

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.

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Case No. 85525

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,

vs.

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

Respondents,

vs.

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

Real Parties in Interest.

Case No. 85656

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K. LEE BLALACK II
(*pro hac vice*)
JONATHAN D. HACKER (*pro hac*
vice forthcoming)
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006

DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13,250)
KORY J. KOERPERICH (SBN 14,559)
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy., Ste. 600
Las Vegas, Nevada 89169

D. LEE ROBERTS (SBN 8877)
COLBY L. BALKENBUSH
(SBN 13,066)
WEINBERG, WHEELER,
HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd.,
Ste. 400
Las Vegas, Nevada 89118

Attorneys for Appellants/Petitioners

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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:

Pat Lundvall
Kristen T. Gallagher
Amanda M. Perach
MCDONALD CARANO LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

Attorneys for Respondents (case no. 85525)/Real Parties in Interest (case no. 85656)

Richard I. Dreitzer
FENNEMORE CRAIG, PC
9275 W. Russell Road, Suite 240
Las Vegas, Nevada 89148

Attorneys for Real Parties in Interest (case no. 85656)

Dennis L. Kennedy
Sarah E. Harmon
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148

Attorneys for Respondents (case no. 85525)

Constance. L. Akridge
Sydney R. Gambee
HOLLAND & HART LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Attorneys for Amicus Curiae (case no. 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

Respondent (case no. 85656)

Joseph Y. Ahmad
John Zavitsanos
Jason S. McManis
Michael Killingsworth
Louis Liao
Jane L. Robinson
Patrick K. Leyendecker
AHMAD, ZAVITSANOS, & MENSING, PLLC
1221 McKinney Street, Suite 2500
Houston, Texas 77010

Justin C. Fineberg
Martin B. Goldberg
Rachel H. LeBlanc
Jonathan E. Feuer
Jonathan E. Siegelau
David R. Ruffner
Emily L. Pincow
Ashley Singrossi
LASH & GOLDBERG LLP
Weston Corporate Centre I
2500 Weston Road Suite 220
Fort Lauderdale, Florida 33331

*Attorneys for Respondents (case no. 85525)/Real Parties in Interest (case
no. 85656)*

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

686A.170 to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.”

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

65. The plain language of NRS 686A.310 does not prohibit a third party, such as the Health Care Providers, from raising claims under NRS 686A.310, but, instead, provides that claims may be asserted by the Commissioner and an insured. NRS 686A.310(2) (“In addition to any rights or remedies available to the Commissioner, an insurer is liable to its insured for any damages sustained by the insured as a result of the commission of any act set forth in subsection 1 as an unfair practice.”).

66. As the Health Care Providers allege in Paragraphs 64, 66, 230 of the FAC, United has failed to comply with NRS 686A.310(1)(e) by failing to pay the Health Care Providers’ medical professionals the usual and customary rate for emergency care provided to United’s members.

67. The Health Care Providers also sufficiently allege that United has acted in bad faith regarding its obligation to pay the usual and customary fee (*see, e.g.*, FAC ¶¶ 57, 69, 233); therefore, pursuant to NRS 42.005, the Health Care Providers are entitled to maintain their claim to recover punitive damages against United associated with this claim.

68. The Court does not find merit to United’s argument that *Gunny v. Allstate Ins. Co.*, 108 Nev. 344, 346, 830 P.2d 1335, 1336 (1992) stands for the proposition that Nevada’s Unfair Insurance Practices Act “does not create a private right of action against insurers in favor of third party claimants like Fremont.” Motion at 23:16-17. Nor is *Gunny* analogous because the Health Care Providers allege the existence of an implied-in-fact contract with United and, consequently, a claim asserted by a medical services provider under NRS 686A.020 and 686A.310 is actionable. The absence of a contract between *Gunny* and the insurer makes this case distinguishable.

...

69. To the extent any of United's other arguments specific to its Motion regarding the Health Care Providers' claim for Violation of NRS 686A.020 and 686A3.10 are not specifically addressed herein, the Court considered all of the defenses raised in the Motion, as well as all arguments made during oral argument, and the Court does not find merit to any of them.

Violations of Nevada Prompt Pay Statutes and Regulations

70. The Nevada Insurance Code requires an HMO, MCO or other health insurer to pay a healthcare provider's claim within 30 days of receipt of a claim. NRS 683A.0879 (third party administrator), NRS 689A.410 (Individual Health Insurance), NRS 689B.255 (Group and Blanket Health Insurance), NRS 689C.485 (Health Insurance for Small Employers), NRS 695C.185 (HMO), NAC 686A.675 (all insurers) (collectively, the "NV Prompt Pay Laws"). Thus, for all submitted claims, United was obligated to pay the Health Care Providers the usual and customary rate within 30 days of receipt of the claim.

71. The Court concludes that the Health Care Providers adequately allege in the FAC that United has failed to reimburse the Health Care Providers at the usual and customary rate within 30 days of the submission of the claim. FAC ¶ 237. The Health Care Providers further allege that United has failed to reimburse the Health Care Providers at the usual and customary rate at all. *Id.*

72. Additionally, the Health Care Providers adequately state a claim for violation of NV Prompt Pay Laws by alleging that United has only paid part of the subject claims that have been approved and are fully payable. *Id.* ¶ 238.

73. As a result, the FAC adequately alleges that United has failed to reimburse the Health Care Providers at the usual and customary rate within 30 days of submission of the claims as the Nevada Insurance Code requires. If established, United is liable to the Health Care Providers for statutory penalties.

74. Moreover, United did not challenge the Health Care Providers' claim for violation of NV Prompt Pay Laws under NRCP 12(b)(5).

75. To the extent any of United's other arguments specific to its Motion regarding the Health Care Providers' claim for Violations of Nevada Prompt Pay statutes and regulations are

not specifically addressed herein, the Court considered all of the defenses raised in the Motion, as well as all arguments made during oral argument, and the Court does not find merit to any of them.

Violations of Nevada Consumer Fraud & Deceptive Trade Practices Acts

76. The Nevada Deceptive Trade Practices Act (DTPA) prohibits United from engaging in “deceptive trade practices,” including but not limited to (1) knowingly making a false representation in a transaction; (2) violating “a state or federal statute or regulation relating to the sale or lease of goods or services”; (3) using “coercion, duress or intimidation in a transaction”; and (4) knowingly misrepresent the “legal rights, obligations or remedies of a party to a transaction.” NRS 598.0915(15), 598.0923(3), 598.0923(4), NRS 598.092(8), respectively.

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

78. The Health Care Providers sufficiently allege that United has violated the DTPA and the Consumer Fraud Statute through its acts, practices, and omissions described in the FAC, including but not limited to (a) wrongfully refusing to pay the Health Care Providers for the medically necessary, covered emergency services the Health Care Providers provided to Members in order to gain unfair leverage against the Health Care Providers now that they are out-of-network and in contract negotiations to potentially become a participating provider under a new contract in an effort to force the Health Care Providers to accept lower amounts than it is entitled for its services; and (b) engaging in systematic efforts to delay adjudication and payment of the Health Care Providers’ claims for its services provided to United’s members in violation of their legal obligations. FAC ¶ 246.

79. The Nevada Supreme Court has held that violations of DTPA do not need to be proven with the same level of particularity as fraud claims. *Betsinger v. D.R. Horton, Inc.*, 232 P.3d 433, 436 (2010) (holding that a violation of the DTPA need not be proven under the clear and convincing standard as is required for a fraud claim).

80. Even if this Court were to require that this claim be subject to heightened pleading standards, the Court concludes that the Health Care Providers pled the claim for violation of

1 DTPA with particularity. FAC ¶ 246; *see also* ¶¶ 25, 57, 65.

2 81. The Health Care Providers sufficiently allege that United violated “a state or
3 federal statute or regulation relating to the sale or lease of goods or services” with allegations
4 that United has violated NRS 679B.152, NRS 686A.020, 686A.310, NRS 683A.0879 (third party
5 administrator), NRS 689A.410 (Individual Health Insurance), NRS 689B.255 (Group and
6 Blanket Health Insurance), NRS 689C.485 (Health Insurance for Small Employers), NRS
7 695C.185 (HMO) and NAC 686A.675 by failing to timely pay claims submitted at a usual and
8 customary rate within 30 days of receipt of the claim. FAC ¶¶ 243-249. The Health Care
9 Providers expressly state that the UH Parties began to violate these provisions in July 2017 (FAC
10 ¶ 254) and the Sierra Affiliates in March 2019 (*id.* ¶ 255) and continue to violate such provisions
11 through the present date. Nothing further is required to establish that this claim is actionable. As
12 such, the Health Care Providers sufficiently allege this portion of the DTPA claim.

13 82. The Health Care Providers also sufficiently allege that the DPTA has been
14 violated by United’s use of “coercion, duress or intimidation in a transaction.” FAC ¶ 244.
15 Specifically, the Health Care Providers allege that United is “wrongfully refusing to pay the
16 Health Care Providers for the medically necessary, covered emergency services the Health Care
17 Providers provided to Members in order to gain unfair leverage against the Health Care Providers
18 now that they are out-of-network and in contract negotiations to potentially become a
19 participating provider under a new contract in an effort to force the Health Care Providers to
20 accept lower amounts than it is entitled for its services.” FAC ¶ 246.

21 83. Further, the Health Care Providers allege:

22 Defendants paid some claims at an appropriate rate and others at a
23 significantly reduced rate which is demonstrative of an arbitrary and
24 selective program and motive or intent to unjustifiably reduce the
25 overall amount Defendants pay to the Health Care Providers.
26 Defendants implemented this program to coerce, influence and
leverage business discussions with the Health Care Providers to
become a participating provider at significantly reduced rates, as
well as to unfairly and illegally profit from a manipulation of
payment rates.

27 FAC ¶ 65.

28 ...

1 84. Based on the foregoing, the Health Care Providers sufficiently allege who
2 engaged in these bad acts (the United entities) when such parties engaged in these acts (from
3 2017 to present, FAC ¶ 90) and the scope of the bad acts alleged (improperly lowering amounts
4 paid to leverage negotiations) (FAC ¶ 65).

5 85. The Health Care Providers also sufficiently allege that United has knowingly
6 misrepresented the “legal rights, obligations or remedies of a party to a transaction.” FAC ¶ 244.
7 Specifically, the Health Care Providers assert that by paying claims at artificially reduced rates,
8 United is representing that these claims are being paid at usual and customary and reasonable
9 rates when such a representation is inaccurate. With respect to the UH Parties, this conduct
10 commenced in July 2017 (FAC ¶ 254); and with respect to the Sierra Affiliates this conduct
11 commenced in September 2019 (*id.* ¶ 255) and continues to present date and each Defendant has
12 engaged in these bad acts. Thus, the Health Care Providers sufficiently allege this aspect of its
13 claim for violation of DTPA.

14 86. As is detailed in the FAC, the Court finds that if claims based on violation of
15 DTPA require a heightened pleading standard, the Health Care Providers have satisfied such a
16 standard.

17 87. The Court considered United’s argument that it is improper to lump all the
18 defendant parties together in the Health Care Providers’ allegations, but the Court rejects the
19 argument. The Health Care Providers allege that United has improperly engaged in artificially
20 reducing the rates paid to the Health Care Providers for an ulterior purpose. Thus, it is
21 permissible for the Health Care Providers to make an allegation which encompasses all of these
22 parties. To force the Health Care Providers to reallege this same claim using each of the
23 Defendants’ names would be inefficient and unnecessary under these circumstances.

24 88. To the extent any of United’s other arguments specific to its Motion regarding the
25 Health Care Providers’ claim for are not specifically addressed herein, the Court considered all of
26 the defenses raised in the Motion, as well as all arguments made during oral argument, and the
27 Court does not find merit to any of them.

28 ...

1 89. United argues that the Health Care Providers are not “victims” under NRS
2 41.600; however, the Court does not find merit to the argument based on Nevada law.

3 90. NRS 41.600(1) provides that “[a]n action may be brought by any person who is
4 a victim of consumer fraud.” The statute does not define the scope of “victim,” but upon review
5 of the deceptive trade practice statutes as a whole, the legislature did not intend to limit the scope
6 of this term.

7 91. The term “victim of consumer fraud” is broad and includes “any person” who is
8 a victim of consumer fraud, including business competitors, consumers and even businesses
9 which do not have competing interests. *Del Webb Community, Inc. v. Partington*, 652 F.3d 1145,
10 1153 (9th Cir. 2011).

11 92. Even under the narrow definition of “victim” adopted by *Igbinovia v. State*, 111
12 Nev. 699, 706, 895 P.2d 1304, 1308 (1995), limiting the term to passive victims who suffered a
13 loss that was “unexpected and occurs without voluntary participation of the person suffering the
14 harm or loss,” the Health Care Providers qualify as victims.

15 93. The Health Care Providers allege they do not voluntarily provide services to out
16 of network patients. Rather, state law mandates that the Health Care Providers provide
17 emergency medical services to any person presenting to an emergency room in need of
18 emergency medical services. NRS 439B.410(1) (“each hospital ... has an obligation to provide
19 emergency services and care, including care provided by physicians...regardless of the financial
20 status of the patient.”).

21 94. The Health Care Providers allege that the provision of services to United’s
22 Members was not voluntary and the loss the Health Care Providers have suffered was unexpected
23 given that United is refusing to pay usual and customary rates and the reasonable value of the
24 services provided despite previously doing so. Thus, the Court concludes that, accepting all
25 allegations of the Health Care Providers as true, the Health Care Providers are not active
26 participants in United’s fraudulent conduct and are “victims” under NRS 41.600(1) even if the
27 definition of “victim” is limited in the way United proposes.

28 ...

95. The Court also does not find United's argument that the term "victim of consumer fraud" is to be construed narrowly such that the Health Care Providers would be excluded from the definition under NRS 41.600.

96. To the extent any of United's other arguments specific to its Motion regarding the Health Care Providers' claim for Violations of Nevada Consumer Fraud & Deceptive Trade Practices Acts are not specifically addressed herein, the Court considered all of the defenses raised in the Motion, as well as all arguments made during oral argument, and the Court does not find merit to any of them.

Declaratory judgment

97. United did not challenge the Health Care Provider's declaratory relief claim under a NRCP 12(b)(5) standard. As a result, this claim is not subject to dismissal for failure to state a claim for relief.

Violation of NRS 207.350 et seq. (NV RICO)

98. Under Nevada law, any person who is injured in his business or property by reason of any violation of NRS 207.400 has a cause of action against a person causing such injury for three times the actual damages sustained. NRS 207.470(1).

99. Pursuant to NRS 207.470 and NRS 207.400, to state a civil RICO cause of action requires a plaintiff to allege that defendants have:

engag[ed] in at least two crimes related to racketeering that have the same or similar pattern, intents, results, accomplices, victims or methods of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated incidents, if at least one of the incidents occurred after July 1, 1983, and the last of the incidents occurred within 5 years after a prior commission of a crime related to racketeering.

NRS 207.390. "Crimes related to racketeering" are enumerated in NRS 207.360 and include the crime of obtaining money or property valued at \$650 or more, violation of 205.377 and involuntary servitude, the crimes that the Health Care Providers allege. NRS 207.360(28), (35), (36).

100. In order to recover, three conditions must be met: (1) the plaintiff's injury must

1 flow from the defendant's violation of a predicate Nevada RICO act; (2) the injury must be
2 proximately caused by the defendant's violation of the predicate act; and (3) the plaintiff must
3 not have participated in the commission of the predicate act. *Allum v. Valley Bank of Nevada*,
4 109 Nev. 280, 283, 849 P.2d 297, 299 (1993).

5 101. "A state RICO complaint need allege no more than that which is set forth in the
6 Nevada statute." *Siragusa v. Brown*, 114 Nev. 1384, 1399, 971 P.2d 801, 811 (1998).

7 102. While Nevada's civil RICO statutes are patterned after the federal RICO statutes,
8 Nevada's statute differs in some respects. *Hale v. Burkhardt*, 104 Nev. 632, 634-635, 764 P.2d
9 866, 867-868 (1988).

10 103. The Court concludes that the FAC satisfies each of these elements and United's
11 challenges must be rejected for the following reasons.

12 104. To have standing to bring a civil RICO claim, a plaintiff must allege injury that
13 flowed from the violation of a predicate RICO act. *Allum*, 109 Nev. at 284, 849 P.2d at 300
14 (citing *Holmes v. Securities Investor Protection Corp.*, 503 U.S. 258, 266-268 (1992)); *Brown v.*
15 *Kinross Gold, U.S.A.*, 378 F. Supp. 2d 1280, 1287 (D. Nev. 2005).

