#### Case Nos. 85525 & 85656

### In the Supreme Court of Nevada

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

Appellants,

vs.

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

Respondents.

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

Petitioners,

us.

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,

us.

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

Real Parties in Interest.

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Case No. 85525

Case No. 85656

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### **CERTIFICATE OF SERVICE**

I certify that on April 18, 2023, I submitted the foregoing appendix for filing via the Court's eFlex electronic filing system.

Electronic notification will be sent to the following:

Attorneys for Real Parties in Interest

(case no. 85656)

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85656)

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. Allf DISTRICT COURT JUDGE – DEPT. 27 200 Lewis Avenue Las Vegas, Nevada 89155

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/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP

# 

## **INDEX OF EXHIBITS**

<u>Description</u>	Exhibit No.
Amended Complaint filed in <i>Marin Gen. Hosp. v. Modesto &amp; Empire Traction Co.</i>	1

300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89

# 00050

# **EXHIBIT 1**

Amended Complaint filed in Marin Gen. Hosp. v. Modesto & Empire Traction Co.

# **EXHIBIT 1**

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Case 3:07-cv-01027-SI Document 19 Filed 05/18/07 Page 1 of 16
 1
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 8
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    California corporation
 9
                       UNITED STATES DISTRICT COURT
10
                     NORTHERN DISTRICT OF CALIFORNIA
11
12
    MARIN GENERAL HOSPITAL, a non- Case No.:
                                                   3:07-cv-01027-SI
13
    profit California corporation,
14
                                         FIRST AMENDED COMPLAINT FOR
                     Plaintiff, 7
                                         DAMAGES FOR:
15
                                              BREACH OF ORAL
                                         1.
          VS.
16
                                              CONTRACT;
17
    MODESTO & EMPIRE TRACTION
                                         2.
                                              NEGLIGENT
18
    COMPANY, a California corporation,
                                              MISREPRESENTATION;
    MEDICAL BENEFITS
19
    AMINISTRATION OF MD., INC. a
                                              QUANTUM MERUIT; AND
                                         3.
20
    Maryland corporation,. RONALD J.
    WILSON, an individual, and DOES 1-50
                                              ESTOPPEL
21
    inclusive,
22
                     Defendants
23
24
25
    ////
    ////
26
27
    ////
28
    ////
                                            FIRST AMENDED COMPLAINT FOR DAMAGES
    first amended complaint.doc
                                            FOR: 1. BREACH OF ORAL CONTRACT; 2.
                                            NEGLIENT MISREPRESENTATION 3. QUANTUM
                                            MERUIT, etc.
```

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Plaintiff, MARIN GENERAL HOSPITAL ("Hospital") is informed and believes and thereon alleges as follows:<sup>1</sup>

#### **PARTIES**

- 1. Hospital expressly disavows this action implicates any of the rights Hospital may have gained through an assignment of benefits from patient S.M. To the extent recovery on any of the claims asserted herein rely upon such an assignment, Hospital declines such recover in this action. Hospital elects to bring this suit specifically and exclusively on the basis of causes of action arising under the laws of the State of California.
- 2. Hospital, a non-profit California corporation is a and at all times was, licensed by the State of California to conduct business as a health care provider in the County of Marin.
- 3. Defendant Modesto & Empire Traction Company ("Modesto"), is a for profit California corporation with its principal place of business in Modesto County, California. Modesto provides self-funded medical insurance to its employees, and/or officers, and their dependants.
- 4. Defendant Medical Benefits Administrators of MD, Inc. ("MBAMD") is a Maryland corporation, and has its principal place of business in Abington, Maryland. MBAMD administers member benefit plans on behalf of employers and organizations that provide self-funded medical insurance on behalf of their employees, officers, and/or members.

Amendments to the original complaint are signified by **boldface** and strikeouts.

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7 2 - FIRST AMENDED COMPLAINT FOR DAMAGES FOR: 1. BREACH OF ORAL CONTRACT; 2. NEGLIENT MISREPRESENTATION 3. QUANTUM MERUIT, etc.

### Case 3:07-cv-01027-SI Document 19 Filed 05/18/07 Page 3 of 16

5. Defendant Ronald J. Wilson ("Wilson") is an individual and at all relevant times herein mentioned was the Chief Executive Officer and Chairman of MBAMD.

6. There exists, and at all times herein mentioned there existed, a unity of interest and ownership between Wilson and MBAMD, such that any individuality and separateness between them have ceased and MBAMD is the alter ego of Wilson in that MBAMD is and, and at all times herein mentioned was, so inadequately capitalized that, compared with the business to be done by MBAMD and the risks of loss, its capitalization was trifling.

7. Adherence to the fiction of the separate existence of MBAMD as an entity distinct from Wilson would permit an abuse of the corporate privilege and would promote injustice in that Hospital is informed and beliefs and thereon alleges Wilson made loans to MBAMD and guaranteed certain of its obligations thereby enabling MBAMD to engage in business activities, without adequate financing and without capital stock, which invited the public generally and Hospital in particular to deal with MBAMD to Hospital's loss.

8. Modesto provided health care benefits to patient S.M - - whose name has been withheld for privacy purposes - - under a self-funded medical insurance plan.

9. Defendants at all relevant times transacted business either personally or through its agents and/or assigns within the State of California. The violations alleged in this complaint herein have been and are being carried out in California.

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- 3 - FIRST AMENDED COMPLAINT FOR DAMAGES FOR: 1. BREACH OF ORAL CONTRACT; 2. NEGLIENT MISREPRESENTATION 3. QUANTUM MERUIT, etc.

#### Case 3:07-cv-01027-SI Document 19 Filed 05/18/07 Page 4 of 16

10. Hospital is unaware of the true names and capacities, whether corporate, associate, individual, partnership or otherwise of Defendants DOES 1-50, inclusive, and therefore sues those defendants named DOE by such fictitious names. Hospital will seek leave of the Court to amend this Complaint to allege their true names and capacities when ascertained.

11. At all relevant times defendants, including the defendants named DOE, were and are the agents, employees, employers, joint venturers, representatives, alter egos, subsidiaries, and/or partners of one or more of the other defendants, and was, in performing the acts complained of herein, acting within the scope of such agency, employment, joint venture, or partnership authority, and/or is in some other way responsible for the acts of one or more of the other Defendants.

12. MBAMD was charge with administering health plan benefits to Modesto member S.M.

a de Sana

1 1

13. For all dates herein alleged defendants provided insurance coverage and thereby an obligation exists for reimbursement for medically necessary services, supplies and /or equipment provided S.M.

# FACTUAL BACKGROUND

14. On or about April 19, 2004, S.M. was admitted to Hospital for a scheduled lumbar fusion procedure.

15. Hospital provided medical services, supplied, and/or equipment to S.M. from April 19, 2004 to April 24, 2004.

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FIRST AMENDED COMPLAINT FOR DAMAGES FOR: 1. BREACH OF ORAL CONTRACT; 2. NEGLIENT MISREPRESENTATION 3. QUANTUM MERUIT, etc.

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- 16. On or before April 19, 2004, patient S.M. was enrolled in Modesto's self-funded health plan.
- 17. Prior to S.M.'s admission, Hospital was advised of patient S.M.'s health insurance coverage through Modesto's self-funded health plan.
- 18. On or about April 8, 2004 Hospital contacted MBAMD, by telephone, which verified patient S.M.'s eligibility and coverage.

19. On or about April 8, 2004, defendants also authorized the care provided to patient S.M and issued the authorization number "CRW4098003LF" to Hospital.

19 11

20. Hospital, in reliance on defendants' verbal statements of coverage and authorization for the treatment of patient S.M., provided medical services, supplies, and /or equipment to patient S.M. with the understanding that defendants would pay Hospital's hospital bills at 90% of Hospital's total billed charges for said services, supplies and/or equipment.

- 21. Hospital timely and properly submitted a valid bill to defendants in the amount of \$178,926.54.
- 22. On or about July 7, 2004 defendants issued a payment in the amount of \$46,655.54, resulting in a balance still due and owing from defendants in the amount of \$114,378.35 for the services provided to patient S.M. after application of a 10% discount.

23. Despite requests written demands to defendants that full

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	Case 3:07-cv-01027-SI Document 19 Filed 05/18/07 Page 6 of 16
1	reimbursement to Hospital for the medical services, supplies and equipment
2	provided to patient S.M, defendants refuse to pay Hospital the full amount due.
3	
4	24. On or about December 8, 2004defendants issued to Hospital a
5	final denial for the remaining balance for the services provided to patient S.M.
6	t Configuration
7	25. Hospital has exhausted all of its administrative appeals.
8	Hospital sent written demands to defendants to rectify the underpayment.
9	
10	26. As a direct and proximate result of defendants' conduct, the
11	medical bill for Hospital's provision of medical services, supplies, and equipment
12	to patient S.M. from April 19, 2004 to April 24, 2004 remains underpaid by
13	\$114,378.35. Hospital thus has suffered damages in the amount of \$114,378.35.
14	
15	FIRST CAUSE OF ACTION
15 16	FIRST CAUSE OF ACTION  (Breach of Implied Contract)
16	(Breach of Implied Contract)
16 17	(Breach of Implied Contract)
16 17 18	(Breach of Implied Contract)  (Against all defendants)
16 17 18 19	(Breach of Implied Contract)  (Against all defendants)  27. Hospital incorporates by reference and re-alleges paragraphs 1
16 17 18 19 20	(Breach of Implied Contract)  (Against all defendants)  27. Hospital incorporates by reference and re-alleges paragraphs 1 through 26 here as though set forth in full.
16 17 18 19 20 21	(Breach of Implied Contract) (Against all defendants)  27. Hospital incorporates by reference and re-alleges paragraphs 1 through 26 here as though set forth in full.
16 17 18 19 20 21 22	(Breach of Implied Contract)  (Against all defendants)  27. Hospital incorporates by reference and re-alleges paragraphs 1 through 26 here as though set forth in full.  28. On or about April 8, 2004, Hospital informed defendants, that
16 17 18 19 20 21 22 23	(Breach of Implied Contract)  (Against all defendants)  27. Hospital incorporates by reference and re-alleges paragraphs 1 through 26 here as though set forth in full.  28. On or about April 8, 2004, Hospital informed defendants, that
16 17 18 19 20 21 22 23 24	(Against all defendants)  27. Hospital incorporates by reference and re-alleges paragraphs 1 through 26 here as though set forth in full.  28. On or about April 8, 2004, Hospital informed defendants, that patient S.M. was scheduled for a lumbar fusion procedure at Hospital.
16 17 18 19 20 21 22 23 24 25	(Against all defendants)  27. Hospital incorporates by reference and re-alleges paragraphs 1 through 26 here as though set forth in full.  28. On or about April 8, 2004, Hospital informed defendants, that patient S.M. was scheduled for a lumbar fusion procedure at Hospital.  29. Defendants confirmed that patient S.M. health plan coverage
16 17 18 19 20 21 22 23 24 25 26	(Against all defendants)  27. Hospital incorporates by reference and re-alleges paragraphs 1 through 26 here as though set forth in full.  28. On or about April 8, 2004, Hospital informed defendants, that patient S.M. was scheduled for a lumbar fusion procedure at Hospital.  29. Defendants confirmed that patient S.M. health plan coverage and authorized the medical services, supplies, and equipment Hospital eventually

#### Case 3:07-cv-01027-SI Document 19 Filed 05/18/07 Page 7 of 16

30. As a result of the custom and practice in the healthcare field, and prior dealings between the parties Hospital and defendants understood that, because defendants authorized and made a representation of coverage upon which Hospital reasonably relied, by providing medically necessary services, Hospital would be paid by defendants for such medical services, supplies and equipment provided to patient S.M. at a 10% discount from its total billings.

31. Defendants, therefore, understood that Hospital's provision of medical services, supplies, and equipment to patient S.M. from April 19, 2004 to April 24, 2004 would require defendants to pay Hospital's bills at 90% of Hospital's total billed charges for said services, supplies and/or equipment for a total amount of \$161,033.87.

32. Hospital timely submitted a bill to defendants. The total charges for the medical services, supplies, and equipment provided to patient S.M. amounted to \$178,926.54.

33. On or about July 7, 2004, defendants issued a partial payment in the amount of \$46,655.54.

34. Because defendants only paid the partial amount of \$46,655.54 this claim has been underpaid, and the balance still due from Defendants amounts to \$114,378.35.

35. Defendants acknowledged and accepted financial responsibility for the medical services, supplies, and equipment provided to patient S.M. by Hospital, and agreed to pay for those services, supplies and equipment.

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FIRST AMENDED COMPLAINT FOR DAMAGES
FOR: 1. BREACH OF ORAL CONTRACT; 2.
NEGLIENT MISREPRESENTATION 3. QUANTUM
MERUIT, etc.

## Case 3:07-cv-01027-SI Document 19 Filed 05/18/07 Page 8 of 16

36. Hospital has performed all conditions, covenants, and promises required on its part to be performed in accordance with the terms and conditions of this contract implied in fact at the rate agreed upon prior to patient S.M.'s hospitalization.

37. On or about December 8, 2004, defendants breached this implied agreement by issuing its final refusal to fully reimburse Hospital for the medical services, supplies and/or equipment provided to patient S.M. at the agreed upon rate.

38. As a direct and proximate result of defendants' breach of implied contract, Hospital has suffered damages in the amount of \$114,378.35.

## **SECOND CAUSE OF ACTION**

(Breach of Oral Contract)
(Against all defendants)

Hospital incorporates by reference and re-alleges paragraphs 1

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39.

through 26 here as though set forth in full.

40. On or about April 8, 2004, Hospital and defendants entered into an oral agreement whereby Hospital agreed to provided medically necessary services, supplies, and equipment to Defendant's enrollee (patient S.M.) in return for which Hospital agreed to pay Hospital's bills at 90% of Hospital's total billed charges for said services, supplies and/or equipment.

41. Hospital supplied medical services, supplies and equipment to Modesto's enrollee, patient S.M., from April 19, 2004 to April 24, 2004, and has

FIRST AMENDED COMPLAINT FOR DAMAGES
FOR: 1. BREACH OF ORAL CONTRACT; 2.
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performed all conditions, covenants, and promises required on its part to be performed in accordance with the terms and conditions of this oral contract.

- 42. On or about December 8, 2004, defendants breached this oral agreement by issuing its final refusal to properly reimburse Hospital for the medical services, supplies and/or equipment provided to patient S.M.
- 43. As a direct and proximate result of defendants' breach of implied contract, Hospital has suffered damages in the amount of \$114,378.35, after payments previously made by defendants are taken into account.

## THIRD CAUSE OF ACTION

(Negligent Misrepresentation)

(Against all defendants)

- 44. Hospital incorporates by reference and re-alleges paragraphs 1 through 26 here as though set forth in full.
- 45. On or about April 8, 2004, defendants represented to Hospital that patient S.M., an enrollee under Modesto's self-funded health plan and that defendants would compensate Hospital for its provision of medical services, supplies and equipment to patient S.M. at 90% of Hospital's total billed charges for said services, supplies and/or equipment for a total amount of \$161,033.87.
- 46. Defendants or their agents made those representations with the intention of inducing Hospital to act in reliance on these representations by providing services, supplies, and equipment to patient S.M. and in preventing Hospital from making other arrangements for payment.

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FIRST AMENDED COMPLAINT FOR DAMAGES FOR: 1. BREACH OF ORAL CONTRACT; 2. NEGLIENT MISREPRESENTATION 3. QUANTUM MERUIT, etc.

## Case 3:07-cv-01027-SI Document 19 Filed 05/18/07 Page 10 of 16

- 47. When defendants or their agents made those representations to Hospital without reasonable grounds for believing them to be true.
- 48. On or about December 8, 2004, after the medical services, supplies and equipment were provided to patient S.M., defendants informed Hospital that they refused to issue any further payment to correct the underpayment of the claim.
- 49. At the time the representations were made by defendants, Hospital was ignorant of the falsity of defendants' representations and believed them to be true.

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- 50. In reasonable reliance upon those representations, Hospital was induced to provide patient S.M. with medically necessary services, supplies, and equipment and refrain from making other arrangements to obtain payment.
- 51. As a direct and proximate result of its reliance Hospital has suffered damages in the sum of \$114,378.35.

## **FOURTH CAUSE OF ACTION**

(Quantum Meruit)

(Against all defendants)

- 52. Hospital incorporates by reference and re-alleges paragraphs 1 through 26 here as though set forth in full.
- 53. As a direct and proximate result of defendants' assurances and representations that patient S.M. had health plan coverage from which payment

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- 10 - FIRST AMENDED COMPLAINT FOR DAMAGES FOR: 1. BREACH OF ORAL CONTRACT; 2. NEGLIENT MISREPRESENTATION 3. QUANTUM MERUIT, etc.

Case 3:07-cv-01027-SI Document 19 Filed 05/18/07 Page 11 of 16

## would be made, Hospital rendered care to patient S.M. with a value of 1 2 \$178,926.54. 3 Hospital has requested full payment from defendants or their 54. 4 agents for the charges incurred for the medical services, supplies and equipment 5 provided by Hospital Center to patient S.M. 6 7 Defendants or their agents have failed to pay fully for the 8 55. medically necessary services, supplies and equipment provided to patient S.M., but 9 to date defendants have only paid \$46,655.54. 10 11 As a result of defendants or their agent's failure to perform 56. 12 according to the assurances and representations made to Hospital, Hospital has 13 suffered damages in the amount of \$132,271.00. 14 15 FIFTH CAUSE OF ACTION 16 (Estoppel) 17 (Against all defendants) 18 19 halenis Hospital incorporates by reference and re-alleges paragraphs 1 20 57. through 26 here as though set forth in full. 21 22 Defendants or their agents represented to Hospital that patient 58. 23 S.M. had health plan coverage and that payment would be made for all hospital 24 bills incurred at 90% of Hospital's total billed charges for said services, supplies 25

and/or equipment for a total amount of \$161,033.87 after applying the discount.

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When promising, assuring and representing to Hospital that

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- 11 - FIRST AMENDED COMPLAINT FOR DAMAGES FOR: 1. BREACH OF ORAL CONTRACT; 2. NEGLIENT MISREPRESENTATION 3. QUANTUM MERUIT, etc.

## Case 3:07-cv-01027-SI Document 19 Filed 05/18/07 Page 12 of 16

patient S.M.. had a policy of health plan coverage that would reimburse Hospital for the medical services, supplied and /or equipment rendered to Modesto's plan enrollee, defendants knew, or should have known, that Hospital would be reasonably induced to rely on defendants' or their agent's promises, assurances and representations.

60. As a direct and proximate result of Defendants' or their agents making representations to Hospital that patient S.M. had health plan coverage and that payment would be made for the charges incurred, Hospital actually, reasonably, and justifiably relied upon such representations and was thereby induced to provide medical services, supplies and /or equipment to provide medical services, supplies and /or equipment to patient S.M. defendants have not fully performed their promises, assurances or representations to pay Hospital.

61. Hospital reasonably and justifiably relied upon such representations and assurances in providing the services, supplies and/or equipment, and in refraining from pursuing other avenues of reimbursement.

62. As a direct and proximate cause of their conduct, defendants should be estopped from denying Hospital has suffered substantial detrimental damages in the sum of at least \$114,378.35.

## PRAYER FOR RELIEF

WHEREFORE, MARIN GENERAL HOSPIRAL prays for judgment as follows:

1. For the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup> and 5<sup>th</sup> causes of action the principal of sum of \$114,378.35;

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FIRST AMENDED COMPLAINT FOR DAMAGES FOR: 1. BREACH OF ORAL CONTRACT; 2. NEGLIENT MISREPRESENTATION 3. QUANTUM MERUIT, etc.

## Case 3:07-cv-01027-SI Document 19 Filed 05/18/07 Page 13 of 16 For the 4<sup>th</sup> cause of action the principal sum of \$132,271.00 2. 1 2 For all causes of action interest on such principal sum at the 3 3. rate of fifteen percent (15%) per annum, pursuant to Cal. Health & Safety Code § 4 111 5 1371; 6 7 4. For all causes of action pre-judgment interest on such principal sum, at the legal rate, pursuant to Cal. Civ. Code § 3287 (a); and 8 9 10 5. For all causes of action such other and further relief as the court deems just and proper. 11 12 Dated: 18 May 2007 13 14 15 STEPHENSON, ACQUISTO & COLMAN 12 16 17 ola Rita Brown 18 Attorneys for 19 MARIN GENERAL HOSPITAL 20 21 22 23 24 25 26 27 28 first amended complaint.doc FIRST AMENDED COMPLAINT FOR DAMAGES FOR: 1. BREACH OF ORAL CONTRACT; 2. **NEGLIENT MISREPRESENTATION 3. QUANTUM**

MERUIT, etc.

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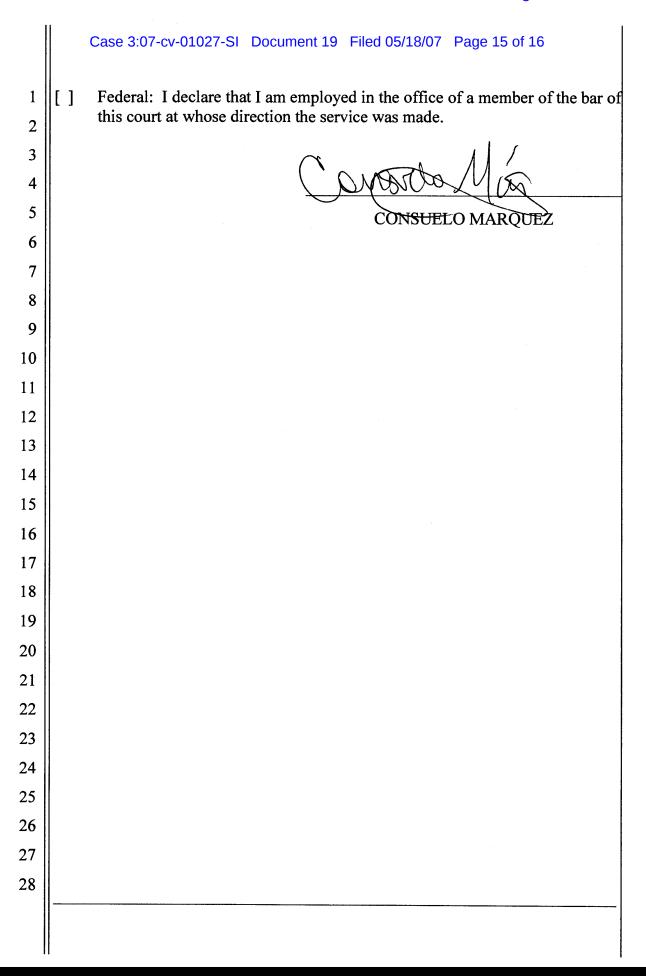
**PROOF OF SERVICE** 

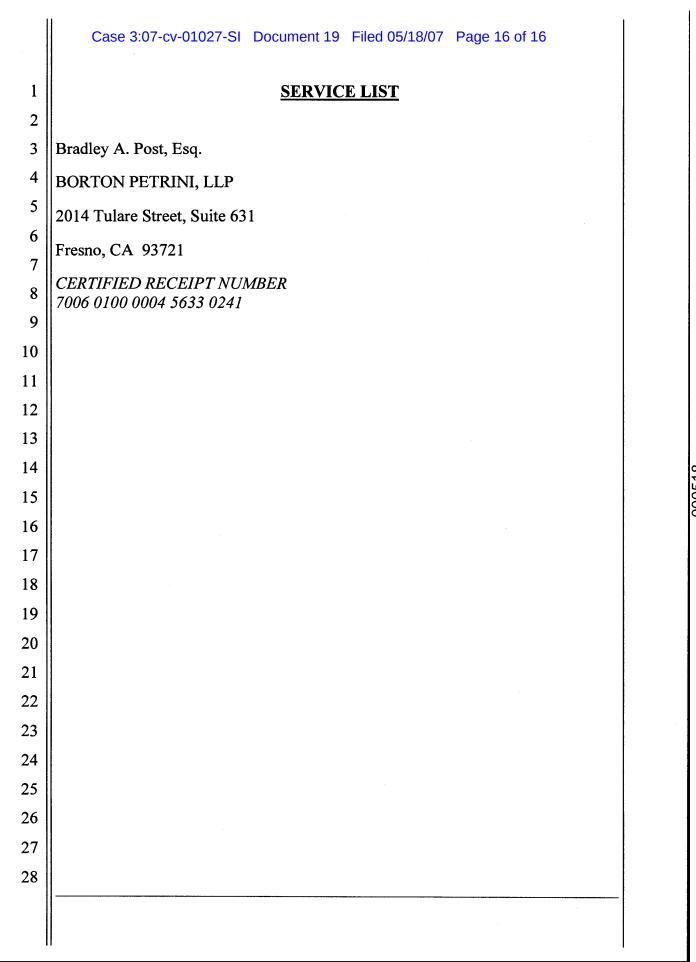
I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 303 North Glenoaks Boulevard, Suite 700, Burbank, California 91502-3226. On 18 May 2007, I served the foregoing document(s) entitled:

## FIRST AMENDED COMPLAINT FOR DAMAGES

by placing a true copy thereof enclosed in a sealed envelope addressed per the attached Service List.

- [X] BY MAIL: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the United States Postal Service on that same day with postage thereon fully prepaid at Burbank, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit. [C.C.P. 1013a(3); F.R.C.P. 5(b)]
- [ ] BY FEDERAL EXPRESS: I caused such envelope(s), with overnight Federal Express Delivery Charges to be paid by this firm, to be deposited with the Federal Express Corporation at a regularly maintained facility on the aforementioned date. [C.C.P. 1013(c) 1013(d)]
- [ ] BY EXPRESS MAIL: I caused such envelope(s), with postage thereon fully prepaid and addressed to the party(s) shown above, to be deposited in a facility operated by the U.S. Postal Service and regularly maintained for the receipt of Express Mail on the aforementioned date. [C.C.P. 1013(c)]
- BY TELECOPIER: Service was effected on all parties at approximately
  \_\_\_\_\_\_ am/pm by transmitting said document(s) from this firm's
  facsimile machine (818/559-4477) to the facsimile machine number(s)
  shown above. Transmission to said numbers was successful as evidenced by
  a Transmission Report produced by the machine indicating the documents
  had been transmitted completely and without error. C.R.C. 2008(e), Cal.
  Civ. Proc. Code § 1013(e).
- [X] State: I declare under penalty of perjury under the laws of the State of California that the above is true and correct.





UNITED STATES DISTRICT COURT DISTRICT OF NEVADA FREMONT EMERGENCY SERVICES Case No. 2:19-CV-832 JCM (VCF) (MANDAVIA), LTD., et al., **ORDER** Plaintiff(s), v. UNITEDHEALTH GROUP, INC., et al., Defendant(s).

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.

James C. Mahan U.S. District Judge

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

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

## II. Legal Standard

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

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

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

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

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

## III. Discussion

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

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

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

U.S. District Judge

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

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

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

Under prong 1 of the *Davila* test, the Ninth Circuit has distinguished between claims involving the "right to payment" and claims involving the proper "amount of payment." *Blue Cross of Cal. v. Anesthesia Care Assocs. Med. Grp., Inc.*, 187 F.3d 1045, 1051 (9th Cir. 1999). Claims involving the "right to payment" generally fall within the scope of § 502(a)(1)(b), while claims involving the "amount of payment" generally fall outside the scope of § 502(a)(1)(b). *Id.* 

Although *Blue Cross* preceded *Davila*, the Ninth Circuit has expressly found that its analysis and holding are consistent with the *Davila* framework and remain good law. *Marin*, 581 F.3d at 948.

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

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

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

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

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James C. Mahan U.S. District Judge

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IV.	Conclusion

Accordingly,

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

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

The clerk shall close the case accordingly.

DATED February 20, 2020.

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James C. Mahan U.S. District Judge

CLERK OF THE COURT

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# UNITED STATES DISTRICT COURT DISTRICT OF NEVADA

\* \* \*

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

Plaintiff(s),

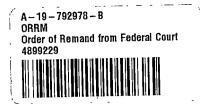
v.

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.

James C. Mahan U.S. District Judge Id. at 10. From 2008–2017, United normally paid plaintiffs at a range of 75–90%. Id. However, beginning in 2019, United continued to pay the claims submitted but reduced the rates of reimbursement to levels ranging from 12–60%, below the usual and customary rates. Id.

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

## II. Legal Standard

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

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

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clock doesn't begin ticking until a defendant receives 'a copy of an amended pleading, motion,

order or other paper' from which it can determine that the case is removable. Id. (quoting 28

1447(c). On a motion to remand, the removing defendant faces a strong presumption against

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removal, and bears the burden of establishing that removal is proper. Sanchez v. Monumental Life Ins. Co., 102 F.3d 398, 403-04 (9th Cir. 1996); Gaus v. Miles, Inc., 980 F.2d 564, 566-67 9 (9th Cir. 1992). III. 11

Discussion

U.S.C. § 1446(b)(3)).

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

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

James C. Mahan U.S. District Judge ERISA. For the reasons set forth below, the court finds that defendant's asserted basis for removal is improper and grants plaintiffs' motion to remand.

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

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

Marin, 581 F.3d at 947.

Under prong 1 of the *Davila* test, the Ninth Circuit has distinguished between claims involving the "right to payment" and claims involving the proper "amount of payment." *Blue Cross of Cal. v. Anesthesia Care Assocs. Med. Grp., Inc.*, 187 F.3d 1045, 1051 (9th Cir. 1999). Claims involving the "right to payment" generally fall within the scope of § 502(a)(1)(b), while claims involving the "amount of payment" generally fall outside the scope of § 502(a)(1)(b). *Id.* 

James C. Mahan U.S. District Judge

Although Blue Cros	ss preceded Davila	the Ninth	Circuit has	expressly f	ound that its	analysis a	ınd
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holding are consiste	ent with the <i>Davila</i>	tramework	and remain	i good law.	<i>Marin</i> , 581	F.3d at 94	<del>18.</del>

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

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

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

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

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Accordingly,				
Accordingly	Δ.	cord	ina	127

**Conclusion** 

IV.

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

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

The clerk shall close the case accordingly.

DATED February 20, 2020.

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**CLOSED** 

**United States District Court District of Nevada (Las Vegas)** CIVIL DOCKET FOR CASE #: 2:19-cv-00832-JCM-VCF

Fremont Emergency Services (Mandavia), Ltd. v. United

Healthcare Insurance Company et al Assigned to: Judge James C. Mahan

Referred to: Magistrate Judge Cam Ferenbach

Case in other court: District Court, Clark County, Nevada,

A-19-792978-B

Cause: 29:1132 E.R.I.S.A.-Employee Benefits

**Plaintiff** 

Fremont Emergency Services (Mandavia), Ltd.

Date Filed: 05/14/2019 Date Terminated: 02/20/2020

Jury Demand: Both

Nature of Suit: 791 Labor: E.R.I.S.A. Jurisdiction: Federal Question

