitimate, but if it's an illegitimate object or an  
6   illegitimate purpose, then, in fact, that that's not a factor  
7   that's going to be evaluated then in affording a stay.

8           And what is the object of their writ? Their writ asks  
9   you to stay enforcement of your order.

10          What does that mean? They are asking you then to  
11   decide the writ. That's what they're asking you to do.  
12   They're asking you to say, the writ is meritorious, the writ  
13   has value, and therefore, we want you to grant the writ, by  
14   offering a stay, because they're not seeking a stay of the  
15   trial. They're seeking a stay of enforcement of your order  
16   not quashing the subpoenas.

17          And so really, when you look at it then, what does  
18   their writ do? And what does their motion for stay do? It's  
19   a reconsideration then of your order. And they're untimely  
20   then with their motion for reconsideration on that. Moreover,  
21   that they haven't met the high standard for reconsideration of  
22   your order. And when you consider -- think about the idea  
23   that your considerable discretion was somehow abused by  
24   denying their motion to quash, that's a pretty high standard  
25   by which that they're going to have to meet, and trying to do

1 that on a motion for reconsideration, I think is next to  
2 impossible.

3 The next two factors are looked at typically by the  
4 Court in conjunction. The Court -- the Nevada Supreme Court  
5 then weighs what the prejudice is, both to the party who is  
6 seeking the stay, and against the party who is opposing the  
7 stay.

8 So let me take a look at the prejudice that is claimed  
9 then by the defense in their motion. And one of the things  
10 that struck me is this, when I look at their motion, their  
11 motion isn't brought on behalf of United. Their motion is  
12 brought on behalf of these witnesses. Think about that.  
13 They're claiming that to you, we don't have any control over  
14 these witnesses or we don't think that we do, but we're  
15 bringing in motion to quash the stay and our -- a motion to  
16 quash the subpoena and a Motion to Stay on behalf of these  
17 witnesses, because they argue no prejudice to United.

18 The only prejudice that they argue is the time, the  
19 inconvenience, and the money that would inure to the  
20 witnesses. That's the only prejudice that they claim. And if  
21 the Court looks at the *Hanson* case, the *Hanson* case has said  
22 unequivocally, those are not factors that constitute  
23 irreparable harm. So the fact that these witnesses, nor has  
24 United offered any harm by which they will suffer by reason  
25 then of requiring these witnesses to testify if called in



1 during our case in chief.

2 Now, the comparison is what is the harm and what is  
3 the prejudice to the plaintiff by granting the Motion to Stay?  
4 By granting the Motion to Stay, you grant their writ. By  
5 granting the Motion to Stay, we lose the effectiveness of live  
6 testimony at the time of trial. And the Court sat through far  
7 too many probably jury trials to be able to not understand the  
8 fact that live testimony from the time of trial is far, far  
9 more effective. I sat on that witness stand just last week,  
10 reading deposition testimony. And I wanted to tap a couple  
11 people on the shoulder and say, Wake up.

12 THE COURT: Well, in the old days we used to take the  
13 sleepers a glass of water, and now we can't do that. So --

14 MS. LUNDVALL: And so from that perspective, there is  
15 just no substitute for the effectiveness of live testimony.  
16 So to the extent then that who gets harmed? We get harmed.  
17 And we are the only party that gets harmed.

18 Now, the last one is the likelihood of success then on  
19 the merits. Once again, I harken back then to considerable  
20 discretion that the Court has under NRS 50, subsection 115,  
21 subsection 1. And that is dealing with the order and the mode  
22 of the testimony then and the evidence to be presented.

23 What they have done then is to take a writ by which  
24 that it asks the Nevada Supreme Court to claim that you have  
25 abused your discretion. And that abuse of discretion for writ

1 purposes is nearly impossible for them to accomplish.

2 And then the one thing that I would offer is this,  
3 when I took a look at the writ papers, I scoured it for the  
4 neon sign that says, This is an emergency. We need your help  
5 now.

6 Very deep within their documents they say, Well,  
7 they -- these witnesses may be called as early as November 3rd  
8 or 2nd, something like that, they said. But they didn't ask  
9 for any emergency treatment. They didn't ask for any  
10 emergency relief. They didn't highlight it in the caption.  
11 They did nothing to bring attention to the fact that this was  
12 something that needed to be looked at and looked at quickly.