16 105. A plaintiff satisfies this requirement by alleging "some direct relation between the
17 injury asserted and the injurious conduct alleged." *Holmes*, 503 U.S. at 266-268; *Canyon County*
18 *v. Syngenta Seeds, Inc.*, 519 F.3d 969, 980 (9th Cir. 2008) (a court evaluates proximate causation
19 under federal civil RICO by asking "whether the alleged violation led directly to the plaintiff's
20 injuries."); *Allum*, 109 Nev. at 286, 849 P.2d at 301.

21 106. Proximate cause is a factual issue not appropriate for resolution on a Rule 12(b)(5)
22 motion. *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661, 664-665 (1998).

23 107. The requirement of proximate cause seeks to "limit a person's responsibility for
24 the consequences of that person's own acts." *Painters & Allied Trades Dist. Council 82 Health*
25 *Care Fund v. Takeda Pharmaceuticals Co. Ltd.*, 943 F.3d 1243, 1248 (9th Cir. 2019) (allegations
26 sufficient to satisfy RICO's proximate cause requirement where the plaintiff alleged a third party
27 had relied on the defendants' false statements).

28 108. The proximate causation analysis is concerned with: (1) whether plaintiff would

1 have difficulty showing its damages flowed from defendant conduct; (2) whether there is a risk
 2 of double recovery; and (3) whether others are positioned to make the same claims. *Holmes* at
 3 503 U.S. at 269. These factors emphasize that proximate cause is “a flexible concept that does
 4 not lend itself to a black-letter rule that will dictate the result in every case.” *Takeda*
 5 *Pharmaceuticals Co. Ltd.*, 2019 WL 6484263, at *5.

6 109. Similarly, the Ninth Circuit has developed three non-exhaustive factors to
 7 determine whether the proximate causation requirement has been met: (1) whether there are more
 8 direct victims of the alleged wrongful conduct who can be counted on to vindicate the law as
 9 private attorneys general; (2) whether it will be difficult to ascertain the amount of the plaintiffs
 10 damages attributable to defendant's wrongful conduct; and (3) whether the courts will have to
 11 adopt complicated rules apportioning damages to obviate the risk of multiple recoveries. *Brown*
 12 *v. Bettinger*, No. 2:15-cv-00331-APG, 2015 WL 4162505, at *4 (D. Nev. July 8, 2015) (citing
 13 *Mendoza v. Zirkle Fruit Co.*, 301 F.3d 1163, 1168–69 (9th Cir. 2002). Here, as they allege, the
 14 Health Care Providers are directly impacted by the scheme, they can ascertain their damages
 15 attributable to the scheme and there are no complicated rules to apportion damages to avoid
 16 multiple recoveries because the Health Care Providers only seek to recover their damages.

17 110. The Court concludes that the three *Holmes* (and reiterated in *Mendoza v.*
 18 *Amalgamated Transit Union Int'l*, No. 2:18-cv-959-JCM-NJK, 2019 WL 4221078, at *6 (D. Nev.
 19 Sept. 5, 2019)) factors are met.

20 111. Accepting all of the allegations in the FAC as true, the Health Care Providers are
 21 directly being defrauded by the Enterprises' scheme (*see, e.g.*, FAC ¶¶ 148, 187-188) and no one
 22 else is better suited to bring this action. FAC ¶¶ 102, 107-109, 113-115, 148.

23 112. The Court concludes that the foregoing allegations squarely link the scheme to
 24 manipulate and reduce rate payment data to an actual reduction in payment for emergency
 25 services to the Health Care Providers.

26 113. Further, the Court does not find merit to United's argument that there is a risk of
 27 double recovery because the Health Care Providers only seek recovery for emergency services
 28 they rendered and no one else is positioned to make the same Nevada civil RICO claims regarding

1 the emergency services at issue in this case. *Holmes*, 503 U.S. at 266-268.

2 114. The Court also considered, and rejects, United's argument that (1) the civil
3 racketeering allegations fail because the alleged underpayment has no causal connection to
4 alleged misrepresentations as the Health Care Providers are required to provide emergency care
5 under federal and state law; and (2) United previewed its scheme, resulting in a break in the
6 causal connection. Supplement at 5:14-6:3. Both of arguments misunderstand the proximate
7 cause inquiry.

8 115. Instead, the Court concludes that the FAC sufficiently alleges proximate cause
9 because the facts the Health Care Providers allege – that there was a change in United's
10 reimbursement rates and the Health Care Providers' relied on the prior reimbursement – support
11 a finding of proximate cause.

12 116. The Court concludes that the Health Care Providers sufficiently allege that they
13 are the direct victims of the predicate acts of obtaining money by false pretenses, multiple
14 transactions involving fraud or deceit and involuntary servitude.

15 117. The Court does not find merit in United's argument that the Health Care Providers
16 failed to plead the civil RICO claim with the requisite particularity under NRCP 9(b). Supplement
17 at 6:18-25; *see* FAC ¶¶ 100-188, 261-273.

18 118. The Court has also considered and rejected United's argument that the civil
19 racketeering claims should be dismissed because the Health Care Providers "lumped" the United
20 Defendants together (Supplement at 9:18-23). The Court concludes that the cases on which
21 United relies involve allegations that are not analogous. In *Doane v. First Franklin Financial*,
22 No. 2:11-CV-02130-MCE, 2012 WL 2129369, at *6 (E.D. Cal. June 12, 2012), the pleadings
23 referred to multiple, unrelated defendants and where the complaints at issue were otherwise
24 wholly deficient, "conclusory, convoluted, vague and generally fail to satisfy the pleading
25 standards under Rule 8(a) or 9(b)."

26 119. The Court finds that the FAC contains substantial allegations that detail the
27 alleged scheme and United's involvement.

28 ...

120. Section 205.377 provides, in part:

A person shall not, in the course of an enterprise or occupation, knowingly and with the intent to defraud, engage in an act, practice or course of business or employ a device, scheme or artifice which operates or would operate as a fraud or deceit upon a person by means of a false representation or omission of a material fact that: (a) The person knows to be false or omitted; (b) The person intends another to rely on; and (c) Results in a loss to any person who relied on the false representation or omission...

121. “False pretense is a representation of some fact or circumstance which is not true and is calculated to mislead, and may consist of any words or actions intended to deceive.” *Hale*, 104 Nev. at 636–37, 764 P.2d at 869; NRS 205.380. Specifically, the Health Care Providers have provided ample allegations to support a claim for violation of NRS 205.377 and for obtaining money by false pretenses in violation of NRS 207.360(28).

122. The Court finds that the Health Care Providers sufficiently allege the elements for two fraud-based predicate acts in violation of NRS 205.377 (multiple transactions involving fraud or deceit in course of enterprise or occupation) and for obtaining possession of money or property by false pretenses.

123. Specifically, in establishing the elements of NRS 205.377, the Court concludes that Health Care Providers have sufficiently pled that in at least two transactions (*see, e.g., id.* ¶ 115), the Enterprise intended to defraud, engage in an act, practice or course of business or employ a device, scheme or artifice which operates or would operate as a fraud or deceit upon a person by means of a false representation or omission of a material fact (*see, e.g., id.* ¶¶ 177-179, 182, 183); that the Enterprise knows to be false or omitted (*see, e.g.,* ¶¶ 99, 100, 102, 107, 109, 113, 271); upon which United intends the Health Care Providers to rely (*see e.g. id.* ¶¶ 111, 183-185); and which has resulted and continues to result in losses to the Health Care Providers who relied on the false representations or omissions (*see, e.g., id.* ¶¶ 187-188).

124. The FAC also sufficiently alleges “Defendants illegally conduct the affairs of the Enterprise, and/or control the Enterprise, that includes Data iSight though a pattern of unlawful activity.” FAC ¶ 112.

125. With respect to the claim under NRS 207.360(28), the Health Care Providers

1 sufficiently allege that the Enterprise intended to defraud the Health Care Providers through
 2 written false representations (*see, e.g., id.* ¶¶ 126, 177-178), causing the Health Care Providers'
 3 reliance thereon (*see, e.g., id.* ¶¶ 111, 183-185). FAC ¶¶ 123-126; *see also* ¶¶ 149-188.

4 126. Under NRS 207.360(36), involuntary servitude is defined as:

5 1. A person who knowingly subjects, or attempts to subject,
 6 another person to forced labor or services by:

7 (c) Abusing or threatening to abuse the law or legal process;

8 (f) Causing or threatening to cause financial harm to any person,

9 ➔ is guilty of holding a person in involuntary servitude.

10 NRS 200.463(1).

11 127. The Court concludes that the FAC sufficiently pleads such a claim premised on
 12 subsections (c) and (f) of NRS 200.463(1) by alleging that United has developed and
 13 implemented a scheme that forces the Health Care Providers to perform services at arbitrarily
 14 deflated payment rates and has threatened to abuse the law or legal process by interfering with
 15 other contracts, disclaiming it has an obligation to pay a reasonable rate for emergency services
 16 and has caused and threatened to cause financial harm to the Health Care Providers. *See* FAC ¶¶
 17 21, 55, 69, 108-109, ¶¶ 90-188.

18 128. The Court has considered and rejected the cases United relied upon and concludes
 19 that the cases are not analogous. Supplement at 11:17-26.

20 129. An “enterprise” is defined in NRS 207.380:

21 “Enterprise” includes:

22 1. Any natural person, sole proprietorship, partnership,
 corporation, business trust or other legal entity; and

23 2. Any union, association or other group of persons associated in
 fact although not a legal entity.

24 ➔ The term includes illicit as well as licit enterprises and
 25 governmental as well as other entities.

26 130. United contends that the Health Care Providers have failed to adequately plead
 27 the existence of an “enterprise” under NRS 205.377 (multiple transactions involving fraud or
 28 deceit in the course of enterprise). Supplement at 12:12.

1 131. The Court concludes that the existence of an enterprise is not required in
 2 connection with violations of NRS 207.400(1)(d), (1)(f) or (1)(i). *See* NRS 207.470. Therefore,
 3 this argument can only be applicable to violations of NRS 207.400(1)(a)-(c) and 1(j).

4 132. The Court concludes that, for all unlawful acts that require the existence of an
 5 enterprise, the Health Care Providers adequately allege the existence of an enterprise in
 6 paragraphs 121 and 122 of the FAC. *See also* FAC ¶¶ 112, 115, 124.

7 133. Further the FAC provides sufficient factual allegations, namely that United and
 8 third-party entities, including Data iSight have joined together to falsely claim to provide
 9 transparent, objective and geographically-adjusted determinations of reimbursement rates; and
 10 they illegally conduct the affairs of the Enterprise, and/or control the Enterprise through a pattern
 11 of unlawful activity. *Id.* ¶¶ 112, 115, 124.

12 134. The Court has also considered and rejects United’s argument that the alleged
 13 Enterprise’s conduct should be overlooked because United purports to have “an ordinary
 14 commercial contractual relationship...through MultiPlan’s Data iSight tool.” Supplement at
 15 13:19-21; *see, e.g., Gomez v. Guthy-Renker*, No. EDCV 14–01425 JGB (KKx), 2015 WL
 16 4270042 (C.D. Cal. July 13, 2015). The Court concludes that the Health Care Providers allege
 17 “something more” than a routine contract. FAC ¶ 115.

18 135. As the Health Care Providers allege, United would not be able to operate its
 19 deceptive scheme absent Data iSight’s purported functioning as a third-party supplier of
 20 transparent, market-based benchmark data. Assuming all allegations in the FAC as true, Data
 21 iSight is conduit through which United seeks to color its arbitrary, deficient payments with the
 22 false appearance of good faith objectivity. The Court concludes that these allegations sufficiently
 23 detail the existence of an “enterprise” under Nevada law.

24 ...

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Case No.: A-19-792978-B

***Order Denying Defendants' Motion To
(1) Dismiss First Amended Complaint;
And (2) Supplemental Brief In Support
Of Their Motion To Dismiss Plaintiffs'
First Amended Complaint Addressing
Plaintiffs' Eighth Claim For Relief***

Accordingly, good cause appearing, therefor,

ORDER

IT IS HEREBY ORDERED that United's Motion is DENIED in its entirety.

IT IS FURTHER ORDERED that United's Supplement is DENIED in its entirety.

DATED this ____ day of June, 2020.

Dated this 24th day of June, 2020

Nancy L Allf
DISTRICT COURT JUDGE JD
A7B FD7 9E00 6B2D

Submitted by:

McDONALD CARANO LLP

Nancy Allf

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
plundvall@mcdonaldcarano.com
kgallagher@mcdonaldcarano.com
aperach@mcdonaldcarano.com

Attorneys for Plaintiffs

McDONALD CARANO

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

001514

DISTRICT COURT
CLARK COUNTY, NEVADA

Fremont Emergency Services
(Mandavia) Ltd, Plaintiff(s)

CASE NO: A-19-792978-B

vs.

DEPT. NO. Department 27

United Healthcare Insurance
Company, Defendant(s)

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 6/24/2020

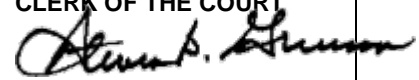
Audra Bonney	abonney@wwhgd.com
Cindy Bowman	cbowman@wwhgd.com
D. Lee Roberts	lroberts@wwhgd.com
Raiza Anne Torrenueva	rtorrenueva@wwhgd.com
Colby Balkenbush	cbalkenbush@wwhgd.com
Brittany Llewellyn	bllewellyn@wwhgd.com
Pat Lundvall	plundvall@mcdonaldcarano.com
Kristen Gallagher	kgallagher@mcdonaldcarano.com
Amanda Perach	aperach@mcdonaldcarano.com
Beau Nelson	bnelson@mcdonaldcarano.com
Marianne Carter	mcarter@mcdonaldcarano.com
Karen Surowiec	ksurowiec@mcdonaldcarano.com

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26
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Flor Gonzalez-Pacheco	FGonzalez-Pacheco@wwhgd.com
Kelly Gaez	kgaez@wwhgd.com
Kimberly Kirn	kkirn@mcdonaldcarano.com

41

41



NEOJ

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

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.: XXVII

**NOTICE OF ENTRY OF STIPULATED
CONFIDENTIALITY AND
PROTECTIVE ORDER**

001517

1 PLEASE TAKE NOTICE that a Stipulated Confidentiality and Protective Order was
2 entered on June 24, 2020, a copy of which is attached hereto.

3 DATED this 24th day of June, 2020.

4 McDONALD CARANO LLP

5 By: /s/ Kristen T. Gallagher

6 Pat Lundvall (NSBN 3761)
7 Kristen T. Gallagher (NSBN 9561)
8 Amanda M. Perach (NSBN 12399)
9 2300 West Sahara Avenue, Suite 1200
10 Las Vegas, Nevada 89102
11 plundvall@mcdonaldcarano.com
12 kgallagher@mcdonaldcarano.com
13 aperach@mcdonaldcarano.com

14 *Attorneys for Plaintiffs*

8151100
McDONALD CARANO

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

001518

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 24th day of June, 2020, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF STIPULATED CONFIDENTIALITY AND PROTECTIVE ORDER** 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.
Brittany Llewellyn, Esq.
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
lroberts@wwhgd.com
cbalkenbush@wwhgd.com
bllewellyn@wwhgd.com

Attorneys for Defendants

/s/ Marianne Carter
An employee of McDonald Carano LLP

001519

Heather S. Smith

CLERK OF THE COURT

SPO

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

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.: XXVII

**STIPULATED CONFIDENTIALITY AND
PROTECTIVE ORDER**

Plaintiffs Fremont Emergency Services (Mandavia), Ltd; Team Physicians of Nevada-
Mandavia, P.C.; Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine
("Plaintiffs") and Defendants UnitedHealth Group, Inc.; United HealthCare Insurance Company;

United HealthCare Services, Inc.; UMR, Inc.; Oxford Health Plans, Inc.; Sierra Health and Life Insurance Company, Inc.; Sierra Health-Care Options, Inc. and Health Plan of Nevada, Inc. (collectively "Defendants") referred to individually as a "Party" or collectively as the "Parties," stipulate and agree as follows:

1. Scope and Applicability. Certain documents or electronically stored information discoverable under NRCP 26(b)(1) may contain confidential information, as described herein, the disclosure of which may be prejudicial to the interests of a Party, and non-party individuals' health information deemed private under state and federal law. Such information is referred to herein as "Confidential Information." The Parties may, however, produce certain Confidential Information subject to the terms of this agreement. This Stipulated Confidentiality and Protective Order ("Protective Order") is applicable to the Parties, any additional parties joined in this litigation, and any third parties subject to this Protective Order and/or otherwise agreeing to be bound by this Protective Order.