represented by Patricia K Lundvall

McDonald Carano Wilson LLP

2300 W. Sahara Ave.

**Suite 1200** 

Las Vegas, NV 89102 702 873 4100

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ATTORNEY TO BE NOTICED

**Plaintiff** 

Team Physicians of Nevada-Mandavia, P.C.

represented by Amanda M. Perach

(See above for address) LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Kristen T. Gallagher

(See above for address) *LEAD ATTORNEY* 

ATTORNEY TO BE NOTICED

Patricia K Lundvall

(See above for address) LEAD ATTORNEY

ATTORNEY TO BE NOTICED

**Plaintiff** 

Crum, Stefanko and Jones, Ltd. doing business as Ruby Crest Emergency Medicine

represented by Amanda M. Perach

(See above for address) LEAD ATTORNEY

#### ATTORNEY TO BE NOTICED

Kristen T. Gallagher (See above for address) LEAD ATTORNEY ATTORNEY TO BE NOTICED

Patricia K Lundvall (See above for address) LEAD ATTORNEY ATTORNEY TO BE NOTICED

V.

#### **Defendant**

United Healthcare Insurance Company

represented by Brittany Maria Llewellyn

Weinberg Wheeler Hudgins Gunn & Dial 6385 S. Rainbow Blvd., Suite 400 Las Vegas, NV 89118 702–938–3838 Fax: 702–938–3864 Email: bllewellyn@wwhgd.com LEAD ATTORNEY ATTORNEY TO BE NOTICED

D. Lee Roberts, Jr

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC 6385 S. Rainbow Blvd. Suite 400 Las Vegas, NV 89118 702–938–3838 Fax: 702–938–3864 Email: <a href="mailto:lroberts@wwhgd.com">lroberts@wwhgd.com</a> LEAD ATTORNEY TO BE NOTICED

Colby Balkenbush

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ATTORNEY TO BE NOTICED

Josephine Groh

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ATTORNEY TO BE NOTICED

#### **Defendant**

United Health Care Services Inc. doing business as
United Healthcare

represented by Brittany Maria Llewellyn

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

D. Lee Roberts , Jr (See above for address) LEAD ATTORNEY ATTORNEY TO BE NOTICED

Colby Balkenbush (See above for address) ATTORNEY TO BE NOTICED

Josephine Groh (See above for address) ATTORNEY TO BE NOTICED

#### **Defendant**

UMR, Inc.
doing business as
United Medical Resources

represented by D. Lee Roberts, Jr

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Brittany Maria Llewellyn (See above for address) ATTORNEY TO BE NOTICED

Colby Balkenbush (See above for address) ATTORNEY TO BE NOTICED

Josephine Groh (See above for address) ATTORNEY TO BE NOTICED

#### **Defendant**

Oxford Health Plans, Inc.

represented by D. Lee Roberts, Jr

(See above for address)

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Brittany Maria Llewellyn (See above for address) ATTORNEY TO BE NOTICED

Colby Balkenbush (See above for address) ATTORNEY TO BE NOTICED

Josephine Groh (See above for address) ATTORNEY TO BE NOTICED

#### **Defendant**

Sierra Health and Life Insurance Company, Inc.

represented by D. Lee Roberts, Jr

(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Brittany Maria Llewellyn (See above for address) ATTORNEY TO BE NOTICED

Colby Balkenbush (See above for address) ATTORNEY TO BE NOTICED

Josephine Groh

(See above for address) ÀTTORNEY TO BE NÓTICED

### **Defendant**

Sierra Health Care Options, Inc.

represented by Brittany Maria Llewellyn

(See above for address) **LEAD ATTORNEY** 

ATTORNEY TO BE NOTICED

D. Lee Roberts, Jr (See above for address) LEAD ATTORNEY

ATTORNEY TO BE NOTICED

Colby Balkenbush

(See above for address)

ATTORNEY TO BE NOTICED

Josephine Groh

(See above for address)

ATTORNEY TO BE NOTICED

### **Defendant**

Health Plan Of Nevada, Inc.

represented by Brittany Maria Llewellyn

(See above for address) **LEAD ATTORNEY** 

ATTORNEY TO BE NOTICED

D. Lee Roberts, Jr

(See above for address) **LEAD ATTORNEY** 

ATTORNEY TO BE NOTICED

Colby Balkenbush

(See above for address) ATTORNEY TO BE NÓTICED

Josephine Groh

(See above for address)

ATTORNEY TO BE NOTICED

## **Defendant**

Unitedhealth Group, Inc.

represented by Brittany Maria Llewellyn

(See above for address)

ATTORNEY TO BE NOTICED

Colby Balkenbush

(See above for address)

ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
05/14/2019	1	PETITION FOR REMOVAL from District Court, Clark County, Nevada, Case Number A-19-792978—B, (Filing fee \$ 400 receipt number 0978-5548762) by Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., United Health Care Services Inc., UMR, Inc., Oxford Health Plans, Inc., Health Plan Of Nevada, Inc., United Healthcare Insurance Company. (Attachments: # 1 Exhibit, # 2 Civil Cover Sheet)(Roberts, D.)
		NOTICE of Certificate of Interested Parties requirement: Under Local Rule 7.1–1, a party must <u>immediately</u> file its disclosure statement with its first appearance, pleading,

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•		petition, motion, response, or other request addressed to the court. (Entered: 05/14/2019)
05/14/2019	2	CERTIFICATE of Interested Parties by Health Plan Of Nevada, Inc., Oxford Health Plans, Inc., Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., UMR, Inc., United Health Care Services Inc., United Healthcare Insurance Company. There are no known interested parties other than those participating in the case (Roberts, D.) (Entered: 05/14/2019)
05/14/2019		Case randomly assigned to Judge Jennifer A. Dorsey and Magistrate Judge Cam Ferenbach. (JM) (Entered: 05/15/2019)
05/15/2019	<u>3</u>	MINUTE ORDER IN CHAMBERS of the Honorable Judge Jennifer A. Dorsey on 5/15/2019. Statement regarding removed action is due by 5/30/2019. Joint Status Report regarding removed action is due by 6/14/2019. (Copies have been distributed pursuant to the NEF – JM) (Entered: 05/15/2019)
05/21/2019	4	MOTION to Dismiss by Defendants Health Plan Of Nevada, Inc., Oxford Health Plans, Inc., Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., UMR, Inc., United Health Care Services Inc., United Healthcare Insurance Company. Responses due by 6/4/2019. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit) (Balkenbush, Colby) (Entered: 05/21/2019)
05/24/2019	<u>5</u>	MOTION to Remand to State Court by Plaintiff Fremont Emergency Services (Mandavia), Ltd Responses due by 6/7/2019. (Attachments: # 1 Declaration of Kristen T. Gallagher, Esq.) (Gallagher, Kristen) (Entered: 05/24/2019)
05/28/2019	<u>6</u>	CERTIFICATE OF SERVICE for 3 Minute Order Removal Case, by Defendants Health Plan Of Nevada, Inc., Oxford Health Plans, Inc., Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., UMR, Inc., United Health Care Services Inc., United Healthcare Insurance Company. (Balkenbush, Colby) (Entered: 05/28/2019)
05/29/2019	7	CERTIFICATE of Interested Parties by Fremont Emergency Services (Mandavia), Ltd There are no known interested parties other than those participating in the case (Gallagher, Kristen) (Entered: 05/29/2019)
05/30/2019	<u>8</u>	STATEMENT REGARDING REMOVAL by Defendants Health Plan Of Nevada, Inc., Oxford Health Plans, Inc., Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., UMR, Inc., United Health Care Services Inc., United Healthcare Insurance Company. (Balkenbush, Colby) (Entered: 05/30/2019)
05/31/2019	9	RESPONSE to <u>8</u> Statement in Removal Case, by Plaintiff Fremont Emergency Services (Mandavia), Ltd (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2)(Gallagher, Kristen) (Entered: 05/31/2019)
06/03/2019	<u>10</u>	VIEW 12 corrected image re STIPULATION FOR EXTENSION OF TIME (First Request) re 4 Motion to Dismiss, 5 Motion to Remand to State Court by Plaintiff Fremont Emergency Services (Mandavia), Ltd (Gallagher, Kristen) (Entered: 06/03/2019)
06/04/2019	11	CLERK'S NOTICE. Attorney Action Required to ECF No. 10. Document is not in compliance with LR IA 6–2 as it does not contain a signature block for the Judge. Counsel is advised to correct the deficiency and file a <i>Notice of Corrected Image/Document</i> and link to 10. (no image attached) (DKJ) (Entered: 06/04/2019)
06/04/2019	<u>12</u>	NOTICE of Corrected Image/Document re 10 Stipulation by Plaintiff Fremont Emergency Services (Mandavia), Ltd (Service of corrected image is attached.) (Gallagher, Kristen) (Entered: 06/04/2019)
06/04/2019	<u>13</u>	ORDER granting 10 Stipulation; Re: 4 Motion to Dismiss, 5 Motion to Remand to State Court. Responses for 4 Motion due by 6/18/2019. Responses for 5 Motion due by 6/21/2019. Signed by Judge Jennifer A. Dorsey on 6/4/2019. (Copies have been distributed pursuant to the NEF – JM) (Entered: 06/05/2019)
06/05/2019	<u>14</u>	MOTION to Stay Case by Plaintiff Fremont Emergency Services (Mandavia), Ltd (Attachments: # 1 Exhibit 1) (Gallagher, Kristen) (Entered: 06/05/2019)

06/06/2019	<u>15</u>	RESPONSE to 14 Motion to Stay Case by Defendants Health Plan Of Nevada, Inc., Oxford Health Plans, Inc., Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., UMR, Inc., United Health Care Services Inc., United Healthcare Insurance Company. Replies due by 6/13/2019. (Balkenbush, Colby) (Entered: 06/06/2019)
06/10/2019	<u>16</u>	REPLY to 15 Response re 14 Motion to Stay Case, by Plaintiff Fremont Emergency Services (Mandavia), Ltd (Gallagher, Kristen) Modified docket entry relationship on 6/10/2019 (DKJ). (Entered: 06/10/2019)
06/11/2019	17	MINUTE ORDER IN CHAMBERS of the Honorable Judge Jennifer A. Dorsey on 6/11/2019. Re: 14 Motion to Stay Case. Plaintiff Fremont Emergency Services (Mandavia) Ltd. moves to stay all proceedings in this case except for its motion to remand 5, which it seeks to have expedited. But Fremont just stipulated with defendants to extend the briefing schedule on its motion to remand [10, 12] and the court granted the requested extension 13. Fremont has not shown good cause to now contract that briefing schedule. Accordingly, Fremont's motion to expedite the briefing schedule on its motion remand is DENIED and Fremont's motion to stay all proceedings in this case except for its remand motion is REFERRED to Magistrate Judge Ferenbach. (Copies have been distributed pursuant to the NEF – CH) (Entered: 06/11/2019)
06/14/2019	18	Joint STATUS REPORT by Plaintiff Fremont Emergency Services (Mandavia), Ltd (Gallagher, Kristen) (Entered: 06/14/2019)
06/18/2019	<u>19</u>	RESPONSE to 4 Motion to Dismiss, by Plaintiff Fremont Emergency Services (Mandavia), Ltd Replies due by 6/25/2019. (Perach, Amanda) (Entered: 06/18/2019)
06/19/2019	20	RESPONSE to 14 Motion to Stay Case by Defendants Health Plan Of Nevada, Inc., Oxford Health Plans, Inc., Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., UMR, Inc., United Health Care Services Inc., United Healthcare Insurance Company. Replies due by 6/26/2019. (Attachments: # 1 Exhibit) (Balkenbush, Colby) (Entered: 06/19/2019)
06/21/2019	<u>21</u>	RESPONSE to 5 Motion to Remand to State Court by Defendants Health Plan Of Nevada, Inc., Oxford Health Plans, Inc., Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., UMR, Inc., United Health Care Services Inc., United Healthcare Insurance Company. Replies due by 6/28/2019. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit) (Balkenbush, Colby) (Entered: 06/21/2019)
06/24/2019	22	First MOTION to Extend Time (First Request) re <u>4</u> Motion to Dismiss, by Defendants Health Plan Of Nevada, Inc., Oxford Health Plans, Inc., Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., UMR, Inc., United Health Care Services Inc., United Healthcare Insurance Company. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit) (Balkenbush, Colby) (Entered: 06/24/2019)
06/25/2019	23	CLERK'S NOTICE Regarding Local Rule IC 5–1(b). ECF No. <u>22</u> was not filed pursuant to LR IC 5–1(b). Please note the signatory must be the attorney or pro se party who electronically files the document. No further action is required concerning this document at this time. (no image attached) (DKJ) (Entered: 06/25/2019)
06/26/2019	<u>24</u>	REPLY to Response to 14 Motion to Stay Case by Plaintiff Fremont Emergency Services (Mandavia), Ltd (Gallagher, Kristen) (Entered: 06/26/2019)
06/27/2019	<u>25</u>	ORDER denying 14 Motion to Stay Case; Discovery Plan/Scheduling Order due by 7/26/2019. Signed by Magistrate Judge Cam Ferenbach on 6/27/2019. (Copies have been distributed pursuant to the NEF – JM) (Entered: 06/28/2019)
06/28/2019	<u>26</u>	REPLY to Response to 5 Motion to Remand to State Court by Plaintiff Fremont Emergency Services (Mandavia), Ltd (Attachments: # 1 Exhibit A, # 2 Exhibit B) (Perach, Amanda) (Entered: 06/28/2019)
07/01/2019	27	MINUTE ORDER IN CHAMBERS of the Honorable Judge Jennifer A. Dorsey on 7/1/2019. Re 22 Defendants' Motion for Extension of Time to File Reply. Good cause appearing, IT IS HEREBY ORDERED that the Defendants' Motion for Extension of Time to File Reply 22 is GRANTED. The deadline for the reply in support of the motion to dismiss 4 is extended to July 2, 2019. (no image attached) (Copies have

•		been distributed pursuant to the NEF – CS) (Entered: 07/01/2019)
07/02/2019	<u>28</u>	REPLY to Response to 4 Motion to Dismiss, by Defendants Health Plan Of Nevada, Inc., Oxford Health Plans, Inc., Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., UMR, Inc., United Health Care Services Inc., United Healthcare Insurance Company. (Balkenbush, Colby) (Entered: 07/02/2019)
07/26/2019	<u>29</u>	PROPOSED Discovery Plan/Scheduling Order by Plaintiff Fremont Emergency Services (Mandavia), Ltd. (Gallagher, Kristen) (Entered: 07/26/2019)
10/21/2019	<u>30</u>	STIPULATION for Protective Order; filed by Plaintiff Fremont Emergency Services (Mandavia), Ltd (Gallagher, Kristen) (Entered: 10/21/2019)
10/22/2019	<u>31</u>	ORDER granting <u>30</u> Stipulated Protective Order; Signed by Magistrate Judge Cam Ferenbach on 10/22/2019. (Copies have been distributed pursuant to the NEF – JM) (Entered: 10/22/2019)
10/30/2019	<u>32</u>	MOTION for Leave to File Amended Complaint; filed by Plaintiff Fremont Emergency Services (Mandavia), Ltd (Attachments: # 1 Exhibit 1) (Gallagher, Kristen) Modified on 10/30/2019 (RFJ). (Entered: 10/30/2019)
11/11/2019	<u>33</u>	STIPULATION FOR EXTENSION OF TIME (First Request) to Extend Deadline for Defendants to File Their Opposition and for Plaintiff to File Its Reply re 32 Motion for Leave to File Document by Defendants Health Plan Of Nevada, Inc., Oxford Health Plans, Inc., Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., UMR, Inc., United Health Care Services Inc., United Healthcare Insurance Company. (Balkenbush, Colby) (Entered: 11/11/2019)
11/12/2019	<u>34</u>	ORDER granting 33 Stipulation; Re: 32 Motion for Leave to File Document. Responses due by 11/20/2019. Replies due by 12/6/2019. Signed by Magistrate Judge Cam Ferenbach on 11/12/2019. (Copies have been distributed pursuant to the NEF – JM) (Entered: 11/12/2019)
11/20/2019	<u>35</u>	RESPONSE to 32 Motion for Leave to File Document by Defendants Health Plan Of Nevada, Inc., Oxford Health Plans, Inc., Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., UMR, Inc., United Health Care Services Inc., United Healthcare Insurance Company. Replies due by 11/27/2019. (Balkenbush, Colby) (Entered: 11/20/2019)
12/06/2019	<u>36</u>	REPLY to Response to <u>32</u> Motion for Leave to File Document by Plaintiff Fremont Emergency Services (Mandavia), Ltd (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 1–A, # <u>3</u> Exhibit 1–B) (Gallagher, Kristen) (Entered: 12/06/2019)
12/18/2019	<u>37</u>	ORDER Setting Hearing on 32 MOTION for Leave to File Amended Complaint. Motion Hearing set for 1/6/2020 at 03:00 PM in LV Courtroom 3D before Magistrate Judge Cam Ferenbach. Signed by Magistrate Judge Cam Ferenbach on 12/18/2019. (Copies have been distributed pursuant to the NEF – JM) (Entered: 12/18/2019)
01/03/2020	38	MOTION for Leave to File Notice of Supplemental Authority in Support of Defendants' Arguments in Opposition to Plaintiff's Motion to Remand and in Support of Defendants' Motion to Dismiss re 4 Motion to Dismiss, 5 Motion to Remand to State Court by Defendants Health Plan Of Nevada, Inc., Oxford Health Plans, Inc., Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., UMR, Inc., United Health Care Services Inc., United Healthcare Insurance Company. (Attachments: # 1 Exhibit 1) (Llewellyn, Brittany) (Entered: 01/03/2020)
01/06/2020	39	MINUTES OF PROCEEDINGS — Hearing re motion for leave to file amended complaint 32 held on 1/6/2020 before Magistrate Judge Cam Ferenbach. Crtrm Administrator: J. Ries; Pla Counsel: Patricia Lundvall and Kristen Gallagher; Def Counsel: D. Roberts; Recording start and end times: 2:50 — 3:58; Courtroom: 3D; The court canvasses and hears representations and arguments from the parties. ORDERED motion to dismiss 4 and motion to remand are both DENIED without prejudice; motion for leave to file amended complaint 32 is GRANTED; proposed discovery plan and scheduling order 29 is VACATED; and motion for leave to file supplemental authority 38 is DENIED as moot. FURTHER ORDERED amended complaint and new motion to remand are both due by 1/15/20. The parties are to submit a proposed discovery plan and scheduling order by 1/15/20. (no image attached) (Copies have been distributed pursuant to the NEF – JAR) (Entered: 01/07/2020)

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01707/2020	<u>40</u>	First AMENDED COMPLAINT with Jury Demand against All Defendants by Fremont Emergency Services (Mandavia), Ltd., Team Physicians of Nevada—Mandavia, P.C., Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine. Adds new parties. Proof of service due by 4/6/2020. (Lundvall, Patricia) (Entered: 01/07/2020)
01/07/2020	41	PROPOSED SUMMONS to be issued to UnitedHealth Group, Inc. by Plaintiffs Crum, Stefanko and Jones, Ltd., Fremont Emergency Services (Mandavia), Ltd., Team Physicians of Nevada—Mandavia, P.C (Lundvall, Patricia) (Entered: 01/07/2020)
01/07/2020	<u>42</u>	Summons Issued as to Unitedhealth Group, Inc. (JM) (Entered: 01/07/2020)
01/07/2020	<u>43</u>	MOTION for Extension of Time to Submit Responses and Objections to Plaintiff's Written Discovery Requests (First Requested Extension) by Defendants Health Plan Of Nevada, Inc., Oxford Health Plans, Inc., Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., UMR, Inc., United Health Care Services Inc., United Healthcare Insurance Company, Unitedhealth Group, Inc., Responses due by 1/21/2020. (Attachments: # 1 Exhibit, # 2 Exhibit) (Balkenbush, Colby) (Entered: 01/07/2020)
01/07/2020	<u>44</u>	VIEW <u>46</u> corrected image re MOTION to Stay the Deadline to Respond to Plaintiff's Written Discovery Requests Pending the Court's Decision on Defendants' Motion for Extension of Time to Submit Responses and objections to Plaintiff's Written Discovery Requests re <u>43</u> Motion,, by Defendants Health Plan Of Nevada, Inc., Oxford Health Plans, Inc., Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., UMR, Inc., United Health Care Services Inc., United Healthcare Insurance Company, Unitedhealth Group, Inc Responses due by 1/21/2020. (Attachments: # 1 Exhibit) (Balkenbush, Colby) Modified on 1/8/2020 (DKJ). (Entered: 01/07/2020)
01/08/2020	45	CLERK'S NOTICE. Attorney Action Required to ECF No. <u>44</u> . Page 8, the Certificate of Service, is not signed or dated. Counsel is advised to correct the deficiency and file a <i>Notice of Corrected Image/Document</i> and link to <u>44</u> . (no image attached) (DKJ) (Entered: 01/08/2020)
01/08/2020	<u>46</u>	NOTICE of Corrected Image/Document re <u>44</u> Motion,, by Defendants Health Plan Of Nevada, Inc., Oxford Health Plans, Inc., Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., UMR, Inc., United Health Care Services Inc., United Healthcare Insurance Company, Unitedhealth Group, Inc., (Service of corrected image is attached.) (Attachments: # <u>1</u> Exhibit) (Balkenbush, Colby) (Entered: 01/08/2020)
01/15/2020	<u>47</u>	TRANSCRIPT of Proceedings, 39 Motion Hearing, held on 1/6/2020, before Magistrate Judge Cam Ferenbach. Court (Reporter) Transcriber: Amber McClane, AM@nvd.uscourts.gov. Any Redaction Request is due by 2/5/2020. Redacted Transcript Deadline is set for 2/15/2020. Release of the Transcript Restriction is set for 4/14/2020. Before release date, the transcript may be viewed at the court public terminal or purchased through the court reporter. The Transcript Order Form is available on the court website. After that date, the transcript may be obtained through the court reporter or PACER. (AMM) (Entered: 01/15/2020)
01/15/2020	<u>48</u>	Joint Proposed Discovery Plan and Scheduling Order re 39 Miscellaneous Hearing,,, by Plaintiffs Crum, Stefanko and Jones, Ltd., Fremont Emergency Services (Mandavia), Ltd., Team Physicians of Nevada–Mandavia, P.C (Gallagher, Kristen) (Entered: 01/15/2020)
01/15/2020	<u>49</u>	Amended MOTION to Remand to State Court re 39 Miscellaneous Hearing,,, by Plaintiffs Crum, Stefanko and Jones, Ltd., Fremont Emergency Services (Mandavia), Ltd., Team Physicians of Nevada–Mandavia, P.C Responses due by 1/29/2020. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2) (Gallagher, Kristen) (Entered: 01/15/2020)
01/17/2020	<u>50</u>	STIPULATION FOR EXTENSION OF TIME (First Request) to File Motion to Dismiss by Defendants Health Plan Of Nevada, Inc., Oxford Health Plans, Inc., Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., UMR, Inc., United Health Care Services Inc., United Healthcare Insurance Company, Unitedhealth Group, Inc (Balkenbush, Colby) (Entered: 01/17/2020)

		2.19-CV-032 AS 01. 026296040 11.00 AWT ST 9 01 11
01717/2020	<u>53</u>	ORDER Setting Hearing on 48 Joint Proposed Discovery Plan and Scheduling Order. Motion Hearing set for 2/12/2020 at 03:00 PM in LV Courtroom 3D before Magistrate Judge Cam Ferenbach. Signed by Magistrate Judge Cam Ferenbach on 1/17/2020. (Copies have been distributed pursuant to the NEF – JM) (Entered: 01/21/2020)
01/21/2020	51	MINUTE ORDER IN CHAMBERS of the Honorable Judge Jennifer A. Dorsey on 1/21/2020. With good cause appearing, the Honorable Judge Jennifer A. Dorsey recuses herself in this action. IT IS ORDERED that this action is referred to the Clerk for random reassignment of this case for all further proceedings. (no image attached) (Copies have been distributed pursuant to the NEF – CS) (Entered: 01/21/2020)
01/21/2020	52	CLERK'S NOTICE that this case is randomly reassigned to Judge James C. Mahan for all further proceedings. All further documents must bear the correct case number 2:19-cv-00832-JCM-VCF. (no image attached) (DKJ) (Entered: 01/21/2020)
01/21/2020	<u>54</u>	RESPONSE to 43 Motion,, by Plaintiffs Crum, Stefanko and Jones, Ltd., Fremont Emergency Services (Mandavia), Ltd., Team Physicians of Nevada–Mandavia, P.C Replies due by 1/28/2020. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5 and 5–A, # 6 Exhibit 6) (Gallagher, Kristen) (Entered: 01/21/2020)
01/21/2020	<u>55</u>	RESPONSE to <u>44</u> Motion,, by Plaintiffs Crum, Stefanko and Jones, Ltd., Fremont Emergency Services (Mandavia), Ltd., Team Physicians of Nevada–Mandavia, P.C Replies due by 1/28/2020. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2) (Gallagher, Kristen) (Entered: 01/21/2020)
01/21/2020	<u>56</u>	OBJECTION/APPEAL Magistrate Judge order or ruling under LR IB 3–1 re 39 Miscellaneous Hearing,,, by Defendants Health Plan Of Nevada, Inc., Oxford Health Plans, Inc., Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., UMR, Inc., United Health Care Services Inc., United Healthcare Insurance Company, Unitedhealth Group, Inc Responses due by 2/4/2020. (Attachments: # 1 Exhibit 1) (Balkenbush, Colby) (Entered: 01/21/2020)
01/22/2020	57	CLERK'S NOTICE. Attorney Action Required to ECF No. <u>54</u> . Document was not filed pursuant to LR IC 2–2(b). For each type of relief requested or purpose, a separate document must be filed. Counsel is advised to file <u>ONLY</u> the Countermotion and any other requests located in ECF No. <u>54</u> as a separate entries to be in compliance with LR IC 2–2(b) and LR IC 2–2(c) by filing separate documents for each request or purpose. <b>DO NOT refile the response.</b> (no image attached) (DKJ) (Entered: 01/22/2020)
01/22/2020	<u>58</u>	Counter MOTION to Compel re <u>54</u> Response, <u>43</u> Motion,, by Plaintiffs Crum, Stefanko and Jones, Ltd., Fremont Emergency Services (Mandavia), Ltd., Team Physicians of Nevada–Mandavia, P.C Responses due by 2/5/2020. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5, # <u>6</u> Exhibit 6) (Gallagher, Kristen) (Entered: 01/22/2020)
01/23/2020	<u>59</u>	Unopposed MOTION for Leave to File Excess Pages re 40 Amended Complaint, by Defendants Health Plan Of Nevada, Inc., Oxford Health Plans, Inc., Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., UMR, Inc., United Health Care Services Inc., United Healthcare Insurance Company, Unitedhealth Group, Inc., (Balkenbush, Colby) (Entered: 01/23/2020)
01/24/2020	<u>60</u>	ORDER granting <u>59</u> Motion for Leave to File Excess Pages. Signed by Judge James C. Mahan on 1/24/2020.(Copies have been distributed pursuant to the NEF – JM) (Entered: 01/24/2020)
01/28/2020	<u>61</u>	REPLY to Response to 43 Motion,, by Defendants Health Plan Of Nevada, Inc., Oxford Health Plans, Inc., Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., UMR, Inc., United Health Care Services Inc., United Healthcare Insurance Company, Unitedhealth Group, Inc (Balkenbush, Colby) (Entered: 01/28/2020)
01/28/2020	<u>62</u>	RESPONSE to <u>58</u> Motion to Compel, by Defendants Health Plan Of Nevada, Inc., Oxford Health Plans, Inc., Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., UMR, Inc., United Health Care Services Inc., United Healthcare Insurance Company, Unitedhealth Group, Inc Replies due by 2/4/2020. (Balkenbush, Colby) (Entered: 01/28/2020)

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C	ase.	2:19-cv-832 As of: 02640660 11:00 AM PST 10 of 11
01/28/2020	<u>63</u>	REPLY to Response to 44 Motion,, by Defendants Health Plan Of Nevada, Inc., Oxford Health Plans, Inc., Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., UMR, Inc., United Health Care Services Inc., United Healthcare Insurance Company, Unitedhealth Group, Inc (Balkenbush, Colby) (Entered: 01/28/2020)
01/29/2020	<u>64</u>	RESPONSE to 49 Motion to Remand to State Court, by Defendants Health Plan Of Nevada, Inc., Oxford Health Plans, Inc., Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., UMR, Inc., United Health Care Services Inc., United Healthcare Insurance Company, Unitedhealth Group, Inc Replies due by 2/5/2020. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8) (Balkenbush, Colby) (Entered: 01/29/2020)
01/30/2020	<u>65</u>	ORDER re 43 Motion for Extension of Time, 44 Motion to Stay, 58 Countermotion to Compel. Motions Hearing set for 2/12/2020 at 03:00 PM in LV Courtroom 3D. Signed by Magistrate Judge Cam Ferenbach on 1/30/2020. (Copies have been distributed pursuant to the NEF – MR) (Entered: 01/30/2020)
02/03/2020	<u>66</u>	ORDER granting <u>50</u> Stipulation; Motion to Dismiss due by 2/4/2020. Signed by Judge James C. Mahan on 2/3/2020. (Copies have been distributed pursuant to the NEF – JM) (Entered: 02/03/2020)
02/04/2020	<u>67</u>	SUMMONS Returned Executed by Team Physicians of Nevada—Mandavia, P.C., Crum, Stefanko and Jones, Ltd., Fremont Emergency Services (Mandavia), Ltd. re 42 Summons Issued. Unitedhealth Group, Inc. served on 1/15/2020. (Gallagher, Kristen) (Entered: 02/04/2020)
02/04/2020	<u>68</u>	REPLY to Response to <u>58</u> Motion to Compel, by Plaintiffs Crum, Stefanko and Jones, Ltd., Fremont Emergency Services (Mandavia), Ltd., Team Physicians of Nevada–Mandavia, P.C (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2) (Gallagher, Kristen) (Entered: 02/04/2020)
02/04/2020	<u>69</u>	RESPONSE to <u>56</u> Objection/Appeal Magistrate Judge Order/Ruling LR IB 3–1, by Plaintiffs Crum, Stefanko and Jones, Ltd., Fremont Emergency Services (Mandavia), Ltd., Team Physicians of Nevada–Mandavia, P.C Replies due by 2/11/2020. (Perach, Amanda) (Entered: 02/04/2020)
02/04/2020	<u>70</u>	MOTION to Dismiss <u>40</u> Amended Complaint, by Defendants Health Plan Of Nevada, Inc., Oxford Health Plans, Inc., Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., UMR, Inc., United Health Care Services Inc., United Healthcare Insurance Company, Unitedhealth Group, Inc Responses due by 2/18/2020. Discovery Plan/Scheduling Order due by 3/20/2020. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6) (Balkenbush, Colby)
		NOTICE of Certificate of Interested Parties requirement: Under Local Rule 7.1–1, a party must <u>immediately</u> file its disclosure statement with its first appearance, pleading, petition, motion, response, or other request addressed to the court. (Entered: 02/04/2020)
02/05/2020	<u>71</u>	REPLY to Response to <u>49</u> Motion to Remand to State Court, by Plaintiffs Crum, Stefanko and Jones, Ltd., Fremont Emergency Services (Mandavia), Ltd., Team Physicians of Nevada—Mandavia, P.C (Attachments: # <u>1</u> Exhibit 1) (Gallagher, Kristen) (Entered: 02/05/2020)
02/12/2020	73	MINUTES OF PROCEEDINGS – Hearing re motion for extension of time 43, motion to stay 44, joint proposed discovery plan and scheduling order 48 and counter motion to compel 58 held on 2/12/2020 before Magistrate Judge Cam Ferenbach. Crtrm Administrator: J. Ries; Pla Counsel: Kristen Gallagher and Amanda Perach; Def Counsel: Colby Balkenbush and D. Roberts; Recording start and end times: 3:02 – 4:02; Courtroom: 3D; The court canvasses and hears representations and arguments from the parties. ORDERED motion for extension of time 43 is GRANTED; motion to stay 44 is DENIED as moot; joint proposed discovery plan and scheduling order 48 is GRANTED IN PART to the extent the dispositive motions deadline will be 12/15/20 and the parties will submit another proposed discovery plan and scheduling order by 2/19/20; and counter motion to compel 58 is DENIED without prejudice. (no image

## Case: 2:19-cv-832 As of: 02/2020 11:00 AM PST 11 of 11

•		attached) (Copies have been distributed pursuant to the NEF – JAR) (Entered: 02/13/2020)
02/13/2020	<u>72</u>	CERTIFICATE of Interested Parties by Unitedhealth Group, Inc There are no known interested parties other than those participating in the case (Balkenbush, Colby) (Entered: 02/13/2020)
02/18/2020	<u>74</u>	TRANSCRIPT of Proceedings, 73 Motion Hearing held on 2/12/2020, before Magistrate Judge Cam Ferenbach. Court Reporter/Transcriber: Exceptional Reporting Services, Inc Recording start and end times: 3:02 p.m. to 4:01 p.m Any Redaction Request is due by 3/10/2020. Redacted Transcript Deadline is set for 3/20/2020. Release of the Transcript Restriction is set for 5/18/2020. Before release date, the transcript may be viewed at the court public terminal or purchased through the reporter/transcriber. Transcript Order form is available on court website. After that date it may be obtained through the court reporter or PACER. (AVB) (Entered: 02/18/2020)
02/18/2020	<u>75</u>	STIPULATION FOR EXTENSION OF TIME (First Request) to File Response and Reply re 70 Motion to Dismiss,,, by Defendants Health Plan Of Nevada, Inc., Oxford Health Plans, Inc., Sierra Health Care Options, Inc., Sierra Health and Life Insurance Company, Inc., UMR, Inc., United Health Care Services Inc., United Healthcare Insurance Company, Unitedhealth Group, Inc (Llewellyn, Brittany) (Entered: 02/18/2020)
02/19/2020	<u>76</u>	ORDER granting <u>75</u> Stipulation; Re: <u>70</u> Motion to Dismiss. Responses due by 2/25/2020. Replies due by 3/3/2020. Signed by Judge James C. Mahan on 2/19/2020. (Copies have been distributed pursuant to the NEF – JM) (Entered: 02/19/2020)
02/19/2020	<u>77</u>	First STIPULATION FOR EXTENSION OF TIME (First Request) re Discovery <i>Plan and Scheduling Order Submission</i> re 73 Miscellaneous Hearing,,,, by Plaintiffs Crum, Stefanko and Jones, Ltd., Fremont Emergency Services (Mandavia), Ltd., Team Physicians of Nevada–Mandavia, P.C (Gallagher, Kristen) (Entered: 02/19/2020)