13 And so therefore, with all due respect, Your Honor, I  
14 don't think that the likelihood of success is high. And we  
15 would ask then the Court to deny their motion for a stay.  
16 Thank you.

17 THE COURT: Thank you.

18 And the reply, please.

19 MR. ROBERTS: Yes. Thank you, Your Honor.

20 Your Honor, the error that we have asserted in the  
21 writ is not error in the court in exercising discretion to  
22 control your docket or to have witnesses called only once. As  
23 we pointed out in our original motion, even though these  
24 witnesses are listed on a may call and expect to call list,  
25 they are also all designated as people we may call by

1 deposition, just as we've already received deposition  
2 designations from all these witnesses for the plaintiff.

3           Rather the error we allege in our writ is that the  
4 trial subpoena is enforceable despite the absence of personal  
5 service in the record.

6           That the implied authority of this -- of my firm, my  
7 firm, Weinberg Wheeler Hudgins Gunn & Dial, cannot be implied,  
8 and that there has been no actual appointment of my firm to  
9 accept service on behalf of these out-of-state witnesses.  
10 That is the error that we've alleged, along with the fact that  
11 the Court is attempting to exercise jurisdiction over  
12 witnesses that are beyond the subpoena power of the Court.  
13 And that's our argument based on *Quinn*.

14           That is the error that we've alleged and the abuse of  
15 discretion that we have alleged.

16           The control issue, footnote 5 to the writ, says  
17 control is not the issue. The issue is the subpoenas are  
18 legally not enforceable. And that is the same argument that I  
19 made before the Court when we attempted to quash them, that  
20 that's a red herring. That's not the basis of our motion and  
21 it's not the basis of our writ.

22           Our basis of our writ is the actual legal authority,  
23 the exercise of jurisdiction over these witnesses, despite the  
24 absence of personal service, and despite the absence of no  
25 express appointment of my firm to accept trial subpoenas.

1           Those deposition subpoenas -- they were for the  
2     witness's home state. They didn't require them to travel to  
3     Nevada. They didn't even require them to travel of their  
4     living room. They were Zoom depositions.

5           That simply cannot be viewed as if they were willing  
6     to sit in their living room and take a Zoom deposition, they  
7     were willing to appoint my firm to accept process to come to  
8     Nevada.

9           And as the *Consolidated Generator* case clearly said,  
10    Appointment to accept service of a subpoena cannot be implied.  
11    It cannot be presumed. It has to be are. And that's why we  
12    believe that the writ does have merit. And that the purpose  
13    of the writ, which is to prevent these witnesses from having  
14    to travel here, in compliance with the subpoena, it's going to  
15    be moot. That's our point. That's the object of the writ.  
16    Not some trial strategy to alter the order of the appearance  
17    of witnesses.

18           THE COURT: Thank you. Thank you, both.

19           MR. ROBERTS: Thank you, Your Honor.

20           THE COURT: This is the defendant's Motion to Stay  
21    enforcement of an order denying a motion to quash subpoenas.

22           I'm going to deny the motion for stay. I do find that  
23    the object of the writ -- is not subject to -- would not be  
24    defeated. In weighing the prejudice, it weighs to the  
25    plaintiffs' benefit, simply because they relied on the Rule 16

1 representations. And for those reasons -- and also because  
2 you have another remedy. You can go to the Supreme Court and  
3 ask them to stay the matter. And, of course, if they do, I  
4 will abide by any rule -- any order that they make. All  
5 right.

6 MR. ROBERTS: I understand. I have one alternative  
7 request from the Court --

8 THE COURT: Yes.

9 MR. ROBERTS: -- so that we don't have to apply for  
10 emergency relief in under 14 days and these witnesses could be  
11 compelled to be here theoretically, November 1st, the day  
12 we're currently scheduled to open.

13 Whether we could have a 14- or 15-day temporary stay.  
14 That would only prevent the plaintiffs from calling them in  
15 the first several days of their case. And that would prevent  
16 the necessity to have to ask the Supreme Court to hear this on  
17 an emergency basis.

18 THE COURT: And a brief response, please?

19 MS. LUNDVALL: Your Honor, I think they waited too  
20 long to make that request. They suggested it during their  
21 opening remarks, and somehow that they had to wait to bring  
22 any type of a writ until they received a written order. They  
23 did not. And in fact, they cite and they rely so heavily upon  
24 the *Quinn* case, the *Quinn* case was both Mr. Polsenberg's and  
25 my case. We went up on an oral order. And we were doing it

1 on an emergency basis, and we headlined and hearalded it was  
2 an emergency basis. They know that. They understand. They  
3 appreciate that. And they've sat on this too long. What  
4 they're trying to do is to prevent us from being able to call  
5 these witnesses in the order by which that we would prefer.