2. Designation of Information. Any document or electronically stored information produced in discovery may be designated as Confidential Information by marking it as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" at the time of production. Such designation shall be made at the time that copies are furnished to a party conducting discovery, or when such documents are otherwise disclosed. Any such designation that is inadvertently omitted during production may be corrected by prompt written notification to all counsel of record.

a. A Party may only designate as "CONFIDENTIAL" any document or any portion of a document, and any other thing, material, testimony, or other information, that it reasonably and in good faith believes contains or reflects: (a) proprietary, business sensitive, or confidential information; (b) information that should otherwise be subject to confidential treatment pursuant to applicable federal and/or state law; or (c) Protected Health Information, Patient Identifying Information, or other HIPAA-governed information.

b. A Party may only designate as "ATTORNEYS' EYES ONLY" any document or portion of a document, and any other thing, material, testimony, or other

1 information, that it reasonably and in good faith believes contains trade secrets or is of such
2 highly competitive or commercially sensitive proprietary and non-public information that would
3 significantly harm business advantages of the producing or designating Party or information
4 concerning third-party pricing and/or reimbursement rates (i.e., reimbursement rates that
5 providers other than Plaintiffs have charged or accepted and that insurers and payors other than
6 the Defendants have paid for claims similar to those at issue in this case) and that disclosure of
7 such information could reasonably be expected to be detrimental to the producing or designating
8 Party's interests.

9 c. "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" information
10 and/or materials shall not include information that either:

11 i. is in the public domain at the time of disclosure through no act, or
12 failure to act, by or on behalf of the recipient, its counsel, its expert(s) or other consultant(s), or
13 any other person to whom disclosure was authorized pursuant to this Protective Order, as
14 evidenced by a written document or other competent evidence;

15 ii. after disclosure, becomes part of the public domain through no act,
16 or failure to act, by or on behalf of the recipient, its counsel, its expert(s) or other consultant(s),
17 or any other person to whom disclosure was authorized pursuant to this Protective Order, as
18 evidenced by a written document or other competent evidence;

19 iii. the receiving Party can show by written document or other
20 competent evidence was already known or in its rightful and lawful possession at the time of
21 disclosure; or

22 iv. lawfully comes into the recipient's possession subsequent to the
23 time of disclosure from another source without restriction as to disclosure, provided such third
24 party has the right to make the disclosure to the receiving Party.

25 3. Designation of Depositions. The Parties may designate information disclosed at
26 a deposition as Confidential Information by indicating on the record at the deposition that a
27 specific portion of testimony, or any exhibit identified during a deposition, is so designated and
28 subject to the terms of this Protective Order or, alternatively, any Party may so designate a

1 portion of the deposition testimony or exhibit within 30 days of receipt of the deposition
2 transcript by so stating in writing to opposing counsel. If designated during the deposition, the
3 court reporter shall stamp the portions of deposition testimony or any exhibit designated as
4 containing Confidential Information as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY,”
5 and access thereto shall be limited as provided herein. Following any deposition, both Parties
6 agree to treat the entire deposition transcript and exhibits as “ATTORNEYS’ EYES ONLY”
7 until the 30-day window for designation following receipt of the transcript has passed.
8 Confidential Information shall not lose its character because it is used as an exhibit to a
9 deposition, regardless of whether the deposition or deposition transcript itself is later designated,
10 in whole or part, as “CONFIDENTIAL INFORMATION” or “ATTORNEYS’ EYES ONLY.”

11 Documents or information designated as “CONFIDENTIAL” or “ATTORNEYS’ EYES
12 ONLY” may be used or disclosed in a deposition and marked as deposition exhibits; the Parties
13 agree that, with the exception of the witness and court reporter, the only persons permitted under
14 this Protective Order to be present during the disclosure or use of designated documents or
15 information during a deposition, whether “CONFIDENTIAL” pursuant to paragraph 10 or
16 “ATTORNEYS’ EYES ONLY” pursuant to paragraph 11, as applicable, are those permitted
17 pursuant to the terms of this Protective Order to review the information or material sought to be
18 used. Absent an agreement between the Parties, if all persons present at the deposition are not
19 permitted under this Protective Order to review the information or material sought to be used,
20 any person not so permitted shall be instructed by the designating party to leave the room during
21 the period(s) in which the “CONFIDENTIAL” and/or “ATTORNEYS’ EYES ONLY”
22 documents or information is being used and/or discussed, to the extent reasonably possible.
23 During the course of a deposition, counsel may anticipate such disclosure and designate in
24 advance certain deposition exhibits, deposition testimony and portions of any deposition
25 transcript as “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY.”

26 4. In advance of a hearing in this matter, the Parties also agree to confer in good
27 faith to reach an agreement regarding the appropriate protections in the event one or both parties
28 seek to use “CONFIDENTIAL” or “ATTORNEYS’ EYES ONLY” documents or information at

1 the hearing. Nothing in this Order shall limit a Party's ability to use its own documents or
2 information, however designated, at a hearing in this litigation or in any other proceeding,
3 subject to the court's determination of the admissibility of the documents or information.

4 5. Protected Health Information. Additionally, certain Confidential Information may
5 be Protected Health Information ("PHI") as defined by the Health Insurance Portability and
6 Accountability Act of 1996 ("HIPAA") and the regulations promulgated thereunder at 45 CFR §
7 160.103. Without limiting the generality of the foregoing, "PHI" includes, but is not limited to,
8 health information, including demographic information, relating to either, (a) the past, present or
9 future physical or mental condition of an individual, (b) the provision of care to an individual, or
10 (c) the payment for care provided to an individual, which identifies the individual or which
11 reasonably could be expected to identify an individual. All "covered entities" (as defined by 45
12 § CFR 160.103) are hereby authorized to disclose PHI to all attorneys in this litigation. Subject
13 to the rules of procedure governing this litigation, and without prejudice to any Party's objection
14 except as otherwise provided herein, the Parties are authorized to receive, subpoena, transmit, or
15 disclose PHI relevant to the medical claims at issue in this litigation and discoverable under
16 NRC 26(b)(1), subject to all terms of this Protective Order. All PHI disclosed under this
17 Protective Order must be designated as Confidential Information under paragraphs 2 and 3
18 above. To the extent documents or information produced in this litigation have already been
19 exchanged or will again be exchanged between the Parties in the normal course of business,
20 treatment of such documents prior to or after the conclusion of this litigation shall be governed
21 by each Party's legal obligations.

22 6. Specific Provisions Concerning Disclosure of PHI. When PHI is disclosed
23 between the Parties as authorized by this Protective Order, the names, dates of birth and Social
24 Security numbers of any individuals whose medical claims are not at issue in this lawsuit and
25 who are otherwise identified in the PHI may be redacted to protect the identity of the patients, if
26 the disclosing Party believes that is warranted under the particular circumstances. Upon receipt
27 of any PHI disclosed between the Parties during the course of this litigation, the receiving Party
28 shall take all reasonable measures necessary for protecting the PHI from unauthorized disclosure

as required under both state and federal law including, but not limited to, HIPAA. Such measures may include filing PHI under seal and redacting patient names, dates of birth and Social Security numbers from documents containing PHI.

7. Non-Waiver of Privilege. The production of documents and information shall not constitute a waiver in this litigation, or any other litigation, matter or proceeding, of any privilege (including, but not limited to, the attorney-client privilege, attorney work product privilege or common defense privilege) applicable to the produced materials or for any other privileged or protected materials containing the same or similar subject matter. The fact of production of privileged information or documents by any producing Party in this litigation shall not be used as a basis for arguing that a claim of privilege of any kind has been waived in any other proceeding. Without limiting the foregoing, this Protective Order shall not affect the Parties' legal rights to assert privilege claims over documents in any other proceeding.

8. Exercise of Restraint and Care in Designating Material for Protection.

a. Each party or non-party that designates information or items for protection under this Order (the "designating Party") must take care to limit any such designation to specific material that qualifies under the appropriate standards. To the extent it is practical to do so, the designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify – so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this Protective Order.

b. If it comes to a designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that designating Party must promptly notify all other parties that it is withdrawing the mistaken designation.

9. Burden of Proof and Challenges to Confidential Information. The party designating information as Confidential Information bears the burden of establishing confidentiality. Nothing in this Protective Order shall constitute a waiver of any Party's right to object to the designation or non-designation of a particular document as "CONFIDENTIAL" or

“ATTORNEYS’ EYES ONLY.” If a Party contends that any document has been erroneously or improperly designated or not designated Confidential or Attorneys’ Eyes Only, the document at issue shall be treated as Confidential or Attorneys’ Eyes Only under this Protective Order until (a) the Parties reach a written agreement or (b) the court issues an order ruling on the designation. In the event that a Party disagrees with a Party’s designation of any document or information as Confidential or Attorneys’ Eyes Only, the objecting Party shall advise counsel for the designating Party, in writing, of the objection and identify the document or item with sufficient specificity to permit identification. Within seven (7) days of receiving the objection, the designating Party shall advise whether the designating Party will change the designation of the document or item. If this cannot be resolved between the Parties, after the expiration of seven (7) days following the service of an objection, but within twenty-one (21) days of service of the written objection, the designating Party may make a motion to the court seeking to preserve the confidentiality designation. It shall be the burden of the designating Party to show why such information is entitled to confidential treatment. The protection afforded by this Protective Order shall continue until the court makes a decision on the motion. Failure of the designating Party to file a motion within the 21-day period shall be deemed to constitute a waiver of that Party’s confidentiality designation to material identified in the objecting Party’s written objection.

10. Restrictions on Disclosure. All Confidential Information, including PHI, other than Confidential Information designated as “Attorneys’ Eyes Only,” produced or disclosed by either Party in this litigation shall be subject to the following:

a. such documents, information, and things shall be used only in this litigation and not for any other purpose whatsoever, except to the extent any documents, information, and things are exchanged in the normal course of business between the Parties and such exchange is more appropriately governed by the course of conduct observed between the Parties, the course of conduct shall control;

b. such documents, information, and things shall not be shown or communicated in any way inconsistent with this Protective Order or to anyone other than

1 “Qualified Persons,” defined below, which persons receiving Confidential Information shall not
2 make further disclosure to anyone except as allowed by this Protective Order; and

3 c. no one except Qualified Persons identified in paragraph 12 shall be
4 provided copies of any Confidential Information.

5 11. Restrictions on Disclosure of Confidential Information Designated as “Attorneys’
6 Eyes Only.” All Confidential Information designated as “ATTORNEYS’ EYES ONLY,”
7 produced or disclosed by either Party in this litigation shall be subject to the following
8 restrictions:

9 a. such documents, information and things shall be used only in this
10 litigation;

11 b. such documents, information and things shall not be shown or
12 communicated to anyone other than Qualified Persons identified in paragraphs 12(a), 12(b),
13 12(d), 12(e), 12(f) , 12(g), 12(h) and (12)(i) below, which persons receiving Confidential
14 Information designated as Attorneys’ Eyes Only shall not make further disclosure to anyone
15 except as allowed by this Protective Order;

16 c. such documents, information and things shall be maintained only at the
17 offices of such Qualified Persons identified in paragraphs 12(a), 12(b), 12(d), 12(e), 12(f) ,
18 12(g), 12(h) and (12)(i) and only working copies shall be made of such documents; and

19 d. no one except Qualified Persons identified in paragraphs 12(a), 12(b),
20 12(d), 12(e), 12(f), 12(g), 12(h) and (12)(i) shall be provided copies of any Confidential
21 Information designated as Attorneys’ Eyes Only.

22 12. Qualified Persons. “Qualified Persons” means:

23 a. The court, court officials and authorized court personnel, jurors,
24 stenographic reporters, and videographers at depositions taken in this action;

25 b. counsel of record for the Parties (including partners, associates,
26 paralegals, employees and persons working at the law firms of the Parties’ respective counsel),
27 contract attorneys retained by counsel for the Parties to provide services in connection with this
28 litigation, and two pre-identified in-house counsel (“Designated In-house Counsel”) with no

1 role, involvement in, or responsibility relating to contract negotiations, rate negotiations,
 2 negotiation of claim payment amounts, or decision-making concerning claim payment rates or
 3 amounts with respect to network contracting with any health plan or payor in the ordinary course
 4 of business (collectively “Rate Negotiations”). In the form of Exhibit B herein, each such in-
 5 house counsel will certify that he/she has no such role, involvement, or responsibility currently,
 6 and does not anticipate having any such role, involvement, or responsibility in Rate Negotiations
 7 during this litigation or any other litigation between the parties and/or their respective affiliates
 8 commenced during the pendency of this litigation, including appeals. To the extent each such
 9 in-house counsel acquires any such role, involvement, or responsibility during the litigation, that
 10 in-house counsel will recuse himself or herself from any matters involving or relating to the
 11 other party and may be replaced with an in-house counsel who meets the above criteria.
 12 Notwithstanding anything to the contrary contained herein, Rate Negotiations shall not include
 13 overseeing and/or managing all aspects (e.g., from evaluation, to filing, to discovery, to trial, to
 14 appeal and/or to settlement, etc.) of any type of litigation, including, without limitation, out-of-
 15 network litigation (“Litigation”), and this Protective Order specifically contemplates and permits
 16 in-house counsel who oversee and/or manage all aspects of Litigation to access Attorneys’ Eyes
 17 Only information;

- 18 c. if the Party is an entity, current officers or employees of the Party;
- 19 d. third parties retained by counsel for a Party or by a Party as consulting
 20 experts or testifying expert witnesses;
- 21 e. with respect to a specific document, the document’s author, addressee, or
 22 intended or authorized recipient of the Confidential Information and who agrees to keep the
 23 information confidential, provided that such persons may see and use the Confidential
 24 information but not retain a copy;
- 25 f. nonparties to whom Confidential information belongs or concerns;
- 26 g. witnesses who are appearing for deposition or other testimony in this case
 27 voluntarily or pursuant to a validly issued subpoena; and;
- 28

1 h. a mediator or other settlement judge selected or agreed-upon by the
2 Parties in connection with any attempted resolution of the litigation;

3 i. Clerical or ministerial service providers, including outside copying
4 services, litigation support personnel, or other independent third parties retained by counsel for
5 the Parties to provide services in connection with this litigation;

6 j. if the Party is an entity, former officers or employees of the Party; or

7 k. any other person by order of the court after notice to all Parties and
8 opportunity to be heard, or as agreed between the Parties, except that the PHI shall only be
9 disclosed in accordance with this Protective Order or further order of the court.

10 13. Acknowledgment. Any Qualified Person identified in paragraph 12(d)–(k) to
11 whom the opposing Party’s Confidential Information is shown or to whom information
12 contained in such materials is to be revealed shall first be required to execute the attached
13 Acknowledgement and Agreement To Be Bound To Stipulated Confidentiality Agreement And
14 Protective Order (the “Acknowledgement”), the form of which is attached hereto as “Exhibit A”
15 and to be bound by the terms of this Protective Order. As to each person to whom any
16 Confidential Information is disclosed pursuant to the Acknowledgement and this Protective
17 Order, such information may be used only for purposes of this litigation and may not be used for
18 any other purpose.

19 14. Conclusion of the Litigation. Upon conclusion of this Litigation, whether by
20 judgment, settlement, or otherwise, counsel of record and each Party, person, and entity who
21 obtained Confidential Information or information claimed to be confidential shall assemble and
22 return to the producing Party all materials that reveal or tend to reveal information designated as
23 Confidential Information, except all such materials constituting work product of counsel. In the
24 alternative, all such materials may be destroyed, with written certification of destruction or
25 deletion provided to the producing Party, except that a Party may retain Confidential
26 Information generated by it, unless such Confidential Information incorporates the Confidential
27 Information of another Party in which case all such Confidential Information shall be destroyed
28 or deleted. No originals or copies of any such Confidential Information will be retained by any

1 person or entity to whom disclosure was made. However, counsel of record and Designated In-
2 house Counsel for the Parties are permitted to retain copies of all pleadings, motions,
3 depositions and hearing transcripts (and exhibits thereto), exhibits, and attorney work product
4 that contain Confidential Information (other than PHI) consistent with his or her ordinary file
5 management and/or document retention policies and/or those of his or her firm. In doing so,
6 retaining Party agrees to execute an agreement that all such documents will be quarantined for
7 record retention only and not for use in other matters involving the Parties or with any other
8 client or shared outside of the organization.

9 15. Equal Application. This Protective Order may be applied equally to information
10 obtained by a producer in response to any subpoena, including, in particular, information
11 produced by non-parties. Any non-party that designates any information as "Confidential" or
12 "Attorneys' Eyes Only" pursuant to this Protective Order may agree to submit to the Court's
13 jurisdiction with regard to the determination of disputes involving such designations.