02/20/2020	<u>78</u>	ORDER granting <u>49</u> Amended Motion to Remand to State Court. Signed by Judge James C. Mahan on 2/20/2020. (Copies have been distributed pursuant to the NEF, cc: Certified Docket to State Court – JM) (Entered: 02/20/2020)

that the foregoing document is a full, true and correct copy of the original on file in my legal custody.

CLERK, U.S. DISTRICT COURT DISTRICT OF NEVADA

outy Clerk

CLERK, U.S. DISTRICT COURT DISTRICT OF NEVADA LLOYD D. GEORGE U.S. COURTHOUSE 333 LAS VEGAS BLVD. SO. – RM 1334 LAS VEGAS, NV 89101

OFFICIAL BUSINESS

8th Judicial District Court Regional Justice Center 200 Lewis Avenue Las Vegas, NV 89155

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Attorneys for Plaintiffs

# 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.

UNITEDHEALTH GROUP, INC., a Delaware corporation; 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.: A-19-792978-B Dept. No.: 27

NOTICE OF ENTRY OF ORDER **RE: REMAND** 

PLEASE TAKE NOTICE that an Order granting Plaintiffs' amended motion to remand was entered in the United States District Court, District of Nevada on February 20, 2020 (ECF No. 78), a copy of which is attached hereto as Exhibit 1.

DATED this 27th day of February, 2020.

## McDONALD CARANO LLP

By: /s/ Kristen T. Gallagher 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 Plaintiffs

# McDONALD CARANO O WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 8910

# **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 27th day of February, 2020, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER RE: REMAND** to be served via this Court's Electronic Filing system in the above-captioned case, upon the following:

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Josephine E. Groh, Esq.
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Attorneys for Defendants

/s/ Marianne Carter
An employee of McDonald Carano LLP

# **EXHIBIT 1**

# **EXHIBIT 1**

UNITED STATES DISTRICT COURT DISTRICT OF NEVADA FREMONT EMERGENCY SERVICES Case No. 2:19-CV-832 JCM (VCF) (MANDAVIA), LTD., et al., **ORDER** Plaintiff(s), v. UNITEDHEALTH GROUP, INC., et al., Defendant(s). 

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.

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

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

## II. Legal Standard

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

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

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

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

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

## III. Discussion

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

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

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

James C. Mahan U.S. District Judge

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

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

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

Under prong 1 of the *Davila* test, the Ninth Circuit has distinguished between claims involving the "right to payment" and claims involving the proper "amount of payment." *Blue Cross of Cal. v. Anesthesia Care Assocs. Med. Grp., Inc.*, 187 F.3d 1045, 1051 (9th Cir. 1999). Claims involving the "right to payment" generally fall within the scope of § 502(a)(1)(b), while claims involving the "amount of payment" generally fall outside the scope of § 502(a)(1)(b). *Id.* 

Although Blue Cross preceded Davila, the Ninth Circuit has expressly found that its analysis and holding are consistent with the *Davila* framework and remain good law. *Marin*, 581 F.3d at 948.

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

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

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

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

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James C. Mahan U.S. District Judge

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IV.	Conclusion

Accordingly,

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

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

The clerk shall close the case accordingly.

DATED February 20, 2020.



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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.

## 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., 23 a Delaware corporation; SIERRA HEALTH AND

LIFE INSURANCE COMPANY, INC., a Nevada 24 corporation; SIERRA HEALTH-CARE

OPTIONS, INC., a Nevada corporation; 25

HEALTH PLAN OF NEVADA, INC., a Nevada corporation; DOES 1-10; ROE ENTITIES 11-20, 26

Defendants.

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Case No.: A-19-792978-B

Dept. No.: 27

# **HEARING REQUESTED**

## **DEFENDANTS' MOTION TO DISMISS**

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Defendants UnitedHealthcare Insurance Company ("UHIC"), United HealthCare Services, Inc. ("UHS"), UMR, Inc. ("UMR"), Oxford Health Plans, Inc. ("Oxford"), Sierra Health and Life Insurance Co., Inc. ("SHL"), Sierra Health-Care Options, Inc. ("SHO"), and Health Plan of Nevada, Inc. ("HPN") (collectively, "Defendants") hereby move to dismiss the claims asserted in Fremont's ("Plaintiff" or "Fremont") April 15, 2019 Complaint ("Complaint") with prejudice, pursuant to the doctrines of ERISA conflict preemption and complete preemption as well as pursuant to Nev. R. Civ. P. 12(b)(5) for failure to state a claim upon which relief can be granted.

## I. INTRODUCTION<sup>1</sup>

Fremont is a for profit out-of-network medical provider. Defendants administer health plans whose members have received medical treatment from Fremont. Fremont alleges that the health plans have underpaid Fremont for medical services rendered to plan members, and seeks to compel the plans to pay Fremont at what it suggests is the "usual and customary rate"—without any regard to the explicit terms of the plans. To achieve its goal of forcing all of the plans to pay the same inflated rates, Fremont has brought a raft of deficient and improper state

<sup>&</sup>lt;sup>1</sup> Defendants removed this case to federal court on May 14, 2019. While this case was in federal court, Fremont filed a motion to amend the complaint, which was granted. Fremont then filed a First Amended Complaint in federal court on January 7, 2020 that added two additional plaintiffs, one additional defendant and a Nevada RICO claim. On February 20, 2020, the federal court found that it lacked jurisdiction and remanded this matter to the Eighth Judicial District Court. "The issue of what effect is to be given to pleadings filed in federal court prior to a remand to state court is a determination for the state court." Ayres v. Wiswall, 112 U.S. 187, 190-91 (1884). While Nevada has not yet taken a position on this issue, logically the proceedings must now stand in the same posture they were in just prior to the filing of the May 14, 2019 Notice of Removal. As a result, all of the filings and actions taken by the federal court prior to the remand order should be deemed void, as that court found that it lacked jurisdiction all along. Other state courts who have addressed the issue agree. See e.g., NCS Healthcare of Arkansas, Inc. v. W.P. Malone, Inc., 350 Ark. 520, 526, 88 S.W.3d 852, 856 (2002) ("[A]fter remand from federal court, a case stands as if it had never been removed from state court, and what happened in federal court has no bearing on the proceeding in state court."). Thus, since the only complaint on file with this Court is Fremont's April 15, 2019 Complaint, Defendants have responded to that Complaint only. However, if this Court disagrees that the actions taken by the federal court are void. Defendants request that they be given an opportunity to respond to the additional cause of action and allegations in Fremont's First Amended Federal Court Complaint and do not intend to waive any rights, arguments, counterclaims, and/or defenses by currently only responding to Fremont's April 15, 2019 State Court Complaint.

law claims.

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However, all seven of Fremont's claims suffer from the same defect—they relate to employee benefit plans and are thus preempted by the Employee Retirement Income Security Act ("ERISA"). ERISA's comprehensive scheme regulates employee benefit plans and provides the exclusive civil enforcement mechanism to deal with disputes related to these plans. State law claims that relate to an ERISA plan or that supplement or duplicate a federal claim that could have been brought under ERISA are subject to dismissal based on ERISA's expansive preemption reach. Thus, as detailed in this Motion, Fremont's state law claims must be dismissed with prejudice.

There are two types of preemption under ERISA—conflict preemption and complete preemption. Under conflict preemption, a state law claim is subject to dismissal if it "relates to" an employee benefit plan governed by ERISA. ERISA's conflict preemption clause (29 U.S.C. § 1144(a)) has been called "one of the broadest preemption clauses ever enacted by Congress" and 1 characterized as "clearly expansive." Under complete preemption, on the other hand, a state law claim is subject to dismissal if the plaintiff (1) could have brought a federal claim under ERISA and (2) no independent legal duty is implicated by the defendant's actions. Both types of preemption apply here, and both are fatal to Fremont's state law claims.

Allowing Fremont's state law claims to proceed would directly undermine the congressional intent behind ERISA—creating a uniform administrative scheme for all 50 states that guides the processing of claims and disbursement of benefits for employee health plans. Fremont is challenging the amount that it received on more than 10,000 separate health plan benefit claims it submitted to Defendants for payment, and is seeking to use state law claims to force the plans to pay more. But the health plans at issue—virtually all of which are governed by ERISA—independently set the benefit rates that each plan promises to pay. And ERISA's expansive preemptive reach does not permit a plaintiff to use state law claims to effectively rewrite the plans by superimposing on them some different, uniformly higher payment rate requirement that is inconsistent with plan terms. Such claims are conflict preempted because they directly "relate to" ERISA plans. And such claims are completely preempted because they

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can and must be pursued as claims for benefits under ERISA Section 502(a)(1)(b), pursuant to which the Court can assess whether each challenged payment was consistent with the terms of the applicable plan.

Fremont will attempt to argue that its claims are not preempted because this is a "rate of payment" case rather than a "right to payment" case. However, Fremont's reliance on that purported distinction is wrong, as it only applies to situations where a plan or its agent affirmatively promised to pay some benefit rate that is different than the rates set by the plan, as may be the case with a network contract or oral promise that then serves as an independent source of legal obligation. This case does not fall into these categories: Fremont admits that it lacks a written contract, oral promise, or even a state statute setting benefit rates. The applicable employee benefit plans are the only documents that set forth the required rate of payment to Fremont, and ERISA does not permit Fremont to use state law claims to circumvent plan terms.

Moreover, to the extent a small number of the plans at issue, such as Affordable Care Act Exchange products, may not be governed by ERISA, such claims still must be dismissed as Fremont fails to allege viable state law claims for causes of actions under Rule 12(b)(5).

For all these reasons and those set forth below, Defendants request that the Court dismiss Fremont's state law claims in their entirety and with prejudice. However, Fremont should be given leave to replead its claims as statutory ERISA claims pursuant to 29 U.S.C. § 1132(a). subject to any defenses Defendants may have to such a claim.

## II. **CLAIMS** FREMONT'S SPONSORED ERISA PLANS AND ARE THUS SUBJECT TO PREEMPTION

When considering a motion to dismiss, the general rule is that a court is limited to reviewing the allegations in the Complaint and should not consider outside evidence. However, there is an exception to this rule where the defendant raises a defense of preemption. In that circumstance, the court may consider evidence outside the complaint showing that the claims relate to employee benefit plans governed by ERISA.<sup>2</sup> The purpose of this exception to the

<sup>&</sup>lt;sup>2</sup> Densmore v. Mission Linen Supply, 164 F. Supp. 3d 1180, 1188, n. 2 (E.D. Cal. 2016).

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general rule is to prevent plaintiffs, like Plaintiff here, from attempting to thwart congressional intent that ERISA provide the exclusive remedy for these types of claims through artful pleading.

Plaintiff's Complaint fails to identify any of the specific claims at issue, including failing to identify who was treated, on what date, and pursuant to which health plan. Instead,, all the Complaint identifies is the general time frame during which Plaintiff allegedly provided medical services to Defendants' members and submitted claims/requests for processing and adjudication to Defendants. See Compl. at ¶¶ 19-20, 25. Despite this, Defendants have determined that nearly all of the at-issue claims relate to ERISA-governed employee benefit plans and are thus conflict preempted.

During the time frames alleged in the Complaint, Plaintiff made claims/requests for payment to the following Defendants: UHIC, UHS, UMR, Oxford, SHL, HPN, and SHO. For the tens of thousands of claims that Plaintiff submitted to UHIC, UHS and UMR, based on the known information, all but one of the claims were made against ERISA-governed plans.<sup>3</sup> For ! the claims made against Oxford and SHO, all of the claims were made against ERISA governed S plans.4 For the claims made against SHL, approximately 72% of the claims were made against ERISA-governed plans.<sup>5</sup> For the claims made against HPN, approximately 84% of the claims were made against ERISA-governed plans.<sup>6</sup> In sum, over 90% of Plaintiff's claims in the relevant period were for services provided to members of ERISA-governed plans.

Furthermore, for all of the claims that Plaintiff is asserting in this litigation, Plaintiff represented that it received assignments of benefits from its patients that, if valid, would allow Plaintiff to sue under ERISA by standing in the shoes of each patient and asserting claims for

<sup>&</sup>lt;sup>3</sup> Exhibit 1 at ¶ 7 (UHIC, UHS and UMR Declaration).

<sup>&</sup>lt;sup>4</sup> Exhibit 2 at ¶ 7 (Oxford Declaration); Exhibit 3 at ¶ 7 (SHO Declaration).

<sup>&</sup>lt;sup>5</sup> Exhibit 4 at ¶ 7 (SHL and HPN Declaration).

<sup>&</sup>lt;sup>6</sup> *Id.* at ¶ 8.

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benefits seeking additional reimbursement under the terms of the plans. As discussed in more detail below, these assignments of benefits are critical because they render Plaintiff the type of party, under the Davila test discussed in Section IV, that can assert a claim under ERISA § 502(a)(1)(B), ERISA's civil enforcement statute, causing Plaintiff's state law claims to be completely preempted.

#### III. LEGAL STANDARD FOR CONFLICT PREEMPTION UNDER ERISA

#### A. The ERISA Preemption Clause, Saving Clause and Deemer Clause

The Employee Retirement Income Security Act ("ERISA") is a federal legislative scheme that "comprehensively regulates" employee benefit plans. 29 U.S.C. § 1001(b); Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 44 (1987). ERISA comprehensively regulates, among other things, employee benefit plans that, "through the purchase of insurance or otherwise . . . [provide] medical, surgical, or hospital care, or benefits in the event of sickness, accident, disability, [or] death." 29 U.S.C. § 1002(1).

To ensure that plans and plan administrators would be subject to a uniform body of benefit laws, Congress capped off ERISA with three provisions relating to the preemptive effect of the federal legislation, which are set forth below:

1.) "Except as provided in subsection (b) of this section [the saving clause], the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws<sup>8</sup> insofar as they may now or hereafter relate to any employee benefit plan . . .". 29 U.S.C. § 1144(a) (pre-emption clause) (emphasis added).

<sup>&</sup>lt;sup>7</sup> See Exhibit 1 at ¶ 7 (UHIC, UHS and UMR Declaration), Exhibit 4 at ¶¶ 7-8 (SHL and HPN Declaration); Exhibit 2 at ¶ 7 (Oxford Declaration); Exhibit 3 at ¶ 7 (SHO Declaration); See also Exhibit 5 (sample claims forms to UMR during the 2017-2019 time period showing Box 27 "Accept Assignment" checked "YES"); Exhibit 6 (sample claim forms to SHO during the same time period). Defendants have reviewed claim forms and related data for the claims that were made to the other entities in this lawsuit and confirmed that Fremont also received an assignment of benefits for those claims but have not attached those claim forms to avoid overburdening the Court. However, those claim forms can be produced if necessary.

<sup>&</sup>lt;sup>8</sup> Under ERISA, the term "state law" is defined as "all laws, decisions, rules, regulations, or other State action having the effect of law, of any State." 29 U.S.C. § 1144(c)(1). Thus, ERISA preempts not only state statutes but also the common law of each state.

<sup>&</sup>lt;sup>9</sup> In cases discussing conflict preemption, this section is also commonly referred to as § 514(a) of ERISA.

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- 2.) "Except as provided in subparagraph (B) [the deemer clause], nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities." 29 U.S.C. § 1144(b)(2)(A) (saving clause).
- 3.) Neither an employee benefit plan . . . nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies. insurance contracts, banks, trust companies, or investment companies." 29 U.S.C. § 1144(b)(2)(B) (deemer clause).

The U.S. Supreme Court summarized how the above clauses work together as follows: "If a state law 'relate[s] to . . . employee benefit plan[s],' it is pre-empted. [29 U.S.C § 1144(a)] The saving clause excepts from the pre-emption clause laws that 'regulat[e] insurance.' [29 U.S.C § 1144(b)(2)A)]. The deemer clause makes clear that a state law that 'purport[s] to regulate insurance' cannot deem an employee benefit plan to be an insurance company. [29 U.S.C. § 1144(b)(2)(B)]." Pilot Life Ins. Co., 481 U.S. at 45.

В. ERISA's "Relates to" Preemption Clause is Broad and Preempts any State Law Claim that Requires a Plan to Deviate from Plan Terms. Fremont's Claims Conflict with the Plan Documents and Would Require the Court to Essentially Rewrite Them.

The Ninth Circuit has repeatedly stated that ERISA's preemption clause is "one of the broadest preemption clauses ever enacted by Congress." Evans v. Safeco Life Ins. Co., 916 F.2d 1437, 1439 (9th Cir. 1990); see also Egelhoff v. Egelhoff, 532 U.S. 141, 146 (2001) (calling the ERISA preemption clause "clearly expansive."). 10 "[A] state law 'relate[s] to' a benefit plan in the normal sense of the phrase, if it has a connection with or reference to such a plan." Pilot Life Ins. Co., 481 U.S. at 47. "[T]o determine whether a state law has the forbidden connection, we

<sup>&</sup>lt;sup>10</sup> Fremont may argue in its response that the federal court has already rejected these preemption arguments when it granted Fremont's motion to remand. Such an argument would be misplaced. Although the federal court found that complete preemption did not apply when it remanded this case, the defense of conflict preemption under § 514(a) of ERISA (aka 29 U.S.C. § 1144(a)) is broader than complete preemption and thus even more likely to apply to Fremont's state law claims. Jass v. Prudential Health Care Plan, Inc., 88 F.3d 1482, 1492 (7th Cir. 1996) ("the defense of 'conflict preemption' is much broader because § 514 [of ERISA] is much broader than § 502(a).").

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look both to the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive, as well as to the nature of the effect of the state law on ERISA plans." Egelhoff, 532 U.S. at 147. ERISA commands that a plan shall "specify the basis on which payments are made to and

from the plan," 29 U.S.C. § 1102(b)(4), and that the fiduciary shall administer the plan "in accordance with the documents and instruments governing the plan," 29 U.S.C. § 1104(a)(1)(D) (emphasis added). Thus, any state law claim that would run counter to these ERISA requirements by, for example, requiring a plan administrator to make payments that are different than the payments required to be paid pursuant to the plan documents, is preempted. Egelhoff, 532 U.S. at 147.

Here, that is exactly what Fremont's state law claims attempt to do. Fremont is an out-ofnetwork medical provider that alleges it provided treatment to more than 10,800 patients who were members of Defendants' health plans administered by Defendants. Compl. at ¶ 25. Fremont further alleges that the Defendants failed to adequately reimburse Fremont for these \$\P\$ services and it seeks a judgment requiring the Defendants to "reimburse Fremont at the usual and customary rate. . . or alternatively for the reasonable value of the services provided." Id. at ¶¶ 23, 26, 27, 29, and subparagraphs C and D of Fremont's Request for Relief. However, each health plan at issue already provides for a particular rate of reimbursement to plan members for services received from out-of-network providers like Fremont. Thus, the remedy Fremont seeks via its seven state law claims is nothing less than a complete rewriting of the health plans at issue. Fremont is essentially asking this Court to insert the terms "usual and customary rate" and "reasonable value" into each of the controlling health plans implicated by the 10,800 at-issue claims. As explained more fully below, courts have repeatedly found that ERISA does not permit a plaintiff to use a state law claim to rewrite and/or avoid a plan's payment terms. Fremont's state law claims unquestionably "relate to" ERISA-governed health plans issued and/or administered by Defendants and are thus conflict preempted by ERISA.

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The U.S. Supreme Court has held that two criteria should be considered in determining whether a state law falls within ERISA's saving clause. First, a court should consider whether, as a matter of "common sense," the state law is one that "regulates insurance." Pilot Life Ins. Co., 481 U.S. at 48-49. Second, a court should use the McCarran-Ferguson<sup>11</sup> test to determine whether the state law (1) is limited to the insurance industry, (2) has the effect of transferring or spreading a policyholder's risk, and (3) involves an integral part of the relationship between the insurer and the insured. *Id.* The Nevada Supreme Court has adopted the U.S. Supreme Court's framework for assessing whether the ERISA saving clause applies and held that all three elements of the McCarran-Ferguson test must be met for the ERISA saving clause to apply. Villescas v. CNA Ins. Companies, 109 Nev. 1075, 1082, 864 P.2d 288, 293 (1993). 12

Here, none of Fremont's state law claims fall within the ERISA saving clause. As to Fremont's common law claims for (1) Breach of Implied-in-Fact Contract, (2) Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing, and (3) Unjust Enrichment, none of these claims can be said to regulate insurance or to be "limited to the insurance industry." Rather, such claims are applicable to a wide variety of non-insurance related commercial disputes. See e.g., Pilot Life Ins. Co., 481 U.S. at 48-49 (1987) (holding that a claim for tortious breach of contract and the Mississippi law of bad faith did not "regulate insurance" and was thus

<sup>&</sup>lt;sup>11</sup> The McCarran-Ferguson Act generally permits states to regulate the "business of insurance." 15 U.S.C. § 1012(a). In determining what constitutes the "business of insurance," courts have come up with the three part McCarran-Ferguson test.

<sup>&</sup>lt;sup>12</sup> Although the Nevada Supreme Court did not expressly reference Pilot Life's "Common Sense Test," other Nevada courts applying Nevada law have applied both the Common Sense Test and the McCarran-Ferguson Test. See Brandner v. UNUM Life Ins. Co. of Am., 152 F. Supp. 2d 1219, 1226 (D. Nev. 2001)

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these claims fail the McCarran-Ferguson test. While the Nevada Unfair Trade Practices Act is specifically aimed at insurance companies, the Nevada Supreme Court has found that the law

preempted because "[a]ny breach of contract, and not merely breach of an insurance contract,

does not have the effect of spreading a policyholder's risk and thus does not fall within ERISA's

saving clause. *Villescas*, 109 Nev. at 1083, 864 P.2d at 293.

may lead to liability for punitive damages.").

The Nevada Prompt Pay Act does not fall under the saving clause for the same reason. "Riskspreading . . . is the pooling or averaging of policyholder's risks." *Id.* at 1082, 864 P.2d at 293; see also Black's Law Dictionary (11th ed. 2019) (defining "Risk" in the insurance context as "[t]he chance or degree of probability of loss to the subject matter of an insurance ? policy."). The Prompt Pay Act simply subjects an insurer to fines by the Nevada Insurance Commissioner if the insurer does not process/pay claims within a specified time frame. NRS 683A.0879(8). This does nothing to pool or average a policyholder's risks.

Finally, Nevada's Deceptive Trade Practices Act and Uniform Declaratory Judgments Act are laws of general applicability and not limited to the insurance industry. See NRS 598.0915 (stating that any "person" with a "business or occupation" can be liable under the Act); NRS 30.040 (allowing a declaratory judgment claim to be brought for any "deed, written contract or other writings constituting a contract."). Thus, these claims also do not fall under the ERISA saving clause and, as a result, are conflict preempted.

## D. In the Alternative, ERISA's Deemer Clause also Bars Fremont's State Law Claims

Even if this Court were to find that some of Fremont's claims fall within ERISA's saving clause, which they do not, the claims would still be preempted by ERISA's "deemer clause." 29 U.S.C. § 1144(b)(2)(B). This clause bars enforcement of any state insurance law against self-

funded ERISA plans by mandating that these plans be "deemed" to not be insurance companies for purposes of state insurance laws and regulations. As with ERISA's "relates to" preemption clause, the U.S. Supreme Court has construed the "deemer clause" broadly, stating:

We read the deemer clause to exempt self-funded ERISA plans from state laws that 'regulat[e] insurance' within the meaning of the saving clause. By forbidding States to deem employee benefit plans 'to be an insurance company or other insurer . . . or to be engaged in the business of insurance,' the deemer clause relieves plans from state laws 'purporting to regulate insurance.' As a result, self-funded ERISA plans are exempt from state regulation insofar as that regulation 'relate[s] to' the plans . . . State laws that directly regulate insurance are 'saved' but do not reach self-funded employee benefit plans because the plans may not be deemed to be insurance companies, other insurers, or engaged in the business of insurance for purposes of such state laws.

FMC Corp. v. Holliday, 498 U.S. 52, 61 (1990). Here, the only state laws at issue that even purport to regulate insurance are Fremont's claims for violation of (1) the Nevada Unfair Trade Practices Act and (2) the Nevada Prompt Pay Statutes. However, even assuming, arguendo, that these laws would otherwise fall within ERISA's saving clause, the deemer clause prohibits them being enforced against any ERISA plans that are self-funded, which must be deemed not to be in the business of insurance. In sum, ERISA conflict preemption presents an insurmountable barrier to Fremont's state law claims.

## IV. LEGAL STANDARD FOR COMPLETE PREEMPTION UNDER ERISA

# A. The Doctrine of Complete Preemption and the Consequences of a Finding of Complete Preemption

The doctrine of complete preemption applies when a federal statute so completely dominates a particular area that any state law claims are converted into an action arising under federal law. *See Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63–64, 107 S. Ct. 1542, 1546 (1987). One area where this doctrine applies is with certain claims related to employee benefit plans, such as employer-sponsored health insurance. *Aetna Health Inc. v. Davila*, 542 U.S. 200, 209 (2004).

As part of ERISA's comprehensive scheme, Congress created a special civil enforcement mechanism to deal with all claims related to employee benefit plans. That mechanism is set

A civil action may be brought—(1) by a participant or beneficiary—...(B) to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan.

29 U.S.C. § 1132(a)(1)(B). The U.S. Supreme Court has found that this statute evidences congressional intent to completely preempt state law claims related to ERISA plans.

A finding of complete preemption means that the plaintiff's state law claims are barred and subject to dismissal, as the plaintiff will only be permitted to assert a statutory cause of action under 29 U.S.C. § 1132(a)(1)(B). *See Davila*, 542 U.S. at 209 ("any state-law cause of action that duplicates, supplements, or supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore preempted.").

# B. Pursuant to the *Davila* Test, Plaintiff's State Law Claims Are Completely Preempted

Davila sets forth a two-prong test for determining whether a state law claim is completely preempted by ERISA's civil enforcement provision. A state law cause of action is completely preempted if (1) the plaintiff, "at some point in time, could have brought [the] claim under ERISA § 502(a)(1)(B)," and (2) "there is no other independent legal duty that is implicated by [the] defendant's actions." Davila, 542 U.S. at 210, 124 S. Ct. at 2496.

The *Davila* test would be undisputedly met if a plan member paid for a covered medical treatment herself, received only partial reimbursement from the plan, and then brought suit

<sup>&</sup>lt;sup>13</sup> This section is also commonly referred to as § 502(a) of ERISA.

<sup>&</sup>lt;sup>14</sup> 29 U.S.C. § 1132(e)(1) (providing that a statutory ERISA claim may be brought in state or federal court).

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against the plan administrator seeking additional reimbursement. Id. at 211. This would be a clear example of a "beneficiary or participant" seeking to recover benefits under an employee benefit plan (see 29 U.S.C. § 1132(a)(1)(B)), and ERISA flatly does not permit state law claims, however labeled, to be used as a mechanism to seek additional reimbursement from a plan outside the plan's terms. The employee's exclusive remedy for seeking additional payments from an ERISA plan is a statutory ERISA claim for benefits.