6 So we would ask the Court then to deny that additional  
7 request.

8 THE COURT: Thank you.

9 And in reply?

10 MR. ROBERTS: Just to clarify that calculating it out,  
11 I think the 15 days would be November 3rd. Openings are  
12 scheduled for November 1st. That's all we're asking for for  
13 this alternate remedy.

14 Thank you, Your Honor.

15 THE COURT: You know, and I just think it's an  
16 inappropriate after I rule against the request, to then make a  
17 new oral request.

18 So I'm going to deny that as well.

19 Now, it is --

20 MR. ROBERTS: Your Honor --

21 THE COURT: Yes.

22 MR. ROBERTS: -- in order to get a written order on  
23 this as soon as possible --

24 THE COURT: I'm going to suggest that you guys get the  
25 it to me today, because I'll sign it today.

1 MR. ROBERTS: -- would -- can we just say it's denied  
2 for the reasons stated on the report?

3 THE COURT: You may.

4 MR. ROBERTS: And that way there's no dispute over the  
5 language?

6 THE COURT: You may. And make sure that Ms. Lundvall  
7 has the ability to review and approve the form.

8 MR. ROBERTS: Thank you, Your Honor.

9 THE COURT: Good enough. All right.

10 It's to -- 3:28. Let's take a recess to 3:40, and  
11 that will be our last recess of the day. We'll end it today  
12 at 4:45.

13 And Counsel, please discuss the order of that argument  
14 on the plaintiffs' *Motion in Limine*. Thank you.

15 MALE SPEAKER: Yes, Your Honor.

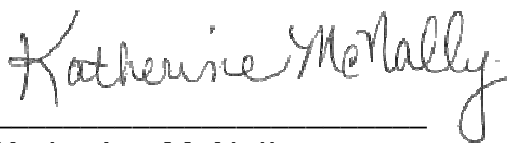
16 [Recess taken from 3:28 p.m., until 3:45 p.m.]

17 THE COURT: So Ms. Gallagher, we were arguing your  
18 motion. Did you have a chance to speak to Mr. Blalack?

19 MS. GALLAGHER: I did, Your Honor. And what we've  
20 agreed is that Mr. Blalack is going to finish his presentation  
21 on Medicare rates, which was the second topic, and get into  
22 in-network agreements.