14 16. List of Names. All counsel shall maintain a list of the names of all third parties
15 that are not parties to the underlying litigation to whom disclosure of Confidential Information
16 or Attorneys' Eyes Only information was made.

17 17. Retroactive Designation. Confidential Information previously produced before
18 the entry of this Order, if any, may be retroactively designated as "CONFIDENTIAL" or
19 "ATTORNEYS' EYES ONLY" and subject to this Protective Order by notice in writing of the
20 designated class of each document by Bates number within thirty (30) days of the entry of this
21 Order.

22 18. Inadvertent Production or Disclosure of Confidential Information. In the event
23 that a Party inadvertently produces Confidential Information, without the required
24 "CONFIDENTIAL" legend, or Attorneys' Eyes Only information, without the required or
25 "ATTORNEYS' EYES ONLY" legend, the producing Party shall contact the receiving Party as
26 promptly as reasonably possible after the discovery of the inadvertent production, and inform
27 the receiving Party in writing of the inadvertent production and the specific material at issue.
28 Such inadvertent or unintentional disclosure shall not be deemed a waiver in whole or in part of

1 the producing Party's claim of confidentiality, either as to specific documents and information
2 disclosed or on the same or related subject matter. Upon receipt of such notice, the receiving
3 Party or Parties shall treat the material identified in the notice as Confidential or Attorneys' Eyes
4 Only under this Protective Order, subject to the provisions in paragraph 8 regarding any
5 challenges.

6 19. Use of "ATTORNEYS' EYES ONLY" Material in Trial Preparation. No later
7 than ninety days (90) prior to the first date of any trial setting, the Parties shall meet and confer
8 in good faith for the purpose of developing a protocol for allowing trial witnesses to review
9 documents designated "ATTORNEYS' EYES ONLY" to the extent that counsel believes it to
10 be necessary for the witness to review the materials in connection with preparing the witness for
11 his or her trial testimony which is reasonable and necessary in preserving, prosecuting and/or
12 defending their respective interests in this matter. In the event the Parties cannot agree, either
13 Party may submit an appropriate motion for relief with the Court. This provision shall not be
14 construed as an agreement by either Party that a trial witness who is not qualified to review
15 "ATTORNEYS' EYES ONLY" is entitled to do so prior to trial.

16 20. Use of Confidential Information at Trial. Nothing in this Order shall preclude a
17 Party from disclosing or offering into evidence at the time of trial or during a hearing any
18 document or information designated as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY,"
19 subject to the rules of evidence and any other Party's objections as to the admissibility or claims
20 of confidentiality of the document or information. However, if a Party anticipates using or
21 disclosing Confidential Information at a trial or during a hearing (except for purposes of
22 impeachment), it shall give the Designating Party at least three (3) business days' notice prior to
23 its use or disclosure. The Court may take such measures, as it deems appropriate, to protect the
24 claimed confidential nature of the document or information sought to be admitted and to protect
25 the Confidential Information from disclosure to persons other than those identified in paragraph
26 12 and who have signed Exhibit A, where necessary, under this Order. If a Party seeks to file
27 unredacted Confidential Information or Attorneys' Eyes Only information, it shall file a motion
28 with the Court for filing under seal, unless the producing Party otherwise agrees. Any disclosure

1 of information designated "ATTORNEYS' EYES ONLY" to the Court under seal shall have
2 limited dissemination to personnel of the Court under such safeguards as the Court may direct.

3 21. Pre-Existing Confidentiality Obligations. This Protective Order in no way
4 modifies any prior agreement between the Parties that may be applicable.

5 22. Publicly Available Documents Excluded. The restrictions and terms set forth in
6 this Protective Order shall not apply to documents or information, regardless of their
7 designation, that are publicly available or that are obtained independently and under rightful
8 means by the receiving Party.

9 23. No Waiver. This Protective Order does not waive or prejudice the right of any
10 Party or non-party to apply to a court of competent jurisdiction for any other or further relief or
11 to object on any appropriate grounds to any discovery requests, move to compel responses to
12 discovery requests, and/or object to the admission of evidence at any hearing on any ground.

13 24. No Admission. Entering into, agreeing to, and/or complying with the terms of
14 the Protective Order shall not operate as an admission by any Party that any particular
15 document, testimony of information marked "CONFIDENTIAL" or "ATTORNEYS' EYES
16 ONLY" contains or reflects trade secrets, proprietary, confidential or competitively sensitive
17 business, commercial, financial or personal information.

18 25. Modification. This Protective Order may be modified or amended either by
19 written agreement of the Parties or by order of the court upon good cause shown. No oral
20 waivers of the terms of this Protective Order shall be permitted between the Parties.

21 26. Prior Protective Order. On May 14, 2019, Defendants removed this action to the
22 United States District Court, District of Nevada (the "Federal Court"), Case No. 2:19-cv-00832-
23 JCM-VCF. On October 22, 2019, the Federal Court entered a Stipulated Confidentiality
24 Protective Order (ECF No. 31), pursuant to which the Parties produced documents. On
25 February 20, 2020, the Federal Court remanded the action (ECF No. 78). The Parties agree that
26 any documents previously produced under the protective order entered by the Federal Court
27 shall continue to be subject to the terms of this Protective Order.
28

27. Future Orders. Nothing in this Protective Order shall prohibit the Parties from seeking an order from the court regarding the production or protection of documents referenced herein or other materials in the future.

28. Good Cause. The Parties submit that good cause exists for entry of this Protective Order because (1) particularized harm will occur due to public disclosure of the Confidential Information to be protected under this Protective Order given the important privacy and business interests at issue here (2) when balancing the public and private interests, a protective order must issue because the public's interest in disclosure is substantially outweighed by the Parties' important privacy, proprietary and business interests and (3) allowing for the redaction of certain information, as contemplated by this Protective Order properly allows for the disclosure of information while protecting the important interests identified herein.

DATED this 23rd day of June, 2020.

McDONALD CARANO LLP

WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC

By: /s/ Kristen T. Gallagher

By: /s/ Colby L. Balkenbush

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
plundvall@mcdonaldcarano.com
kgallagher@mcdonaldcarano.com
aperach@mcdonaldcarano.com

D. Lee Roberts, Jr. (NSBN 8877)
Colby L. Balkenbush (NSBN 13066)
Brittany M. Llewellyn (NSBN 13527)
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
lroberts@wwhgd.com
cbalkenbush@wwhgd.com
bllewellyn@wwhgd.com

Attorneys for Plaintiffs

Attorneys for Defendants

ORDER

IT IS SO ORDERED.

Dated this 24th day of June, 2020

Nancy L. Allif
DISTRICT COURT JUDGE
308 58E 8271 F977 JD

Nancy Allif

1 Submitted by:

2 McDONALD CARANO LLP

3 By: /s/ Kristen T. Gallagher

4 Pat Lundvall (NSBN 3761)

5 Kristen T. Gallagher (NSBN 9561)

6 Amanda M. Perach (NSBN 12399)

7 2300 West Sahara Avenue, Suite 1200

8 Las Vegas, Nevada 89102

9 Telephone: (702) 873-4100

10 plundvall@mcdonaldcarano.com

11 kgallagher@mcdonaldcarano.com

12 aperach@mcdonaldcarano.com

13 *Attorneys for Plaintiffs*

EXHIBIT A**DISTRICT COURT****CLARK COUNTY, NEVADA**

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

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

Plaintiffs,

vs.

UNITEDHEALTH GROUP, INC., et al.,

Defendants.

**ACKNOWLEDGEMENT AND
AGREEMENT TO BE BOUND TO
STIPULATED CONFIDENTIALITY
AGREEMENT AND PROTECTIVE
ORDER**

I, _____, hereby acknowledge receipt of a copy of the
Stipulated Confidentiality Agreement and Protective Order ("Protective Order") entered in the
above-referenced action, and agree as follows:

1. I acknowledge that I have read the Protective Order and agree to be bound by its
terms and conditions and to hold any "Confidential" or "Attorneys' Eyes Only" information
and/or materials disclosed to me in accordance with the Protective Order.

2. I will take all steps reasonably necessary to ensure that any secretarial, clerical, or
other personnel who assist me in connection with my participation in this action will likewise
comply with the terms and conditions of the Protective Order.

3. I further understand that I am to retain all copies of all documents or information
marked pursuant to the Protective Order in a secure manner, and that all copies of such materials
are to remain in my personal custody until termination of my participation in the above-
referenced litigation, whereupon the originals or any copies of such materials, and any work
product derived from said information and/or materials, will be returned to counsel who
provided the under with such materials.

4. To assure my compliance with the Protective Order, I submit to the jurisdiction
of the above-referenced Court for the limited purpose of any proceeding related to the
enforcement of, performance under, compliance with or violation of the Protective Order and
understand that the terms of the Protective Order obligate me to use materials designated as
Confidential in accordance with the Protective Order solely for the purposes of the above-
referenced litigation, and not to disclose any such Confidential Information to any other person,
firm or concern.

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

Dated this ____ day of _____, 20__.

Signature: _____

Name (printed): _____

Title/Position: _____

Employer: _____

Address: _____

EXHIBIT B**DISTRICT COURT****CLARK COUNTY, NEVADA**

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

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

Plaintiffs,

vs.

UNITEDHEALTH GROUP, INC., et al.,

Defendants.

**AGREEMENT CONCERNING
ATTORNEYS' EYES ONLY MATERIAL
COVERED BY AGREED PROTECTIVE
ORDER**

1. I have read the Agreed Protective Order entered in this action, and as may amended by the Court (the "Protective Order"). I understand the terms of the Protective Order, and agree to be bound by the terms thereof.

2. In addition, I certify that I have no role, involvement in, or responsibility relating to contract negotiations, rate negotiations, negotiation of claim payment amounts, or decision-making concerning claim payment rates or amounts with respect to network contracting with any health plan or payor in the ordinary course of business (collectively "Rate Negotiations"), currently, and do not anticipate having any such role, involvement, or responsibility in Rate Negotiations during this litigation or any other litigation between the parties and/or their respective affiliates commenced during the pendency of this litigation, including appeals. I further understand that to the extent I acquire any such role, involvement, or responsibility during the litigation, that I will recuse myself from any matters involving or relating to the other party and may be replaced with an in-house counsel who meets the above criteria. Notwithstanding anything to the contrary contained herein, I understand that Rate Negotiations shall not include overseeing and/or managing all aspects (e.g., from evaluation, to filing, to discovery, to trial, to appeal and/or to settlement, etc.) of any type of litigation, including, without limitation, out-of-network litigation ("Litigation"), and the Protective Order specifically contemplates and permits me to oversee and/or manage all aspects of Litigation and to access Attorneys' Eyes Only information.

By: _____

Name: _____
(Please print)

Date: _____

From: Balkenbush, Colby <CBalkenbush@wwhgd.com>
Sent: Tuesday, June 23, 2020 11:32 AM
To: Kristen T. Gallagher
Cc: Pat Lundvall; Amanda Perach; Roberts, Lee; Llewellyn, Brittany M.
Subject: RE: Fremont Emergency Services (Mandavia) Ltd vs. UnitedHealth Group et al. - protective order

Kristy,

This looks good and we have no changes. You may insert my electronic signature and submit to the Court.



Colby Balkenbush, Attorney
Weinberg Wheeler Hudgins Gunn & Dial
 6385 South Rainbow Blvd. | Suite 400 | Las Vegas, NV
 89118
 D: 702.938.3821 | F: 702.938.3864
www.wwhgd.com | vCard

From: Kristen T. Gallagher [mailto:kgallagher@mcdonaldcarano.com]
Sent: Saturday, June 20, 2020 11:27 AM
To: Balkenbush, Colby; Roberts, Lee; Llewellyn, Brittany M.
Cc: Pat Lundvall; Amanda Perach
Subject: Fremont Emergency Services (Mandavia) Ltd vs. UnitedHealth Group et al. - protective order

This Message originated outside your organization.

Colby -

In order to finalize the PO, we will agree to revisit the trial-related provisions as the case progresses. Attached is the PO in Word and PDF format. Please do a final review and then respond to this email to provide authorization for insertion of your electronic signature and submission to the court.

Thanks,
 Kristy

Kristen T. Gallagher | Partner

McDONALD CARANO

2300 West Sahara Avenue | Suite 1200
 Las Vegas, NV 89102

P: 702.873.4100 | **F:** 702.873.9966

BIO | **WEBSITE** | **V-CARD** | **LINKEDIN**

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001538

001538

DISTRICT COURT
CLARK COUNTY, NEVADA

Fremont Emergency Services
(Mandavia) Ltd, Plaintiff(s)

CASE NO: A-19-792978-B

vs.

DEPT. NO. Department 27

United Healthcare Insurance
Company, Defendant(s)

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 6/24/2020

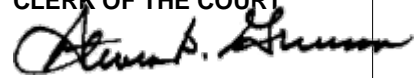
Audra Bonney	abonney@wwhgd.com
Cindy Bowman	cbowman@wwhgd.com
D. Lee Roberts	lroberts@wwhgd.com
Raiza Anne Torrenueva	rtorrenueva@wwhgd.com
Colby Balkenbush	cbalkenbush@wwhgd.com
Brittany Llewellyn	bllewellyn@wwhgd.com
Pat Lundvall	plundvall@mcdonaldcarano.com
Kristen Gallagher	kgallagher@mcdonaldcarano.com
Amanda Perach	aperach@mcdonaldcarano.com
Beau Nelson	bnelson@mcdonaldcarano.com
Marianne Carter	mcarter@mcdonaldcarano.com
Karen Surowiec	ksurowiec@mcdonaldcarano.com

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Flor Gonzalez-Pacheco	FGonzalez-Pacheco@wwhgd.com
Kelly Gaez	kgaez@wwhgd.com
Kimberly Kirn	kkirn@mcdonaldcarano.com

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42



1 **ANSC**
2 D. Lee Roberts, Jr., Esq.
3 Nevada Bar No. 8877
4 *lroberts@wwhgd.com*
5 Colby L. Balkenbush, Esq.
6 Nevada Bar No. 13066
7 *cbalkenbush@wwhgd.com*
8 Brittany M. Llewellyn, Esq.
9 Nevada Bar No. 13527
10 *bllewellyn@wwhgd.com*
11 WEINBERG, WHEELER, HUDGINS,
12 GUNN & DIAL, LLC
13 6385 South Rainbow Blvd., Suite 400
14 Las Vegas, Nevada 89118
15 Telephone: (702) 938-3838
16 Facsimile: (702) 938-3864

17 *Attorneys for Defendants*

18 **DISTRICT COURT**
19 **CLARK COUNTY, NEVADA**

20 **FREMONT EMERGENCY SERVICES**
21 **(MANDAVIA), LTD.**, a Nevada professional
22 corporation; **TEAM PHYSICIANS OF**
23 **NEVADA-MANDAVIA, P.C.**, a Nevada
24 professional corporation; **CRUM, STEFANKO**
25 **AND JONES, LTD. dba RUBY CREST**
26 **EMERGENCY MEDICINE**, a Nevada
27 professional corporation,

28 Plaintiffs,

vs.

1 UNITEDHEALTH GROUP, INC., a Delaware
2 corporation; UNITED HEALTHCARE
3 INSURANCE COMPANY, a Connecticut
4 corporation; UNITED HEALTH CARE
5 SERVICES INC., dba UNITEDHEALTHCARE,
6 a Minnesota corporation; UMR, INC., dba
7 UNITED MEDICAL RESOURCES, a Delaware
8 corporation; OXFORD HEALTH PLANS, INC.,
9 a Delaware corporation; SIERRA HEALTH AND
10 LIFE INSURANCE COMPANY, INC., a Nevada
11 corporation; SIERRA HEALTH-CARE
12 OPTIONS, INC., a Nevada corporation;
13 HEALTH PLAN OF NEVADA, INC., a Nevada
14 corporation; DOES 1-10; ROE ENTITIES 11-20,

Defendants.