The result is the same if the employee plan member assigns her claim to the medical provider and the medical provider then brings suit against the plan administrator seeking reimbursement for medical services. The Ninth Circuit has held that ERISA preempts the state law claims of a medical provider suing as the assignee of an employee's rights under an employee benefit plan governed by ERISA. Misic v. Bldg. Serv. Employees Health & Welfare Tr., 789 F.2d 1374 (9th Cir. 1986) (upholding the dismissal of various state tort law claims and a claim under the California Unfair Insurance Practices Act as preempted by ERISA since the provider had accepted an assignment from the patients and thus had standing to bring an ERISA claim itself).

Here, just like the provider in *Misic*, Fremont is an out-of-network medical provider that provided medical services to members of health plans administered by Defendants. Compl. at ¶¶ 17-19. Fremont then requested payments from Defendants, representing that it had received assignments of the patients' plan benefits. Id. at ¶¶ 20, 25-26. As in Misic, Defendants here paid a portion of the amounts requested, but not the entire amount. Id.; Misic, 789 F.2d at 1376 ("The trust paid a portion of the amount billed, but less than the full 80%."). Fremont has now brought suit seeking additional reimbursements from the applicable health plans and, in doing so, stands in the shoes of Defendants' members.

Both elements of the Davila test are therefore met. The first element is met because Fremont obtained assignments that give it standing to bring ERISA claims. The fact that Fremont now self-servingly disclaims that it is suing as the assignee of Defendants' plan members is not relevant to a Davila analysis. The only question is whether Fremont "could" have brought an ERISA claim, and Fremont clearly could have done so.

Element 2 of the *Davila* test is met because Fremont is an out-of-network provider who lacks a written contract with Defendants that sets forth an agreed upon rate of payment. Compl. at ¶ 17. Thus, the only legal duties owed to Fremont (if any) flow from the terms of the applicable ERISA plans. Regardless of the labels used and Fremont's attempt at artful pleading, all of Fremont's claims are completely preempted.

# V. LEGAL STANDARD FOR RULE 12(B)(5) MOTION TO DISMISS

Under NRCP 12(b)(5), this Court must dismiss a claim where the plaintiff can "prove no set of facts that would entitle him or her to relief." *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 22, 62 P.3d 720, 734 (2003); *see Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984) (providing that Nevada is a notice-pleading jurisdiction). A claim that fails as a matter of law on the face of the pleading warrants dismissal under NRCP 12(b)(5). *See Harrison v. Roitman*, 131 Nev. Adv. Op. 92, 362 P.3d 1138, 1139 (2015). In evaluating a motion to dismiss for failure to state a claim, the court must accept all factual allegations in the complaint as true, construe the complaint's allegations liberally, and draw all inferences in favor of the plaintiff. *See Simpson v. Mars Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997).

# VI. FREMONT'S CLAIM FOR BREACH OF IMPLIED-IN-FACT CONTRACT SHOULD BE DISMISSED

# A. This Claim is Subject to Conflict Preemption

Courts regularly find this type of implied-in-fact contract claim subject to conflict preemption. See Aetna Life Ins. Co. v. Bayona, 223 F.3d 1030, 1034 (9th Cir. 2000) (internal citation omitted) ("We have held that ERISA preempts common law theories of breach of contract implied in fact, promissory estoppel, estoppel by conduct, fraud and deceit and breach of contract.") (emphasis added); Blau v. Del Monte Corp., 748 F.2d 1348, 1356 (9th Cir. 1984) (breach of implied-in-fact contract claim was conflict preempted) (abrogated on other grounds in Dytrt v. Mountain States Tel. & Tel. Co., 921 F.2d 889, 894, n. 4 (9th Cir. 1990); Parlanti v. MGM Mirage, No. 2:05-CV-1259-ECR-RJJ, 2006 WL 8442532, at \*6 (D. Nev. Feb. 15, 2006) (breach of contract claim was both conflict preempted and completely preempted).

This is supported not only by law, but by common sense. Fremont is attempting to compel thousands of different ERISA-governed plans administered by the Defendants to pay Fremont the same rate—an inflated "usual and customary rate"—without regard to the specific benefit rates established by the terms of each controlling health plan, and without any of the plans ever having agreed to pay anything other than their plan benefit rates. If, for example, a plan expressly provided that it would pay all medical claims at 150% of the benefit rate paid by Medicare, Fremont would ask the Court to apply its implied-in-fact contract logic to compel that plan to instead pay it a higher "usual and customary rate." That is a textbook case of the kind of claim that is conflict preempted. ERISA requires the Defendants to "specify the basis on which payments are made to and from [their plans]" and to administer their plans "in accordance with the documents and instruments governing the plan[s]," 29 U.S.C. § 1102(b)(4); 29 U.S.C. § 1104(a)(1)(D). Fremont's implied-in-fact contract claim "relates to" employee benefit plans and is preempted as it seeks to have this Court conduct a wholesale rewriting of those plans' payment terms. To the extent Fremont is entitled to any additional reimbursement, the amount of that reimbursement depends entirely on the rate of payment that is established by the plan documents.

# B. This Claim is Subject to Complete Preemption

The Davila test for complete preemption is met here as (1) Fremont has standing to bring a statutory § 502(a) ERISA claim due to the assignments of benefits it received from Defendants' plan members and (2) there is no legal obligation owed by Defendants other than those created by the ERISA benefit plans since Fremont is an out-of-network provider. Compl. at ¶ 17. The case law is in accord. Melamed v. Blue Cross of California, 557 F. App'x 659, 661 (9th Cir. 2014) ("Melamed's breach of implied contract claim is completely preempted because through that claim, Melamed seeks reimbursement for benefits that exist "only because of [the defendant's] administration of ERISA-regulated benefit plans."); In Re Managed Care Litig., 298 F. Supp. 2d at 1292 (out-of-network providers' implied-in-fact contract claim was completely

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preempted); Torrent & Ramos, M.D., P.A. v. Neighborhood Health Partnerships, Inc., No. 04-20858-CIV, 2004 WL 7320735, at \*4 (S.D. Fla. July 1, 2004) (same). 15

## C. This Claim Must be Dismissed Under NRCP 12(b)(5)

An implied-in-fact contract exists where the conduct of the parties demonstrates that they (1) intended to contract, (2) exchanged bargained-for promises, and (3) the terms of the bargain are sufficiently clear. Certified Fire Prot. Inc. v. Precision Constr., 128 Nev. 371, 379-80, 283 P.3d 250, 256 (2012); Magnum Opes Const. v. Sanpete Steel Corp., No. 60016, 2013 WL 7158997, at \*2 (Nev. Nov. 1, 2013) (unpublished).

Here, Fremont fails to state a claim as it has not sufficiently alleged any of the above three elements. Nowhere in the Complaint is there an allegation that the Defendants "intended to contract" with Fremont. Nor is there any explanation of what "promises" were exchanged between the Parties and what the terms of those promises were. Reading the Complaint in the light most favorable to Fremont, there is instead an allegation that (1) Fremont provided medical services to members of Defendants' health plans, (2) Fremont requested full reimbursement for these services from Defendants and (3) on some occasions Defendants obliged, and on other occasions Defendants did not. Compl. at ¶¶ 35, 37-40. In essence, Fremont argues that payments for some past services constitute a promise by Defendants to pay for all future services. Id.

The Nevada Supreme Court's decision in *Recrion Corp.* forecloses such a theory. There the Court refused to find an implied-in-fact contract where an employee provided unsolicited

<sup>&</sup>lt;sup>15</sup> Fremont may argue in response that the Nevada Federal District Court found that complete preemption does not apply to Fremont's Breach of Implied-in-Fact Contract claim in its February 20, 2020 order remanding this case to state court. However, the federal court erroneously relied on an inapplicable distinction between claims involving the "right to payment" vs. the "amount of payment." Remand Order at 4:24-28. Further, the federal court's remand order relies heavily on the "strong presumption against removal [to federal court]." Id. at 3:5-8. Here, unlike in the federal court proceeding, there is no presumption against complete preemption applying to Fremont's claims. Further, this Court is not required to defer to the federal court's reasoning as all orders made by the federal court are now void since it found that it lacked jurisdiction all along. See e.g., NCS Healthcare of Arkansas, Inc. v. W.P. Malone, Inc., 350 Ark. 520, 526, 88 S.W.3d 852, 856 (2002) ("[A]fter remand from federal court, a case stands as if it had never been removed from state court, and what happened in federal court has no bearing on the proceeding in state court.").

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services to a hotel prior to having a discussion about compensation. The Court noted that its ruling would have been the same even if, after the services were provided, the hotel had promised the employee compensation. The Court held that "[plast consideration is the legal equivalent to no consideration" and that services cannot be subject to an implied-in-fact contract unless the contract was created "before" the services were provided. Smith v. Recrion Corp., 91 Nev. 666, 669, 541 P.2d 663, 665 (1975) (emphasis added).

Here, just like in Recrion Corp, Fremont is attempting to force the Defendants to compensate it for unsolicited<sup>16</sup> services that were provided without any contract in place. Further, Fremont relies only on the past consideration of prior payments to create the alleged implied-in-fact contract—a theory that *Recrion Corp* expressly disapproved. Thus, Fremont has failed to state a claim for implied-in-fact contract and this claim should be dismissed.

Alternatively, if Fremont is attempting to rely on a state or federal statute to create the implied-in-fact contract, this theory also fails. The Complaint cites to the Emergency Medical ? Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd, and NRS 439B.410. Compl. § at ¶¶ 15, 33. However, these statutes only relate to requirements that hospitals provide emergency services to patients regardless of the patients' ability to pay. They do not require payment by insurers to out-of-network providers, or say anything about a required rate of payment. Thus, Fremont has failed to state a claim for implied-in-fact contract and this claim should be dismissed.

# VII. COVENANT OF GOOD FAITH AND FAIR DEALING SHOULD BE DISMISSED

## A. This Claim is Subject to Conflict Preemption

Tortious breach claims are subject to conflict preemption. Pilot Life Ins. Co. 481 U.S. at 48-49 (claim for tortious breach of contract and the Mississippi law of bad faith were conflict preempted); Bayona, 223 F.3d at 1034 ("Here, Castro asserted counterclaims for breach of

<sup>&</sup>lt;sup>16</sup> The Complaint does not allege that the Defendants did anything to solicit or induce Fremont to provide emergency medical services to their plan members.

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contract, tortious breach of the covenant of good faith and fair dealing, and fraud-all were based on common law and state causes of action, and all were preempted.") (emphasis added) (internal citation omitted); Thrall v. Prudential Insurance Company of America, 2005 WL 8161321, at \*2 (D. Nev. Aug. 11, 2005) (finding claim for breach of duty of good faith and fair dealing preempted under ERISA). In Pilot Life, the U.S. Supreme Court found that (1) such a claim is subject to conflict preemption under ERISA's "relates to" preemption clause and (2) a state's tortious breach common law does not seek to "regulate insurance" and thus does not fall within ERISA's saving clause. Pilot Life, 481 U.S. at 48-49. There is no reason for this Court to deviate from the reasoning in that case.

#### B. This Claim is Subject to Complete Preemption

Like Fremont's other state law claims, this claim seeks to recover money for medical services provided to members of employee benefit plans governed by ERISA. Compl. at ¶¶ 24-26. Thus, reference to the plan is required to determine both coverage and the amount of \( \square\$ This claim also attempts to "duplicate" or "supplement" the ERISA civil 8 enforcement mechanism by seeking punitive damages against a plan administrator. Compl. at ¶ 55 and p. 16:12-13. Such claims are completely preempted. Estate of Burgard v. Bank of America, N.A., 2017 WL 1273869 (D. Nev. March 31, 2017) ("[I]t is well established that breach of contract claims—whether contractual or tortious—fall within section 502(a)."); see also Bast v. Prudential Ins. Co. of Am., 150 F.3d 1003, 1009 (9th Cir. 1998) ("Extracontractual, compensatory and punitive damages are not available under ERISA.") (limitation on other grounds recognized in A.F. v. Providence Health Plan, 157 F. Supp. 3d 899, 916 (D. Or. 2016); Elliot v. Fortis Benefits Ins. Co., 337 F.3d 1138, 1146-47 (9th Cir. 2003) ("claim processing causes of action" which seek state law damages are "clearly" preempted under 29 U.S.C. § 1132(a)(1)(B) of ERISA).

#### This Claim Must be Dismissed Under NRCP 12(b)(5) C.

The implied covenant of good faith and fair dealing only arises if a valid contract exists between Fremont and Defendants. A.C. Shaw Const., Inc. v. Washoe Cty., 105 Nev. 913, 914, 784 P.2d 9, 10 (1989). Thus, as an initial matter, if the Court agrees that Fremont has failed to

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allege an enforceable implied-in-fact contract it should end its analysis there and dismiss this claim.

In the alternative, even assuming that an implied-in-fact contract exists, this claim still fails. Nevada has only recognized this cause of action in two discrete circumstances—(1) a suit by an insured against its insurer where an insurer acts in bad faith in denying coverage and (2) bad faith wrongful discharge by an employer where the employee has a special relationship of trust, reliance and dependency with the employer. U.S. Fid. & Guar. Co. v. Peterson, 91 Nev. 617, 620, 540 P.2d 1070, 1071 (1975) (recognizing bad faith tort in insurance context); D'Angelo v. Gardner, 107 Nev. 704, 717, 819 P.2d 206, 215 (1991) (recognizing bad faith tort in employment context).

Critically, the Nevada Supreme Court has refused to expand this tort to contracts between sophisticated parties in the commercial realm. Aluevich v. Harrah's, 99 Nev. 215, 216, 660 P.2d 986, 986 (1983) (holding that claim for tortious breach of the implied covenant does not extend to commercial leases between two sophisticated parties). The tort is only meant for situations where there is a "special relationship" between the parties, such as in the insuredinsurer or employer-employee context. *Id.* 

Here, while Fremont has alleged that there was "[a] special element of reliance or trust between Fremont and the [Defendants]," this is an entirely conclusory allegation, Compl. at ¶ 50, which is not entitled to the assumption of truth typical of more specific allegations. Nor does the Complaint contain any other allegations explaining why there would be a "special relationship" between two sophisticated parties (Fremont and Defendants) who do not even have an express written contractual relationship. See Compl. at ¶ 17 (admitting no written agreement exists); see also Compl. at ¶¶ 2, 14 (admitting that Fremont is a sophisticated "professional practice group of emergency medicine physicians" that runs major emergency rooms across the Las Vegas

<sup>&</sup>lt;sup>17</sup> In addition, there is no reason to predict that the Nevada Supreme Court will expand the tort to the commercial realm anytime soon. The vast majority of jurisdictions have refused to do so. Tort Remedies for Breach of Contract: The Expansion of Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing into the Commercial Realm, 86 COLUM. L. REV. 377, 390 (1986) ("Most jurisdictions have refused to apply the bad faith tort to the commercial context, limiting the tort to its application in the insurance context.").

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Moreover, as explained above, even if Fremont had made more specific allegations to support this claim, it would still be subject to dismissal, as the Nevada Supreme Court has found as a matter of law that this tort does not apply to commercial contracts. Aluevich, 99 Nev. at 216, 660 P.2d at 986. Thus, Fremont has failed to state a plausible claim for tortious breach and this claim should be dismissed.

# VIII. FREMONT'S CLAIM FOR UNJUST ENRICHMENT SHOULD BE DISMISSED

#### A. This Claim is Subject to Conflict Preemption

Fremont's unjust enrichment claim "relates to" employee benefit plans governed by ERISA because to determine the appropriate benefit rate, the Court would need to refer to the rate of payment terms in the plans at issue. Notably, Fremont's allegations supporting its unjust enrichment claim specifically reference health plans. Compl. at ¶ 61. Courts regularly find such claims to be preempted. Alcalde v. Blue Cross & Blue Shield of Fla., Inc., 62 F. Supp. 3d 1360. 1365 (S.D. Fla. 2014) (medical provider's unjust enrichment claim against plan found to be conflict preempted); Lab. Physicians, P.A. v. AvMed, Inc., No. 8:08-CV-1726-T-26EAJ, 2009 WL 2486328, at \*2 (M.D. Fla. Aug. 10, 2009) (same). ERISA requires that plans be administered "in accordance with the documents and instruments governing the plan[s]," 29 U.S.C. § 1104(a)(1)(D), yet Fremont seeks to use this claim to recover a different amount than it would be owed pursuant to the each plans' rate of payment terms for out-of-network providers. Thus, this claim clearly conflicts with ERISA and is preempted. Moreover, Nevada law on unjust enrichment would not fall within the ERISA saving clause as it is a law of general applicability that is not specifically aimed at regulating insurance companies.

#### В. This Claim is Subject to Complete Preemption

Courts have specifically held that a plaintiff-providers' unjust enrichment claims seeking to require health plans to pay amounts in excess of plan terms are subject to complete preemption. Torrent & Ramos, M.D., P.A., 2004 WL 7320735, at \*4 (out-of-network providers' unjust enrichment claim was completely preempted); Hill v. Opus Corp., 841 F. Supp. 2d 1070, 1086 (C.D. Cal. 2011) (unjust enrichment claim was subject to ERISA preemption); Lodi Mem'l

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Hosp. Ass'n v. Tiger Lines, LLC, No. 2:15-CV-00319-MCE, 2015 WL 5009093, at \*8 (E.D. Cal. Aug. 20, 2015) (quantum meruit claim was subject to ERISA preemption); Hill Country Emergency Medical Associates, P.A., et al. v. United HealthCare Insurance Company, et al., Civil Action No. 19-cv-00548-RP, Dkt. No. 18 (W.D. Tex. Dec. 10, 2019) (medical providers' quantum meruit claim held to be completely preempted). 18

## C. This Claim Must be Dismissed Under NRCP 12(b)(5)

"Unjust enrichment exists when the plaintiff [1] confers a benefit on the defendant, [2] the defendant appreciates such benefit, and there is [3] acceptance and retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof." Certified Fire Prot. Inc. v. Precision Constr., 128 Nev. 371, 381, 283 P.3d 250, 257 (2012). "[A] pleading of quantum meruit for unjust enrichment does not discharge the plaintiff's obligation to demonstrate that the defendant received a benefit from services provided." Id.

Here, Fremont's claim fails as courts around the country routinely hold that providing medical services to a participant or beneficiary of a health plan does not benefit the insurer/administrator. Rather, courts have found that the medical provider is providing a benefit only to the patient (i.e. the insured/plan member). See Peacock Med. Lab, LLC v. UnitedHealth Grp., Inc., No. 14-81271-CV, 2015 WL 2198470, at \*5 (S.D. Fla. May 11, 2015) ("a healthcare provider who provides services to an insured does not benefit the insurer."); Adventist Health Sys./Sunbelt Inc. v. Med. Sav. Ins. Co., No. 6:03-CV-1121-ORL-19, 2004 WL 6225293, at \*6 (M.D. Fla. Mar. 8, 2004) ("as a matter of commonsense, the benefits of healthcare treatment flow to patients, not insurance companies"); Encompass Office Solutions, Inc. v. Ingenix, Inc., 775 F.Supp.2d 938, 966 n. 11 (E.D. Tex. 2011) (dismissing quantum meruit claim because benefit of medical treatment flowed only to insured, not insurer); Electrostim Med. Servs., Inc. v. Health Care Serv. Corp., 962 F. Supp. 2d 887, 898-99 (S.D. Tex. 2013) (same) (reversed in part

A copy of the Hill Country order, which was against TeamHealth affiliated medical providers, is attached hereto as Exhibit 7.

on other grounds in, 614 F. App'x 731 (5th Cir. 2015); Travelers Indem. Co. of Connecticut v. Losco Grp., Inc., 150 F. Supp. 2d 556, 563 (S.D.N.Y. 2001) ("It is counterintuitive to say that services provided to an insured are also provided to its insurer. The insurance company derives no benefit from those services; indeed, what the insurer gets is a ripened obligation to pay money to the insured—which hardly can be called a benefit."); Joseph M. Still Burn Ctrs., Inc. v. AmFed Nat'l Ins. Co., 702 F.Supp.2d 1371, 1377 (S.D. Ga. 2010) (dismissing quantum meruit causes of action because the medical provider provided services to a patient, not the insurer, "and no cognizable, let alone measurable, benefit or value to [the insurer was] identified by [the provider]"); Sinai Med. Ctr. v. Mid-West Nat. Life Ins. Co. of Tenn., 118 F.Supp.2d 1002, 1013 (C.D.Cal. 2000) (stating that a medical provider's claim for quantum meruit lacked merit because it did not treat the patient at the insurance company's request).

Since the only benefit that Fremont alleges it conferred on the Defendants is the medical treatment the Defendants' plan members, this claim fails as a matter of law and should be dismissed. See Compl. at ¶ 62.

# IX. FREMONT'S CLAIM FOR VIOLATION OF NRS 686A.020 AND 686A.310 SHOULD BE DISMISSED

# A. This Claim is Subject to Conflict Preemption

The Nevada Supreme Court has found that claims under the Nevada Unfair Trade Practices Act are preempted by ERISA. *Villescas v. CNA Ins. Companies*, 109 Nev. 1075, 1084, 864 P.2d 288, 294 (1993) ("We add Nevada's voice to the growing body of case law holding state unfair insurance practice claims to be preempted by ERISA and conclude that Chapter 686A of the Nevada Insurance Code is preempted by ERISA when applied to a valid ERISA plan."); *see also Thrall*, 2005 WL 8161321, at \*2 (claim for violation of Nevada Unfair Claim Practices was preempted). The *Villescas* decision is directly on point and found not only that claims such as Fremont's "relate to" an ERISA plan, but also that these claims do not fall within the ERISA saving clause. *Villescas*, 109 Nev. at 1083, 864 P.2d at 294. So, too, here. At bottom, Fremont's claim under the Nevada Unfair Trade Practices Act is conflict preempted, as it relates to the processing of claims under ERISA-governed plans.

# B. This Claim is Subject to Complete Preemption

Based on the Nevada Supreme Court's decision in *Villescas*, this claim is also subject to complete preemption under the *Davila* test. Fremont has standing to bring a statutory ERISA claim against Defendants due to the assignments of benefits it received, and Defendants do not owe any duty to Fremont independent of the ERISA plans at issue.

# C. This Claim Must be Dismissed Under NRCP 12(b)(5)

Fremont asserts that the Defendants violated the Nevada Unfair Insurance Practices Act by not paying more on Fremont's claims. Fremont specifically cites to NRS 686A.310(1)(e), which prohibits "[f]ailing to effectuate prompt, fair and equitable settlements of claims in which liability of the insurer has become reasonably clear." Compl. ¶ 70.

Fremont's claim fails as a matter of law because the Act only gives a private right of action to "insureds," not to third party claimants like Fremont. NRS 686A.310(2) ("In addition to any rights or remedies available to the Commissioner, an insurer is liable to its <u>insured</u> for any damages sustained by the <u>insured</u> as a result of the commission of any act set forth in subsection 1 as an unfair practice.") (emphasis added) In fact, The Nevada Supreme Court has specifically held on multiple occasions that the Act does not create a private right of action against insurers in favor of third party claimants like Fremont. *Gunny v. Allstate Ins. Co.*, 108 Nev. 344, 346, 830 P.2d 1335, 1336 (1992) ("we conclude that [plaintiff] has no private right of action as a third-party claimant under NRS 686A.310."). The Court recently reaffirmed *Gunny's* central holding, stating as follows:

NRS 686A,310(1)(e) provides that it is an unfair practice to '[f]ail[] to effectuate prompt, fair and equitable settlements of claims in which liability of the insurer has become reasonably clear.' NRS 686A.310 expressly grants insureds a private right of action against insurance companies engaged in this unfair practice. This statute, however, does not provide a private right of action to third-party claimants.

Fulbrook v. Allstate Ins. Co., No. 61567, 2015 WL 439598, at \*4 (Nev. Jan. 30, 2015) (citing to Gunny) (emphasis added) (unpublished). Case law out of the Nevada federal district court is in accord. See Tweet v. Webster, 614 F. Supp. 1190, 1195 (D. Nev. 1985) ("we do not find any facts or evidence presented by plaintiffs to persuade us that a Nevada court would grant a third

party claimant a cause of action directly against an insurer for bad faith refusal to settle a reasonably clear claim, based on statute, implied contract, or common law tort, under Nevada law as it stands today."); Crystal Bay Gen. Imp. Dist. v. Aetna Cas. & Sur. Co., 713 F. Supp. 1371, 1376 (D. Nev. 1989) ("We have no reason to disagree with [the] conclusion that the Act created no private right of action in favor of third party claimants against the insurer.").

Here, Fremont is undisputedly a third party medical provider who provided medical services to participants of plans administered by Defendants. Fremont is not an "insured" but rather a "third party claimant" with no contractual relationship with Defendants. Therefore, this claim should be dismissed, as Fremont lacks standing to bring it.

# X. FREMONT'S CLAIM FOR VIOLATIONS OF NEVADA'S PROMPT PAY STATUTES AND REGULATIONS SHOULD BE DISMISSED

# A. This Claim is Subject to Conflict Preemption

Plaintiff alleges that Defendants violated the Nevada prompt pay statutes, including NRS 683A.0879, NRS 689A.410, NRS 689B.255, NRS 689C.485, NRS 695C.185, and NAC 686A.675, by failing to reimburse Fremont within 30 days of Fremont's requests for payment. Compl. at ¶ 78. As a remedy for this alleged violation, Fremont seeks to recover Nevada statutory penalties. *Id.* at ¶¶ 78, 81.

Plaintiffs' prompt pay claim unquestionably "has a connection with or reference to" an ERISA plan, as the claim is based on Defendants' alleged failure to cause the plans at issue to "pay Fremont the usual and customary rate within 30 days of receipt of the claim." *Id.*. at ¶ 77. To determine whether the challenged plan benefit payments violated the statute, the Court would have to reference the ERISA plans at issue to determine whether or not Defendants complied with the rate of payment terms for out-of-network providers. Further, this claim conflicts with the aforementioned ERISA requirement that Defendants comply with plan's payment terms (29 U.S.C. § 1102(b)(4) and 29 U.S.C. § 1104(a)(1)(D)) by seeking to have the Court superimpose a "usual and customary rate" term into each plan. Thus, this claim should be dismissed as conflict preempted. *See e.g.*, *N. Jersey Brain & Spine Ctr. v. CIGNA Healthcare of NJ, Inc.*, No. CV 09-2630 (JAG), 2010 WL 11594901, at \*6 (D.N.J. Jan. 12, 2010) (out-of-network providers' New

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Jersey prompt pay statute claims found to be conflict preempted); Am.'s Health Ins. Plans v. Hudgens, 915 F. Supp. 2d 1340, 1359-60 (N.D. Ga. 2012) (Georgia prompt pay statute found to be conflict preempted since it "interfere[d] with nationally uniform administration of ERISA plans.").

#### B. This Claim is Subject to Complete Preemption

This claim is completely preempted for several reasons. First, ERISA already provides a remedy for a plan administrator's failure to promptly pay claims. A plan participant or beneficiary may seek an injunction to force immediate payment. 29 U.S.C. § 1132(a)(1)(B) (action can be brought to "enforce his rights under the terms of the plan"); Pryzbowski v. U.S. Healthcare, Inc., 245 F.3d 266, 272 (3d Cir. 2001) (claims related to delay in processing claims were completely preempted, as a plan participant or beneficiary can accelerate the plan's approval of a claim by seeking an injunction under 29 U.S.C. § 1132(a)(1)(B) to enforce the benefits to which they are entitled.). Nevada's prompt pay statute seeks to supplement this remedy and is thus completely preempted.

Second, courts have repeatedly found similar state "prompt pay" statutes preempted, unless the claim for payment specifically arises from an independent agreement between the provider and plan. Compare Schoedinger v. United Healthcare of Midwest, Inc., 557 F.3d 872, 875-76 (8th Cir. 2009) (finding provider's claim, pursuant to an assignment of benefits from participant, for interest under Missouri prompt pay statute pre-empted by ERISA); Productive MD, LLC v. Aetna Health, Inc., 969 F.Supp.2d 901, 938 (M.D. Tenn. 2013) (finding Tennessee Prompt Pay Act claim pre-empted because provider brought it as assignee of plan participant) with In re Managed Care Litig., 298 F.Supp.2d 1259, 1294 (S.D. Fla. 2003) (finding no preemption of providers' prompt pay claims arising from "a separate relationship between the provider and plan administrator," rather than an assignment from plan participants). See also America's Health Ins. Plans v. Hudgens, 742 F.3d 1319 (11th Cir. 2014) (Georgia's prompt-pay provision was preempted as applied to self-funded ERISA plans because the provision interfered with uniform administration of benefits.); Zipperer v. Premera Blue Cross Blue Shield of Alaska, 2016 WL 4411490 (D. Alaska, August 16, 2016) (Alaska prompt pay statute was preempted);

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Houston Methodist Hosp. v. Humana Ins. Co., 266 F. Supp. 3d 939 (S.D. Tex. 2017) (Texas Prompt Payment of Physicians and Providers Act was preempted); OSF Healthcare Sys. v. Contech Constr. Prod. Inc. Group Comprehensive Health Care, No. 1:13-CV-01554-SLDJEH, 2014 WL 4724394, at \*7 (C.D. Ill. Sept. 23, 2014) (Illinois prompt-pay statute preempted by ERISA as having an "impermissible connection to an ERISA plan."). There is no significant distinction between Nevada's prompt pay statute and those of other states that have been found to be preempted. These statutes seek to regulate the processing of claims under employee benefit plans, which infringes on the field occupied by ERISA. The Court should adopt the above courts' reasoning and find that Nevada's prompt pay statute is preempted as well.