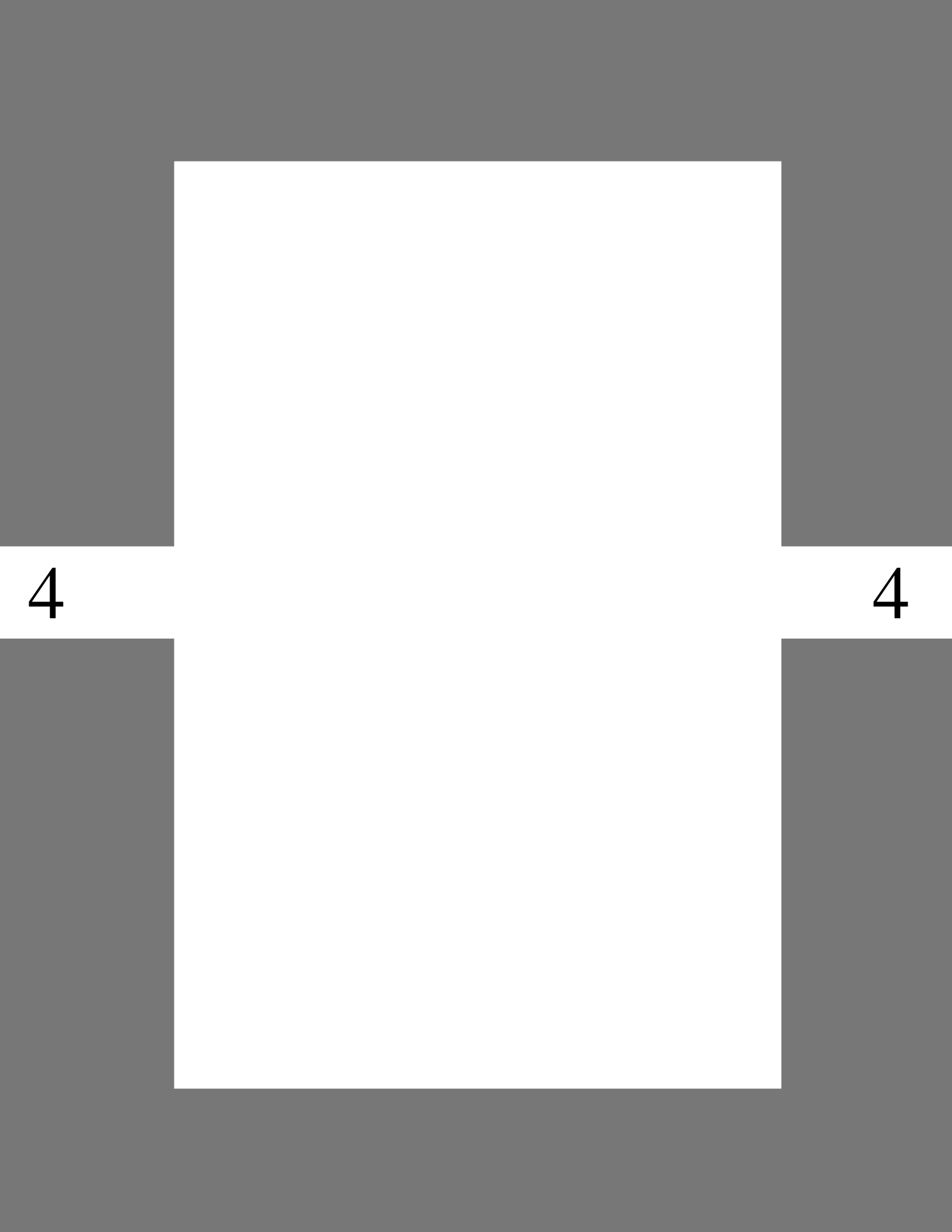
23 And then I will address those three in turn, so that  
24 would be clinical records, medical rates, and then the  
25 in-network agreements, Your Honor.

1 ATTEST: I do hereby certify that I have truly and correctly  
2 transcribed the audio/video proceedings in the above-entitled case  
3 to the best of my ability.

4 

5  
6 Katherine McNally  
7 Independent Transcriber CERT\*\*D-323  
8 AZ-Accurate Transcription Service, LLC  
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*Heather S. Shuman*

CLERK OF THE COURT

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

FREMONT EMERGENCY SERVICES  
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corporation; TEAM PHYSICIANS OF  
NEVADA-MANDAVIA, P.C., a Nevada  
professional corporation; CRUM, STEFANKO  
AND JONES, LTD. dba RUBY CREST  
EMERGENCY MEDICINE, a Nevada  
professional corporation,

Plaintiffs,

vs.

UNITED HEALTHCARE INSURANCE  
COMPANY, a Connecticut corporation;

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

**ORDER DENYING DEFENDANTS'  
MOTION TO STAY ENFORCEMENT  
OF SUBPOENAS ISSUED TO OUT OF  
STATE WITNESSES PENDING  
RESOLUTION OF WRIT PETITION ON  
ORDER SHORTENING TIME**

Hearing Date: October 19, 2021  
Hearing Time: 9:30 a.m.

**McDONALD CARANO**

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

1 UNITED HEALTH CARE SERVICES INC.,  
 2 dba UNITEDHEALTHCARE, a Minnesota  
 3 corporation; UMR, INC., dba UNITED  
 4 MEDICAL RESOURCES, a Delaware  
 5 corporation; SIERRA HEALTH AND LIFE  
 6 INSURANCE COMPANY, INC., a Nevada  
 7 corporation; HEALTH PLAN OF NEVADA,  
 8 INC., a Nevada corporation,