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

**DEFENDANTS' ANSWER TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT**



1 **ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

2 Defendants UnitedHealth Group, Inc., UnitedHealthcare Insurance Company ("UHIC"),
3 United HealthCare Services, Inc. ("UHS"), UMR, Inc. ("UMR"), Oxford Health Plans, LLC,
4 improperly named as Oxford Health Plans, Inc. ("Oxford"), Sierra Health and Life Insurance
5 Co., Inc. ("SHL"), Sierra Health-Care Options, Inc. ("SHO"), and Health Plan of Nevada, Inc.
6 ("HPN") (collectively, "Defendants" or "United"), by and through their attorneys of record, the
7 law firm of WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC, hereby file their Answer to
8 Plaintiffs' First Amended Complaint:

9 **ANSWER**

10 Unless specifically admitted, United denies all the allegations in the numbered paragraphs
11 of the First Amended Complaint, and further denies that they were responsible for, or liable for,
12 any of the happenings or events mentioned in the First Amended Complaint. To the extent
13 Plaintiffs have included impertinent material or headings that are inappropriate under Rules 8 and
14 12(f) of the Nevada Rules of Civil Procedure, no response is necessary and any such
15 inappropriate material should be stricken. To the extent any headings or inappropriate material
16 are deemed to require a response, United denies them. United has retained any such headings
17 only for the Court's convenience. Responding to the individual allegations of the First Amended
18 Complaint, United answers:

19 **NATURE OF THIS ACTION**

20 1. Answering Paragraph 1 of Plaintiffs' First Amended Complaint, this paragraph
21 contains Plaintiffs' characterization of this action, which requires no response. To the extent
22 these allegations require a response, United denies the allegations as stated, and specifically
23 denies any implicit or explicit allegations that United failed to appropriately process and pay out-
24 of-network emergency claims from Plaintiffs or engaged in any kind of fraud. The footnote to
25 Paragraph 1 contains Plaintiffs' characterization of this action, which requires no response. To
26 the extent these allegations require a response, United denies the allegations contained therein.

27 2. Answering paragraph 2 of the First Amended Complaint, United denies the
28 allegations contained therein.

PARTIES

3. Answering paragraph 3 of the First Amended Complaint, United is without knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and, therefore, cannot admit or deny these allegations.

4. Answering paragraph 4 of the First Amended Complaint, United is without knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and, therefore, cannot admit or deny these allegations.

5. Answering paragraph 5 of the First Amended Complaint, United is without knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph and, therefore, cannot admit or deny these allegations.

6. Answering paragraph 6 of the First Amended Complaint, United admits that UnitedHealth Group Incorporated is a Delaware corporation with its principal place of business in Minnesota. United admits that UnitedHealth Group Incorporated is a publicly held corporation. United admits that UnitedHealth Group Incorporated is the ultimate corporate parent of UnitedHealthcare Insurance Company; United HealthCare Services, Inc.; and UMR, Inc. United denies all remaining allegations contained in this paragraph.

7. Answering paragraph 7 of the First Amended Complaint, United admits that UnitedHealthcare Insurance Company is a Connecticut corporation with its principal place of business in Connecticut. United admits that UnitedHealthcare Insurance Company is licensed to do business in Nevada. Responding to the allegations contained in the second sentence of Paragraph 7, United denies that the allegations fully or accurately describe the business of UnitedHealthcare Insurance Company. United lacks knowledge or information sufficient to form a belief as to the truth of the allegations concerning the “medical services at issue,” as the term collectively refers to thousands of individual claims. On that basis, United denies the allegations contained in the second sentence of Paragraph 7, and explicitly denies the allegation that any services Plaintiffs provided qualify as “emergency” services. United denies all remaining allegations contained in this paragraph.

8. Answering paragraph 8 of the First Amended Complaint, United admits that



1 United HealthCare Services, Inc. is a Minnesota corporation, licensed to do business in Nevada.
2 United denies that United HealthCare Services, Inc.'s principal place of business is in
3 Connecticut. Responding to the allegations contained in the second sentence of Paragraph 8,
4 United denies that the allegations fully or accurately describe the business of United HealthCare
5 Services, Inc. United lacks knowledge or information sufficient to form a belief as to the truth of
6 the allegations concerning the "medical services at issue," as the term collectively refers to
7 thousands of individual claims. On that basis, United denies the allegations contained in the
8 second sentence of Paragraph 8, and explicitly denies the allegation that any services Plaintiffs
9 provided qualify as "emergency" services. United denies all remaining allegations contained in
10 this paragraph.

11 9. Answering paragraph 9 of the First Amended Complaint, United admits that
12 UMR, Inc. ("UMR") is a Delaware corporation, licensed to do business in Nevada. Defendants
13 deny that UMR, Inc.'s principal place of business is in Connecticut. United lacks knowledge or
14 information sufficient to form a belief as to the vague allegation that UMR, Inc. is an affiliate of
15 United HealthCare Services, Inc. and, therefore, cannot admit or deny this allegation.
16 Responding to the allegations contained in the second sentence of Paragraph 9, United denies
17 that the allegations fully or accurately describe the business of UMR, Inc. United lacks
18 knowledge or information sufficient to form a belief as to the truth of the allegations concerning
19 the "medical services at issue," as the term collectively refers to thousands of individual claims.
20 On that basis, United denies the allegations contained in the second sentence of Paragraph 9, and
21 explicitly denies the allegation that any services Plaintiffs provided qualify as "emergency"
22 services. United denies all remaining allegations contained in this paragraph.

23 10. Answering paragraph 10 of the First Amended Complaint, United states that
24 Oxford Health Plans, Inc. is improperly named. United admits that Oxford Health Plans, LLC is
25 a Delaware corporation with its principal place of business in Connecticut. United lacks
26 knowledge or information sufficient to form a belief as to the vague allegation that Oxford
27 Health Plans is an affiliate of United HealthCare Services, Inc. and, therefore, cannot admit or
28 deny this allegation. Responding to the allegations contained in the second sentence of Paragraph

1 10, United denies that the allegations fully or accurately describe the business of Oxford Health
2 Plans, Inc. United lacks knowledge or information sufficient to form a belief as to the truth of the
3 allegations concerning the “medical services at issue,” as the term collectively refers to
4 thousands of individual claims. On that basis, United denies the allegations contained in the
5 second sentence of Paragraph 10, and explicitly denies the allegation that any services Plaintiffs
6 provided qualify as “emergency” services. United denies all remaining allegations contained in
7 this paragraph.

8 11. Answering paragraph 11 of the First Amended Complaint, United admits that
9 Sierra Health and Life Insurance Company, Inc. is a Nevada corporation. United lacks
10 knowledge or information sufficient to form a belief as to the vague allegation that Sierra Health
11 and Life Insurance Company, Inc. is an affiliate of United HealthCare Services, Inc. and,
12 therefore, cannot admit or deny this allegation. Responding to the allegations contained in the
13 second sentence of Paragraph 11, United denies that the allegations fully or accurately describe
14 the business of Sierra Health and Life Insurance Company, Inc. United lacks knowledge or
15 information sufficient to form a belief as to the truth of the allegations concerning the “medical
16 services at issue,” as the term collectively refers to thousands of individual claims. On that basis,
17 United denies the allegations contained in the second sentence of Paragraph 11, and explicitly
18 denies the allegation that any services Plaintiffs provided qualify as “emergency” services.
19 United denies all remaining allegations contained in this paragraph.

20 12. Answering paragraph 12 of the First Amended Complaint, United admits that
21 Sierra Health-Care Options, Inc. is a Nevada corporation. United lacks knowledge or information
22 sufficient to form a belief as to the vague allegation that Sierra Health-Care Options, Inc. is an
23 affiliate of United HealthCare Services, Inc. and, therefore, cannot admit or deny this allegation.
24 Responding to the allegations contained in the second sentence of Paragraph 12, United denies
25 that the allegations fully or accurately describe the business of Sierra Health-Care Options, Inc.
26 United lacks knowledge or information sufficient to form a belief as to the truth of the
27 allegations concerning the “medical services at issue,” as the term collectively refers to
28 thousands of individual claims. On that basis, United denies the allegations contained in the



1 second sentence of Paragraph 12, and explicitly denies the allegation that any services Plaintiffs
2 provided qualify as “emergency” services. United denies all remaining allegations contained in
3 this paragraph.

4 13. Answering paragraph 13 of the First Amended Complaint, United admits that
5 Health Plan of Nevada, Inc. is a Nevada corporation. United lacks knowledge or information
6 sufficient to form a belief as to the vague allegation that Health Plan of Nevada, Inc. is an
7 affiliate of United HealthCare Services, Inc. and, therefore, cannot admit or deny this allegation.
8 Responding to the allegations contained in the second sentence of Paragraph 13, United denies
9 that the allegations fully or accurately describe the business of Health Plan of Nevada, Inc.
10 United lacks knowledge or information sufficient to form a belief as to the truth of the
11 allegations concerning the “medical services at issue,” as the term collectively refers to
12 thousands of individual claims. On that basis, United denies the allegations contained in the
13 second sentence of Paragraph 13, and explicitly denies the allegation that any services Plaintiffs
14 provided qualify as “emergency” services. United denies all remaining allegations contained in
15 this paragraph.

16 14. Answering paragraph 14 of the First Amended Complaint, this paragraph does not
17 require a response as no allegations against United are contained therein. Given the numerous,
18 potential permutations and the reference to unidentified “DOE” and “ROE” entities, United is
19 without knowledge or information sufficient to form a belief as to the truth of the allegations
20 contained in this paragraph as to such other Defendants. To the extent the allegations in
21 Paragraph 14 require a response, United denies them, and further denies that Plaintiffs are
22 entitled to leave to amend the operative complaint.

23 JURISDICTION AND VENUE

24 15. Answering paragraph 15 of the First Amended Complaint, United responds that
25 the First Amended Complaint speaks for itself as to the alleged amount in controversy claimed
26 on its face, but denies that Plaintiffs have any entitlement to recovery from United, and denies
27 that discovery beyond the administrative records of the claims at issue is permissible or
28 appropriate. United lacks knowledge or information sufficient to form a belief as to the truth of



1 the remaining allegations in Paragraph 15 and, on that basis, denies them.

2 16. Answering paragraph 16 of the First Amended Complaint, United denies the
3 allegations in the first sentence of Paragraph 16. The second, third, and fourth sentences of this
4 Paragraph contain Plaintiffs' characterization of this action, which require no response. United
5 denies the allegations in the fifth sentence of Paragraph 16.

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

7 ***The Health Care Providers Provide Necessary Emergency Care to Patients***

8 17. Answering paragraph 17 of the First Amended Complaint, United is without
9 knowledge or information sufficient to form a belief about the truth of the allegations in this
10 paragraph and, on that basis, denies the same.

11 18. Answering paragraph 18 of the First Amended Complaint, the first and second
12 sentences set forth legal conclusions that require no response. To the extent these sentences
13 contain allegations requiring a response, United responds that the federal Emergency Medical
14 Treatment and Labor Act ("EMTALA"), Nevada law, and the referenced statutory provisions
15 speak for themselves, and denies any allegations in Paragraph 18 inconsistent with those laws or
16 those provisions. United admits that Plaintiffs have provided medical services to some
17 participants in health plans insured or administered by United. United lacks knowledge or
18 information sufficient to form a belief as to the truth of the remaining allegations in Paragraph
19 18. United denies any allegation, implicit or explicit, in Paragraph 18 that any services Plaintiffs
20 provided qualify as "emergency" services.

21 19. Answering paragraph 19 of the First Amended Complaint, the first sentence sets
22 forth legal conclusions that require no response. Responding to the second sentence of this
23 Paragraph, United admits that it provides healthcare benefits to its members. Defendants deny the
24 remaining allegations contained in this Paragraph.

25 20. Answering paragraph 20 of the First Amended Complaint, United admits the
26 allegations contained in the first sentence of this Paragraph. United denies the allegations in the
27 second sentence of Paragraph 20.

28 21. Answering paragraph 21 of the First Amended Complaint, the first, second, and



1 fourth sentences of Paragraph 21 set forth legal conclusions that require no response. To the
2 extent these sentences contain allegations requiring a response, United denies them. United
3 denies the allegations in the third sentence of Paragraph 21. United denies any allegation, implicit
4 or explicit, in Paragraph 21 that any services Plaintiffs provided qualify as “emergency” services.

5 22. Answering paragraph 22 of the First Amended Complaint, United admits only that
6 Plaintiffs have provided medical services to some participants in health plans insured or
7 administered by United. United denies any allegation, implicit or explicit, in Paragraph 22 that
8 any services Plaintiffs provided qualify as “emergency” services.

9 23. Answering paragraph 23 of the First Amended Complaint, this Paragraph sets
10 forth legal conclusions that require no response. To the extent this paragraph contains allegations
11 requiring a response, United responds that the terms and conditions of any applicable contract
12 and the provisions of any applicable law speak for themselves, and denies any allegations in
13 Paragraph 23 inconsistent with such terms and conditions, and/or such provisions. United denies
14 any allegation, implicit or explicit, in Paragraph 23 that any services Plaintiffs provided qualify
15 as “emergency” services.

16 24. Answering paragraph 24 of the First Amended Complaint, United admits that the
17 uhc.com website contains the text that is quoted in Paragraph 24, with the exception of the text
18 contained within brackets.

19 25. Answering paragraph 25 of the First Amended Complaint, United is without
20 knowledge or information sufficient to form a belief about the truth of the allegations contained
21 in subsections (a) and (b) of this paragraph and, on that basis, denies the same. United denies any
22 allegation, implicit or explicit, in Paragraph 25 that any services Plaintiffs provided qualify as
23 “emergency” services.

24 26. Answering paragraph 26 of the First Amended Complaint, United admits that
25 health plans insured or administered by United have paid Plaintiffs for covered services on
26 various claims with dates of service through July 31, 2019. United denies any allegation, implicit
27 or explicit, in the first sentence of Paragraph 26 that it failed to process or pay claims
28 appropriately. The second and third sentences of Paragraph 26 contain Plaintiffs’ characterization



1 of this action, to which United is not required to respond. To the extent these sentences contain
2 allegations requiring a response, United denies the same.

3 ***The Relationship Between the Health Care Providers and Defendants***

4 27. Answering paragraph 27 of the First Amended Complaint, United denies that the
5 allegations in Paragraph 27 fully or accurately describe the business of the United Defendants.
6 United further states that it is without knowledge or information sufficient to form a belief about
7 what specific companies provided the health plan coverage to the claims alleged to be at issue.

8 28. Answering paragraph 28 of the First Amended Complaint, United responds that
9 the terms and conditions of member benefit plans speak for themselves. United denies any
10 allegations in paragraph 28 inconsistent with their terms.

11 29. Answering paragraph 29 of the First Amended Complaint, United responds that
12 the terms and conditions of member benefit plans and provider participation agreements speak
13 for themselves. United denies any allegations in paragraph 29 inconsistent with their terms.

14 30. Answering paragraph 30 of the First Amended Complaint, United denies that the
15 allegations fully or accurately describe the business of the United Defendants and, on that basis,
16 denies them.

17 31. Answering paragraph 31 of the First Amended Complaint, United responds that
18 the terms and conditions of member benefit plans speak for themselves. United denies any
19 allegations in paragraph 31 inconsistent with their terms.

20 32. Answering paragraph 32 of the First Amended Complaint, United responds that
21 the terms and conditions of member benefit plans speak for themselves. United denies any
22 allegations in paragraph 32 inconsistent with their terms.

23 33. Answering paragraph 33 of the First Amended Complaint, United responds that
24 the terms and conditions of member benefit plans speak for themselves. United denies any
25 allegations in paragraph 33 inconsistent with their terms. United denies any allegation, implicit
26 or explicit, in Paragraph 33 that any services Plaintiffs provided qualify as “emergency” services.

27 34. Answering paragraph 34 of the First Amended Complaint, this paragraph sets
28 forth legal conclusions that do not require a response. To the extent this paragraph requires a



1 response, United responds that the terms and conditions of member benefit plans speak for
2 themselves. United denies any allegations in paragraph 34 inconsistent with their terms. United
3 denies any allegation, implicit or explicit, in Paragraph 34 that any services Plaintiffs provided
4 qualify as “emergency” services.

5 35. Answering paragraph 35 of the First Amended Complaint, United responds that
6 any public information contained in member benefit plans is consistent with the terms of those
7 plans. United denies the remaining allegations in Paragraph 35.

8 36. Answering paragraph 36 of the First Amended Complaint, United admits that the
9 uhc.com website contains the text that is quoted in Paragraph 36, with the exception of the text
10 contained within brackets.

11 37. Answering paragraph 37 of the First Amended Complaint, United is without
12 knowledge or information sufficient to form a belief about the truth of the allegations in this
13 paragraph and, on that basis, denies them.

14 38. Answering paragraph 38 of the First Amended Complaint, United is without
15 knowledge or information sufficient to form a belief about the truth of the allegations in this
16 paragraph and, on that basis, denies them.