Third, Fremont's claim is also preempted because it seeks to recover Nevada statutory penalties which are not available under ERISA. See e.g., Elliot, 337 F.3d at 1147 (holding claim processing causes of action under state law which seek non-ERISA damages are preempted by ERISA).

#### XI. FREMONT'S CLAIM FOR VIOLATIONS OF NEVADA'S CONSUMER FRAUD & DECEPTIVE TRADE PRACTICES ACTS SHOULD BE DISMISSED

#### A. This Claim is Subject to Conflict Preemption

Through this claim, Fremont seeks to hold Defendants liable for making false representations and engaging in coercion, duress or intimidation in relation to Defendants' processing of claims on employee benefit plans. Compl. at ¶¶ 85, 87. As part of this claim, Fremont alleges that Defendants are refusing to pay for "covered emergency services." *Id.* at ¶ 87. This claim is conflict preempted because (1) the Court would need to reference the ERISA plans at issue to determine whether the services Fremont provided were in fact "covered," as well as whether any misrepresentations were made regarding the plan payment terms, and (2) the state law Fremont relies on impermissibly "relates to" the processing of claims under an employee benefit plan. There is no reason for this Court to deviate from other courts' decisions on this issue. Pachuta v. Unumprovident Corp., 242 F. Supp. 2d 752, 764 (D. Hawaii, March 19, 2002) (holding that plaintiff's Hawaii Deceptive Trade Practices Act claim "related to" an ERISA plan and did not fall within the ERISA saving clause) ("Plaintiff's breach of contract and

unfair and deceptive trade practices [claims] are obviously preempted under ERISA . . . . Plaintiff's claim for deceptive trade practices is a statutory cause of action that by its very terms is not specifically directed at insurance companies."); *Pilot Life Ins. Co.*, 481 U.S. at 57 (finding fraud claims based on the improper processing of a benefits claim were conflict preempted); *Davidian v. S. Cal. Meat Cutters Union*, 859 F.2d 134, 135 (9th Cir. 1988) (claims against an ERISA plan for bad faith, fraud, deceit and breach of fiduciary duty were conflict preempted); *Olson v. General Dynamics Corp.*, 960 F.2d 1418, 1422–23 (9th Cir. 1991) (claim challenging oral misrepresentation regarding the level of benefits provided by a plan is conflict preempted).

### B. This Claim is Subject to Complete Preemption

This claim is completely preempted because, as discussed previously, the *Davila* test is met. Fremont could have brought its challenge to the payment amounts that it received through a statutory ERISA claim pursuant to the assignments of benefits it received from Defendants' plan members. Defendants do not owe any independent legal obligation to Fremont beyond that set forth in the ERISA plan documents since Fremont is an out-of-network provider.

Moreover, this claim seeks punitive treble damages and a disgorgement of profits against Defendants. Compl. at ¶ 89. All claims seeking such damages against an ERISA plan administrator are completely preempted. *Davila*, 542 U.S. at 209 ("any state-law cause of action that duplicates, supplements, or supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore pre-empted."); *Bast*, 150 F.3d at 1009 ("Extracontractual, compensatory and punitive damages are not available under ERISA."); *Elliot*, 337 F.3d at 1146-47 ("claim processing causes of action" which seek state law damages are "clearly" preempted under 29 U.S.C. § 1132(a)(1)(B) of ERISA).

### C. This Claim Must be Dismissed Under NRCP 12(b)(5)

### 1. Fremont Has Failed to Plead this Claim with Particularity

When a claim sounds in fraud, it must be pled with particularity. See Nev. R. Civ. P. 9(b) ("In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake."). The Nevada Supreme Court has held that a claim for violation of the Nevada Deceptive Trade Practices Act sounds in fraud and thus is subject to the pleading

requirements of Nev. R. Civ. P. 9(b). *Davenport v. Homecomings Fin.*, LLC, No. 56322, 2014 WL 1318964, at \*3 (Nev. Mar. 31, 2014); *see also Sommers v. Cuddy*, No. 2:08-CV-78-RCJ-RJJ, 2012 WL 359339, at \*4 (D. Nev. Feb. 2, 2012) ("a plaintiff must plead a deceptive trade practices claim with Rule 9(b) particularity.").

To plead a fraud claim with particularity under Rule 9(b), "[t]he circumstances that must be detailed include averments to the time, the place, the identity of the parties involved, and the nature of the fraud or mistake." *Brown v. Kellar*, 97 Nev. 582, 583–84, 636 P.2d 874, 874 (1981). The "allegations of fraud must be specific enough to give defendants notice of the particular misconduct which is alleged to constitute the fraud charged so that they can defend against the charge and not just deny that they have done anything wrong." *Swartz v. KPMG LLP*, 476 F.3d 756, 764 (9th Cir. 2007) (internal citation omitted). <sup>19</sup>

For a fraud claim against multiple defendants, "Rule 9(b) does not allow a complaint to merely lump multiple defendants together but requires plaintiffs to differentiate their allegations when suing more than one defendant . . . and inform each defendant separately of the allegations surrounding his alleged participation in the fraud. In the context of a fraud suit involving multiple defendants, a plaintiff must, at a minimum, identify the role of each defendant in the alleged fraudulent scheme." *Id.* at 764-765 (internal quotations and citations omitted).

Here, Fremont's fraud allegations are formulaic, conclusory and entirely inadequate. *See* Compl. at ¶¶ 84-90. Fremont has not set forth the time, place, or specific content of *any* false representations by the Defendants. Fremont has also failed to allege the identity of a single individual employed by Defendants who made a false representation, broke a state or federal law or engaged in coercion, duress or intimidation. Fremont then compounds this error by doing exactly what the Nevada Supreme Court has prohibited—lumping all the Defendants in this case together and failing to identify the role each Defendant played in the alleged fraudulent scheme. *Id.* (referring only to the "UH Parties" generally in each allegation). For all these reasons,

<sup>&</sup>lt;sup>19</sup> Federal case law on this issue is strong persuasive authority as Fed. R. Civ. P. 9(b) is identical to Nev. R. Civ. P. 9(b).

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Fremont has not pled this claim with particularity and it should be dismissed.

#### 2. Fremont is Not "Victim" Within the Meaning of NRS 41.600 and Thus Lacks Standing to Bring a Claim

An action under the Nevada Deceptive Trade Practices Act may be brought by any person who is a "victim" of consumer fraud. NRS 41.600(1). The term "victim" in section 41.600 is not defined, and the Nevada Supreme Court has not yet offered a definition. Nonetheless, the Nevada Supreme Court has defined "victim" as that term is used in NRS 176.033(c), which authorizes restitution for a crime victim.

The court addressed the issue in *Igbinovia v. State*, 111 Nev. 699, 895 P.2d 1304 (1995), where it held that the Las Vegas Metropolitan Police Department was not a "victim" that could receive restitution for money used to purchase illegal drugs in a sting operation. *Id.* at 706, 895 at 1308. While noting the term was undefined, the court found that "the word 'victim' has commonly-understood notions of passivity, where the harm or loss suffered is generally unexpected and occurs without the voluntary participation of the person suffering the harm or loss." Id.

At least two Nevada federal district court decisions have found that it is appropriate to use the definition of "victim" proposed by the Igbinovia decision when determining whether a claimant has standing to bring a claim under the Nevada Deceptive Trade Practices Act. Winnemucca Farms, Inc. v. Eckersell, No. 3:05-CV-385-RAM, 2010 WL 1416881, at \*7 (D. Nev. Mar. 31, 2010); Weaver v. Aetna Life Ins. Co., No. 308-CV-00037-LRH-VPC, 2008 WL 4833035, at \*5 (D. Nev. Nov. 4, 2008). Further, in a pre-Igbinovia decision, a Nevada federal district court found that business competitors are not "victims" within the meaning of NRS 41.600 and thus lack standing to sue under the Act (i.e. again accepting the distinction between passive and active involvement in a scheme). Rebel Oil Co. v. Atl. Richfield Co., 828 F. Supp. 794, 797 (D. Nev. 1991). Thus, significant persuasive authority exists indicating that, if forced to address the issue, the Nevada Supreme Court would adopt the definition of "victim" set forth in Igbinovia and only confer standing on individuals who were "passive" victims of a deceptive trade practice and did not "voluntarily" participate in the scheme that caused them harm.

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Here, Fremont's claim fails as it admits in the Complaint that it is not a passive victim of Defendants' alleged scheme, but rather was an active and knowing participant in the events in dispute. Fremont admits that it entered into contract negotiations with Defendants beginning in 2017, that Defendants fully informed Fremont during those negotiations of the rates it should expect to be paid for all future services rendered, and that Fremont nonetheless thereafter willingly provided medical services to the Defendants' members. Compl. at ¶¶ 18-19, 25-26, 87. As such, Fremont does not qualify as a passive "victim" under NRS 41.600 and lacks standing to bring this claim.

#### XII. FREMONT'S CLAIM FOR DECLARATORY JUDGMENT SHOULD BE DISMISSED

### This Claim is Subject to Conflict Preemption

Fremont's declaratory judgment claim seeks a judicial declaration requiring Defendants to cause the plans they administer to pay Fremont amounts of reimbursement set without regard to the terms of the plans. Compl. at ¶ 98-99. But it would be impossible for this Court to \$\P\$ determine the correct amount of reimbursement, if any, for Fremont's medical services without referring to and interpreting the terms and conditions of the members' ERISA plans. At bottom, the relief sought by Fremont—a declaration that it is entitled to receive the "usual and customary rate" for its services—would require this Court to alter or rewrite the ERISA plans altogether. This Court simply cannot issue the declaratory relief sought by Fremont without consulting the language in the ERISA plans. Therefore, Fremont's claim for declaratory judgment is preempted because it "relates to" these ERISA plans. See, e.g., Brandner v. UNUM Life Ins. Co. of Am., 152 F. Supp. 2d 1219, 1225 (D. Nev. 2001) (declaratory relief claim related to an ERISA plan, did not fall within ERISA saving clause and was preempted); Bland v. Fiatallis N. Am., Inc., No. 02 C 0069, 2003 WL 1895429, at \*2 (N.D. III. Apr. 15, 2003) (stating "ERISA preempts state claims for declaratory relief that relate to an ERISA benefits plan").

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#### В. This Claim is Subject to Complete Preemption

ERISA's civil enforcement statute specifically authorizes actions for declaratory judgment, providing that a plan participant or beneficiary can bring a civil action to "clarify any of his rights to future benefits." 29 U.S.C. § 1132(a)(1)(B); see also Franchise Tax Board of California v. Construction Laborers Vacation Trust for S. California, 463 U.S. 1, 27 n.31 (1983) ("ERISA has been interpreted as creating a cause of action for a declaratory judgment"). Fremont seeks a declaratory judgment under state law regarding the correct amount of reimbursement for the medical services that it performed on Defendants' members. Compl. at ¶¶ 98-99. Such a claim clearly duplicates the relief provided by 29 U.S.C. § 1132(a)(1)(B) of ERISA and therefore is completely preempted. Davila, 542 U.S. at 209 ("any state-law cause of action that duplicates, supplements, or supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore preempted.").

#### XIII. CONCLUSION

For all the above reasons, Defendants request that this Court dismiss Fremont's state law claims with prejudice, but give Fremont leave to attempt to plead a statutory claim under 29 U.S.C. § 1132(a)(1)(B) of ERISA.

Dated this 12th day of March, 2020.

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Attorneys for 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.

### **CERTIFICATE OF SERVICE**

I hereby certify that on the 12th day of March, 2020, a true and correct copy of the foregoing **DEFENDANTS' MOTION TO DISMISS** 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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An employee of WEINBERG, WHEELER, HUDGINS GUNN & DIAL, LLC

# **EXHIBIT 1**

# **EXHIBIT 1**

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	Insurance Company, United HealthCare Services, Inc
10	UMR, Inc., Oxford Health Plans, Inc.,
11	Sierra Health and Life Insurance Co., Inc.,
11	Sierra Health-Care Options, Inc., and
12	Health Plan of Nevada, Inc.
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### UNITED STATES DISTRICT COURT

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

Case No.: 2:19-cv-00832

DECLARATION OF JANE STALINSKI IN SUPPORT OF DEFENDANTS' OPPOSITION TO MOTION TO REMAND

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I, Jane Stalinski, declare under penalty of perjury as follows:

- I am an adult resident of Cuyahoga County in the state of Ohio, over 18 years of age, and I have personal knowledge of the matters set forth herein, except as stated upon information and belief, which matters I believe to be true.
- I am a Legal Service Specialist for UnitedHealthcare Insurance Company ("UHIC") and its affiliates.
- 3. I submit this declaration in support of Defendants' Opposition to Fremont's Motion to Remand.
- In the Complaint, Fremont Emergency Services (Mandavia), Ltd. ("Fremont") alleges that it provided medical treatment to Defendants UnitedHealthcare Insurance Company's ("UHIC"), United HealthCare Services, Inc.'s ("UHS"), and UMR, Inc.'s ("UMR") plan members from July 2017 to present and that Defendants failed to adequately reimburse Fremont for the medical services it provided. See e.g., Complaint at 9 24-25.
- 5. Based on the allegations in the Complaint, I have conducted an investigation of the claims/requests for payment ("claims") that Fremont has submitted to UHIC, UHS and UMR. The results of this investigation are summarized below.
- б. My understanding is that The Employee Retirement Income Security Act ("ERISA") defines an "employee welfare benefit plan" (hereinafter "employee benefit plan") as follows:

any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or 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, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

In regard to the thousands of claims that Fremont sent to Defendants UHIC, UHS, 7.

29 U.S.C. § 1002.

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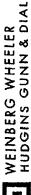
Page 2 of 3

and UMR during the time period of July 2017 to present, all but one of the claims were made against employee benefit plans. Further, for all of Fremont's claims against UHIC, UHS, and UMR, the claim submission data indicates that Fremont received an assignment of benefits from the patient/plan member/insured and/or other authorized person.

- 8. In addition, I have reviewed the nature of the claims Fremont has asserted against UHIC, UHS and UMR and determined that some of the claims were denied in full and no partial payment was issued.
- I declare under penalty of perjury under the laws of the State of Nevada and the
   United States that the foregoing is true and correct.

DATED this 20th day of June, 2019.





# **EXHIBIT 2**

# **EXHIBIT 2**

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1 D. Lee Roberts, Jr., Esq. Nevada Bar No. 8877 lroberts@wwhgd.com Colby L. Balkenbush, Esq. Nevada Bar No. 13066 cbalkenbush@wwhgd.com Josephine E. Groh, Esq. Nevada Bar No. 14209 5 igroh@wwhgd.com WEINBERG, WHEELER, HUDGINS, 6 GUNN & DIAL, LLC 6385 South Rainbow Blvd., Suite 400 7 Las Vegas, Nevada 89118 Telephone: (702) 938-3838 8 Facsimile: (702) 938-3864 Attorneys for Defendants UnitedHealthcare Insurance Company, United HealthCare Services, Inc., 10 UMR, Inc., Oxford Health Plans, Inc., Sierra Health and Life Insurance Co., Inc., 11 Sierra Health-Care Options, Inc., and Health Plan of Nevada, Inc. 12

#### UNITED STATES DISTRICT COURT

#### DISTRICT OF NEVADA

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

D1 1 .100

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.

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26 27 IN SUPPORT OF OPPOSITION TO MOTION TO REMAND

**DECLARATION OF MARYANN BRITTO** 

Case No.: 2:19-cv-00832

Page 1 of 3

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I, Maryann Britto, declare under penalty of perjury as follows:

- I am an adult resident of Fairfield County, Connecticut, over 18 years of age, and I have personal knowledge of the matters set forth herein, except as stated upon information and belief, which matters I believe to be true.
  - 2. I am a Legal Case Information Analyst for United Healthcare Services, Inc.
- 3. I submit this declaration in support of Defendants' Opposition to Fremont's Motion to Remand.
- In the Complaint, Fremont Emergency Services (Mandavia), Ltd. ("Fremont") alleges that it provided medical treatment to Defendant Oxford Health Plans, Inc.'s ("Oxford") plan members from July 2017 to present and that Oxford failed to adequately reimburse Fremont for the medical services it provided. See e.g., Complaint at ¶ 24-25.
- Based on the allegations in the Complaint, I have conducted an investigation of the claims/requests for payment ("claims") that Fremont has submitted to Oxford. The results of this investigation are summarized below.
- My understanding is that The Employee Retirement Income Security Act ("ERISA") defines an "employee welfare benefit plan" (hereinafter "employee benefit plan") as follows:

any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or 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, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

29 U.S.C. § 1002.

7. In regard to the claims that Fremont sent to Defendant Oxford during the time period of July 2017 to present, all of the claims were made against employee benefit plans. Further, for all of Fremont's claims against Oxford, the claim submission data indicates that

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Fremont received an assignment of benefits from the patient/plan member/insured and/or other authorized person.

- 8. In addition, I have reviewed the nature of the claims Fremont has asserted against Oxford and determined that some of the claims were denied in full and no partial payment was issued.
- 9. I declare under penalty of perjury under the laws of the State of Nevada and the United States that the foregoing is true and correct.

DATED this 21 day of June, 2019.

Maryann Britto

WEINBERG WHEELER HUDGINS GUNN & DIAL

Page 3 of 3

# **EXHIBIT 3**

# **EXHIBIT 3**

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    Sierra Health and Life Insurance Co., Inc.,
    Sierra Health-Care Options, Inc., and
    Health Plan of Nevada, Inc.
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                                UNITED STATES DISTRICT COURT
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                                       DISTRICT OF NEVADA
16
    FREMONT EMERGENCY SERVICES
                                                      Case No.: 2:19-cv-00832
    (MANDAVIA), LTD., a Nevada professional
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    corporation,
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                                                      DECLARATION OF SHAWNA REED IN
                          Plaintiff,
                                                      SUPPORT OF DEFENDANTS'
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                                                      OPPOSITION TO MOTION TO REMAND
            VS.
20
    UNITED HEALTHCARE INSURANCE
    COMPANY, a Connecticut corporation; UNITED
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    HEALTH CARE SERVICES INC. dba
    UNITEDHEALTHCARE, a Minnesota
    corporation; UMR, INC. dba UNITED MEDICAL RESOURCES, a Delaware corporation; OXFORD HEALTH PLANS, INC.
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    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
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     corporation; DOES 1-10; ROE ENTITIES 11-20,
27
                          Defendants.
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I, Shawna Reed, declare under penalty of perjury as follows:

- I am an adult resident of Clark County, Nevada, over 18 years of age, and I have personal knowledge of the matters set forth herein, except as stated upon information and belief, which matters I believe to be true.
- 2. I am the general manager for Sierra Health-Care Options, Inc. ("SHO") operations.
- I submit this declaration in support of Defendants' Opposition to Fremont's 3. Motion to Remand.
- In the Complaint, Fremont Emergency Services (Mandavia), Ltd. ("Fremont") alleges that it provided medical treatment to Defendant SHO's plan members from July 2017 to present and that SHO failed to adequately reimburse Fremont for the medical services it provided. See e.g., Complaint at ¶¶ 24-25.
- 5. Based on the allegations in the Complaint, I have conducted an investigation of the claims/requests for payment ("claims") that Fremont has submitted to SHO. The results of this investigation are summarized below.
- My understanding is that The Employee Retirement Income Security Act 6. ("ERISA") defines an "employee welfare benefit plan" (hereinafter "employee benefit plan") as follows:

any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or 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, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

29 U.S.C. § 1002.

In regard to the claims that Fremont sent to Defendant SHO during the time 7. period of July 2017 to present, all of the claims were made against employee benefit plans.

Further, for all of Fremont's claims against SHO, the claim submission data indicates that Fremont received an assignment of benefits from the patient/plan member/insured and/or other authorized person.

8. I declare under penalty of perjury under the laws of the State of Nevada and the United States that the foregoing is true and correct.

DATED this \_\_\_ day of June, 2019.

WEINBERG WHEELER HUDGINS GUNN & DIAL

Page 3 of 3

# **EXHIBIT 4**

# **EXHIBIT 4**

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### UNITED STATES DISTRICT COURT

#### DISTRICT OF 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. 23 a Delaware corporation; SIERRA HEALTH AND

24 LIFE INSURANCE COMPANY, INC., a Nevada corporation; SIERRA HEALTH-CARE 25 OPTIONS, INC., a Nevada corporation; HEALTH PLAN OF NEVADA, INC., a Nevada

26 corporation; DOES 1-10; ROE ENTITIES 11-20, 27

Defendants.

28

Page 1 of 3

DECLARATION OF ELLEN SINCLAIR IN SUPPORT OF DEFENDANTS' OPPOSITION TO MOTION TO REMAND

Case No.: 2:19-cv-00832

I, Ellen Sinclair, declare under penalty of perjury as follows:

- 1. I am an adult resident of Clark County, Nevada, over 18 years of age, and I have personal knowledge of the matters set forth herein, except as stated upon information and belief, which matters I believe to be true.
  - 2. I am a Healthcare Economics Consultant for HPN/SHL.
- I submit this declaration in support of Defendants' Opposition to Fremont's Motion to Remand.
- 4. In the Complaint, Fremont Emergency Services (Mandavia), Ltd. ("Fremont") alleges that it provided medical treatment to Defendants Sierra Health and Life Insurance Co.'s ("SHL") and Health Plan of Nevada, Inc.'s ("HPN") plan members from July 2017 to present and that Defendants failed to adequately reimburse Fremont for the medical services it provided.

  See e.g., Complaint at ¶ 24-25.
- 5. Based on the allegations in the Complaint, I have conducted an investigation of the claims/requests for payment ("claims") that Fremont has submitted to SHL and HPN. The results of this investigation are summarized below.
- 6. My understanding is that The Employee Retirement Income Security Act ("ERISA") defines an "employee welfare benefit plan" (hereinafter "employee benefit plan") as follows:

any plan, fund, or program which was heretofore or is hereafter established or maintained by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or 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, accident, disability, death or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

29 U.S.C. § 1002.

7. In regard to the claims that Fremont sent to Defendant SHL during the time period of July 2017 to present, approximately 72 percent of the claims were made against employee

27 0.0.0. 3 1002.

Page 2 of 3

benefit plans. Further, for all of Fremont's claims against SHL, the claim submission data indicates that Fremont received an assignment of benefits from the patient/plan member/insured and/or other authorized person.

- 8. In regard to the claims that Fremont sent to Defendant HPN during the time period of July 2017 to present, approximately 84 percent of the claims were made against employee benefit plans. Further, for all of Fremont's claims against HPN, the claim submission data indicates that Fremont received an assignment of benefits from the patient/plan member/insured and/or other authorized person.
- 9. In addition, I have reviewed the nature of the claims Fremont has asserted against SHL and HPN and determined that some of the claims were denied in full and no partial payment was issued.
- 10. I declare under penalty of perjury under the laws of the State of Nevada and the United States that the foregoing is true and correct.

DATED this 20 day of June, 2019.





# **EXHIBIT 5**

### **EXHIBIT 5**

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Submitter: 752297429-10036 (UHC 837 MEDICAL)

Claim TPA ID

**HEALTH INSURANCE CLAIM FORM** 

Claim Total

UNOFFICIALWOT YET APPROVED BY N.U.C. 02/12

: \$505.00

1500

PICA

25. FEDERAL TAX LD. NUMBER

31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.)

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LEONG, JOEANN 1104011527 207P00000X

SIGNED

NUCC Instruction Manual at: www.nucc.org Page: 1 of 1 Sul UNOFFICIALWOT YET APPROVED BY N.U.C. FORM CMS-1500 (02/12) Submitter: 752297429-10036 (UHC 837 MEDICAL)

X YES

27. ACCEPT ASSIGNMENT

28. TOTAL CHARGE

1366429821

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CINCINNATI, OH 45263-8972

FREMONT EMERGENCY SERVICES MAN PO BOX 638972

33. BILLING PROVIDER INFO & PH#

28. AMOUNT PAID

30. Ravd for NUCC Use

26. PATIENT ACCOUNT NO.

32. SERVICE FACILITY LOCATION INFORMATION

LASVEGAS, NV 89128-0436

FREMONT EMERGENCY SERVICES MAN 3100 N TENAYA WAY

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NUCC Instruction Manual at: www.nucc.org
Page: 1 of 1 Submitter: 752297429-10036 (UHC 837 MEDICAL)

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	PATIENT'S OR AUTHORIZED PERSON'S SIGNATU to procees this claim, I also request payment of govern below.	payment of medical services described	ii benefits	to the undersi	ned physician or supplier for				
	SIGNED_AUTHORIZED_SIGNATUR	E ON FILE		SIGNED AU'I	HORI	ZED SIC	NATURE ON FILE		
	14, DATE OF CURRENT ILLNESS, INJURY, or PREGN. NM DO YY QUAL.	16. DATES PATIENT MM DO FROM	UNABLE,	TO WORK IN (	CURRENT OCCUPATION				
	17, NAME OF REFERRING PROVIDER OR OTHER SO	URCE 176			N DATES		CURRENT SERVICES		
	19, ADDITIONAL CLAIM INFORMATION (Designated by	-		U= -		20. OUTSIDE LAB?	no I	<b>\$</b> C	ARGE8
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Claim TPA ID	: 752297429-10036 (UHC 83	Patient's Acct# :
1500 Claim Total : \$1,295.00		Batch Number :
HEALTH INSURANCE CLAIM FORM		CCN# : HIC Number : n/a
UNOFFICIALWOT YET APPROVED BY N.U.C. 02/12		
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(Medicarell) (Medicaldir) (IDM/DoDir) (Membe	HEALTH PLAN -BLK LUNG	
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9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)	10. IS PATIENT'S CONDITION RELATED TO:	
- ATHER INCHES PALIS OF ASSURANCE	a. EMPLOYMENT? (Current or Previous)	
a. OTHER INSURED'S POLICY OR GROUP NUMBER		
b. RESERVED FOR NUCC USE	L. AUTO ACCIDENT? PLACE (State)	
	YES NO	
c. RESERVED FOR NUCC USE	c. OTHER ACCIDENT?	c. INSURANCE PLAN NAME OR PROGRAM NAME
	YES NO	
d. Insurance Plan Name or Program Name	10d. CLAIM CODES(Designated by NUCC)	d is there another health benefit plan?
READ BACK OF FORM BEFORE COMPLETI	IG & BIGNING FORM.	YES NO If yee, complete items 9, 9e, and 9d.  13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize
<ol> <li>PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize to to process this claim. I also request payment of government benefits or</li> </ol>	e release of any medical or other information necessary	payment of medical benefits to the undersigned physician or supplier for services described below.
below.		
SIGNED AUTHORIZED SIGNATURE ON FI		SIGNED_AUTHORIZED SIGNATURE ON FILE
MM DD YY	5. OTHER DATE NAM DO YY	18. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION MM DO TO
uore.		18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES
	7b.	FROM TO
19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)		20. OUTSIDE LAB? \$ CHARGES
Referral/	REF= H/L=	YES NO
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Relate A-L to a	• • • • •	22. RESUBMISSION CODE ORIGINAL REF. NO.
	R042 D. R918	23. PRIOR AUTHORIZATION NUMBER
E.L	1 .1	
	EDURES, SERVICES, OR SUPPLIES E.	F. Q. H. I. D. RENDERING.
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8 8 0 2 6 2 4 3 8  31. SIGNATURE OF PHYSICIAN OR SUPPLIER  32. SERVICE	X YES NO FACILITY LOCATION INFORMATION	\$ 1,295 00 \$
INCLUDING DEGREES OR CREDENTIALS  (I certify that the statements on the reverse	EMERGENCY SERVICES MAN	FREMONT EMERGENCY SERVICES MAN
epply to this bill and are made a part thereof.)	ENAYA WAY	PO BOX 638972
1114286077 207P00000X	,NV 89128-0436	CINCINNATI, OH 45263-8972 (888) 952-6772
SIGNED DATE	<b>8</b> .	<b>a</b> 1366429821 <b>b</b>

NUCC Instruction Manual at: www.nucc.org UNOFFICIALWOT YET APPROVED BY N.U.C. FORM CMS-1500 (02/12)
Page: 1 of 1 Submitter: 752297429-10036 (UHC 837 MEDICAL)

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	9. OTHER INSURED'S NAME (	Lest Name, First I	Yame, Mi	idle (nitial)	10. 18	PATIENT'S	CONDITION REL	ATED TO:							
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	- DEDECT TO FOR 1990 HOLD	-				TO ACCIDE		ю					M	☐ F[	1
	b. RESERVED FOR NUCC USE	<b>:</b>			1.70			PLACE (State)	b. OTHER CL	NIM ILKI	Designated	DY NU	ICC)		
	c. RESERVED FOR NUCC USE	<u> </u>			c. 0T	HER ACCIO			a INSURANC	E PLAN	NAME OF	PRO	GRAM I	NAME	
	d. INSURANCE PLAN NAME O	R PROGRAM NA	ME		10d. (	CLAIM COD	YES N ES(Designated by	NUCC)	d. IS THERE A	NOTH	ER HEALT	H BEN	EFIT PI	LAN?	
i						· · ·		_	YES				_	e Itama 9, 9a, and 9d.	
	READ 12. PATIENT'S OR AUTHORIZE to process this claim. I also re	D BACK OF FORM ED PERSON'S SI SQUEST DRYMENT O	GNATUR	E I authori	ze the release	of any med	ical or other inform	nation necessary		f medic	al benefits			SIGNATURE I author gned physician or sup	
	below.							•		7. 7. 7. 7. 7. 7. 7. 7. 7. 7. 7. 7. 7. 7	PULCE T	ממע	0.70	TALE CALL	