9 Defendants.

10 This matter came before the Court on October 19, 2021 on defendants UnitedHealth  
 11 Group, Inc.; UnitedHealthcare Insurance Company; United HealthCare Services, Inc.; UMR,  
 12 Inc.; Oxford Health Plans, Inc.; Sierra Health and Life Insurance Co., Inc.; Sierra Health-Care  
 13 Options, Inc.; and Health Plan of Nevada, Inc.'s (collectively, "United") MOTION TO STAY  
 14 ENFORCEMENT OF SUBPOENAS ISSUED TO OUT OF STATE WITNESSES PENDING  
 15 RESOLUTION OF WRIT PETITION ON ORDER SHORTENING TIME ("Motion"). D. Lee  
 16 Roberts, Jr., Colby L. Balkenbush, Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, Daniel F.  
 17 Polsenberg, Lewis Roca Rothgerber Christie LLP, and K. Lee Blalack, O'Melveny & Myers  
 18 LLP appeared on behalf of United. Pat Lundvall, Amanda M. Perach and Kristen T. Gallagher,  
 19 McDonald Carano LLP, and John Zavitsanos and Jane Robinson, Ahmad, Zavitsanos,  
 20 Anaipakos, Alavi & Mensing, P.C appeared on behalf of plaintiffs Fremont Emergency Services  
 21 (Mandavia), Ltd. ("Fremont"); Team Physicians of Nevada-Mandavia, P.C. ("Team  
 22 Physicians"); Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine ("Ruby  
 23 Crest" and collectively the "Health Care Providers").

24 The Court, having considered United's Motion, the Health Care Providers' opposition,  
 25 and the argument of counsel at the hearing on this matter and good cause appearing, finds,  
 26 concludes and orders as follows:

27 **IT IS HEREBY ORDERED** that, for the reasons set forth on the record at the hearing  
 28 and contained in the Health Care Providers' Opposition, United's Motion to Stay Enforcement  
 of Subpoenas Issued to Out of State Witnesses Pending Resolution of Writ Petition on Order  
 Shortening Time is **DENIED**.

In addition, the Court **DENIES** United's oral motion for a 15 day stay pending

resolution of the writ petition for the reasons set forth on the record at the hearing and contained in the Health Care Providers' oral opposition.

DATED this 20th day of October, 2021.

Dated this 20th day of October, 2021

Nancy L Alf  
DISTRICT COURT JUDGE

TW

Submitted by:

McDONALD CARANO LLP

499 CFD E554 C2E0  
Approved as to form and content:  
Nancy Alf  
District Court Judge

WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC

/s/ Pat Lundvall

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/s/ Colby L. Balkenbush

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---

**Subject:** Fremont Emergency Services (Mandavia), Ltd. v. United Healthcare Insurance et al. - order on motion to quash out of state trial subpoenas

**From:** Pat Lundvall <plundvall@mcdonaldcarano.com>

**Date:** October 19, 2021 at 8:51:59 PM PDT

**To:** "Roberts, Lee" <LRoberts@wwhgd.com>

**Cc:** "Kristen T. Gallagher" <kgallagher@mcdonaldcarano.com>, "Balkenbush, Colby" <CBalkenbush@wwhgd.com>, "Blalack II, K. Lee" <lblalack@omm.com>, DPolsenberg@lrrc.com, Amanda Perach <aperach@mcdonaldcarano.com>, Justin Fineberg <jfineberg@lashgoldberg.com>, Rachel LeBlanc <RLeBlanc@lashgoldberg.com>, "Jonathan E. Siegelau" <jsiegelau@lashgoldberg.com>, "Bonney, Audra R." <ABonney@wwhgd.com>, "Pierce, Kelly L." <KPierce@wwhgd.com>, TMH010 <TMH010@azalaw.com>, Carol Owen <Carol\_Owen@teamhealth.com>

**Subject: Re: Fremont Emergency Services (Mandavia), Ltd. v. United Healthcare Insurance et al. - order on motion to quash out of state trial subpoenas**

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Lee: Thank you for this draft. Please fix the title of the order. You may then affix my e-signature and submit.

Pat Lundvall | Partner

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On Oct 19, 2021, at 4:10 PM, Roberts, Lee <LRoberts@wwhgd.com> wrote:

Attached is a clean copy of the proposed order and a pdf for ease of review.

[cid:REVISEE-sig2020\_5801a862-4942-4e3a-94ab-425c0ea8e329.png]

D. Lee Roberts, Attorney

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1 **CSERV**

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA

4  
5  
6 Fremont Emergency Services  
(Mandavia) Ltd, Plaintiff(s)

CASE NO: A-19-792978-B

7 vs.

DEPT. NO. Department 27

8  
9 United Healthcare Insurance  
Company, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12  
13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Order Denying Motion was served via the court's electronic eFile  
system to all recipients registered for e-Service on the above entitled case as listed below:

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