17 39. Answering paragraph 39 of the First Amended Complaint, United admits that
18 Plaintiffs are non-participating providers. United is without knowledge or information sufficient
19 to form a belief about the particular benefit claims at issue in this litigation. It is evident,
20 however, that Plaintiffs recurrently represented to United that they obtained assignments from
21 their patients (the validity of which may vary from claim to claim) of health plan contracts that
22 incorporate the referenced reimbursement policies or applicable reimbursement rates.

23 40. Answering paragraph 40 of the First Amended Complaint, United is without
24 knowledge or information sufficient to form a belief as to the truth of the allegations due to
25 Plaintiffs’ failure to identify the “Non-Participating Claims” that are “within the scope of this
26 action.” Because Plaintiffs have not specified plan, member and claim information in this
27 paragraph, United cannot formulate a response to Plaintiffs’ allegations pertaining to the claims
28 at issue.





1 41. Answering paragraph 41 of the First Amended Complaint, United is without
2 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
3 this paragraph because Plaintiffs have not identified, in their First Amended Complaint, which
4 claims are at issue. Without plan, member, and claim information, United cannot formulate a
5 response to Plaintiffs' allegations pertaining to the claims at issue.

6 42. Answering paragraph 42 of the First Amended Complaint, United is without
7 knowledge or information sufficient to form a belief as to the truth of the allegations due to
8 Plaintiffs' failure to identify the plan(s), member(s) and claim information at issue in their First
9 Amended Complaint. As a result, United cannot formulate a response to Plaintiffs' allegations
10 pertaining to the claims at issue. Responding further, the allegations in Paragraph 42 cannot be
11 reconciled with other allegations in the First Amended Complaint and, on that basis, United
12 denies them. Plaintiffs are plainly asserting the underpayment of plan benefits under the
13 Employee Retirement Income Security Act of 1974 ("ERISA"). Plaintiffs' inclusion of footnotes
14 throughout the First Amended Complaint does not comply with Nevada Rule of Civil Procedure
15 10(b), requiring that allegations be stated "in numbered paragraphs, each limited as far as
16 practicable to a single set of circumstances." As such, no response is required to footnote 2. To
17 the extent a response to footnote 2 is required, United admits that it typically relies on provider
18 representations that a plan participant has authorized direct payment, rather than representations
19 that benefits have been assigned, in determining whether to pay out-of-network benefits directly
20 to a provider.

21 43. Answering paragraph 43 of the First Amended Complaint, United denies the
22 allegations contained therein.

23 44. Answering paragraph 44 of the First Amended Complaint, United responds that
24 the terms and conditions of member benefit plans speak for themselves, and denies any
25 allegations in paragraph 44 inconsistent with their terms. United denies any allegation, implicit or
26 explicit, in Paragraph 44 that it failed to process or pay claims appropriately. United denies any
27 allegation, implicit or explicit, in Paragraph 44 that any services Plaintiffs provided qualify as
28 "emergency" services.

1 45. Answering paragraph 45 of the First Amended Complaint, United responds that
2 the terms and conditions of member benefit plans speak for themselves, and denies any
3 allegations in paragraph 45 inconsistent with their terms. United denies any allegation, implicit or
4 explicit, in Paragraph 45 that it failed to process or pay claims appropriately. United denies that it
5 has knowledge of what its members “will” do with respect to seeking emergency treatment.
6 United denies any allegation, implicit or explicit, in Paragraph 45 that any services Plaintiffs
7 provided qualify as “emergency” services.

8 ***The Reasonable Rate for Non-Participating Emergency Services is Well-Established***

9 46. Answering paragraph 46 of the First Amended Complaint, United is without
10 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
11 this paragraph and, on that basis, denies them. United denies any allegation, implicit or explicit,
12 in Paragraph 46 that any services Plaintiffs provided qualify as “emergency” services.

13 47. Answering paragraph 47 of the First Amended Complaint, United admits that
14 rental networks may establish contractually specified rates for provider services through
15 negotiations between the rental network and providers on the one hand, and the rental network
16 and health insurance companies on the other. The terms of any rental network contracts speak for
17 themselves, and United denies any allegations in Paragraph 47 inconsistent with their terms.
18 United cannot determine from the First Amended Complaint what claims are at issue, and
19 therefore lacks knowledge or information sufficient to form a belief as to the truth of the
20 remaining allegations in Paragraph 47, and, on that basis, denies them.

21 48. Answering paragraph 48 of the First Amended Complaint, United denies that the
22 allegations fully or accurately describe the business of rental networks.

23 49. Answering paragraph 49 of the First Amended Complaint, United responds that
24 the terms of any rental network contracts speak for themselves, and denies any allegations in
25 paragraph 49 inconsistent with their terms. United denies that the allegations in this paragraph
26 fully or accurately describe the business of rental networks.

27 50. Answering paragraph 50 of the First Amended Complaint, United responds that
28 the terms of any rental network contracts speak for themselves, and denies any allegations in



1 paragraph 50 inconsistent with their terms. United denies that the allegations in this paragraph
2 fully or accurately describe the business of rental networks.

3 51. Answering paragraph 51 of the First Amended Complaint, United denies the
4 allegations contained in this paragraph.

5 52. Answering paragraph 52 of the First Amended Complaint, United is without
6 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
7 this paragraph and, on that basis, denies them.

8 53. Answering paragraph 53 of the First Amended Complaint, United is without
9 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
10 this paragraph and, on that basis, denies them.

11 54. Answering paragraph 54 of the First Amended Complaint, United denies the
12 allegations contained in this paragraph.

13 55. Answering paragraph 55 of the First Amended Complaint, United denies the
14 allegations contained in this paragraph.

15 56. Answering paragraph 56 of the First Amended Complaint, United denies the
16 allegations contained in this paragraph.

17 ***Defendants Paid the Health Care Providers Unreasonable Rates***

18 57. Answering paragraph 57 of the First Amended Complaint, United denies the
19 allegations in the first and second sentences of this paragraph. United lacks knowledge or
20 information sufficient to form a belief as to the truth of the remaining allegations in this
21 paragraph, including subsections (a), (b), and (c) of this paragraph and, on that basis, denies
22 them. United lacks sufficient information because Plaintiffs have provided virtually no
23 information about their asserted claims in their First Amended Complaint, and without plan,
24 member, and claim information, United cannot formulate a response to allegations pertaining to
25 the claims at issue. Responding to subsection (d) of paragraph 57, United admits that it typically
26 relies on provider representations that a plan participant has authorized direct payment, rather
27 than representations that benefits have been assigned, in determining whether to pay out-of-
28 network benefits directly to a provider. The remaining allegations in Paragraph 57(d) cannot be



1 reconciled with other allegations in the First Amended Complaint and, on that basis, United
2 denies them. United denies any allegation, implicit or explicit, in Paragraph 57 that any services
3 Plaintiffs provided qualify as “emergency” services.

4 58. Answering paragraph 58 of the First Amended Complaint, United lacks
5 knowledge or information sufficient to form a belief as to the truth of the vague allegations about
6 what United “generally” did, and, on that basis, denies them.

7 59. Answering paragraph 59 of the First Amended Complaint, United admits that at
8 least some of the Plaintiffs continue to provide medical services to some participants in health
9 plans insured or administered by United. United lacks knowledge or information sufficient to
10 form a belief as to the truth of the remaining allegations in Paragraph 59. United denies any
11 allegation, implicit or explicit, in Paragraph 59 that it failed to process or pay claims
12 appropriately. United denies any allegation, implicit or explicit, in Paragraph 59 that any services
13 Plaintiffs provided qualify as “emergency” services.

14 60. Answering paragraph 60 of the First Amended Complaint, United responds that
15 the terms and conditions of member benefit plans speak for themselves, and denies any
16 allegations in Paragraph 60 inconsistent with their terms. United denies any allegation, implicit or
17 explicit, in Paragraph 60 that it failed to process or pay claims appropriately. United denies any
18 allegation, implicit or explicit, in Paragraph 60 that any services Plaintiffs provided qualify as
19 “emergency” services.

20 61. Answering paragraph 61 of the First Amended Complaint, United responds that
21 the terms and conditions of member benefit plans speak for themselves, and denies any
22 allegations in Paragraph 61 inconsistent with their terms. United denies any allegation, implicit or
23 explicit, in Paragraph 61 that it failed to process or pay claims appropriately. United denies that it
24 has knowledge of what its members “will” do with respect to seeking emergency treatment.
25 United denies any allegation, implicit or explicit, in Paragraph 61 that any services Plaintiffs
26 provided qualify as “emergency” services.

27 62. Answering paragraph 62 of the First Amended Complaint, United lacks
28 knowledge or information sufficient to form a belief about the truth of the allegations in the first



1 and second sentences of this paragraph. Responding to the third sentence of this paragraph,
2 United states that the terms and conditions of member benefit plans speak for themselves, and
3 denies any allegations in Paragraph 62 inconsistent with their terms. United denies any
4 allegation, implicit or explicit, in Paragraph 62 that it failed to process or pay claims
5 appropriately. United denies any allegation, implicit or explicit, in Paragraph 62 that any services
6 Plaintiffs provided qualify as “emergency” services.

7 63. Answering paragraph 63 of the First Amended Complaint, United admits that
8 Plaintiffs provided a variety of medical services to some participants in health plans insured or
9 administered by United. United lacks knowledge or information sufficient to form a belief as to
10 the truth of the remaining allegations in Paragraph 63, and on that basis denies them. United
11 denies any allegation, implicit or explicit, in Paragraph 63 that any services Plaintiffs provided
12 qualify as “emergency” services.

13 64. Answering paragraph 64 of the First Amended Complaint, United admits that
14 Plaintiffs have submitted thousands of claims to United representing that they provided medical
15 services to participants in health plans insured or administered by United. United denies the
16 allegations in the second and third sentences of Paragraph 64. United denies any allegation,
17 implicit or explicit, in Paragraph 64 that any services Plaintiffs provided qualify as “emergency”
18 services.

19 65. Answering paragraph 65 of the First Amended Complaint, United denies the
20 allegations contained in this paragraph.

21 66. Answering paragraph 66 of the First Amended Complaint, United denies the
22 allegations contained in this paragraph.

23 67. Answering paragraph 67 of the First Amended Complaint, United lacks
24 knowledge or information sufficient to form a belief about the truth of the allegations stated
25 therein and, on that basis, denies them.

26 68. Answering paragraph 68 of the First Amended Complaint, this paragraph sets
27 forth legal conclusions that require no response. To the extent this paragraph contains allegations
28 requiring a response, United denies them.



69. Answering paragraph 69 of the First Amended Complaint, this paragraph contains Plaintiffs' characterization of this action, which requires no response. To the extent this paragraph contains allegations requiring a response, United denies them. United specifically denies any allegation, implicit or explicit, in Paragraph 69 that any services Plaintiffs provided qualify as "emergency" services.

Defendants' Prior Manipulation of Reimbursement Rates

70. Answering paragraph 70 of the First Amended Complaint, United denies the allegations contained in this paragraph.

71. Answering paragraph 71 of the First Amended Complaint, United admits that, in 2008, former New York Attorney General Andrew Cuomo announced an industry-wide investigation into health care reimbursement rates. United denies the remaining allegations in Paragraph 71.

72. Answering paragraph 72 of the First Amended Complaint, United denies the allegations contained in this paragraph.

73. Answering paragraph 73 of the First Amended Complaint, United admits that UnitedHealth Group Inc. reached an agreement with former Attorney General Andrew Cuomo in connection with his industry-wide investigation into health care reimbursement rates. United states that the terms of that agreement speak for themselves, and denies any allegations inconsistent with its terms. United denies the remaining allegations in Paragraph 73.

74. Answering paragraph 74 of the First Amended Complaint, United admits that former New York Attorney General Andrew Cuomo gave a statement containing the language that is quoted in Paragraph 74.

75. Answering paragraph 75 of the First Amended Complaint, United admits that United HealthCare Corporation, n/k/a UnitedHealth Group, UnitedHealthcare Insurance Company, and United HealthCare Services, Inc., among other defendants, entered into a Settlement Agreement dated January 14, 2009 in settlement of *American Medical Association et al. v. United Healthcare Corporation, et al.*, Case No. 00-2800 (LMM) (GWG) (S.D.N.Y.). United states that the Settlement Agreement speaks for itself, and denies any allegations



1 inconsistent with its terms. United denies the remaining allegations in Paragraph 75.

2 76. Answering paragraph 76 of the First Amended Complaint, United lacks
3 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
4 this paragraph and, on that basis, denies them.

5 77. Answering paragraph 77 of the First Amended Complaint, United lacks
6 knowledge or information sufficient to form a belief as to the truth of the allegations contained in
7 this paragraph and, on that basis, denies them.

8 78. Answering paragraph 78 of the First Amended Complaint, United admits that its
9 website contains various references to FAIR Health, but denies that its website “touts” the use of
10 FAIR Health and its benchmark databases to determine non-participating, out-of-network
11 payment amounts.

12 79. Answering paragraph 79 of the First Amended Complaint, United admits that the
13 uhc.com website contains the text that is quoted in Paragraph 79. The selected quotes referenced
14 in Paragraph 79 are taken from the following passage:

15 The UnitedHealth Group affiliate will pay based on the terms of the member’s health care
16 benefit plan that in many cases provides for payment for amounts that are the lower of
17 either:

- 18 • the out-of-network provider’s actual charge billed to the member, or
- 19 • “the reasonable and customary amount,” “the usual, customary, and reasonable
20 amount,” “the prevailing rate,” or other similar terms that base payment on what
21 other healthcare professionals in a geographic area charge for their services.

22 United states that the content of the uhc.com website speaks for itself, and denies any allegations
23 inconsistent with that content. United denies any allegation, implicit or explicit, in Paragraph 79
24 that it failed to process or pay claims appropriately. United denies the remaining allegations in
25 paragraph 79.

26 80. Answering paragraph 80 of the First Amended Complaint, United denies the
27 allegations contained in this paragraph.

28 81. Answering paragraph 81 of the First Amended Complaint, United denies the



1 allegations contained in this paragraph.

2 82. Answering paragraph 82 of the First Amended Complaint, United denies the
3 allegations contained in this paragraph.

4 83. Answering paragraph 83 of the First Amended Complaint, United lacks
5 knowledge or information sufficient to form a belief as to what claim payments Plaintiffs are
6 referring to in Paragraph 83, and, on that basis, denies the allegation concerning the specific
7 percentages of billed charges at which rates “have” been paid. United denies the remaining
8 allegations in Paragraph 83.

9 84. Answering paragraph 84 of the First Amended Complaint, United lacks
10 knowledge or information sufficient form a belief as to the truth of the allegations contained in
11 this paragraph and, on that basis, denies them. Because Plaintiffs have failed to provide plan,
12 member, and claim information in their First Amended Complaint, United cannot formulate a
13 response to Plaintiffs’ allegations pertaining to the claims at issue. United denies any allegation,
14 implicit or explicit, in Paragraph 84 that any services Plaintiffs provided qualify as “emergency”
15 services.

16 85. Answering paragraph 85 of the First Amended Complaint, United lacks
17 knowledge or information sufficient form a belief as to the truth of the allegations contained in
18 this paragraph and, on that basis, denies them. Because Plaintiffs have failed to provide plan,
19 member, and claim information in their First Amended Complaint, United cannot formulate a
20 response to Plaintiffs’ allegations pertaining to the claims at issue. United denies any allegation,
21 implicit or explicit, in Paragraph 85 that any services Plaintiffs provided qualify as “emergency”
22 services.

23 86. Answering paragraph 86 of the First Amended Complaint, United lacks
24 knowledge or information sufficient form a belief as to the truth of the allegations contained in
25 this paragraph and, on that basis, denies them. Because Plaintiffs have failed to provide plan,
26 member, and claim information in their First Amended Complaint, United cannot formulate a
27 response to Plaintiffs’ allegations pertaining to the claims at issue. United denies any allegation,
28 implicit or explicit, in Paragraph 86 that any services Plaintiffs provided qualify as “emergency”



1 services.

2 87. Answering paragraph 87 of the First Amended Complaint, United lacks
3 knowledge or information sufficient form a belief as to the truth of the allegations contained in
4 this paragraph and, on that basis, denies them. Because Plaintiffs have failed to provide plan,
5 member, and claim information in their First Amended Complaint, United cannot formulate a
6 response to Plaintiffs' allegations pertaining to the claims at issue. United denies any allegation,
7 implicit or explicit, in Paragraph 87 that any services Plaintiffs provided qualify as "emergency"
8 services.

9 88. Answering paragraph 88 of the First Amended Complaint, United denies the
10 allegations contained in this paragraph.

11 89. Answering paragraph 89 of the First Amended Complaint, United denies the
12 allegations contained in this paragraph.