	SIGNED AUTHORIZ  14. DATE OF CURRENT ILLNE						07/15/17		16. DATES PA	TIENT	UNABLE 1	owo		SNATURE ON CURRENT OCCUPAT	
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	(i certify that the statements apply to this bill and are made meaning means.)	de a part thereof.)			W SUNSET		**		FREMONT PO BOX 6						
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NUCC Instruction Manual at: www.nucc.org UNOFFICIAL WOT YET APPROVED BY N.U.C. FORM CMS-1500 (02/12)
Page: 1 of 1 Submitter: 201736437 (FIRST HEALTH/CCN ROUTED 837 MEDICAL)

Submitter  1500 Claim TPA ID : \$1,295.00  HEALTH INSURANCE CLAIM FORM	: 611358935 (ZIRMED 837 N	MEDICAL VIA OPTUMINSIGHT Patient's Acct# Batch Number CCN# HIC Number	: : : : n/a					
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(Medicares) (Medicalds) (IDS/DoDs) (Member	DIF) (IDIF) (IDIF) (IDIF)							
9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)	10. IS PATIENT'S CONDITION RELATED TO:							
OTHER INSURED'S POLICY OR GROUP NUMBER	s. EMPLOYMENT? (Current or Previous)							
b. RESERVED FOR NUCC USE	L YES NO b. AUTO ACCIDENT? PLACE (State)							
· · · · · · · · · · · · · · · · · · ·	YES NO L							
a RESERVED FOR NUCC USE	c. OTHER ACCIDENT?	G. INSURANCE PLAN NAME OR PROGRAM NAME	E					
d. Insurance plan name or program name	YES NO 10d. CLAM CODES(Designated by NUCC)	d is there another health benefit plan?	•					
	Total Good Good and Control of the C	YES NO If yes, complete item						
READ BACK OF FORM BEFORE COMPLETING 12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the		13. INSURED'S OR AUTHORIZED PERSON'S SIG payment of medical benefits to the undersigned	NATURE I authorize					
to process this claim. I also request payment of government benefits eltibelow.	her to myself or the party who accepts assignment	services described below.	bulyacons or authorise for					
SIGNED AUTHORIZED SIGNATURE ON FIL	EDATE_07/17/17	SIGNED AUTHORIZED SIGNA	TURE ON FILE					
14, DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY(LMP) 15	OTHER DATE MM DD YY	16. DATES PATIENT UNABLE TO WORK IN CURP	RENT OCCUPATION					
QUAL. Q	JAL.	FROM TO						
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE		18. HOSPITALIZATION DATES RELATED TO CUR	RENT SERVICES					
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21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Relate A-L to ser	` '	22. RESUBMISSION ORIGINAL REF. NO. 1 23. PRIOR AUTHORIZATION NUMBER						
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E. L								
24 A. DATES OF SERVICE B. C. D. PROC	EDURES, SERVICES, OR SUPPLIES E. DIAGNOSIS	F. G. H. I.	J. RENDERING.					
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25. FEDERAL TAX LD. NUMBER 68N EIN 26. PATIENT A		28. TOTAL CHARGE 29. AMOUNT PAID	30. Ravd for NUCC Use					
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INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse 3100 N. Till	ACLITY LOCATION INFORMATION VIEW HOSPITAL	33. BILLING PROVIDER INFO & PH # FREMONT EMERGENCY SERVICES MA	M					
(i certify that the statements on the reverse apply to this bill end ere made a part thereof.)  DINAGAN. CLARENCE	VIEW HOSPITAL ENAYA WAY	FREMONT EMERGENCY SERVICES MAP PO BOX 638972	N.					
(i pertify that the statements on the reverse epply to this bill and ere made a part thereof.)  DUNAGAN, CLARENCE  1972505675  LAS VEGAS	VIEW HOSPITAL ENAYA WAY 3,NV 89128-0436	FREMONT EMERGENCY SERVICES MAP PO BOX 638972 CINCINNATI,OH 45263-8972 (888) 952-6772	rn					
(I certify that the statements on the reverse eppty to this bill and are made a part thereof.)  DUNAGAN, CLARENCE  JAS VEGA:	VIEW HOSPITAL ENAYA WAY S,NV 89128-0436	FREMONT EMERGENCY SERVICES MAP PO BOX 638972 CINCINNATI,OH 45263-8972						

1500 Claim TPA Claim Total	al	: \$463	.00	tter :	201736	437 (FI	RST	HEALTH	I/CCN ROUTE	Pat: Bato CCN	ient' ch Nu	s Acc mber	
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						YES [	NO			TOTAL O		3,54,,,	
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to process this claim. I also required.	sest payme	nt of gove	mment	benefits either to	myself or the	party who acco	opte as	signment	services described	i below.			
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17. NAME OF REFERRING PROV	IDER OR (	OTHER 6	OURCE	176					18. HOSPITALIZATIO	N DATES	RELAT	OT DE	CURRENT SERVICES
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NUCC Instruction Manual at: www.nucc.org UNOFFICIALWOT YET APPROVED BY N.U.C. FORM CMS-1500 (02/12)
Page: 1 of 1 Submitter : 201736437 (FIRST HEALTH/CCN ROUTED 837 MEDICAL)

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ſ	b, RESERVED FOR N	IUCC USE			b. Al	UTO ACCIDENT		LACE (State)							
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ŀ	d. INSURANCE PLAN	NAME OF PROCE	AM NAME		100		E8 NO	100)	d to Tues	RE ANOTHE	D UEAL T	U DEN	EETT DI	A11/0	
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	18. ADDITIONAL CLA Reference 21. DIAGNOSIS OR N A. MS 4 1 2	VATURE OF ILLNES	(Designated	by NUC	17b. C) REF=		and the state of t		FROM 20. OUTSI Y 22. RESUI CODE	DE LAB? TES  BMISSION 1	мо	ORK	TO S CH BINAL R	WW	1 BERVICES
	18. ADDITIONAL CLA Referable 21. DIAGNOSIS OR F	UM INFORMATION	(Designated	by NUC	17b.  C)  REF=  A-L to service line		and the state of t		FROM 20. OUTSI Y 22. RESUI CODE	DE LAB? TES BMISSION	мо	ORK	TO S CH BINAL R	IARGES	l bervices
	18. ADDITIONAL CLA Referrali** 21. DIAGNOSIS OR I A LM5412 E. L L DATES C Prom	NATURE OF ILLNES B. L. F. L J. L. JF SERVICE To	(Designated 38 OR INJUI R030	by NUC	REF=  A-L to service line  C. F4:  G. D. PROCEDURE (Explain Unus	1.9 S, SERVICES, suel Circumstan	ICD Incl. () D.L	E. DIAGNOSIS	PROM  20, OUTSI  22, RESUI CODE  23, PRIOR	DE LAB? YES BMISSION 1 RAUTHORE	NO L	ORIGIUMBER	TO SCH	IARGES EF. NO.	J. RENDERING.
	16. ADDITIONAL CLA Referrables 21. DIAGNOSIS OR N A M5 4 1 2 E. L L L L Prom Y MM DD YY	NATURE OF ILLNES B. L. F. L. J. L. DF SERVICE NAM. DO Y	(Designated 88 OR INJUI R030	By NUC	REF=  P A-L to service line  C. F41  G. L  K. L  D. PROCEDURE (Explain Unus	S, SERVICES, suid Circumstan	D.L.H.L.COR SUPPLIES	DIAGNOSIS POINTER	20. OUTSI 20. CODE 22. RESUIC CODE 23. PRIOR	DE LAB? YES BMISSION  1 AUTHORE F. ARGES	NO ZATION N	ORKS UMBER	TO SCH BINAL R L LD. QUAL	IARGES  EF. NO.	J.
1	16. ADDITIONAL CLA Referrables 21. DIAGNOSIS OR N A M5412 E. L 1 DATES O HOM DD YY  08 14 17	HATURE OF ILLNES B. L. F. L. J. L. DF SERVICE MAN. DO Y	(Designated SS OR INJUR R030	C. EMG	REF=  A-L to service line  C. F41  G.L  D. PROCEDURE (Explain Unu CPT/HCPCS	S, BERVICES, suel Circumstan	OR SUPPLIES	DIAGNOSIS POINTER A,B,C	FROM 20. OUTSI 22. RESUI CODE 23. PRIOR \$ CH.	DE LAB? YES SMISSION 1 RAUTHORIZ F. ARIGES	NO DATE OF THE PROPERTY OF THE	ORIG UMBER H. EPSDT Family Plan	TO SCH SINAL R LD. QUAL	EF. NO.	RENDERING.
1	18. ADDITIONAL CLA Referrable 21. DIAGNOSIS OR N A M5 4 1 2 E. L L 24.A. DATES C Prom MM DD YY  08 14 17	HATURE OF ILLNES B. L. F. L. J. L. DF SERVICE MAN DO Y	(Designated as OR INJUF R030	C. EMG	REF=  A-L to service line  C. F4  G. G. L  K L  D. PROCEDURE (Explain Unur CPT/HCPCS	S, BERVICES, suel Circumstan	ICD Ind. () D.L	DIAGNOSIS POINTER A,B,C	20. OUTS! 22. RESUI CODE 23. PRIOR 4	DE LAB? TES BMISSION 1 AUTHORIZ F. ARGES	NO DAYS	ORIG UMBER H. EPSDT Family Plan	TO SCH BINAL R L LD. QUAL	EF. NO.	RENDERING.
1	16. ADDITIONAL CLA Referrables 21. DIAGNOSIS OR N A M5412 E. L 1 DATES O HOM DD YY  08 14 17	HATURE OF ILLNES B. L. F. L. J. L. DF SERVICE MAN. DO Y	(Designated as OR INJUF R030	C. EMG	REF=  A-L to service line  C. F41  G.L  D. PROCEDURE (Explain Unu CPT/HCPCS	S, BERVICES, suel Circumstan	OR SUPPLIES	DIAGNOSIS POINTER A,B,C	FROM 20. OUTSI 22. RESUI CODE 23. PRIOR \$ CH.	DE LAB? TES BMISSION 1 AUTHORIZ F. ARGES	NO DATE OF THE PROPERTY OF THE	ORIG UMBER H. EPSDT Family Plan	TO SCH SINAL R LD. QUAL	EF. NO.	RENDERING.
1 2 3	18. ADDITIONAL CLA Referrable 21. DIAGNOSIS OR N A M5 4 1 2 E. L L 24.A. DATES C Prom MM DD YY  08 14 17	HATURE OF ILLNES B. L. F. L. J. L. DF SERVICE MAN DO Y	(Designated SS OR INJUR R030	Dy NUC	REF=  A-L to service line  C. F4  G. G. L  K L  D. PROCEDURE (Explain Unur CPT/HCPCS	3, SERVICES, stale Crounstan	ICD Ind. () D.L	DIAGNOSIS POINTER A,B,C	20. OUTS! 22. RESUI CODE 23. PRIOR 4	DE LAB? TES BMISSION 1 AUTHORIZ F. ARGES	NO DATE OF THE PROPERTY OF THE	ORIG UMBER H. EPSDT Family Plan	TO \$ CH BINAL R L LD. QUAL	EF. NO.	RENDERING.
1 2 3 4	16. ADDITIONAL CLA Referrables 21. DIAGNOSIS OR N A LM5412 E. L 1 L 24 A DATES C AMM DD YY 08 14 17	HATURE OF ILLNES  B. L.  F. L.  J. L.  DF SERVICE  MM. DO Y	(Designated SS OR INJUR R030	C. EMG	REF=  P A-L to service line  C. F41  G. L  K. L  D. PROCEDURE (Explain Unus CPT/HCPCS	S, SERVICES, size Circumstant	ICD Ind. ()  D.L	DIAGNOSIS POINTER A,B,C	20. OUTS! 22. RESUI CODE 23. PRIOR 4	DE LAB? TES BMISSION 1 AUTHORIZ F. ARGES	NO   ZATION N	ORIG UMBER H. EPSDT Family Plan	TO S CH SINAL R LD. QUAL	EF. NO.	RENDERING.
1 2 3	18. ADDITIONAL CLA Referrality 21. DIAGNOSIS OR N A M5 4 1 2 E. L L L 24 A DATES C Prom MM DD YY  08 14 17	HATURE OF ILLNES  B. L.  F. L.  J. L.  DF SERVICE  MAN. DO Y  08 14 1	(Designated SS OR INJUE RO30	by NUC	REF=  A-L to service line  C. F4:  G. KL  D. PROCEDURE (Explain Unu CPT/HCPGS	8, SERVICES, stal Crossstan	ICD Ind. ()  D.L	DIAGNOSIS POINTER	FROM 20. OUTSI  22. RESUI CODE 23. PRIOR \$ CH.	DE LAB? TES SMISSION 1 AUTHORIZ F. ARGES 63 00	NO   ZATION N	ORKS	TO SCH	EF. NO.	RENDERING. ROVIDER LD. #
1 2 3 4	16. ADDITIONAL CLA Referrables 21. DIAGNOSIS OR N A LM5412 E. L 1 L 24 A DATES C AMM DD YY 08 14 17	HATURE OF ILLNES  B. L.  F. L.  J. L.  DF SERVICE  MM. DO Y	(Designated SS OR INJUR R030	by NUC	REF=  P A-L to service line  C. F41  G. L  K. L  D. PROCEDURE (Explain Unus CPT/HCPCS	8, SERVICES, stal Crossstan	ICD Ind. ()  D.L	DIAGNOSIS POINTER	20. OUTS! 22. RESUI CODE 23. PRIOR 4	DE LAB? TES SMISSION 1 AUTHORIZ F. ARGES 63 00	NO   ZATION N	ORKS	TO SCH	EF. NO.	RENDERING.
1 2 3 4 5	18. ADDITIONAL CLA Referrable 21. DIAGNOSIS OR N A M5 4 1 2 E. L 1 L 24 A DATES C MM DD YY  08 14 17  25. FEDERAL TAX II	HATURE OF ILLNES  B. L.  F. L.  J. L.  DF SERVICE  MM. DO Y	(Designated SS OR INJUR R030	by NUC	REF=  A-L to service line  C. F4:  G. KL  D. PROCEDURE (Explain Unu CPT/HCPGS	S, SERVICES, size Circumster	OR SUPPLIES	DIAGNOSIS POINTER A, B, C	FROM 20. OUTSI  22. RESUI CODE 23. PRIOR \$ CH.	DE LAB? TES BMISSION 1 AUTHORI F. ARIGES 63 00	ZATION N	ORKG	TO SCH	ARGES EF. NO. PI	RENDERING. ROVIDER LD. #
1 2 3 4 5	18. ADDITIONAL CLA  Referrality 21. DIAGNOSIS OR N  A [M5412] E. L  1 L  24. DATES O  MM DD YY  08 14 17  25. FEDERAL TAX II  880262438 31. SIGNATURE OF	ATURE OF ILLNES  B. L.  F. L.  J. L.  DF SERVICE  MM DO Y  08 14 1  D. NUMBER	(Designated as OR INJUF R030	by NUCC	PATIENT ACCOUNTS	S, SERVICES, stal Circumstant M	OR SUPPLIES  OR SUPPLIES  OBE  OBE  Z7. ACCEPT ASS  X YES  FORMATION	DIAGNOSIS POINTER A,B,C	FROM  20, OUTSI  22, RESUI  CODE  23, PRIOR  4  4  28, TOTAL  3  33, BILLING	DE LAB? TES BMISSION 1 AUTHORIZ F. ARGES CHARGE 463 3 PROVIDE	NO DAYS UNITS	ORKG	TO SCHOOL	IARGES EF. NO.	RENDERING. ROVIDER LD. #
1 2 3 4 5	16. ADDITIONAL CLAR Referrable= 21. DIAGNOSIS OR N A M5 4 1 2 E. L 1 L 24 A DATES C From MM DD YY  08 14 17  25. FEDERAL TAX LI 8 8 0 2 6 2 4 3 8 31. SIGNATURE OF INCLUDING DEG (I certify the the sapply to this bill as	ATURE OF ILLNES  B. L.  F. L.  OF SERVICE  MM DO Y  08 14 1  D. NUMBER  D. NUMBER  PHYSICIAN OR SU REES OR CREDEN  statements on the re- diare made a part of	(Designated SS OR INJUF R030	by NUC	PATIENT ACCOUNT	S, SERVICES, suid Circumstan M	OR SUPPLIES  OR SUPPLIES  OBE  OBE  Z7. ACCEPT ASS  X YES  FORMATION	DIAGNOSIS POINTER A, B, C	FROM  20. OUTS!  22. RESUI CODE  23. PRIOR  4  4  28. TOTAL  3 BILLING FREMON	DE LAB? FES BMISSION 1 AUTHORIZ F. ARGES 63 00	ZATION N  ZATION N  1  20  20  3  R NFO & GENCY	ORKG	TO SCHOOL	IARGES EF. NO.	RENDERING. ROVIDER LD. #
1 2 3 4 5	18. ADDITIONAL CLAR Referrality 21. DIAGNOSIS OR MAN M5 4 1 2 E. L.	ATURE OF ILLNES  B. L.  F. L.  OF SERVICE  MM DO Y  08 14 1  D. NUMBER  D. NUMBER  PHYSICIAN OR SU REES OR CREDEN  statements on the re- diare made a part of	(Designated SS OR INJUF R030	by NUCC	PATIENT ACCOUNTERNORM EMPCRE	S, SERVICES, state Circumstant Management of the Community of the Communit	CD ind. ()  D.L.  H.L.  OR SUPPLIES  ONE)  ODIFIER  27. ACCEPT ASS  X YES  FORMATION  VICES MAN	DIAGNOSIS POINTER A, B, C	FROM  20. OUTS!  22. RESUI CODE  23. PRIOR  4  4  28. TOTAL \$ 33. BILLING FREMON PO BOX CINCIN	DE LAB?  TES SMISSION  1  AAJTHORE  F.  ARGES  CHARGE  463 3 PROVIDER  TT EMERITA	ZATION N  ZATION N  1  2  2  3  3  4  4  5  6  7  1  1  1  1  1  1  1  1  1  1  1  1	ORKG	TO SCH	IARGES EF. NO.	RENDERING. ROVIDER LD. #
1 2 3 4 5	16. ADDITIONAL CLAR Referrable= 21. DIAGNOSIS OR N A M5 4 1 2 E. L L L 24 A DATES C Prom MM DD YY  08 14 17  25. FEDERAL TAX II 8 8 0 2 6 2 4 3 8 31. SIGNATURE OF INCLUDING Deg (I certify that the sapply to this bill ar	JATURE OF ILLNES  B. L.  F. L.  J. L.	(Designated SS OR INJUF R030	by NUCC	PATIENT ACCOUNT EMONT EMERGE  O W SUNSET	S, SERVICES, state Circumstant Management of the Community of the Communit	CD ind. ()  D.L.  H.L.  OR SUPPLIES  ONE)  ODIFIER  27. ACCEPT ASS  X YES  FORMATION  VICES MAN	DIAGNOSIS POINTER A, B, C	FROM  20. OUTS!  22. RESUI  23. PRIOR  3 CH  4  28. TOTAL  3 BILLING FREMON PO BOX CINCIN (888)	DE LAB? TES SMISSION  1 AAJTHORE F. ARGES 63 00  CHARGE 463 03 3PROVIDE TT EMER: 63897	ZATION N  ZATION N  1  20  20  3  R NFO & GENCY  2  H 4526  72	ORIGINAL PH#	TO SCH	IARGES EF. NO.	RENDERING. ROVIDER LD. #

		laim TPA ID	S	ubm:	itter :	2017364	37 (FIRST	HEALT	H/CCN	ROUTE			DIC			
		laim Total	: \$64 LAIM FO		,						Bat CCN	ch Nu	mber	: : : : : : : : : : : : : : : : : : :		
	UNOFFICIALWOT Y	ET APPROVED B	Y N.U.C. 02	/12												
	1. MEDICARE	MEDICAID	TRICARE		CHAMPVA	GROUP	FECA	OTHER			in. a. aat		<u> 1 43 / 44.</u>	PICA		
	(Medicered)	(Medicald#)	(ID#/DoD#)		(Member ID#)	(IDIF)	LAN BLKIUN	X (IDM)								
ı																
	9. OTHER INSURED	S NAME (Lest Nam	e. First Name	a. Middle	Initial) 10	IS PATIENT	S CONDITION REL	ATED TO:								
	■ OTHER INSURED	8 POLICY OR GRO	UP NUMBE	R		EMPLOYMEN	T? (Current or Previ									
	b. RESERVED FOR I	IUCC USE			b.	AUTO ACCIDI	YE8 NO ENT?	) PLACE (State)								
							YES N									
	a reserved for 1	IUCC USE			c	OTHER ACCI	YES NO		c. INSUF	ANCE PLA	NAME O	R PRO	GRAM N	IAME		
	d. INSURANCE PLAN	NAME OR PROG	RAM NAME		10	d. CLAIM COD	ES(Designated by		d. IS TH	RE ANOTH	ER HEALT	TH BEN	EFIT PL	AN?		
***************************************				=====						YE8			<u>i</u>	items 9, 9a, and 9d,		
	12. PATIENT'S OR At to process this ciri below.	MILANIER BERG	ALLO OLONIA	*******	OMPLETING & S authorize the releat t benefits either to		G	ition necessary	Petyrr	RED'S OR / ent of medic ses describe	ai benefits	ED PE	RSON'S Indensig	SIGNATURE I authorize ned physicien or supplier for		
	14. DATE OF CURRE	HORIZED S				DATE_ ER DATE	08/26/17							NATURE ON FILE URRENT OCCUPATION		
	MM DO	QUAL.	,		QUAL.		NAM DD	W	FROM	MM D	<b>о</b> Тү	Ϋ	то	MM DO YY		
	17. NAME OF REFER	RING PROVIDER	OR OTHER						18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES							
	19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)					17b.					FROM TO  20. OUTSIDE LAB? \$ CHARGES					
	Referral#=				REF=						YES NO					
	1 R4182		1509	KY Kelet	de A-L to service line below(24E) ICD ind. ()					22. RESUBMISSION CODE ORIGINAL REF. NO.						
	E.L.	- 8. L - F. L			مـــــ	c. <u>R7989</u> b. <u>N289</u>					23. PRIOR AUTHORIZATION NUMBER					
	I. L. DATES C		Т в.	<del>-</del>	KL_	FO 0577 505	L.L S, OR SUPPLIES	<del>-</del>			<del></del>					
	From MM DD YY	OF SERVICE To MM DD Y	PLACE OF	C. EMG	(Explain Un	usuel Circums	s, or supplies tances) Modifier	E. DIAGNOSIS POINTER		F. IARGES	DAYS	EPSOT Femily Plan	LD. QUAL	J. RENDERING, PROVIDER LD. #		
1						W Branch St.	A 22 CH	10.44	VI	S 11 1 2 2 2 2 5 4	14.50	Sec. 201	纖			
	08 26 17	08 26 1	SAL WATER	01000	93010			В		64 00	24 CH H 22 FT	1884	8318 <b>4</b> 03	1629049945		
2	amunicani, at pai des		mass Workseld	39/2012	general entre ge		ieka mika miyake	A constact aut W.		10 mm 1 m	A Pagallan		arer in			
3									48.5			200				
			2017				e noon quite in	300 (Co)		4.12			Colonia.			
4		X.	00000 Doi:1000.400	Í	PE OPEN	30 S		Ž	district.		<u> </u>		11.00 (1.00 )	en section is a profit se destriction (2015), entre central profit		
5					3.55							200				
6											2,732	761				
٧	26, FEDERAL TAX LO	NUMBER	BBN EIN	28	PATIENT ACCOU	NT NO	27. ACCEPT AS	RIGNHENT	28 TOTA	L CHARGE	120	L	JNT PAI			
	880262438		□x				X YES	NO	\$	64	- 1	. PONOL	ANT FA	D 30. Ravd for NUCC Use		
	31. SIGNATURE OF I	REES OR CREDEN	ITIALS		SERVICE FACILITY EMONT EMER					G PROVIDE	R NFO 4		ICES	MAN		
	epply to this bill an MCBRIDE, DAN	atements on the re- id are made a part to TRT.	rense hersof.)		01 ST ROSE				PO BO	X 63897	2	ou.				
	1629049945 207P00000X	**************************************		<u> </u>	NDERSON, NV		839		CINCI (888)	NNATI,0 952-67	72		72			
-				a		<b>b.</b> ·	\$P\$100000000000000000000000000000000000	250年的现代			. b.	ECH WY		righter sekie (1904). Giberialei		
-	SIGNED NUCC Instruction		ATE			779		3.36		901316	)T		異なり	RM CMS-1500 (02/12)		

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9, OTHER INSURED					IS PATIENT'S CO			a. INSURED'S DATE (	NE BROTT			SEX
	0,020,000				YE		Í	MM DO	. W		ME	i i
b. RESERVED FOR	NUCC USE			b. A	AUTO ACCIDENTY		LACE (State)	b. OTHER CLAIM ID(	esignate	by NU	JCC)	
c. RESERVED FOR I	NUCC USE				THER ACCIDENT	r		a. INSURANCE PLAN	NAME O	R PRO	GRAM NA	ME
d. INSURANCE PLAI	N NAME OR PROC	GRAM NAME		100	. CLAIM CODES(	Designated by Ni	JCC)	d. 18 THERE ANOTHE				
	READ BACK	OF FORM BEI	ORE CO	OMPLETING & SI	GNING FORM.			13. INSURED'S OR A	JTHORIZ	ED PER	RSONSS	tems 9, 9a, and 9d, IGNATURE I authorize
below.	im. I also request p	payment of gov	emment	benefits either to	myself or the party	who accepts ass	on necessary ignment	services described	below.		<u>-</u> ,	ed physician or supplier for
SIGNED AUT					DATE 11 ER DATE	/10/17						ATURE ON FILE
MM DO	QUAL	OKI, G PREG	THE STATE OF	QUAL.	AL MI	M DD	<b>YY</b>	FROM DO	Y	Y	TO	MM DO YY
17. NAME OF REFE	RRING PROVIDER	OR OTHER 6	OURCE	17a. 17b.			5-42 E	18. HOSPITALIZATIO MM DO FROM	N DATES	RELAT	TED TO C	URRENT SERVICES MM DO YY
19. ADDITIONAL CL	AIM INFORMATIO	N (Designated	by NUC	C) REF=		H/L=		20. OUTSIDE LAB?	NO I		\$ CHA	RGE8
21. DIAGNOSIS OR	NATURE OF ILLNI	ESS OR INJUR	Y Relate		e below(24E)	ICD Ind. 0		22. RESUBMISSION CODE		ORK	GINAL RE	F. NO.
A 10200	B. [	R030		V. I.	A01	D. <b>L</b>		1 28. PRIOR AUTHORIZ	ATION N	UMBE	R	
E. L	F. L J. L			а. <u> </u>		H.L L.L						
24 A. DATES ( From MM DD YY	OF SERVICE To MM DD	B. PLACE OF YY SERVICE		D. PROCEDURI (Explain Una CPT/HCPCS	ES, SERVICES, O seual Circumstano MC	R SUPPLIES es) DOIFIER	E, DIAGNOSIS POINTER	F. 5 CHARGES	DAYS OR UNITS	H. EPSOT Femily Plan	L LD. QUAL	J. RENDERING. PROVIDER I.D. #
11 10 17			200	99284	SA		A,B,C	883 00		3813		1336566579
	in the second second	99432 504580			S. MATCHINE COLUMN							
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		1						Temperatura (Managara)	ALC:		19 P	Company of the Second
			MZ				Puga S		EMERGE 671			
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)							i d	a de la companya de l				
25. FEDERAL TAX L		SBN EIN			NT NO. 2	7. ACCEPT ASS	GNMENT	28. TOTAL CHARGE	26	3858 3858		
25. FEDERAL TAX L 8 8 0 2 6 2 4 3 8 31. SIGNATURE OF INCLUDING DES	D. NUMBER  PHYSICIAN OR S REES OR CREDE	SSN EIN X UPPLIER	28.1 32.1 FR	PATIENT ACCOUNTS BERVICE FACILITY EMONT EMER	NT NO. 2 Y LOCATION INF GENCY SERV	7. ACCEPT ASS X YES ORMATION		28. TOTAL CHARGE \$ 883 ( 3. BILLING PROVIDE FREMONT EMER	26 00 \$ R NFO &	). AMO	UNT PAID	30, Ravd for NUCC Use
25. FEDERAL TAX I. 880262438 31. SIGNATURE OF INCLUDING DEC () contry that the apply to this bill at LI, TERRY	D. NUMBER PHYSICIAN OR 8	SSN EIN X UPPLIER	28.1 32.1 FR 10	PATIENT ACCOU	NT NO. 2 Y LOCATION INF GENCY SERV EAD PKWY	7. ACCEPT ASS X YES ORMATION ICES MAN	GNMENT	28. TOTAL CHARGE \$ 883 33. BILLING PROVIDE FREMONT EMER. PO BOX 63897. CINCINNATI, O	200 \$ RINFO & GENCY 2	PH# SERV	UNT PAID	30, Ravd for NUCC Use
25. FEDERAL TAX I. 8 8 0 2 6 2 4 3 8 31. SIGNATURE OF INCLUDING DEC (I) certify that the apply to this bills	D. NUMBER PHYSICIAN OR 8 RREES OR CREDS statements on the r and are made a part	SSN EIN X UPPLIER	28.1 32.1 FR 10	PATIENT ACCOUNT EMONT EMER 2 E LAKE M	NT NO. 2 Y LOCATION INF GENCY SERV EAD PKWY	7. ACCEPT ASS X YES ORMATION ICES MAN	GNMENT	28. TOTAL CHARGE \$ 883 ( 33. BILLING PROVIDE FREMONT EMER PO BOX 63897	200 \$ R INFO & GENCY 2 H 452672	PH# SERV	UNT PAID	30, Rayd for NUCC Use

HE	ALTH INS	laim TPA ID laim Total URANCE C	: \$1,2 LAIM FC	95.00 <b>PRM</b>	tter :	2017	36437	(FIRS	T HEALTH	H/CCN ROU	JTED	Pati Bato CCN	ient' ch Nu	s Aco		
	PICA		J. 1.1.0.0. U.	-											PICA [	
<b>—</b>	MEDICARE Medicares)	MEDICAID (Medicaldif)	TRICARE (IDM/DoDM)		CHAMPVA (Member IDI	HE.	OUP WITH PLAN )	FECA BLK LU (IDM)	OTHER							
9. (	THER INSURED	S NAME (Last Nan	ne, First Name	, Middle	Initial)	10. IS PA	NENT'S CON	DITION RE	ATED TO:							
L						- EMDLO	Michigan.									
"	INEK INSUKEU	8 POLICY OR GR	OUP NUMBER	•	l	W CHE CO	YMENT? (CL YES		10							
b. F	ESERVED FOR I	UCC USE				b. AUTO	CCIDENT?	^	PLACE (State)							
L		2003					YES		ا ۱۵							733
c.F	ESERVED FOR N	IUCC USE				c. OTHER	ACCIDENT?	<del></del>		o. INSURANCE	PLAN N	VAME OF	R PRO	GRAM	NAME	
d. I	ISURANCE PLAN	NAME OR PROG	RAM NAME			10d, CLAI	M CODES(D		NUCC)	d. IS THERE AN	OTHER	RHEALT	H BEN	EFIT P	LAN?	
							•	,	•	YES					e items 9, 9a, and 9d.	
	BIGNED AUTI	UTHORIZED PERI m. I also request p HORIZED S ENT ILLNESS, INJU YY	SIGNATU	RE O	N FILE	THER DA	OATE 11/	no accepte	nation necessary	services des SIGNED_	AUTI	HORI:	ZED	sic	gned physicien or supplier for SNATURE ON FII CURRENT OCCUPATION	
<u> </u>		QUAL.			QUA	ESTRON CONCES	ZAMOROVNOM SOSTO	Манадантар		FROM				то		
"	name of Refer	IRING PROVIDER	OR OTHER 8	OURCE	17 <b>6.</b> 17b.					18. HOSPITALE	ZATION	DATES	RELA'	TO TO	CURRENT SERVICES	
19,	ADDITIONAL CLA	UM INFORMATIO	(Designated	by NUCC		ļl				20. OUTSIDE L	AB?				HARGES	
_	ereiji=				RE			H/L=		YE6		10				
		NATURE OF ILLNE		Y Relate			w(24E) H	GD ind. (		22. RESUBMISS	SION		ORK	BINAL F	REF. NO.	
A E	E860	B. L _ F. L	R1110		C.L G.L	1289		D. <b>L.</b> ≟ н. <b>L</b>	2197	28. PRIOR AUT	HORIZA	ATION N	UMBE	R		
i.					кL			L.L								
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NUCC Instruction Manual at: www.nucc.org UNOFFICIAL WOT YET APPROVED BY N.U.C. FORM CMS-1500 (02/12)
Page: 1 of 1 Submitter: 201736437 (FIRST HEALTH/CCN ROUTED 837 MEDICAL)

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UNOFFICIAL WOT YET APPROVED BY N.U.C. FORM CMS-1500 (02/12)

Fig. 1518120971

UNOFFICIAL WOT YET APPROVED BY N.U.C. FORM CMS-1500 (02/12)

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NUCC Instruction Manual at: www.nucc.org Page: 1 of 1 Submitter: 841162764UFE UNOFFICIALINOT YET APPROVED BY N.U.C. FORM CMS-1500 (02/12) (OPTUMINSIGHT FKA ICS/INGENIX UFE 837 MEDICAL)

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2 3 4 5	Prom No. 1 Number SN 8 02 6 24 3 8  31. Signature of Physician or supplie including the first half of the research of the rese	EIN 26. S.	(Explain Unu CPT/HCPCS 99284  99284  PATIENT ACCOUN SERVICE FACILIT REMONT EMERA L86 S MARYLI	T NO.  Y LOCATION INI SENCY SERV	ODIFIER  17. ACCEPT ASSI X YES  CORMATION TICES MAN	DIAGNOSIS POINTER  A, B, C  A, B, C	\$CHARGES  927 00  28. TOTAL CHARGE \$ 927 0  33. BILLING PROVIDE FREMONT EMER. PO BOX 63897  CINCINNATI, O (888) 952-67	29. 00 s RINFO & SENCY 2	Ersor I.O. Franky QUAL Phan QUAL AMOUNT P. PH # SERVICES	RENDERING PROVIDER I.D. #  1073933057  1073933057  AID 30. Rsvd for NUCC Use
2 3 4 5 6	25. FEDERAL TAX I.D. NUMBER SN 880262438 31. SIGNATURE OF PHYSICIAN OR SUPPLIE INCLUDING DEGREES OR CREDENTIALS (I codify that the statements on the reverse apply to this bill and are made a part thereo TANG, MICHAEL 1073933057	EIN 26.  ERR 32.  S PF 31.  LITURE AND ADDRESS PR 31.  ADDRESS PR 31.	(Explain to CEPTH-CPCS)  99284  99284  PATIENT ACCOUNT EMERGIBLE S MARYLJ	V LOCATION INITIAL SENCY SERVY AND PKWY	DDIFIER  PT. ACCEPT ASSI  X YES  ORMATION  ICES MAN	DIAGNOSIS POINTER  A, B, C  A, B, C  GNMENT  NO  DEFICIALIN	927 00  927 00  28. TOTAL CHARGE \$ 927 0  33. BILLING PROVIDE FREMONT EMER: PO BOX 63897  CINCINNATI, 0 (888) 952-67  8. 151812097	29. 20 s R INFO & 3ENCY 2 1 b	AMOUNT PASSERVICES 3-8972	RENDERING PROVIDER I.D. #  1073933057  1073933057  AID 30. Rsvd for NUCC Use

Claim TPA ID :	: 201736437 (FIRST HEALTH/	CCN ROUTED 837 MEDICAL Patient's Acct#						
1500 Claim Total : \$1,360.00		Batch Number CCN#	:					
HEALTH INSURANCE CLAIM FORM UNOFFICIAL WOT YET APPROVED BY N.U.C. 02/12		HIC Number	: n/a					
PICA			PICA					
I. MEDICARE MEDICAID TRICARE CHAMPA	HEALTH PLAN BLK LUNG							
(Medicard#) (Medicaid#) (ID#/DoD#) (Member	IDH) (IDH) X (IDH)							
9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)	10. IS PATIENT'S CONDITION RELATED TO:							
a. OTHER INSURED'S POLICY OR GROUP NUMBER	a. EMPLOYMENT? (Current or Previous)							
b, RESERVED FOR NUCC USE	b. AUTO ACCIDENT? PLACE (State)							
B, RESERVEST OR AGOG GSE	YES NO 1							
c. RESERVED FOR NUCC USE		c. INSURANCE PLAN NAME OR PROGRAM NAM	E					
d, INSURANCE PLAN NAME OR PROGRAM NAME	YES NO  10d. CLAIM CODES(Designated by NUCC)	d. IS THERE ANOTHER HEALTH BENEFIT PLAN	?					
B, HADDRAINGE FEAR HANNE ON FROGRAM NAME	Total Code Code Code Code Code Code Code Code	YES NO If yes, complete ite						
READ BACK OF FORM BEFORE COMPLETIN	e release of any medical or other information necessary	13. INSURED'S OR AUTHORIZED PERSON'S SIGneyment of medical benefits to the undersigned	SNATURE I authorize I physician or supplier for					
to process this claim. I also request payment of government benefits e below.	ther to myself or the party who accepts assignment	services described below.						
SIGNED AUTHORIZED SIGNATURE ON FI								
MM DD YY	MM DD AY MM DD YY MM DS							
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	76.	FROM TO	M CD VY					
19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)		20. OUTSIDE LAB? \$ CHAR	IGES					
Referral#= 21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Relate A-L to se	REF  H/L=  rvice line below(24E) ICD Ind. () 2	YES NO 22. RESUBMISSION						
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E F G	н	23. PRIOR AUTHORIZATION NUMBER						
1. J. K 24 A. DATES OF SERVICE B. C. D. PRO-	CEDURES, SERVICES, OR SUPPLIES E.	F. G. H. I.	J.					
From To PLACE OF (EX	lain Unusual Circumstances) DIAGNOSIS ICPCS   MODIFIER POINTER	S CHARGES UNITS Plan QUAL	RENDERING. PROVIDER I.D. #					
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INCLUDING DEGREES OR CREDENTIALS FREMONT	EMERGENCY SERVICES MAN	FREMONT EMERGENCY SERVICES M PO BOX 638972	ИА					
INGLISH, DANIEL LASVEGAS		CINCINNATI, OH 45263-8972						
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NUCC Instruction Manual at: www.nucc.org UNOFFICIALINOT YET APPROVED BY N.U.C. FORM CMS-1500 (02/12) Page: 1 of 1 Submitter: 201736437 (FIRST HEALTH/CCN ROUTED 837 MEDICAL)

Subm  1500 Claim TPA ID : \$1,360.0  HEALTH INSURANCE CLAIM FORM UNOFFICIAL WOT YET APPROVED BY N.U.C. 02/12  PICA		Patient's Acct# : Batch Number : CCN# : HIC Number : n/a
MEDICARE MEDICAID TRICARE     (Medicare#) (Medicaid#) (ID#/DoD#)	CHAMPVA GROUP FECA OTHER (Member ID#) HEALTH PLAN BLIX LUNG X (104)	
(Constant any) (Constant any)	(Member ID#) (ID#) X (ID#)	
9. OTHER INSURED'S NAME (Last Name, First Name, Midd	lle initial) 10. IS PATIENT'S CONDITION RELATED TO:	
a. OTHER INSURED'S POLICY OR GROUP NUMBER	e. EMPLOYMENT? (Current or Previous)  YES NO	
b, RESERVED FOR NUCC USE	b. AUTO ACCIDENT? PLACE (State)	
c. RESERVED FOR NUCC USE	c. OTHER ACCIDENT?	C. INSURANCE PLAN NAME OR PROGRAM NAME
d. INSURANCE PLAN NAME OR PROGRAM NAME	10d. CLAIM CODES(Designated by NUCC)	d. IS THERE ANOTHER HEALTH BENEFIT PLAN?
		YES NO If yes, complete items 9, 9a, and 9d.
I 12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE	COMPLETING & SIGNING FORM. I authorize the release of any medicel or other information necessary int benefits either to myself or the party who accepts assignment	<ol> <li>INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier for services described below.</li> </ol>
SIGNED AUTHORIZED SIGNATURE		SIGNED_AUTHORIZED SIGNATURE ON FILE
14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANC MM DO VY	CY(LMP) 15. OTHER DATE MM DD 77 QUAL.	16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION MM CD FROM TO
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE	DE <b>(17a)</b>	18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES MM DD DD VY
19. ADDITIONAL CLAIM INFORMATION (Designated by NU		20. OUTSIDE LAB? \$ CHARGES
Referral#= 21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Ref	REF= H/L= ate A-L to service line below(24E) ICD Ind. ()	22. RESUBMISSION CONCINAL DES NO
A LR531 B. LR001	c. 1452 D. 110	CODE ORIGINAL REF. NO.
F. L. J.	G.L H.L	23. PRIOR AUTHORIZATION NUMBER
24 A. DATES OF SERVICE B. C. From To PLACE OF	D. PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances)  E. DIAGNOSIS	F. G. H. I. J. DAYS EPSDI I.D. RENDERING.
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	PATIENT ACCOUNT NO. 27. ACCEPT ASSIGNMENT	28. TOTAL CHARGE 29. AMOUNT PAID 30. Rsvd for NUCC Use
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INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.)  M 3	OUNTAINVIEW HOSPITAL 100 N TENAYA WAY	FREMONT EMERGENCY SERVICES MA PO BOX 638972
NUSSBAUM, CHRISTIN 1518387885	AS VEGAS,NV 89128-0436	CINCINNATI,OH 45263-8972
SIGNED DATE a.	1104870187	a. 1366429821
NUCC Instruction Manual at: www.nucc.org Page: 1 of 1 Subm	UNOFFICIALW Litter : 383384800 (HOVS MEDICAL	OT YET APPROVED BY N.U.C. FORM CMS-1500 (02/12)

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		MEDICAID TRIC	CARE		CHAMPVA		GROUP	FECA	OTHER	<u> </u>	ggg Albert			PICA
	(Medicare#)	(Medicaid#) (ID#	/DoD#)		(Member ID#		HEALTH PLAN ((D#)	BLK LUNG (IDM)	X (10#)					
8	OTHER INSURED	S NAME (Last Name, Fi	rst Name,	Middle	Initial)	10. IS	PATIENT'S CC	ONDITION RELAT	ED TO:					
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ľ	. RESERVED FOR N	IUCC USE				D. AU	TO ACCIDENT		ACE (State)	b. OTHER CLAIM II	O(Designate	d by N	UCC)	
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Ļ	I INSURANCE PLAN	NAME OR PROGRAM	NAME			10d (	L AIM CODES	S NO Designated by NU	ICC)	d. IS THERE ANOT	HER HEAL	TH REN	VEEIT P	IAN2
										YES	NO			e items 9, 9s. and 9d.
	2. PATIENT'S OR AI to process this clar below.	READ BACK OF FOUTHORIZED PERSONS m. I also request payme	S SIGNAT	UREIR	uthorize the re	lease	of any medical	or other information who accepts ass	on necessary ignment	13. INSURED'S OR payment of med services describ	ical benefit:	ZED PE s to the	RSON'S undersi	S SIGNATURE I authorize gned physician or supplier for
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	MM DD	NT ILLNESS, INJURY, Yr QUAL,	or PREGI	VANCY(	(LMP) 15. C		DATE M	M DD	rY .	16. DATES PATIEN	DD Y	TO WO	ORK IN ( TO	CURRENT OCCUPATION
1	7. NAME OF REFER	RING PROVIDER OR	OTHER S	OURCE	178. 17b.		<b>&amp;</b> r::: { }	(. ) i		18. HOSPITALIZAT	ION DATES	RELA	TED TO	CURRENT SERVICES
1	9. ADDITIONAL CLA	IM INFORMATION (De	signated l	y NUC	C)					20. OUTSIDE LAB?	<b>–</b> .		\$ CI	HARGES
-	Referral## 21. DIAGNOSIS OR I	NATURE OF ILLNESS C	R INJUR	Y Relate	REI A-L to service		below(24E)	H/L= ICD Ind. 0		22. RESUBMISSIO	NO		CINAL (	DEC NO
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1	24 A. DATES (	OF SERVICE	B. PLACE OF	C.	D. PROCED		i, SERVICES, C		E. DIAGNOSIS	F.	G. DAYS	H. EPSD	I. I.D.	J. RENDERING.
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ı	25. FEDERAL TAX 1.	D. NUMBER SSA	N EIN	26. 1	PATIENT ACC	OUNT	lr	7. ACCEPT ASSI	GNMENT	28. TOTAL CHARG	- 1	9. AMC	OUNT PA	MD 30. Ravd for NUCC Use
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	Submitt  1500 Claim TPA ID : \$929.00  HEALTH INSURANCE CLAIM FORM  UNOFFICIALINOT YET APPROVED BY N.U.C. 02/12	er : 201736437 (FIRST HEALT	H/CCN ROUTED 837 MEDICAL)  Patient's Acct# :  Batch Number :  CCN# :  HIC Number : n/a				
	PICA		PICA [				
ı		MPVA GROUP FECA OTHER HEALTH PLAN BLK LUNG X (ID#)					
	9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initia	10. IS PATIENT'S CONDITION RELATED TO:					
	a. OTHER INSURED'S POLICY OR GROUP NUMBER	a. EMPLOYMENT? (Current or Previous)  YES NO	a. INSURED'S DATE OF BIRTH SEX				
	b. RESERVED FOR NUCC USE	b. AUTO ACCIDENT? PLACE (State)	b. OTHER CLAIM ID(Designated by NUCC)				
	c. RESERVED FOR NUCC USE	c. OTHER ACCIDENT?	c. INSURANCE PLAN NAME OR PROGRAM NAME				
	d. INSURANCE PLAN NAME OR PROGRAM NAME	YES NO					
	U. BYSURANCE PLAN NAME OR PROGRAM NAME	10d. CLAIM CODES(Designated by NUCC)	d. IS THERE ANOTHER HEALTH BENEFIT PLAN?  YES NO If yes complete items 9, 9s, and 9d.				
	READ BACK OF FORM BEFORE COMPL 12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I author to process this claim. I also request payment of government bene- below.	ze the release of any medical or other information necessary	Insured's OR AUTHORIZED PERSON'S SIGNATURE I authorize     payment of medical benefits to the undersigned physician or supplier for     services described below.				
	SIGNED AUTHORIZED SIGNATURE ON	TLE DATE 01/26/18	SIGNED_AUTHORIZED_SIGNATURE_ON_FIL				
	14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY(LMP)	15. OTHER DATE  MM DD YY  QUAL.	16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION				
	01 26 18 QUAL.  17. NAME OF REFERRING PROVIDER OR OTHER SOURCE	17a	FROM TO  18. HOSPITALIZATION DATES, RELATED TO CURRENT SERVICES				
		17b.	FROM TO				
	19, ADDITIONAL CLAIM INFORMATION (Designated by NUCC) Referral#=	REF≈ ₩L=	20. OUTSIDE LAB? \$ CHARGES				
	21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Relate A-L		22. RESUBMISSION ORIGINAL REF. NO.				
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	F	G.L	23. PRIOR AUTHORIZATION NUMBER				
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	INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.)  FREMO: 3186	T EMERGENCY SERVICES MAN MARYLAND PKWY	FREMONT EMERGENCY SERVICES MAN PO BOX 638972				
	119/2090592	AS,NV 89109-2317	CINCINNATI, OH 45263-8972 (888) 952-6772				
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NUCC Instruction Manual at: www.nucc.org UNOFFICIALINOT YET APPROVED BY N.U.C. FORM CMS-1500 (02/12) Page: 1 of 1 Submitter: 201736437 (FIRST HEALTH/CCN ROUTED 837 MEDICAL)

	1500 Claim TPA I Claim TOTAL HEALTH INSURANCE UNOFFICIALINOT YET APPROVE	: \$1,36 CLAIM FO	0.00 R <b>M</b>	: 201736	5437 (FI	RST HEALTH	H/CCN ROUTE	Pati Bato CCN#	ent's Ac h Number					
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	MEDICARE MEDICAID     (Medicare#) (Medicaid#)	TRICARE (ID#/DoD#)	CHAMP (Membe	HEALTI		K LUNG								
	9. OTHER INSURED'S NAME (Last N		Middle Initial)		T'S CONDITION									
	a. OTHER INSURED'S POLICY OR C	GROUP NUMBER		a. EMPLOYM	ENT? (Current or	Previous)	a. INSURED'S DATE	OF BIRTH	N	SEX F				
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	- BEOEDVED COD MUCO MOD			[	YES	] ио								
	c. RESERVED FOR NUCC USE			c. OTHER AC	CIDENT?	7 no	C. INSURANCE PLAN	NAME OR	PROGRAM	NAME				
	d. INSURANCE PLAN NAME OR PRO	OGRAM NAME		10d. CLAIM C	ODES(Designate		d. IS THERE ANOTH			LAN? te items 9, 9a, and 9d.				
	READ BAC 12. PATIENT'S OR AUTHORIZED PE to process this claim. I also reques below.	K OF FORM BEFO ERSON'S SIGNATU It payment of gover	JRE I authorize ti	ne release of any n	nedical or other in	formation necessary opts assignment	13. INSURED'S OR A payment of medica services described	al benefits t	D PERSON'S to the undersi	S SIGNATURE I authorize gned physician or supplier for				
	SIGNED AUTHORIZED	SIGNATUR	E ON FI	LE DAT	E 02/22/	18	SIGNED AUTHORIZED SIGNATURE ON FILE							
	14. DATE OF CURRENT ILLNESS, IF	NJURY. or PREGN		5. OTHER DATE	MM DD	'n	16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION							
	QUAL. 17. NAME OF REFERRING PROVIDE			QUAL.	246-1536-2-21		FROM		TO					
	,		185	17b.			FROM	YY	TO	CURRENT SERVICES				
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	Referral#= 21. DIAGNOSIS OR NATURE OF ILL	NESS OR INJURY		REF= rvice line below(24	H/L IE) ICD Ind.	<del>*</del>	YES 22, RESUBMISSION	NO						
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-	25. FEDERAL TAX I.D. NUMBER	SSN EIN	26. PATIENT A	ACCOUNT NO.	27. ACCEP	T ASSIGNMENT	28. TOTAL CHARGE	29.	AMOUNT PA	ND 30. Ravd for NUCC Use				
	880262438	X			X YES	NO	\$ 1,360 (	- 1						
	31. SIGNATURE OF PHYSICIAN OR INCLUDING DEGREES OR CREE (I certify that the statements on the apply to this bill and are made a property of the certify that the statements of the apply to this bill and are made a property of the certification.	DENTIALS e reverse	FREMONT	ACILITY LOCATION IN THE PROPERTY OF THE PROPER			33. BILLING PROVIDE FREMONT EMERO PO BOX 63897:	SENCY S		MAN				
	SLAUGHTER, KEVIN 1558317354 207P00000X		ļ	,NV 89148-			CINCINNATI, 01 (888) 952-67		3-8972					
	SIGNED	DATE	a.	b,			a. 167955014	9 b.	<b>小维/</b> 统					

NUCC Instruction Manual at: www.nucc.org UNOFFICIAL\NOT YET APPROVED BY N.U.C. FORM CMS-1500 (02/12) Page: 1 of 1 Submitter: 201736437 (FIRST HEALTH/CCN ROUTED 837 MEDICAL)

	Claim TPA ID : \$1,360.  HEALTH INSURANCE CLAIM FORM UNOFFICIALINOT YET APPROVED BY N.U.C. 02/12 PICA		OBA (MEI	DICARE CO	BA MED	ICAL)	Pati Batc CCN# HIC	h Nu		t#:
	1. MEDICARE MEDICAID TRICARE	CHAMPVA	GROUP HEALTH PLAN		OTHER					
	(Medicare#) (Medicaid#) (ID#/DoD#)	(Member ID#)	(454)	(104)	X (ID#)					
47.0	9. OTHER INSURED'S NAME (Last Name, First Name, Mid	idle initial) 10. i	S PATIENT'S C	ONDITION RELATI	ED TO:					
	a. OTHER INSURED'S POLICY OR GROUP NUMBER	a. El	MPLOYMENT?	(Current or Previou	s)					
	b. RESERVED FOR NUCC USE	b. Al	YI UTO ACCIDENT		ACE (State)					
			YI							
	c, RESERVED FOR NUCC USE	c. O	THER ACCIDENT	IT?		c. INSURANCE PLAN	NAME OR	PRO	SRAM N	AME
	d. INSURANCE PLAN NAME OR PROGRAM NAME	10d.	CLAIM CODES	(Designated by NU	ICC)	d. IS THERE ANOTHE				
	READ BACK OF FORM BEFORE  12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE to process this claim. I also request payment of governm below.	E I authorize the releas	e of any medica	l or other informatic ly who accepts assi	on necessary gnment		JTHORIZE	O PE	RSON'S	o items 9, 9a, and 9d. SIGNATURE I authorize med physician or supplier for
	SIGNED AUTHORIZED SIGNATURE	ON FILE	DATE 0	3/23/18		SIGNED_AUT	HORIZ	ZED	SIG	NATURE ON FILE
	14, DATE OF CURRENT ILLNESS, INJURY, or PREGNAN MM DO YY QUAL.	(CY(LMP) 15, OTHE QUAL.		M DD '	W	16. DATES PATIENT I	UNABLE T	o wo	RK IN C	CURRENT OCCUPATION
	17. NAME OF REFERRING PROVIDER OR OTHER SOUP	12001 200				MM DO	N DATES	RELAT	ED TO	CURRENT SERVICES
	/ 19. ADDITIONAL CLAIM INFORMATION (Designated by N	IUCC)	1	<del></del>		FROM 20. OUTSIDE LAB?	······		TO \$ CH	HARGES
	Referra#= 21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY R	REF≖	helow/24F1	H/L≈ ICD Ind. ()		YES 22, RESUBMISSION	МО			
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	E F	G.L		н	<del></del>	23. PRIOR AUTHORIZ	ZATION NO	JMBEI	₹	
	I. J. L. B. C. PLACE OF SERVICE B. C. PLACE OF	C. D. PROCEDURE	S. SERVICES.		E. DIAGNOSIS	F.	G. DAYS	H. EPSDT	I. I.D.	J. RENDERING.
		MG CPT/HCPCS	I M	ODIFIER	POINTER	\$ CHARGES	OR UNITS	Femily Plan	QUAL	PROVIDER I.D. #
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6				ing the			\$10.00			
	25. FEDERAL TAX I.D. NUMBER SSN EIN : 880262438	26. PATIENT ACCOUN	IT NO.	27. ACCEPT ASSI	GNMENT NO	28. TOTAL CHARGE \$ 1,360		AMO	UNT PA	ID 30. Rsvd for NUCC Use
	31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I cartiful that the substance of the reverse apply to this bill and are made a part thereof.)	32. SERVICE FACILIT MOUNTAIN VIEW 3100 N TENAY/ LAS VEGAS, NV	HOSPITA A WAY 89128-04	FORMATION L		33. BILLING PROVIDE FREMOT EMER: PO BOX 63897: CINCINNATI, O (888) 952-67	RINFO& SVC MA 2 H 4526 72	3 - 8	72	TD
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SIGNED DATE a. 1104870187 b. a. 1366429821 b.

NUCC Instruction Manual at: www.nucc.org UNOFFICIAL.NOT YET APPROVED BY N.U.C. FORM CMS-1500 (02/12) Page: 1 of 1 Submitter: COBA (MEDICARE COBA MEDICAL)

	1500 c: HEALTH INSU UNOFFICIALWOT YI PICA	ET APPROV	ia : E CLAII	\$1,40 M FO J.C. 02/1	4.00 RM					HEALTH	/CCN ROUTEI	Pati Bato CCN#	ent'a	mber				
		MEDICAID (Medicaid#)		DoD#)	an Cia	CHAMP\ (Member		GROUP HEALTH PLA (ID#)	N FECA BLK LUNG (ID#)									
	9. OTHER INSURED'S	S NAME (Last	t Name, Fire	st Name,	Middle I	Initial)	10, 15	PATIENT'S (	CONDITION RELA	TED TO:								
	a. OTHER INSURED:	S POLICY OF	R GROUP N	IUMBER					(Current or Previo	us)								
	b. RESERVED FOR N	IUCC USE					b. AU	TO ACCIDEN	IT? F	LACE (State)								
	c. RESERVED FOR N	IUCC USE				·	G. 01	HER ACCIDE	NT?		c. INSURANCE PLAN	NAME OF	R PROC	GRAM N	IAME			
	d. INSURANCE PLAN	NAME OR P	ROGRAM	NAME			10d.		YES NO S(Designated by N	UCC)	d. IS THERE ANOTHE	R HEALT	H BEN	EFIT PL	AN?			
					,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,						YES				ilems 9, 9a, and 9d.			
	12. PATIENT'S OR AI to process this clai below.	ITHORIZED	PERSONS	SIGNAT	UREIa	uthorize ti	he release	VING FORM. of any madic yself or the pa	al or other informal inty who accepts as	ion necessary signment	13. INSURED'S OR Al payment of medica services described	il benefits	ED PEF to the c	RSON'S Indersig	SIGNATURE I authorize ned physicien or supplier f	or		
	SIGNED AUTI								3/31/18						NATURE ON F	LLE		
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	17. NAME OF REFER	RING PROV	IDER OR O	THER SO	OURCE		17 <b>4.</b> 17b.		Alexander II	la patri.	18. HOSPITALIZATIO MM DE FROM	N DATES	RELAT	ED TO TO	CURRENT SERVICES MM OD YY			
	19. ADDITIONAL CLA	IM INFORMA	ATION (Des	ignated b	y NUC	C)					20. OUTSIDE LAB?	1		\$ CH	HARGES			
	Referral## 21, DIAGNOSIS OR N	NATURE OF I	ILLNESS O	R INJUR'	/ Relate	A-L (0 86	REF=	below(24E)	H/L*		22. RESUBMISSION CODE	МО	OBIO	SINA) B	REF. NO.			
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	25. FEDERAL TAX I.	D. NUMBER	SSN	EIN	26, 1	PATIENT	ACCOUN	T NO.	27. ACCEPT AS	1	28. TOTAL CHARGE		. AMO	UNT PA	ID 30, Rsvd for NUC	C Use		
	880262438 31. SIGNATURE OF	PHYSICIAN (	OR SUPPLI	X ER					X YES NFORMATION	NO	\$ 1,404 33, BILLING PROVIDE	R INFO 8						
	INCLUDING DEGREES OR CREDENTIALS (I cartify that the statements on the reverse apply to this bill and are made a part thereof.)  FREMONT EMERGENCY SERVICES MAN 3186 S MARYLAND PKWY  FREMONT EMERGENCY SERVICES MAN D BOX 638972																	
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	NUCC Instruction Page: 1 of		at: www.i	nucc.or	g ubmi	tter	: 2	0173643	UN 37 (FIRST	OFFICIAL\	NOT YET APPRO 1/CCN ROUTE	D 83.	Y N.U 7 ME	.C. FC	ORM CMS-1500 (02 AL)	/12)		

	Claim TPA ID : \$1,950  Claim Total : \$1,950  HEALTH INSURANCE CLAIM FOF  JNOFFICIALWOT YET APPROVED BY N.U.C. 02/12	5.00 RM	201736	437 (FIRST	HEALTI	H/CCN ROUTE	Patie	nt's Acc Number	
ı	PICA								PICA [
	I. MEDICARE MEDICAID TRICARE  (Medicard#) (Medicaid#) (ID#/DoD#)	CHAMPVA (Member ID#	GROUP HEALTH I (ID#)	FECA PLAN BLK LUNG (ID#)	OTHER X (ID#)				
	9. OTHER INSURED'S NAME (Last Name, First Name, N			'S CONDITION RELA					
	a. OTHER INSURED'S POLICY OR GROUP NUMBER		a, EMPLOYMEN	YES NO	us)				
	b. RESERVED FOR NUCC USE		b. AUTO ACCIO	CNTO	LACE (State)				
Ì	c. RESERVED FOR NUCC USE		c. OTHER ACC		لــا	c. INSURANCE PLAN	NAME OR P	ROGRAM	NAME
	d. INSURANCE PLAN NAME OR PROGRAM NAME		10d, CLAIM CO	YES NO DES(Designated by N	UCC)	d. IS THERE ANOTHE	R HEALTH	BENEFIT P	LAN?
ł	READ BACK OF FORM BEFOR	RE COMPLETING 8	SIGNING FOR	м.		YES 13. INSURED'S OR A	UTHORIZED	PERSONS	e items 9, 9a. and 9d. S SIGNATURE I authorize
	<ol> <li>PATIENTS OR AUTHORIZED PERSON'S SIGNATU to process this claim. I also request payment of govern below.</li> </ol>	ment benefits either	to myself or the	party who accepts as	ion nacessary aignment	payment of medica services described	al beinefits to i below.	he undersi	gnad physician or supplier for
ļ	SIGNED AUTHORIZED SIGNATUR			04/26/18					NATURE ON FILE
	14. DATE OF CURRENT ILLNESS. INJURY, or PREGNAMM DD YY QUAL.	QUAI	THER DATE	MW OD	717	16. DATES PATIENT	UNABLE TO	WORK IN ( TO	CURRENT OCCUPATION MM DO 'YY
	17. NAME OF REFERRING PROVIDER OR OTHER SOL	JRCE 17s.	il land		4011	18. HOSPITALIZATIO	N DATES RE	LATED TO	CURRENT SERVICES
İ	19. ADDITIONAL CLAIM INFORMATION (Designated by					20. OUTSIDE LAB?			HARGES
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ŀ	25. FEDERAL TAX I.D. NUMBER SSN EIN	26. PATIENT ACC	DUNT NO.	27. ACCEPT ASS	IGNMENT	28. TOTAL CHARGE	29. AI	MOUNT PA	JD 30. Rsvd for NUCC Use
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	INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.)	32. SERVICE FAC FREMONT EM 3001 ST RO	ERGENCY S	NINFORMATION ERVICES MAN		33. BILLING PROVIDE FREMONT EMERO PO BOX 638972	SENCY SE		MAN
	TRANCHELL, NATHAN 1558599050 207P00000X	HENDERSON,		3839	<del>; , ,,,</del> ,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,	CINCINNATI, OF (888) 952-67		8972	
-	SIGNED DATE	a.	<b>b.</b>			a. 168901316	1 b,		

NUCC Instruction Manual at: www.nucc.org UNOFFICIAL\NOT YET APPROVED BY N.U.C. FORM CMS-1500 (02/12) Page: 1 of 1 Submitter: 201736437 (FIRST HEALTH/CCN ROUTED 837 MEDICAL)

<sup>8</sup> 1689013161

Submit  1500 Claim TPA ID : \$927.00  HEALTH INSURANCE CLAIM FORM  UNOFFICIAL WOT YET APPROVED BY N.U.C. 02/12	er : 201736437 (FIRST HEA	P B C	37 MEDICAL) atient's Acct#: atch Number : CN# : IC Number : n/a
1. MEDICARE MEDICAID TRICARE C	AMPVA GROUP FECA C	THER	
(Medicare#) (Medicald#) (ID#/DoD#) ((	umber IOM) (IIOM) X (I	0#)	
9. OTHER INSURED'S NAME (Last Name, First Name, Middle Init	) 10. IS PATIENT'S CONDITION RELATED TO		
B. OTHER INSURED'S POLICY OR GROUP NUMBER	a. EMPLOYMENT? (Current or Previous)		
a. OTHER INSURED S POLICY OR GROUP NUMBER	YES NO		
b. RESERVED FOR NUCC USE	b. AUTO ACCIDENT? PLACE (	State)	
	YES NO		
c. RESERVED FOR NUCC USE	c. OTHER ACCIDENT?	c. INSURANCE PLAN NAMI	E OR PROGRAM NAME
d. INSURANCE PLAN NAME OR PROGRAM NAME	YES NO  10d. CLAIM CODES(Designated by NUCC)	d. IS THERE ANOTHER HE	ALTH BENEFIT PLAN?
		YES NO	If yes, complete items 9, 9a, and 9d.
READ BACK OF FORM BEFORE COM 12, PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE   aud	ETING & SIGNING FORM.		RIZED PERSON'S SIGNATURE I authorize efits to the undersigned physician or supplier for
to process this claim. I also request payment of government be below.	fits either to myself or the party who accepts assignment	services described below	w.
SIGNED AUTHORIZED SIGNATURE ON	FILE DATE 05/16/18	SIGNED AUTHO	RIZED SIGNATURE ON FILE
14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY(LM	) 15. OTHER DATE	16. DATES PATIENT UNAB	BLE TO WORK IN CURRENT OCCUPATION
05 16 18 QUAL.	QUAL.	FROM	то
17. NAME OF REFERRING PROVIDER OR OTHER SOURCE	17a 17b.	FROM	TES RELATED TO CURRENT SERVICES  NW DO VY  TO
19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC)		20. OUTSIDE LAB?	\$ CHARGES
Referral#≖	REF⊭ H/L≂	YES NO	
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Relate A		22. RESUBMISSION CODE	ORIGINAL REF. NO.
A S32511A 8 R262	c. W0110XA	23. PRIOR AUTHORIZATIO	N NUMBER
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apply to this out and are made a part merson.)	S MARYLAND PKWY	PO BOX 638972	
1194131854	GAS, NV 89109-2317	CINCINNATI, OH 4 (888) 952-6772	5263-8972
207P00000X SIGNED DATE	6	8. 1519120971	<b>b</b>

NUCC Instruction Manual at: www.nucc.org UNOFFICIALINOT YET APPROVED BY N.U.C. FORM CMS-1500 (02/12) Page: 1 of 1 Submitter: 201736437 (FIRST HEALTH/CCN ROUTED 837 MEDICAL)

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1500 Claim Total : \$927.00	-				Batch	n Number	:
HEALTH INSURANCE CLAIM FORM	1				CCN# HIC N	Number	: n/a
UNOFFICIALINOT YET APPROVED BY N.U.C. 02/12							
PICA  I. MEDICARE MEDICAID TRICARE	CHAMPVA GRO	OUP FECA	OTHER				PICA
(Medicare#) (Medicaid#) (ID#/DoD#)		ALTH PLAN -BLK LUNG	X (ID#)				
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9. OTHER INSURED'S NAME (Last Name, First Name, Midd	de Initial) 10. IS PAT	TIENT'S CONDITION RELAT	ED TO:				
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d, INSURANCE PLAN NAME OR PROGRAM NAME	10d. CLAI	M CODES(Designated by NO	ICC)	d. IS THERE ANOTHE	R HEALTH	I BENEFIT P	LAN?
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to process this claim. I also request payment of governme below.				services described		o ano omouna	gride prijetaan ar supplier tor
SIGNED AUTHORIZED SIGNATURE	ON ETTE	DATE 06/07/18		SIGNED VIII	und t	יבה פונ	GNATURE ON FILE
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19. ADDITIONAL CLAIM INFORMATION (Designated by NL	JCC)			20. OUTSIDE LAB?	······································	\$ C	HARGES
Referral#=	REF*	H/L≈		YES	NO		
21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY Re	late A-L to service line below	w(24E) ICD Ind. ()		22. RESUBMISSION CODE		ORIGINAL	REF. NO.
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E F	G.L	н.		23. PRIOR AUTHORIZ	ZATION NU	MBER	
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24 A. DATES OF SERVICE B. C.	(Explain Unusual C	Circumstances)	DIAGNOSIS POINTER	1	G. DAYS OR UNITS	H. I. EPSDT I.D. Fancily Plan QUAL	RENDERING. PROVIDER I.D. #
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31 SIGNATURE OF PHYSICIAN OR SUPPLIER 3	2. SERVICE FACILITY LOC	CATION INFORMATION	_ <del></del>	33. BILLING PROVIDE	R INFO &		
(i certify that the statements on the reverse ),	FREMONT EMERGENO 8280 W WARM SPRI			FREMONT EMER		SERVICES	S MAN
SONDDIED TOGAN	LASVEGAS, NV 8911			CINCINNATI,O		3_8072	
207000000	·			(888) 952-67	72		
SIGNED DATE	•	h.		a 168901316	1		SAN TOP

	1500 Claim TPA ID :	803.00 DRM	: 75229	97429-1003	6 (UHC 83	7 MEDICAL)	Batc CCN#	h Numb	:	n/a				
	I. MEDICARE MEDICAID TRICARE	CHAME		JP FECA		<u> </u>			San Alberta	rioa j				
	(Medicarell) (Medicaid#) (ID#/DoDM)	(Memb		(ID#)	W(ID#)									
	9. OTHER INSURED'S NAME (Lest Name, First Nam	e, Middle Initial)	10. IS PATIE	ENT'S CONDITION R	ELATED TO:									
			- EMBLOY	MENTO (Current or D										
	a. OTHER INSURED'S POLICY OR GROUP NUMBE	к	a, EMPLOTI	MENT? (Current or Pr	·	a. INSURED'S DATE (	OF BIRTH		мП	SEX				
	b. RESERVED FOR NUCC USE		b. AUTO AC	YES CIDENT?	NO PLACE (State)	b. OTHER CLAIM ID(E	)esignated	by NUC						
				YES	NO I I		•	•						
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	14. DATE OF CURRENT ILLNESS, INJURY, or PRE		15. OTHER DATE		•	16. DATES PATIENT				TURE ON FILE				
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	19. ADDITIONAL CLAIM INFORMATION (Designate	L	17b.			FROM 20. OUTSIDE LAB?			TO \$ CHARG	F.C.				
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	INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.)	FREMONT 3186 S	EMERGENCY MARYLAND P	ENCY SERVICES MAN FREMONT EMERGENCY SERVICES MAN PO BOX 638972					N					
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Claim TPA ID 1500 : \$927.00 Claim Total

Submitter: 752297429-10036 (UHC 837 MEDICAL)

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NUCC Instruction Manual at: www.nucc.org UNOFFICIAL\NOT YET APPROVED BY N.U.C. FORM CMS-1500 (02/12) Page: 1 of 1 Submitter: 752297429-10036 (UHC 837 MEDICAL)

	76(11)		: CLAIM	\$1,351 FOF	3.00 RM	ter:	8413	162764U	FE (OP)	'UMINSI	GHT FKA	ICS		ent's Num	) Acct		/a	EDICAL)
-		EDICAID (edicaid#)	TRICAR			(Member IDI	r HE	ROUP FALTH PLAN #)	FECA BLK LUNG (ID#)	OTHER								
	9. OTHER INSURED'S	NAME (Last Na	ıme, First	Name, N	Middle I	nitial)	10. IS PA	TIENT'S CON	DITION RELAT	ED TO:								
ľ	8. OTHER INSURED'S	POLICY OR GR	ROUP NU	MBER			a. EMPL		rent or Previou	ıs)								
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-	d. INSURANCE PLAN	NAME OR PRO	GRAM N	AME			10d, CL/	YES	NO esignated by N	JCC)	d. IS THERE A	NOTHER	HEALTH	BEN	EFIT PL	N?		<del></del>
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	12. PATIENT'S OR AUT to process this claim below.	READ BACH HORIZED PER I also request	RSON'S S	IGNATU	JRE I at	uthorize the r	elease of	any medical or	other informati vito accepts as:	on necessary signment	13. INSURED'S payment of services de	inedical	benefits t	DPER OUIGU	RSON'S :	SIGNAT sed phys	URE I au ician or :	ithorize supplier for
	SIGNED AUTHO	ORIZED	SIGN	ATUR	E O	N FILE	<u> </u>	DATE 01/	01/19									N FILE
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	17. NAME OF REFERR		R OR OT	HER SC	URÇE	179	Sec. 257 1 109-11	$(\Sigma^{t})_{i\in I}$	i pri i		18. HOSPITALI	ZATION	DATES	RELAT	ED TO	URREI	NT SERV	TCES
ŀ	19. ADDITIONAL CLAIR	M INFORMATIO	giaad) MC	nated by	y NUCC	176					20. OUTSIDE L	AB?				ARGES		
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Ŭ	25. FEDERAL TAX I.D.	. NUMBER	SSN	EIN	26. F	PATIENT AC	COUNT N	O. 27	. ACCEPT ASS	IGNMENT	28. TOTAL CHA	ARGE	29	. AMO	UNT PAI	0 :	30. Rsvd	for NUCC Use
	880262438			X					YES	NO		53 0						
	31. SIGNATURE OF P INCLUDING DEGR (I certify that the sta apply to this bill and SPENCE, ROBER	REES OR CREC atements on the d are made a pa	DENTIALS reverse	3	ER 72	AT ALI	ANTE IANTE				33. BILLING PE FREMONT PO BOX 6	EMERG 38972	ENCY	SERV		MAN		
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NUCC Instruction Manual at: www.nucc.org UNOFFICIALNOT YET APPROVED BY N.U.C. FORM CMS-1500 (02/12)
Page: 1 of 1 Submitter: 841162764UFE (OPTUMINSIGHT FKA ICS/INGENIX UFE 837 MEDICAL)

	Claim TPA ID : \$530.0 Claim Total : \$530.0 HEALTH INSURANCE CLAIM FOR UNOFFICIALWOT YET APPROVED BY N.U.C. 02/12	RM	61135893	5 (ZIRMEI	) 837 N	MEDICAL VIA	Pati Bato CCN#	ent' h Nu	a Acc	:t# : : : : n/a	
	1. MEDICARE MEDICAID TRICARE	CHAMPVA	GROUP HEALTH PLAN	FECA BUX LUNG	OTHER	1.000				PICA T	
	(Medicare#) (Medicaid#) (ID#/DoD#)	(Member ID#)		(ID#)	X (ID#)						
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L	9. OTHER INSURED'S NAME (Last Name, First Name, N	liddle leikelt	A IC DATIFATIO A	OUDITION DELLA							
	3. OTHER INSURED S NAME (Last Name, First Name, W	idde muai)	0. IS PATIENT'S C	UNDITION RELAT	ED TO:						
	a. OTHER INSURED'S POLICY OR GROUP NUMBER	·	. EMPLOYMENT?	(Current or Previou	18)	a. INSURED'S DATE	OF BIRTH			SEX	
	b, RESERVED FOR NUCC USE		YI YI AUTO ACCIDENT	ES NO			5		M	F	
	B. NESERVED FOR NOCE USE			ES NO	LACE (State)	b. OTHER CLAIM ID(I	Jesignated	I by Ni	JCC)		
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	to process this claim. I also request payment of govern below.	ment benefits either	to myself or the part	ly who accepts ass	ignment	services described	below.		011001019	greed proyected for supplies for	
	SIGNED AUTHORIZED SIGNATURE	E ON FILE	DATE 0	1/02/19		SIGNED AUT	HORI	ZED	SIG	NATURE ON FI	ĿΕ
	14. DATE OF CURRENT ILLNESS, INJURY, or PREGNA MM DO YT	. ,	HER DATE	ASA DD	· · · ·	16. DATES PATIENT	UNABLE T	o wo	RK IN C	CURRENT OCCUPATION	
	QUAL. 17. NAME OF REFERRING PROVIDER OR OTHER SOL	JRCE 178			6 (2 b)	FROM  18. HOSPITALIZATIO	N DATES	RFI A	TO TED TO	CURRENT SERVICES	
		17b.				FROM DE	YY	,	то	MM OO VY	
	19. ADDITIONAL CLAIM INFORMATION (Designated by	NUCC)				20. OUTSIDE LAB?			\$ CI	HARGES	
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	25. FEDERAL TAX I.D. NUMBER SSN EIN X	26. PATIENT ACCO		27. ACCEPT ASSI		28. TOTAL CHARGE	- 1	AMOI	UNT PA	ID 30. Rsvd for NUCC I	Jse
	31. SIGNATURE OF PHYSICIAN OR SUPPLIER	32. SERVICE FACI	ITY LOCATION IN	FORMATION	NO	s 530 ( 33. BILLING PROVIDE	R INFO &				
	INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.)	MOUNTAIN VI 3100 N TEN		•		FREMONT EMERG PO BOX 63897:	GENCY :	SERV	/ICES	MAN	
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NUCC Instruction Manual at: www.nucc.org
Page: 1 of 1

NUCC Instruction Manual at: www.nucc.org
Submitter: 611358935

CIRMED 837 MEDICAL VIA OPTUMINSIGHT)

	Claim TPA II Claim Total HEALTH INSURANCE UNOFFICIALNOT YET APPROVED	CLAIM F	ORM	tter : 75	3229742	9-10036	(UHC 83	7 MEDICAL)	Pati Batc CCN# HIC	h Nu		:	n/a PICA	
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	9. OTHER INSURED'S NAME (Last N	lame, First Name	. Middle I	nitial) 10 IS	PATIENT'S	CONDITION RELAT	ED TO:							
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Patient's Acct# :

Batch Number CCN#

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#
C. INSURANCE PLAN NAME OR PROGRAM NAME
d. IS THERE ANOTHER HEALTH BENEFIT PLAN?
YES NO II yes. complete items 9, 9a. and 9d.  13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize
y payment of inedical benefits to the undersigned physician or supplier for services described below.
SIGNED AUTHORIZED SIGNATURE ON FI
16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION
FROM TO
18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES
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Submitter : COBA (MEDICARE COBA MEDICAL)

Claim TPA ID

HEALTH INSURANCE CLAIM FORM

; \$1,360.00

880262438

SIGNED

31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.)
FORSMAN, ROBYN R
1811395718

Claim Total

1500

<sup>8.</sup> 1518120971 NUCC Instruction Manual at: www.nucc.org UNOFFICIAL\NOT YET APPROVED BY N.U.C. FORM CMS-1500 (02/12) Page: 1 of 1 Submitter: COBA (MEDICARE COBA MEDICAL)

X YES

32. SERVICE FACILITY LOCATION INFORMATION SUNRISE HOSPITAL AND MEDICAL C 3186 S MARYLAND PKWY

LAS VEGAS, NV 89109-2317

1861439952

1,360 00 s

33. BILLING PROVIDER INFO 8 PH #
FREMONT EMERGENCY SERVICES
PO BOX 638972

CINCINNATI, OH 45263-8972

(888) 952-6772

	Submit 1500 Claim TPA ID : \$1,360.00 HEALTH INSURANCE CLAIM FORM UNOFFICIALINOT YET APPROVED BY N.U.C. 02/12	tter : 75229742	9-10036 (UHC 83	37 MEDICAL)	Batc CCN#	ent's Ac h Number Number	
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	9. OTHER INSURED'S NAME (Last Name, First Name, Middle In		ONDITION RELATED TO:				
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	c. RESERVED FOR NUCC USE	a OTHER ACCIDE	VI?	c. INSURANCE PLAN	NAME OR	PROGRAM	NAME
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	<ol> <li>PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I au to process this claim, I also request payment of government b below.</li> </ol>	or only the release of any medical penefits either to myself or the par	is of other information necessary by who accepts assignment	payment of medica services described	il beriefils ( below.	o the unders	igned physician or supplier for
	SIGNED AUTHORIZED SIGNATURE ON 14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY(L.		2/25/19			***************************************	GNATURE ON FILE
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	9. OTHER INSURED'S NAME (Last Name, First Name, Mic	ddle Initial) 10. IS PAT	TENT'S CONDITION RELATED TO:			
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to process this claim below.	m. I also request pa	yment of gove	mment	benefits either to m	yself or the par	ty who accepts ass	ignment	services	described	below.			
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<sup>8.</sup> 1679550149

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b. RESERVED FOR NUCC USE  b. AUTO ACCIDENT?  YES  NO  C. RESERVED FOR NUCC USE  c. OTHER ACCIDENT?  TYES  NO  d. INSURANCE PLAN NAME OR PROGRAM NAME  10d. CLAIM CODES(Designated by NUCC)  READ BACK OF FORM BEFORE COMPLETING & SIGNING FORM.  12. PATIENTS OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process this claim. I also request payment of government benefits either to myself or the party who accepts assignment  SIGNED AUTHORIZED SIGNATURE ON FILE  DATE 03/06/19  D. OTHER CLAIM ID(Designated by NUCC)  C. INSURANCE PLAN NAME OR PROGRAM NAME  C. INSURANCE PLAN NAME OR PROGRAM NAME  10. IS THERE ANOTHER HEALTH BENEFIT PLAN?  YES  NO  If yes, complete items 9, 9a, and 9d.  13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE I authorize payment of medical benefits to the undersigned physician or supplier to services described below.  SIGNED AUTHORIZED SIGNATURE ON FILE  DATE 03/06/19  SIGNED AUTHORIZED SIGNATURE ON FI	14. DATE OF CURRENT		r. or PREG	NANCY				DD	74	Į.	WH D	UNABLE V	TO WC		CURRENT OCCUPATION
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9. OTHER INSURED'S NAME (Last Name, First Name, Middle Initial)  10. IS PATIENT'S CONDITION RELATED TO:	9. OTHER INSURED'S NA	AME (Last Name,	First Name	, Middle	Initial)	10. IS PA	TIENT'S CO	NDITION RELAT	ED TO:						

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	Claim TPA ID : 1500 Claim TPA ID : \$1,337 HEALTH INSURANCE CLAIM FOR UNOFFICIALMOT YET APPROVED BY N.U.C. 02/12	.00	: 7522	97429-	10036	(UHC 83	7 MEDICAL)	Batc CCN#	h Nu		: n/a
Ī	1. MEDICARE MEDICAID TRICARE	CHAMPVA	HE.	OUP ALTH PLAN	FECA BLK LUNG						
	(Medicare#) (Medicaid#) ((D#/DoD#)	(Member iC	(ID)	r)	(lD#)	X (4D#)					
1	9. OTHER INSURED'S NAME (Last Name, First Name, M	iddle Initial)	10, IS PA	TIENT'S CON	DITION RELA	TED TO:					
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				YES	NO	,	סם אא	**		М	F F
	b. RESERVED FOR NUCC USE		b. AUTO	ACCIDENT?	□ NO	PLACE (State)	b. OTHER CLAIM ID(D	esignated	by NU	ICC)	
Ì	c. RESERVED FOR NUCC USE	······································	c. OTHER	ACCIDENT?			c. INSURANCE PLAN	NAME OF	PRO	GRAM I	NAME
-	d. INSURANCE PLAN NAME OR PROGRAM NAME		10d CLA	YES	NO hoteland		d. IS THERE ANOTHE	RHEALT	H REN	FEIT PI	4N2
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ŀ	QUAL.  17. NAME OF REFERRING PROVIDER OR OTHER SOL	QU JRCE 217		Section 1	S12 : Nr 55 :	e Baron Januar	FROM  18 HOSPITALIZATION	DATES	RELAT	TO	CURRENT SERVICES
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Ī	19. ADDITIONAL CLAIM INFORMATION (Designated by	NUCC)					20. OUTSIDE LAB?			\$ CI	HARGES
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	F	. G.L		<del></del>	н		23. PRIOR AUTHORIZ	ATION N	UMBE	₹	
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	31, SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS (I certify that the statements on the reverse apply to this bill and are made a part thereof.)	32. SERVICE FA PREMONT E 3325 SOUT	MERGEN	CY SERVI			33. BILLING PROVIDE FREMONT EMERO PO BOX 63897:	GENCY		/ICES	3 MAN
	LUNDBERG, MICHAEL 1366865206	LAS VEGAS	,NV 891	117-6360			CINCINNATI, O (888) 952-67		3 - 8 9	72	
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12, PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of eny medical or other information to process this claim. I also request payment of government benefits either to myself or the party who accepts assign								on necessary	payme	payment of medical benefits to the undersigned physician or supplier for services described below.									
	below.	•		•				• • • • • • • • • • • • • • • • • • • •		•									
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	9. OTHER INSURED	S NAME (Lasi	t Name, Fi	rst Name	, Middle	Initial)	10. IS P	ATIENTS	CONDIT	ON RELA	TED TO:							
	a. OTHER INSURED	S POLICY OR	GROUP	NUMBER	₹		a, EMPl	OYMENT	7? (Curren	t or Previo	us)	a. INSURED	'S DATE	OF BIRTH			SEX	
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RAY, ROBERT 1790981462 207P00000X						S VEGAS,	S,NV 89117-6360 CINCINNATI,OH 45263-8972 (888) 952-6772											

## **EXHIBIT 6**

## **EXHIBIT 6**

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BALLOTHER OBJECTES CA CASISERTALS COUNTY that the interested as the reserved COUNTY that it is not made upon the reserved SUNRISE HO	OSPITAL AND ME RYLAND PKWY	FREMONT EMERGENCY SERVICES MA PO BOX 638972
	NV 89109-2317	CINCINNATI, OH 45263-8972 1518120971

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SIERRA HEALTHCARE OPTIONS-NV P PO BOX 15392

LAS VEGAS NV 89114-5392 HEALTH INSURANCE CLAIM FORM TABLE SALE OF FORM BEFORE COMPLETING & SIGNING THIS FORM.

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SIERRA HEALTHCARE OPTIONS-NV P