13 ***Defendants' Current Schemes***

14 90. Answering paragraph 90 of the First Amended Complaint, United denies the
15 allegations contained in this paragraph.

16 91. Answering paragraph 91 of the First Amended Complaint, United admits the
17 allegations, except that United lacks knowledge or information sufficient to form a belief as to
18 the truth of the allegation that the individuals or entities who "tried to negotiate with Defendants
19 to become participating, in-network providers" are properly characterized as "the Health Care
20 Providers' representatives," and, on that basis, denies that allegation.

21 92. Answering paragraph 92 of the First Amended Complaint, United admits the
22 allegations, except that United lacks knowledge or information sufficient to form a belief as to
23 the truth of the allegation that the individuals or entities that "met" with United are properly
24 characterized as "the Health Care Providers' representatives," and, on that basis, denies that
25 allegation.

26 93. Answering paragraph 93 of the First Amended Complaint, United denies that the
27 allegations accurately represent the full and contextually accurate content of any statements
28 made by the alleged speaker. United lacks knowledge or information sufficient to form a belief



1 as to the truth of the allegation that any individuals or entities to whom the alleged speaker spoke
2 are properly characterized as “the Health Care Providers’ representatives,” and, on that basis,
3 denies that allegation.

4 94. Answering paragraph 94 of the First Amended Complaint, United denies the
5 allegations contained in this paragraph.

6 95. Answering paragraph 95 of the First Amended Complaint, United denies the
7 allegations contained in this paragraph.

8 96. Answering paragraph 96 of the First Amended Complaint, United denies that the
9 allegations accurately represent the full and contextually accurate content of any statements
10 made by the alleged speaker, and specifically deny that the alleged speaker made “threats” of any
11 kind.

12 97. Answering paragraph 97 of the First Amended Complaint, United denies that the
13 allegations accurately represent the full and contextually accurate content of any statements
14 made by the alleged speaker, and specifically deny that the alleged speaker stated that United
15 would “cut” non-participating reimbursement rates.

16 98. Answering paragraph 98 of the First Amended Complaint, United denies the
17 allegations contained in this paragraph.

18 99. Answering paragraph 99 of the First Amended Complaint, United denies the
19 allegations contained in this paragraph.

20 100. Answering paragraph 100 of the First Amended Complaint, United denies the
21 allegations contained in this paragraph.

22 101. Answering paragraph 101 of the First Amended Complaint, United denies that the
23 allegations in the first sentence fully or accurately describe Data iSight, which is a service
24 offered by MultiPlan, Inc. that provides pricing information concerning medical claims. United
25 lacks knowledge or information sufficient to form a belief as to the truth of the remaining
26 allegations in Paragraph 101. United lacks sufficient information to form a belief as to the truth
27 of the allegations in the sixth sentence of Paragraph 101 because Plaintiffs have provided
28 virtually no information about their asserted claims, and without plan, member, and claim



1 information, United cannot formulate a response to allegations pertaining to the claims at issue.
2 United denies any allegation, implicit or explicit, in Paragraph 101 that any services Plaintiffs
3 provided qualify as “emergency” services.

4 102. Answering paragraph 102 of the First Amended Complaint, United denies the
5 allegations contained in this paragraph.

6 103. Answering paragraph 103 of the First Amended Complaint, United denies the
7 allegations contained in this paragraph.

8 104. Answering paragraph 104 of the First Amended Complaint, United denies that the
9 allegations accurately represent the full and contextually accurate content of any statements
10 made by the alleged speaker, and specifically deny that the alleged speaker stated that United
11 would “cut” plan non-participating payment rates.

12 105. Answering paragraph 105 of the First Amended Complaint, United denies the
13 allegations contained in this paragraph.

14 106. Answering paragraph 106 of the First Amended Complaint, United denies the
15 allegations contained in this paragraph.

16 107. Answering paragraph 107 of the First Amended Complaint, United denies the
17 allegations contained in this paragraph.

18 108. Answering paragraph 108 of the First Amended Complaint, United lacks
19 knowledge or information sufficient to form a belief as to the truth of the vague allegations in the
20 first sentence of this paragraph pertaining to the so-called “Florida Facility,” and, on that basis,
21 denies those allegations, and all remaining allegations in the first sentence of this paragraph
22 United lacks knowledge or information sufficient to form a belief as to the truth of the
23 allegations contained in the second sentence of this paragraph. United lacks sufficient
24 information to form a belief as to the truth of the allegations in the third sentence of Paragraph
25 108 and, on that basis, denies them, and specifically denies that United made “threats” of any
26 kind. United denies the allegations contained in the fourth sentence of this paragraph, and
27 specifically denies that United made “threats” of any kind. United denies any allegation, implicit
28 or explicit, in Paragraph 108 that any services Plaintiffs provided qualify as “emergency”



1 services.

2 109. Answering paragraph 109 of the First Amended Complaint, United denies the
3 allegations contained in this paragraph, and specifically denies that United made “threats” of any
4 kind.

5 ***Defendants’ Fraudulent Schemes to Deprive the Health Care Providers of Reasonable***
6 ***Reimbursement Violates Nevada’s Civil Racketeering Statute***

7 110. Answering paragraph 110 of the First Amended Complaint, United denies the
8 allegations contained in this paragraph.

9 111. Answering paragraph 111 of the First Amended Complaint, United denies the
10 allegations contained in this paragraph.

11 112. Answering paragraph 112 of the First Amended Complaint, United denies the
12 allegations contained in this paragraph.

13 113. Answering paragraph 113 of the First Amended Complaint, United denies the
14 allegations contained in this paragraph.

15 114. Answering paragraph 114 of the First Amended Complaint, United denies the
16 allegations contained in this paragraph.

17 115. Answering paragraph 115 of the First Amended Complaint, United denies the
18 allegations in the first, second, and third sentences of the paragraph. United lacks knowledge or
19 information sufficient to form a belief as to the truth of the allegations in the fourth sentence of
20 Paragraph 115, and, on that basis, denies them. United denies any allegation, implicit or explicit,
21 in Paragraph 115 that any services Plaintiffs provided qualify as “emergency” services.

22 116. Answering paragraph 116 of the First Amended Complaint, United denies the
23 allegations contained in this paragraph.

24 ***Defendants’ and Data iSight’s Activities Constitute Racketeering Activity***

25 117. Answering paragraph 117 of the First Amended Complaint, United denies the
26 allegations contained in this paragraph.

27 118. Answering paragraph 118 of the First Amended Complaint, United denies the
28 allegations contained in this paragraph.



1 119. Answering paragraph 119 of the First Amended Complaint, United denies the
2 allegations contained in this paragraph.

3 120. Answering paragraph 120 of the First Amended Complaint, this paragraph
4 contains Plaintiffs' characterization of this action, which requires no response. To the extent this
5 paragraph contains allegations requiring a response, United denies them.

6 ***The Enterprise and Scheme***

7 121. Answering paragraph 121 of the First Amended Complaint, United denies the
8 allegations contained in this paragraph.

9 122. Answering paragraph 122 of the First Amended Complaint, United denies the
10 allegations contained in this paragraph.

11 123. Answering paragraph 123 of the First Amended Complaint, United denies the
12 allegations contained in this paragraph.

13 124. Answering paragraph 124 of the First Amended Complaint, United denies the
14 allegations contained in this paragraph.

15 125. Answering paragraph 125 of the First Amended Complaint, United denies the
16 allegations contained in this paragraph.

17 126. Answering paragraph 126 of the First Amended Complaint, United denies the
18 allegations contained in this paragraph.

19 127. Answering paragraph 127 of the First Amended Complaint, United denies the
20 allegations contained in this paragraph.

21 ***The Enterprise's False Statements: Transparency***

22 128. Answering paragraph 128 of the First Amended Complaint, United lacks
23 knowledge or information sufficient to form a belief as to the truth of the allegations in this
24 paragraph, and, on that basis, denies them. United lacks sufficient information in part because
25 Plaintiffs do not delineate in Paragraph 128 whether they are referring their own "non-
26 participating claims" or a broader set, and have provided virtually no information about their
27 asserted claims in their First Amended Complaint. Without plan, member, and claim
28 information, United cannot formulate a response to allegations pertaining to the claims at issue.



1 129. Answering paragraph 129 of the First Amended Complaint, United admits that the
2 dataisight.com website contains the text that is quoted in this paragraph. Responding further,
3 United states that the content of the dataisight.com website speaks for itself, and denies any
4 allegations in Paragraph 129 inconsistent with that content. United denies the remaining
5 allegations in Paragraph 129.

6 130. Answering paragraph 130 of the First Amended Complaint, United denies the
7 allegations contained in this paragraph.

8 131. Answering paragraph 131 of the First Amended Complaint, United denies the
9 allegations contained in this paragraph.

10 132. Answering paragraph 132 of the First Amended Complaint, United denies that
11 Data iSight determines reimbursement, or did so at any time. Responding further, United states
12 that the terms of its Provider Remittance Advice forms speak for themselves, and denies any
13 allegations in Paragraph 132 inconsistent with their terms.

14 133. Answering paragraph 133 of the First Amended Complaint, United denies that
15 Data iSight processes (adjudicates) claims, or did so at any time. Responding further, United
16 denies any allegation, implicit or explicit, in Paragraph 133 that it failed to process or pay claims
17 appropriately. United denies the remaining allegations in Paragraph 133.

18 134. Answering paragraph 134 of the First Amended Complaint, United responds that
19 the terms of the Provider Remittance Advice forms speak for themselves, and denies any
20 allegations in this paragraph inconsistent with their terms. United denies any allegation, implicit
21 or explicit, in Paragraph 134 that it failed to process or pay claims appropriately. United denies
22 the remaining allegations in Paragraph 134.

23 135. Answering paragraph 135 of the First Amended Complaint, United responds that
24 the terms of the Provider Remittance Advice forms speak for themselves, and denies any
25 allegations in this paragraph inconsistent with their terms.

26 136. Answering paragraph 136 of the First Amended Complaint, United lacks
27 knowledge or information sufficient to form a belief as to the truth of the allegations in this
28 paragraph, and, on that basis, denies them. United denies any allegation, implicit or explicit, in



1 Paragraph 136 that any services Plaintiffs provided qualify as “emergency” services.

2 137. Answering paragraph 137 of the First Amended Complaint, United lacks
3 knowledge or information sufficient to form a belief as to the truth of the allegations in this
4 paragraph, and, on that basis, denies them. United denies any allegation, implicit or explicit, in
5 Paragraph 137 that any services Plaintiffs provided qualify as “emergency” services.

6 138. Answering paragraph 138 of the First Amended Complaint, United lacks
7 knowledge or information sufficient to form a belief as to the truth of the allegations in this
8 paragraph, and, on that basis, denies them.

9 139. Answering paragraph 139 of the First Amended Complaint, United lacks
10 knowledge or information sufficient to form a belief as to the truth of the allegations in this
11 paragraph, and, on that basis, denies them.

12 140. Answering paragraph 140 of the First Amended Complaint, United lacks
13 knowledge or information sufficient to form a belief as to the truth of the allegations in this
14 paragraph, and, on that basis, denies them.

15 141. Answering paragraph 141 of the First Amended Complaint, United lacks
16 knowledge or information sufficient to form a belief as to the truth of the allegations in this
17 paragraph, and, on that basis, denies them.

18 142. Answering paragraph 142 of the First Amended Complaint, United denies the
19 allegations contained in this paragraph.

20 143. Answering paragraph 143 of the First Amended Complaint, United denies the
21 allegations contained in this paragraph.

22 144. Answering paragraph 144 of the First Amended Complaint, United lacks
23 knowledge or information sufficient to form a belief as to the truth of the allegation that “This
24 process to contest the unreasonable payment takes weeks to conclude for the Provider and is
25 impracticable to follow for every claim,” and, on that basis, denies it. United denies the
26 remaining allegations in Paragraph 144.

27 145. Answering paragraph 145 of the First Amended Complaint, United lacks
28 knowledge or information sufficient to form a belief as to the truth of the allegation that



1 “Providers’ representatives contested the allowed amounts on the claims discussed above,” and,
2 on that basis, denies it. United denies the remaining allegations in Paragraph 145.

3 146. Answering paragraph 146 of the First Amended Complaint, United lacks
4 knowledge or information sufficient to form a belief as to the truth of the allegations in this
5 paragraph, and, on that basis, denies them.

6 147. Answering paragraph 147 of the First Amended Complaint, United denies the
7 allegations contained in this paragraph.

8 148. Answering paragraph 148 of the First Amended Complaint, United denies the
9 allegations contained in this paragraph.

10 ***The Enterprise’s False Statements: Representations that Payment Rates Are “Defensible and***
11 ***Market Tested”***

12 149. Answering paragraph 149 of the First Amended Complaint, United denies the
13 allegations contained in this paragraph.

14 150. Answering paragraph 150 of the First Amended Complaint, United admits that the
15 dataisight.com website contains the text that is quoted in this paragraph. Responding further,
16 United states that the content of the dataisight.com website speaks for itself, and denies any
17 allegations in Paragraph 150 inconsistent with that content. United denies any allegation, implicit
18 or explicit, in Paragraph 150 that it failed to process or pay claims appropriately. United denies
19 the remaining allegations in Paragraph 150.

20 151. Answering paragraph 151 of the First Amended Complaint, United denies that
21 Data iSight processes (adjudicates) claims, or did so at any time. Responding further, United
22 states that the terms of any “notes” on documents related to the processing of claims speak for
23 themselves, and denies any allegations in Paragraph 151 inconsistent with their terms. United
24 denies any allegation, implicit or explicit, in Paragraph 151 that it failed to process or pay claims
25 appropriately.

26 152. Answering paragraph 152 of the First Amended Complaint, United denies the
27 allegations contained in this paragraph.

28 153. Answering paragraph 153 of the First Amended Complaint, United denies that



1 Data iSight determines reimbursement, or determined reimbursement at any time. Responding
2 further, United states that the content of Data iSight's provider portal speaks for itself, and denies
3 any allegations in this paragraph inconsistent with that content. United denies any allegation,
4 implicit or explicit, in Paragraph 153 that it failed to process or pay claims appropriately.

5 154. Answering paragraph 154 of the First Amended Complaint, United responds that
6 the content of the multiplan.com website speaks for itself, and denies any allegations in this
7 paragraph inconsistent with that content. United denies any allegation, implicit or explicit, in
8 Paragraph 154 that it failed to process or pay claims appropriately. United denies that Plaintiffs'
9 characterization of MultiPlan as Data iSight's "parent company" is accurate. United denies the
10 remaining allegations in paragraph 154.

11 155. Answering paragraph 155 of the First Amended Complaint, United denies the
12 allegations contained in this paragraph.

13 156. Answering paragraph 156 of the First Amended Complaint, United denies the
14 allegations contained in this paragraph.

15 157. Answering paragraph 157 of the First Amended Complaint, United lacks
16 knowledge or information sufficient to form a belief as to the truth of the allegations in this
17 paragraph, including subsections (a), (b), and (c)(i)–(v), and, on that basis, denies them. United
18 lacks sufficient information because Plaintiffs have provided virtually no information about their
19 asserted claims (including those pertaining to "Member #14", "Member #15" or "Members
20 ##16a–16e") in their First Amended Complaint, and without plan, member, and claim
21 information, United cannot formulate a response to allegations pertaining to the claims at issue.
22 United denies any allegation, implicit or explicit, in Paragraph 157 that any services Plaintiffs
23 provided qualify as "emergency" services.

24 158. Answering paragraph 158 of the First Amended Complaint, United lacks
25 knowledge or information sufficient to form a belief as to the truth of the allegations in this
26 paragraph that the benefits that may have been paid on a handful of inadequately identified
27 claims can appropriately be characterized as demonstrating a "lock-step reduction." United lacks
28 sufficient information in part because Plaintiffs have provided virtually no information about



1 their asserted claims in their First Amended Complaint, and without plan, member, and claim
2 information, United cannot formulate a response to allegations pertaining to the claims at issue.
3 United denies the remaining allegations in paragraph 158, and specifically denies that it made
4 any “threats” to Plaintiffs in December 2018.

5 159. Answering paragraph 159 of the First Amended Complaint, United denies the
6 allegations contained in this paragraph.

7 160. Answering paragraph 160 of the First Amended Complaint, United denies the
8 allegations contained in this paragraph.

9 161. Answering paragraph 161 of the First Amended Complaint, United denies the
10 allegations contained in this paragraph.

11 ***The Enterprise’s False Statements: Geographic Adjustment***

12 162. Answering paragraph 162 of the First Amended Complaint, United denies the
13 allegations contained in this paragraph.