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## HEALTH INSURANCE CLAIM FORM

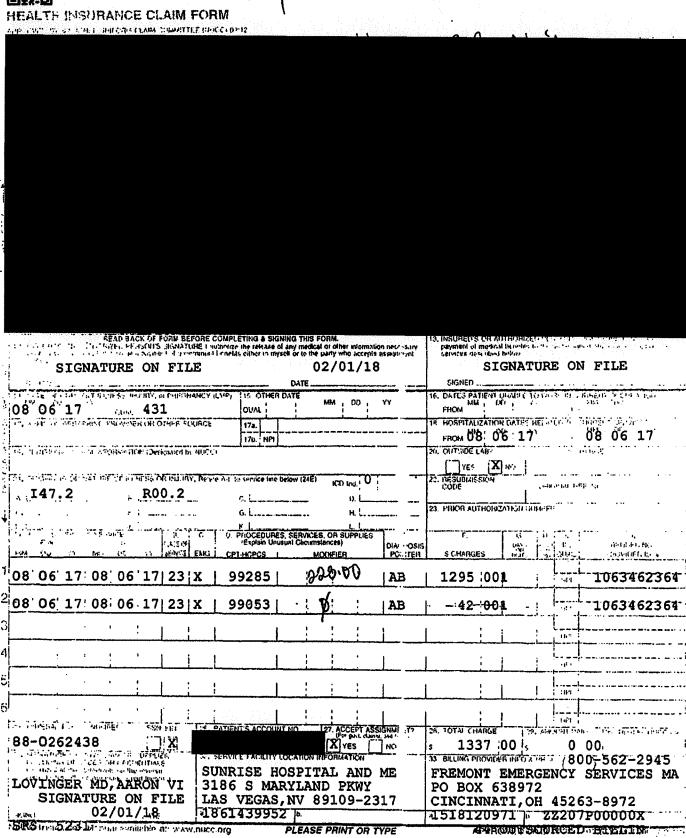
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SIERRA HEALTHCARE OPTIONS-NV P PO BOX 15392 LAS VEGAS NV 89114-5392

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APPROVED SMP 8998-11974-DIN 1980 (02-12)

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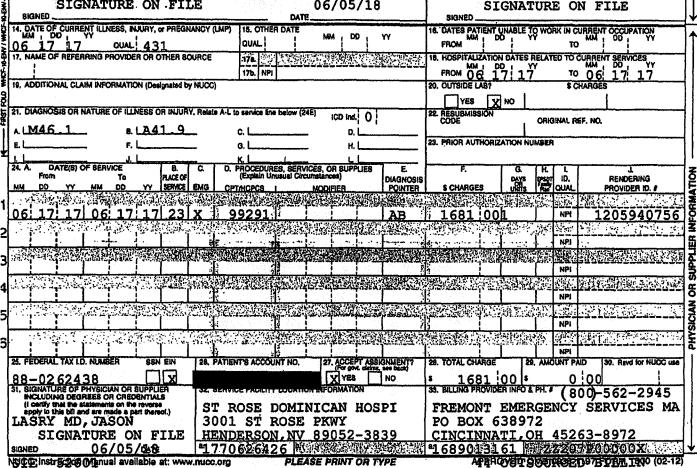
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	PO BOX 15392
	LAS VEGAS NV 89114-5392
EALTH INSURANCE CLAIM FORM	
PROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/12	

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APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE INUCC) 02/12		CARR
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SIERRA HEALTHCARE OPTIONS-NV P PO BOX 15392 LAS VEGAS NV 89114-5392

#### **HEALTH INSURANCE CLAIM FORM**

APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/18

READ BACK OF FORM BEFORE COMPLETING & SIGNING THIS FORM.	13. INSURED'S OR AUTHORIZED PERSON'S SIGNATURE 1 SHIPPS IN
12 PARENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary in processing the second of about request payment of government bands, either to myself or to the party who accepts assignment towars.	payment of medical benishes to log inde didners of you give supplier to service described behavior.
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### **HEALTH INSURANCE CLAIM FORM**

KAISER-CA MEDICARE POB 7004 DO PO BOX 7004 ATTN: CLAIMS DEPT DOWNEY,CA 90242-7004

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KAISER PO BOX 15392 LAS VEGAS NV 89114

HEALTH	INSUR	ANCE	CLAIM	FORM
APPROVED BY	NATIONAL U	NIFORM CL	AIM COMMITT	TEE (NUCC) 02/12

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SIERRA HEALTHCARE OPTIONS-NV P PO BOX 15392 LAS VEGAS NV 89114-5392

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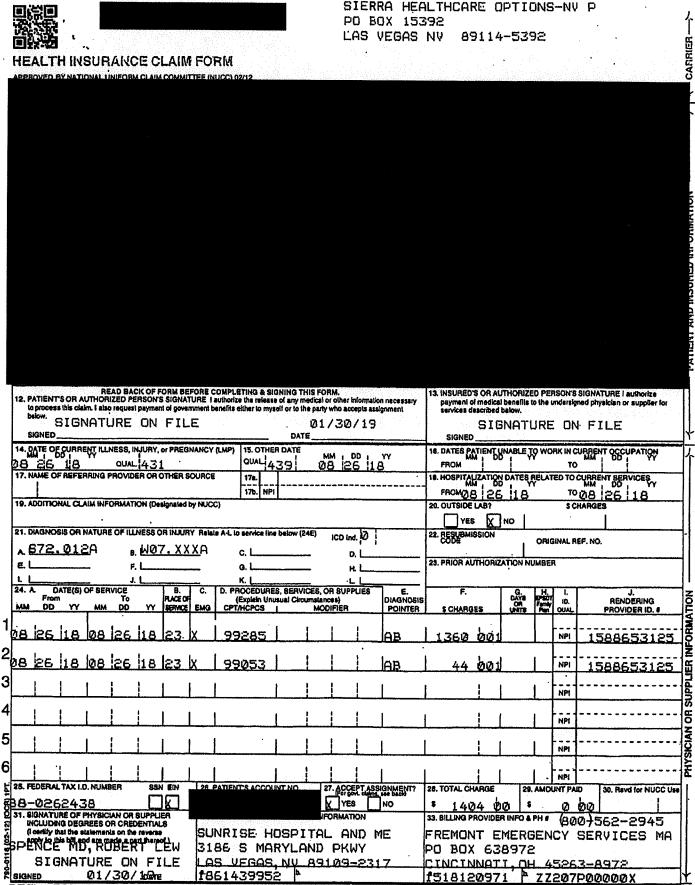
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APPROVED BY NATIONAL UNIFORM CLAIM COMMITTEE (NUCC) 02/12

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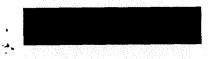
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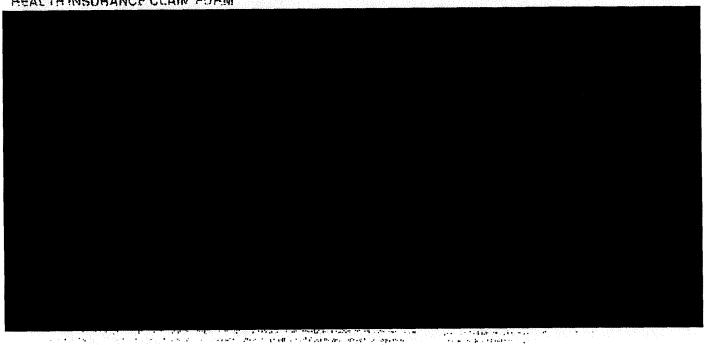
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HEALTH INSURANCE CLAIM FORM



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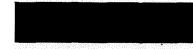




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SIERRA HEALTHCARE OPTIONS-NV P PO BOX 15392 LAS VEGAS NV 89114-5392 **HEALTH INSURANCE CLAIM FORM** PATIENT AND INSURED INFORMATION READ BACK OF FORM BEFORE COMPLETING & SIGNING THIS FORM.

12. PATIENT'S OR AUTHORIZED PERSON'S SIGNATURE I authorize the release of any medical or other information necessary to process the claim. I also request payment of government benefits either to myself or to the party who accepts assignment below.

SIGNATURE ON FILE

04/02/19 INSURED'S OR AUTHORIZED PERSON'S SIGNATURE Faumorize
payment of medical benefits to the undersigned physician or supplier for
services described below. SIGNATURE ON FILE SIGNED DATE. SIGNED 14. DATE OF CURRENT ILLNESS, INJURY, or PREGNANCY (LMP) 12<sup>M</sup> 0 8<sup>D</sup> 18 Y QUAL 431 15. OTHER DATE 16. DATES PATIENT UNABLE TO WORK IN CURRENT OCCUPATION MM , DD , YY DD QUAL. FROM TO 18. HOSPITALIZATION DATES RELATED TO CURRENT SERVICES FROM \$2, 06, 187 TO 12, 06, 187 17. NAME OF REFERRING PROVIDER OR OTHER SOURCE 17a. 17b. NPI 19. ADDITIONAL CLAIM INFORMATION (Designated by NUCC) 20. OUTSIDE LAB? & CHARGES YES X NO 21. DIAGNOSIS OR NATURE OF ILLNESS OR INJURY. Relate A-L to service line below (24E) 22. RESUBMISSION CODE ICO Ind. ORIGINAL REF. NO. E11.65 K31.84 23. PRIOR AUTHORIZATION NUMBER F. L G. L H. l PROCEDURES, SERVICES, OR SUPPLIES (Explain Unusual Circumstances) DATE(S) OF SERVICE В. E. Ğ. SUPPLIER INFORMATION From To PLACE OF ID. RENDERING DIAGNOSIS DAYS Off 72 SERVICE CPT/HCPCS \$ CHARGES PROVIDER ID. POINTER 12:06:18 12; 06; 18; 23; X 99285 AB 1360 :001 1619979028 NPI NPI NPI

NPI NPI 26. FEDERAL TAX I.D. NUMBER 27. ACCEPT ASSIGNMENT? 26. PATIENT'S ACCOUNT NO 28. TOTAL CHARGE 29. AMOUNT PAID 30. Rsvd for NUCC use 1360 00 88-0262438 X YES 0 00 33. BILLING PROVIDER INFO LPH. 7 (800 7 562 - 2945 FREMONT EMERGENCY SERVICES MA 32. SERVICE FACILITY LOCATION INFORMATION MOUNTAIN VIEW HOSPITAL

PLEASE PRINT OR TYPE

31. SIGNATURE OF PHYSICIAN OR SUPPLIER INCLUDING DEGREES OR CREDENTIALS
() certify that the statements on the reverse ANDERSIGNATING THE PROTECTION H 3100 N TENAYA WAY SIGNATURE ON FILE 04/02/19 DATE

SIGNED DATE DATE NOCC Instruction Manual available at: www.nucc.org

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SIERRA HEALTHCARE OPTIONS-NV P PO BOX 15392 Attn: Kaiser Claims LAS VEGAS, NV 89114-5392

# HEALTH INSURANCE CLAIM FORM

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### **EXHIBIT 7**

### EXHIBIT 7

#### IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS AUSTIN DIVISION

HILL COUNTRY EMERGENCY MEDICAL ASSOCIATES, P.A., LONGHORN EMERGENCY MEDICINE ASSOCIATES, P.A., CENTRAL TEXAS EMERGENCY ASSOCIATES, P.A., and EMERGENCY ASSOCIATES OF CENTRAL TEXAS,

Plaintiffs,

v.

OF TEXAS, INC.,

UNITEDHEALTHCARE INSURANCE COMPANY and UNITEDHEALTHCARE

Defendants.

1:19-CV-548-RP

#### <u>ORDER</u>

Before the Court are Hill Country Emergency Medical Associates, P.A., Longhorn

Emergency Medicine Associations, P.A., Central Texas Emergency Associates, P.A. and Emergency

Associates of Central Texas, P.A.'s ("Plaintiffs") motion to remand, (Dkt. 12), Defendants

UnitedHealthcare Insurance Company and UnitedHealthcare of Texas, Inc.'s ("Defendants")

response, (Dkt. 16), and the Plaintiffs' reply, (Dkt. 17). After considering the parties' arguments, the record, and the relevant law, the Court finds that the motion should be denied.

#### I. BACKGROUND

This case involves a dispute over the rate of reimbursement for out-of-network emergency care provided to patients with insurance plans ("Plans") administered by the Defendants. Plaintiffs provide physician staffing for emergency rooms across central Texas. Defendants, United Healthcare Insurance Company and United Healthcare of Texas, Inc., administer preferred provider plans ("PPO") and health maintenance organization ("HMO") plans, respectively. (Orig. Pet., Dkt

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1-3, at 3). In their original petition, Plaintiffs allege that the Defendants have not properly paid more than 7,000 claims for the emergency services provided to Defendants' health plan enrollees. (*Id.* at 7). While Plaintiffs concede that Defendants paid these claims, they allege that Defendants paid them at "unacceptably low rates" that were "significantly less than the usual and customary rate for the services provided." (*Id.*). Because Plaintiffs have no contracts with Defendants, they provided all emergency services to Defendants' health plan members as "out-of-network" or "non-participating" providers. (*Id.* at 6). In other words, the parties did not enter into a provider agreement that specifies an agreed rate of reimbursement for these emergency services. (*Id.*).

Plaintiffs sued Defendants in state court for improper payment on the emergency service claims, asserting violations of the Texas Insurance Code and the Texas Prompt Pay Act, as well as claims for quantum meruit and declaratory relief. (Compl., Dkt. 1-3, at 9–13). Defendants removed this case to federal court on the basis of complete preemption by the Employee Retirement Income Security Act ("ERISA"). (Notice of Removal, Dkt. 1, at 3). In their Notice of Removal, Defendants contend—and Plaintiffs do not dispute—that the health plans at issue include ERISA-regulated plans. Plaintiffs dispute that ERISA preempts their state-law causes of action and now move to remand. (Mot. Remand, Dkt. 12, at 2). Thus, to determine whether removal is proper, this Court must decide whether Plaintiffs' state law claims are in fact completely preempted by ERISA's civil enforcement scheme.

#### II. LEGAL STANDARD

A defendant may remove any civil action from state court to a district court of the United States that has original jurisdiction. 28 U.S.C. § 1441(a). The party seeking removal "bears the burden of establishing that federal jurisdiction exists and that removal was proper." Manguno v. Prudential Prop. & Cas. Ins. Co., 276 F.3d 720, 723 (5th Cir. 2002). The removal statute must "be strictly construed, and any doubt about the propriety of removal must be resolved in favor of

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remand." Gasch v. Hartford Accident & Indem. Co., 491 F.3d 278, 281–82 (5th Cir. 2007); Hood ex rel. Mississippi v. JP Morgan Chase & Co., 737 F.3d 78, 84 (5th Cir. 2013) ("Any ambiguities are construed against removal and in favor of remand to state court."). A district court is required to remand the case to state court if, at any time before final judgment, it determines that it lacks subject matter jurisdiction. 28 U.S.C. § 1447(c).

Determining whether a case arises under federal law ordinarily turns on the well-pleaded complaint rule. Aetna Health Inc. v. Davila, 542 U.S. 200, 207 (2004). Under the well-pleaded complaint rule, a defendant may not remove a case to federal court unless the plaintiff's complaint establishes that the case arises under federal law. Id. Complete preemption, however, is an exception to the well-pleaded complaint rule. Id. When a federal statute "wholly displaces the state-law cause of action through complete preemption," the state claim can be removed. Id.

ERISA is one such federal statute with the "extraordinary pre-emptive power" to "convert[s] an ordinary state common law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule." *Id.* (quoting *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 65–66 (1987)). Congress enacted ERISA "to provide a uniform regulatory regime over employee benefit plans" and equipped ERISA with "expansive pre-emption provisions" to ensure that the regulation of employee benefit plans would be "exclusively a federal concern." *Id.* at 208. Any state-law cause of action that "duplicates, supplements, or supplants the ERISA civil enforcement remedy conflicts with the clear congressional intent to make the ERISA remedy exclusive and is therefore pre-empted." *Id.* State-law causes of action that implicate ERISA's civil enforcement provisions are therefore "necessarily federal" and removable to federal court. *Id.* 

ERISA's civil enforcement scheme is stated in § 502(a) of the Act. Section 502(a)(1)(B) provides that a civil action may be brought by a participant or beneficiary "to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his

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rights to future benefits under the terms of the plan." ERISA § 502(a)(1)(B), 29 U.S.C. §

1132(a)(1)(B). State-law claims that are within the scope of § 502(a)(1)(B) are completely preempted by ERISA and removable to federal court. Lone Star OB/GYN Assocs. v. Aetna Health Inc., 579 F.3d

525, 529 (5th Cir. 2009). In Davila, the Supreme Court articulated the test for determining whether ERISA completely preempts a non-federal cause of action. 542 U.S. 200 at 210. Under Davila, a party's state-law claim falls within the scope of § 502(a)(1)(B) and is therefore completely preempted if: (1) an individual could have brought his claim under § 502(a)(1)(B), and (2) there is no independent legal duty that is implicated by defendant's actions. Id. As the party seeking removal on the basis of ERISA preemption, the Defendants bear the burden of satisfying this two-part inquiry. See Lone Star OB/GYN Assocs., 579 F.3d at 528 ("The party seeking removal bears the burden of showing that federal jurisdiction is proper" and "the district court may not remand if the defendant demonstrates the presence of a substantial federal claim, e.g., one completely preempted by ERISA.").

#### III. DISCUSSION

Upon examination of the Plaintiffs' original petition, the state statutes upon which their state law claims are based, the various health plan documents, and the parties' briefing, the Court determines that the Defendants have shown Plaintiffs' claims fall within § 502(a)(1)(B) of the ERISA statute and are therefore preempted.

#### A. Whether plaintiffs could have brought this action under ERISA

The first part of the *Davila* inquiry requires the Court to determine whether Plaintiffs could have brought their claims under § 502(a)(1)(B). *Aetna Health Inc. v. Davila*, 542 U.S. 200, 210 (2004). In other words, the Court must determine whether Plaintiffs have standing to sue under the ERISA statute. *Spring E.R., LLC v. Aetna Life Ins. Co.*, No. CIV.A. H-09-2001, 2010 WL 598748, at \*2 (S.D. Tex. Feb. 17, 2010).

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ERISA confers standing on plan "participants" and "beneficiaries." 29 U.S.C. § 1132 ("A civil action may be brought by a participant or beneficiary... to recover benefits due to him under the terms of his plan, to enforce his rights under the terms of the plan, or to clarify his rights to future benefits under the terms of the plan"). While a health care provider does not have independent standing to recover benefits under an ERISA plan, a health care provider has derivative standing to sue under ERISA upon a valid assignment of plan benefits. *Dallas Cty. Hosp. Dist. v. Associates' Health & Welfare Plan*, 293 F.3d 282, 285 (5th Cir. 2002).

Here, Plaintiffs have derivative standing to sue under ERISA as assignees of plan benefits.<sup>1</sup> (Resp., Dkt. 16, at 3). In their original petition, Plaintiffs state that they "received an assignment of the insured's benefits from each patient" and that they filed claims for such benefits with the Insurance Companies "as the insured's assignee[s]." (Orig. Pet., Dkt. 1-3, at 11). Thus, standing considerations do not bar Plaintiffs from pursuing a remedy under ERISA.

While Plaintiffs do not dispute that they have derivative standing to sue under ERISA, they nevertheless contend that they could not have brought their claims pursuant to § 502(a)(1)(B) because they are not seeking the payment of wrongly-denied ERISA plan benefits. (Mot. Remand, Dkt. 12, at 2). Instead, Plaintiffs argue that the Defendants reimbursed them for the emergency services provided to Plan members below the usual and customary rate required under Texas law. (Orig. Pet., Dkt. 1-3, at 9). That is, Plaintiffs contend, "the claims at issue involve no questions of whether the claim is payable; rather, they involve only the issue of whether the Insurance Companies

<sup>&</sup>lt;sup>1</sup> Plaintiffs do not dispute that they seek payment for emergency care rendered to patients insured by Defendants. (Orig. Pet., Dkt. 12, at 4 ("From January 2016 to September 2018, Plaintiff Doctors provided emergency medical services to thousands of the Insurance Companies' members.")). And Plaintiffs do not contest that at least some of the insurance plans at issue include ERISA-governed plans. (Not. Removal, Dkt. 1, at 2–3); Mot. Remand, Dkt. 12, at 2). Instead, Plaintiffs assert that their right to payment arises from Texas law, not the terms of an ERISA-governed health plan. (Id. ("The central issue in this case is whether the Insurance Companies are violating Texas law by reimbursing Plaintiff Doctors at unlawfully inadequate rates.")).

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paid the claim at the required usual and customary rate." (Id.). Therefore, Plaintiffs aver, their claims "concern the rate of payment, not the right to payment." (Mot. Remand, Dkt. 12, at 7). This distinction matters, say Plaintiffs, because courts have routinely held that right to payment cases "sometimes are preempted by ERISA" because they involve a benefits determination under the Plans, while rate of payment cases are not preempted by ERISA because they merely "implicate the sufficiency of the rate of payment." (Pls.' Reply, Dkt. 17, at 2 (citing Lone Star OB/GYN Assocs. V. Aetna Health, Inc., 579 F.3d 525, 532 (5th Cir. 2009) ("Where, however, a medical service is determined to be covered and the only remaining issue is the proper contractual rate of payment, coverage and benefit determinations are not implicated and the claims are not preempted.")).

The rate of payment/right to payment distinction is inapplicable here. In cases where the Fifth Circuit has made such a distinction, the healthcare providers seeking reimbursement had negotiated separate provider agreements specifying a contractual rate of reimbursement. See, e.g., Lone Star OB/GYN Assocs., 579 F.3d at 530. For example, in Lone Star OB/GYN Assocs., the principal case relied upon by Plaintiffs, Lone Star OB/GYN Associates ("Lone Star") had a provider agreement with Aetna Health Inc. ("Aetna"), an administrator of employee welfare benefit plans regulated by ERISA. Id. at 528. The provider agreement between Lone Star and Aetna established the rate of payment Aetna was required to pay Lone Star for treating its plan members. Id. at 530. In calculating the amount of reimbursement owed to Lone Star for treating its plan members, Aetna would first determine the reimbursement rate under the Aetna Market Fee Schedule for each medical procedure performed by the doctor and then pay Lone Star "the fixed percentage (set out in the Provider Agreement) of that amount." Id. Lone Star argued that "mere consultation of an ERISA plan [was] not enough to bring the claims within the scope of § 502(a)."

Id. The Court agreed and clarified that a claim implicating "the rate of payment as set out in the

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Provider Agreement, rather than the *right* to payment under the terms of the benefit plan, does not run afoul of *Davila* and is not preempted by ERISA." *Id.* (emphasis in original).

The Court went on to hold that Lone Star's "claims for underpayment under the Provider Agreement, which do not implicate coverage determinations under the terms of the relevant plan, are not preempted under ERISA." *Id.* at 533. Because the Fifth Circuit could not determine from the record which claims Aetna partially paid because it denied the service for lack of coverage under the plan and which claims it partially paid because it erroneously calculated the contractual rate of reimbursement under the Provider Agreement, the Fifth Circuit remanded to the district court "to determine whether any of the payment claims submitted by Lone Star implicate a coverage determination under the plan and thus a federal issue under ERISA." *Id.* 

Here, there is no independent provider agreement between Plaintiffs and Defendants with a fee schedule separate from the ERISA plan. As Defendants rightly note, "Plaintiffs are out-of-network providers who have no contract with Defendants and no agreed-upon rate of payment." (Resp., Dkt. 16, at 7). Instead, Plaintiffs secured assignments of ERISA benefits from insured patients and filed claims for such benefits with the Defendants "as the insured's assignee." (Orig. Pet., Dkt. 1-3, at 11). Plaintiffs' right to reimbursement flows derivatively from each insured's rights under the terms of their insurance plans—and Plaintiffs do not dispute that the Plans at issue are ERISA-governed plans. Any alleged underpayment of claims necessarily arose from a benefits determination under the Plans at issue rather than "an error in calculating the contractual rate" specified in an independent provider agreement. *Lone Star*, 579 F.3d at 533. Absent an independent provider agreement with a separate fee schedule, both the right to payment and the rate of reimbursement would depend on the terms of the ERISA plan.

Because Defendants have shown that Plaintiffs have derivative standing to sue as assignees of plan benefits, Defendants have sufficiently demonstrated that Plaintiffs could have brought their

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claims pursuant to § 502(a)(1)(B). Moreover, the right to payment/rate of payment distinction asserted by Plaintiffs does not apply here because Plaintiffs were out-of-network providers who never negotiated a separate provider agreement with Defendants with an agreed-upon rate of payment. See Lone Star OB/GYN Assoc., 579 F.3d at 530–32. Having found that the Plaintiffs could have brought their claims under the first Davila prong, the Court will now proceed to the next step of the analysis—whether Texas law creates a legal duty "independent" of the ERISA plans at issue. 542 U.S. 200 at 210.

### B. Whether Texas law creates a right to reimbursement independent of the ERISA-regulated plans.

Under *Davila*'s second prong, a cause of action is completely preempted by ERISA "where there is no other independent legal duty that is implicated by a defendant's actions." *Id.* Therefore, the Court must determine whether Plaintiffs are "in fact suing under obligations created by the plan itself, or under obligations independent of the plan and the plan member." *Spring E.R., LLC*, 2010 WL 598748, at \*5. If one of Plaintiffs' claims does not rest on an independent legal duty under Texas law, the Court may not remand. *Giles v. NYLCare Health Plans, Inc.*, 172 F.3d 332, 337 (5th Cir. 1999) ("If the plaintiff moves to remand, all the defendant has to do is demonstrate a substantial federal claim, *e.g.*, one completely preempted by ERISA, and the court may not remand.").

Plaintiffs assert state-law and common-law causes of action that they contend create an independent legal duty under Texas law requiring insurers to "reimburse out-of-network providers of emergency medical services at the usual and customary rate (i.e. the general prevailing cost of a service within a geographic area.)" (Mot. Remand, Dkt. 12, at 8). Specifically, Plaintiffs assert claims for violations of the Texas Insurance Code and the Texas Prompt Pay Act, as well as claims for quantum meruit and declaratory relief. (Compl., Dkt. 1-3, at 9-13). Reprising their right to payment/rate of payment argument, Plaintiffs contend their causes of action "involve no questions of whether the claim is payable; rather, they involve only the issue of whether the [Defendants] paid

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the claim[s] at the required and customary rate" under Texas law. (*Id.*). While causes of action implicating the right to payment would trigger ERISA preemption, Plaintiffs maintain their state-law and common-law causes of action solely implicate the rate of payment guaranteed under Texas law, a duty independent of ERISA. (Mot. Remand, Dkt. 12, at 6).

Plaintiffs' causes of action do not implicate legal duties independent of ERISA; rather Plaintiffs' claims for reimbursement hinge on the terms of the ERISA-governed plans. Plaintiffs concede that Defendants determined all the claims at issue to be payable. (Pls.' Reply, Dkt. 17, at 1-2). As Defendants rightly note, "Plaintiffs have no provider agreements with Defendants and no other contractual basis on which they were entitled to seek reimbursement from Defendants." (Resp., Dkt. 16, at 10). Any potential liability for underpayment would therefore derive entirely from the rights and obligations encompassed within the terms of the benefit plans at issue. While the Texas statutes cited by Plaintiffs state rules for reimbursement of emergency care by non-network providers, these statutes still link reimbursement to either a plan's terms or a separate provider agreement, which Plaintiffs—as out-of-network providers—have not negotiated. See, e.g, Tex. Ins. Code § 1301.155 ("If an insured cannot reasonably reach a preferred provider, an insurer shall provide reimbursement for the following emergency care services at the usual and customary rate or at an agreed rate and at the preferred level of benefits until the insured can reasonably be expected to transfer to a preferred provider") (emphasis added). As assignees of plan benefits, Plaintiffs' reimbursement claims are not based on Texas law; they are inextricably linked to the reimbursement obligation set forth in the plans' terms.

ERISA completely preempts Plaintiffs' quantum meruit claim for similar reasons. Plaintiffs contend they are entitled to recover in quantum meruit because the Defendants "received the benefit of having its healthcare obligations to its plan members discharged and their enrollees received the benefit of the emergency care provided to them by Plaintiff Doctors." (Orig. Pet., Dkt.

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1-3, at 13). But under Texas law, recovery under a quantum meruit theory is "based upon a promise implied by law to pay for beneficial services rendered and knowingly accepted." Leasehold Expense Recovery, Inc. v. Mothers Work, Inc., 331 F.3d 452, 462 (5th Cir. 2003) (quoting Black Lake Pipe Line v. Union Const. Co., Inc., 538 S.W.2d 80, 86 (Tex. 1976)). The implied promise to reimburse Plaintiffs for emergency care arises from the terms of each patient's insurance plan. Determining "the reasonable value of services rendered" would hinge on an analysis and interpretation of Plaintiffs' entitlement to benefits under the Plans' terms. Id.

Plaintiffs insist that because they are "seeking reimbursement for approved claims at the usual and customary rate guaranteed to them by Texas law" rather than denied benefits, their quantum meruit claim does not depend on the implied agreement to pay benefits captured by the plans' terms. (Pls.' Reply, Dkt. 17, at 2). But Defendants only received the benefit of emergency care for their plan members that was covered under their enrollees' ERISA-governed healthcare plans. Spring E.R., LLC, 2010 WL 598748, at \*6. Defendants therefore accepted the benefit of Plaintiffs' emergency care according to the terms of their enrollees' plans. The rate of reimbursement for the benefit of such service would therefore turn on the reimbursement obligations under the ERISA plans held by the insured patients. Plaintiffs—having provided emergency care in accordance with the Plans' terms—would be entitled to the rate of reimbursement specified in the Plans, no more and no less. Plaintiffs' quantum meruit claim is therefore preempted.

Defendants have demonstrated that Plaintiffs (1) could have brought their claims pursuant to ERISA's civil enforcement scheme and that (2) at least one of Plaintiffs' state-law claims does not rest on a legal duty independent of ERISA. *Davila*, 542 U.S. 200 at 210. Therefore, the Court need not reach the question of whether Plaintiffs' Prompt Pay Act claim or other Insurance Code claims

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are also preempted by ERISA.<sup>2</sup> Because Defendants have shown that ERISA completely preempts at least one of Plaintiffs' claims, this Court cannot remand this action.

#### IV. CONCLUSION

For these reasons, IT IS ORDERED that Plaintiffs' Motion to Remand, (Dkt. 12), is **DENIED**.

SIGNED on December 10, 2019.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

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<sup>&</sup>lt;sup>2</sup> Defendants need only demonstrate that one of Plaintiffs' stated claims is completely preempted by ERISA, as federal question jurisdiction requires only one "substantial federal claim, e.g., one completely preempted by ERISA." Giles, 172 F.3d at 337. So long as the Court has proper removal jurisdiction over one federal claim, "it may exercise supplemental jurisdiction over any remaining state law claims." Id. Thus, the Court need not analyze each of Plaintiffs' state-law claims to determine whether they present an independent legal duty. Id. The Court does note that the cases cited by Plaintiffs for the proposition that their Texas Prompt Pay Act claim rests on an independent duty precluding removal jurisdiction are inapposite because they involve either separate provider agreements or common-law misrepresentation claims, neither of which are present here. See Lone Star, 579 F.3d at 532 (holding that claims for underpayment under a separately-negotiated provider agreement brought pursuant to the Texas Prompt Pay Act that did not implicate coverage determinations were not preempted by ERISA); Kindred Hosps. Ltd. Pship v. Aetna Life Ins. Co., No. 3:16-CV-3379-D, 2017 WL 2505001, at \*7 (N.D. Tex. June 9, 2017) (holding that plaintiffs' common-law misrepresentation claim based on an insurance company's pre-admission representations about coverage and claim for breach of an independent provider agreement were not completely preempted).

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Attorneys for Plaintiffs

#### 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.

UNITEDHEALTH GROUP, INC., a Delaware corporation; 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.: A-19-792978-B

Dept. No.: 27

#### NOTICE OF INTENT TO TAKE DEFAULT AS TO:

(1) DEFENDANT UNITEDHEALTH GROUP, INC. ON ALL CLAIMS; AND

(2) ALL DEFENDANTS ON THE FIRST AMENDED COMPLAINT'S EIGHTH **CLAIM FOR RELIEF** 

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Plaintiff Fremont Emergency Services (Mandavia), Ltd. ("Fremont") is a professional emergency medicine services group practice that staffs the emergency departments at hospitals located throughout Clark County, Nevada. This case arises from the United Defendants' improper business strategy to artificially reduce payments to Fremont, Team Physicians of Nevada-Mandavia, P.C. ("Team Physicians"); and Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine ("Ruby Crest" and collectively, the "Health Care Providers") through a multi-front assault: negotiations aimed at trying to leverage an in-network agreement at unsubstantiated low reimbursement rates; concurrent pressure by United on hospital facilities in order to put pressure on hospitals who have contractual relationships with the Health Care Providers; and the organized plan between United and third-party Data iSight to artificially reduce reimbursement rates for emergency medicine services. Part of this plan is to delay payment of reasonable and customary reimbursement rates provided to United's members to continue the economic squeeze on the Health Care Providers. As a result, Fremont initiated this action on April 15, 2019 alleging it has been improperly underpaid for emergency services by the United defendants and claims for breach of implied-in-fact contract, tortious breach of the implied covenant of good faith and fair dealing unjust enrichment (alternative claim), violation of NRS 686A.020 and 686.020, violation of Nevada's Prompt Pay Statutes and Regulations, Consumer Fraud and Deceptive Trade Practices Acts, and seeking a declaratory judgment.

On May 14, 2019, defendants United Healthcare Insurance Company; United Health Care Services Inc. dba UnitedHealthcare; UMR, Inc., dba United Medical Resources; Oxford Health Plans, Inc.; Sierra Health And Life Insurance Company, Inc.; Sierra Health-Care Options, Inc., Health Plan Of Nevada, Inc. (collectively, the "Removing Defendants") removed the action to the United States District Court, District of Nevada, Case No. 2:19-cv-00832-JCM-VCF.

During the pendency of the action in federal court, Fremont moved to remand the action and moved for leave to amended its complaint. After a contested hearing, the federal court granted leave to amend and the Health Care Providers filed a First Amended Complaint adding (1) plaintiffs Team Physicians and Ruby Crest; (2) defendant UnitedHealth Group, Inc.; and (3) a claim for violation of Nevada civil racketeering statute, NRS 207.350 et seq. Exhibit 1, First