14 163. Answering paragraph 163 of the First Amended Complaint, United responds that
15 the content of Data iSight’s provider portal speaks for itself, and denies any allegations in this
16 paragraph inconsistent with that content. United denies any allegation, implicit or explicit, in
17 Paragraph 163 that it failed to process or pay claims appropriately. United denies the remaining
18 allegations in Paragraph 163.

19 164. Answering paragraph 164 of the First Amended Complaint, United admits that the
20 healthplanalliance.org website contains the text that is quoted in this paragraph, except for the
21 bracketed text. United denies any allegation, implicit or explicit, in Paragraph 164 that it failed to
22 process or pay claims appropriately. United denies that Plaintiffs’ characterization of MultiPlan
23 as Data iSight’s “parent company” is accurate. United denies the remaining allegations in
24 Paragraph 164.

25 165. Answering paragraph 165 of the First Amended Complaint, United denies the
26 allegations contained in this paragraph.

27 166. Answering paragraph 166 of the First Amended Complaint, United lacks
28 knowledge or information sufficient to form a belief as to the truth of the allegations in this



1 paragraph, and, on that basis, denies them. United lacks sufficient information because Plaintiffs
2 have provided virtually no information about their asserted claims in their First Amended
3 Complaint, and without plan, member, and claim information, United cannot formulate a
4 response to allegations pertaining to the claims at issue.

5 167. Answering paragraph 167 of the First Amended Complaint, United lacks
6 knowledge or information sufficient to form a belief as to the truth of the allegations in this
7 paragraph, and, on that basis, denies them. United lacks sufficient information because Plaintiffs
8 have provided virtually no information about their asserted claims in their First Amended
9 Complaint, and without plan, member, and claim information, United cannot formulate a
10 response to allegations pertaining to the claims at issue. United denies any allegation, implicit or
11 explicit, in Paragraph 167 that any services Plaintiffs provided qualify as “emergency” services.

12 168. Answering paragraph 168 of the First Amended Complaint, United lacks
13 knowledge or information sufficient to form a belief as to the truth of the allegations in this
14 paragraph, and, on that basis, denies them. United lacks sufficient information because Plaintiffs
15 have provided virtually no information about their asserted claims in their First Amended
16 Complaint, and without plan, member, and claim information, United cannot formulate a
17 response to allegations pertaining to the claims at issue.

18 169. Answering paragraph 169 of the First Amended Complaint, United lacks
19 knowledge or information sufficient to form a belief as to the truth of the allegations in this
20 paragraph, and, on that basis, denies them. United lacks sufficient information because Plaintiffs
21 have provided virtually no information about their asserted claims in their First Amended
22 Complaint, and without plan, member, and claim information, United cannot formulate a
23 response to allegations pertaining to the claims at issue.

24 170. Answering paragraph 170 of the First Amended Complaint, United lacks
25 knowledge or information sufficient to form a belief as to the truth of the allegations in this
26 paragraph, and, on that basis, denies them. United lacks sufficient information because Plaintiffs
27 have provided virtually no information about their asserted claims in their First Amended
28 Complaint, and without plan, member, and claim information, United cannot formulate a



1 response to allegations pertaining to the claims at issue.

2 171. Answering paragraph 171 of the First Amended Complaint, United lacks
3 knowledge or information sufficient to form a belief as to the truth of the allegations in this
4 paragraph, and, on that basis, denies them. United lacks sufficient information because Plaintiffs
5 have provided virtually no information about their asserted claims in their First Amended
6 Complaint, and without plan, member, and claim information, United cannot formulate a
7 response to allegations pertaining to the claims at issue.

8 172. Answering paragraph 172 of the First Amended Complaint, United lacks
9 knowledge or information sufficient to form a belief as to the truth of the allegations in this
10 paragraph, and, on that basis, denies them. United lacks sufficient information because Plaintiffs
11 have provided virtually no information about their asserted claims in their First Amended
12 Complaint, and without plan, member, and claim information, United cannot formulate a
13 response to allegations pertaining to the claims at issue.

14 173. Answering paragraph 173 of the First Amended Complaint, United admits that the
15 specific quotes provided appear on a website that is maintained by United. Responding further,
16 United states that the content of its website speaks for itself, and denies any allegations in
17 Paragraph 173 inconsistent with that content.

18 174. Answering paragraph 174 of the First Amended Complaint, United denies the
19 allegations contained in this paragraph.

20 ***The Enterprise's Predicate Acts***

21 175. Answering paragraph 175 of the First Amended Complaint, United admits, upon
22 information and belief, that other health claim payers also contract to receive Data iSight's
23 services. United denies the remaining allegations in Paragraph 175, and specifically denies
24 entering into any contract with "Data iSight."

25 176. Answering paragraph 176 of the First Amended Complaint, United denies the
26 allegations contained in this paragraph.

27 177. Answering paragraph 177 of the First Amended Complaint, United denies the
28 allegations contained in this paragraph.



1 178. Answering paragraph 178 of the First Amended Complaint, United denies the
2 allegations contained in this paragraph.

3 179. Answering paragraph 179 of the First Amended Complaint, United lacks
4 knowledge or information sufficient to form a belief as to the truth of the allegations in this
5 paragraph and, on that basis, denies them.

6 180. Answering paragraph 180 of the First Amended Complaint, United lacks
7 knowledge or information sufficient to form a belief as to the truth of the allegations in this
8 paragraph and, on that basis, denies them.

9 181. Answering paragraph 181 of the First Amended Complaint, United denies the
10 allegations contained in this paragraph.

11 182. Answering paragraph 182 of the First Amended Complaint, United denies the
12 allegations contained in this paragraph.

13 183. Answering paragraph 183 of the First Amended Complaint, United denies the
14 allegations contained in this paragraph.

15 184. Answering paragraph 184 of the First Amended Complaint, United lacks
16 knowledge or information sufficient to form a belief as to the truth of the allegations in this
17 paragraph, including subsections (d), (e), (f), and (g), and, on that basis, denies them. United
18 lacks sufficient information because Plaintiffs have provided virtually no information about their
19 asserted claims (including those pertaining to “Member #17”, “Member #18” or “Member #19”)
20 in their First Amended Complaint, and without plan, member, and claim information, United
21 cannot formulate a response to allegations pertaining to the claims at issue. United denies any
22 allegation, implicit or explicit, in Paragraph 184 that any services Plaintiffs provided qualify as
23 “emergency” services.

24 185. Answering paragraph 185 of the First Amended Complaint, United denies the
25 allegations contained in this paragraph.

26 186. Answering paragraph 186 of the First Amended Complaint, United denies the
27 allegations contained in this paragraph.

28 187. Answering paragraph 187 of the First Amended Complaint, United denies the



1 allegations contained in this paragraph.

2 188. Answering paragraph 188 of the First Amended Complaint, United denies the
3 allegations contained in this paragraph.

4 **FIRST CLAIM FOR RELIEF**

5 **(Breach of Implied-in-Fact Contract)**

6 189. Answering paragraph 189 of the First Amended Complaint, United repeats and
7 incorporates each and every response contained the preceding paragraphs, 1 through 188, as
8 though fully set forth herein.

9 190. Answering paragraph 190 of the First Amended Complaint, this paragraph sets
10 forth legal conclusions that require no response. To the extent this paragraph contains allegations
11 requiring a response, United responds that federal and Nevada law speak for themselves, and
12 denies any allegations in Paragraph 190 inconsistent with those laws. United denies any
13 allegation, implicit or explicit, in Paragraph 190 that any services Plaintiffs provided qualify as
14 “emergency” services.

15 191. Answering paragraph 191 of the First Amended Complaint, this paragraph sets
16 forth legal conclusions that require no response. To the extent this paragraph contains allegations
17 requiring a response, United responds that federal and Nevada law speak for themselves, and
18 denies any allegations in Paragraph 191 inconsistent with those laws. United denies any
19 allegation, implicit or explicit, in Paragraph 191 that any services Plaintiffs provided qualify as
20 “emergency” services.

21 192. Answering paragraph 192 of the First Amended Complaint, United admits that
22 Plaintiffs are out-of-network providers, and that Plaintiffs have provided medical services to
23 some participants in health plans insured or administered by United. United lacks knowledge or
24 information sufficient to form a belief as to the truth of the remaining allegations in Paragraph
25 192, and, on that basis, denies them. United lacks sufficient information in part because Plaintiffs
26 have provided virtually no information about their asserted claims in their First Amended
27 Complaint, and without plan, member, and claim information, United cannot formulate a
28 response to allegations pertaining to the claims at issue, or to “all material times.” United denies



1 any allegation, implicit or explicit, in Paragraph 192 that any services Plaintiffs provided qualify
2 as “emergency” services.

3 193. Answering paragraph 193 of the First Amended Complaint, United admits that
4 Plaintiffs have provided medical services to some participants in health plans insured or
5 administered by United, and that health plans insured or administered by United have paid
6 Plaintiffs for covered services. United lacks knowledge or information sufficient to form a belief
7 as to the truth of the remaining allegations in Paragraph 193, and, on that basis, denies them.
8 United denies any allegation, implicit or explicit, in Paragraph 193 that any services Plaintiffs
9 provided qualify as “emergency” services.

10 194. Answering paragraph 194 of the First Amended Complaint, United admits that
11 Plaintiffs have provided medical services to some participants in health plans insured or
12 administered by United, and that health plans insured or administered by United have paid
13 Plaintiffs for covered services. United lacks knowledge or information sufficient to form a belief
14 as to the truth of the remaining allegations in Paragraph 194, and, on that basis, denies them.
15 United denies any allegation, implicit or explicit, in Paragraph 194 that any services Plaintiffs
16 provided qualify as “emergency” services.

17 195. Answering paragraph 195 of the First Amended Complaint, United denies the
18 allegations contained in this paragraph.

19 196. Answering paragraph 196 of the First Amended Complaint, United admits that
20 health plans insured or administered by United have paid Plaintiffs for covered services, typically
21 directly. United denies any allegation, implicit or explicit, in Paragraph 196 that it failed to
22 process or pay claims appropriately. United denies the remaining allegations in paragraph 196.
23 United denies any allegation, implicit or explicit, in Paragraph 196 that any services Plaintiffs
24 provided qualify as “emergency” services.

25 197. Answering paragraph 197 of the First Amended Complaint, United denies the
26 allegations contained in this paragraph. Responding further, United denies specifically that it
27 assumed any responsibility to pay Plaintiffs for services rendered at any rate other than the rates
28 specified in the applicable health plans. United denies any allegation, implicit or explicit, in



Paragraph 197 that any services Plaintiffs provided qualify as “emergency” services.

198. Answering paragraph 198 of the First Amended Complaint, this paragraph sets forth legal conclusions that require no response. To the extent this paragraph contains allegations requiring a response, United denies them. United denies any allegation, implicit or explicit, in Paragraph 198 that any services Plaintiffs provided qualify as “emergency” services.

199. Answering paragraph 199 of the First Amended Complaint, United denies the allegations contained in this paragraph. Responding further, United denies specifically that it assumed any responsibility to pay Plaintiffs for services rendered at any rate other than the rates specified in the applicable health plans. United denies any allegation, implicit or explicit, in Paragraph 199 that any services Plaintiffs provided qualify as “emergency” services.

200. Answering paragraph 200 of the First Amended Complaint, United denies the allegations contained in this paragraph.

201. Answering paragraph 201 of the First Amended Complaint, United denies the allegations contained in this paragraph.

202. Answering paragraph 202 of the First Amended Complaint, United denies the allegations contained in this paragraph. Responding further, United denies specifically that it assumed any responsibility to pay Plaintiffs for services rendered at any rate other than the rates specified in the applicable health plans. United denies any allegation, implicit or explicit, in Paragraph 202 that any services Plaintiffs provided qualify as “emergency” services.

203. Answering paragraph 203 of the First Amended Complaint, United admits that Plaintiffs did not enter into a written agreement with United concerning reimbursement rates. United lacks knowledge or information sufficient to form a belief as to what Plaintiffs may have agreed with their patients to accept as reasonable or sufficient compensation, or may have subjectively agreed or disagreed with, and, on that basis, denies the remaining allegations in paragraph 203. United specifically denies any allegation, implicit or explicit, in Paragraph 203 that any services Plaintiffs provided qualify as “emergency” services.

204. Answering paragraph 204 of the First Amended Complaint, United denies the allegations contained in this paragraph. United specifically denies any allegation, implicit or



1 explicit, in Paragraph 204 that any services Plaintiffs provided qualify as “emergency” services.

2 205. Answering paragraph 205 of the First Amended Complaint, United denies the
3 allegations contained in this paragraph.

4 206. Answering paragraph 206 of the First Amended Complaint, United denies the
5 allegations contained in this paragraph.

6 **SECOND CLAIM FOR RELIEF**

7 **(Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing)**

8 207. Answering paragraph 207 of the First Amended Complaint, United repeats and
9 incorporates each and every response contained the preceding paragraphs, 1 through 206, as
10 though fully set forth herein.

11 208. Answering paragraph 208 of the First Amended Complaint, United denies the
12 allegations contained in this paragraph.

13 209. Answering paragraph 209 of the First Amended Complaint, United denies the
14 allegations contained in this paragraph.

15 210. Answering paragraph 210 of the First Amended Complaint, United denies the
16 allegations contained in this paragraph.

17 211. Answering paragraph 211 of the First Amended Complaint, United denies the
18 allegations contained in this paragraph.

19 212. Answering paragraph 212 of the First Amended Complaint, United denies the
20 allegations contained in this paragraph.

21 213. Answering paragraph 213 of the First Amended Complaint, United denies the
22 allegations contained in this paragraph.

23 214. Answering paragraph 214 of the First Amended Complaint, United denies the
24 allegations contained in this paragraph.

25 215. Answering paragraph 215 of the First Amended Complaint, United denies the
26 allegations contained in this paragraph.

27 ///

28 ///



THIRD CLAIM FOR RELIEF**(Alternative Claim for Unjust Enrichment)**

216. Answering paragraph 216 of the First Amended Complaint, United repeats and incorporates each and every response contained the preceding paragraphs, 1 through 215, as though fully set forth herein.

217. Answering paragraph 217 of the First Amended Complaint, this paragraph contains Plaintiffs' characterization of this action, which requires no response. To the extent these allegations require a response, United admits that Plaintiffs have provided medical services to some participants in health plans insured or administered by United. United lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 217, and on that basis, denies them. United denies any allegation, implicit or explicit, in Paragraph 217 that any services Plaintiffs provided qualify as "emergency" services.

218. Answering paragraph 218 of the First Amended Complaint, this paragraph contains Plaintiffs' characterization of this action, which requires no response. To the extent these allegations require a response, United admits that any care that Plaintiffs may have provided to United's Members may have conferred a benefit on those Members. United denies the remaining allegations in Paragraph 218, and specifically denies that any services Plaintiffs provided conferred a benefit on United. United denies any allegation, implicit or explicit, in Paragraph 218 that any services Plaintiffs provided qualify as "emergency" services.

219. Answering paragraph 219 of the First Amended Complaint, United denies that Plaintiffs had any reasonable expectation that coverage and payment rates for services rendered would be determined based on anything other than the terms of the applicable health plans. United denies any remaining allegations in Paragraph 219. United denies any allegation, implicit or explicit, in Paragraph 219 that any services Plaintiffs provided qualify as "emergency" services.

220. Answering paragraph 220 of the First Amended Complaint, United denies the allegations contained in this paragraph.

221. Answering paragraph 221 of the First Amended Complaint, United denies the



1 allegations contained in this paragraph.

2 222. Answering paragraph 222 of the First Amended Complaint, United denies the
3 allegations contained in this paragraph. United denies any allegation, implicit or explicit, in
4 Paragraph 222 that any services Plaintiffs provided qualify as “emergency” services.

5 223. Answering paragraph 223 of the First Amended Complaint, this paragraph
6 contains Plaintiffs’ characterization of this action, which requires no response. To the extent this
7 paragraph contains allegations requiring a response, United denies them, and further denies that
8 Plaintiffs are entitled to the relief sought.

9 224. Answering paragraph 224 of the First Amended Complaint, United denies the
10 allegations contained in this paragraph.

11 225. Answering paragraph 225 of the First Amended Complaint, United denies the
12 allegations contained in this paragraph.

13 226. Answering paragraph 226 of the First Amended Complaint, United denies the
14 allegations contained in this paragraph.

15 **FOURTH CLAIM FOR RELIEF**

16 **(Violation of NRS 686A.020 and 686A.310)**

17 227. Answering paragraph 227 of the First Amended Complaint, United repeats and
18 incorporates each and every response contained the preceding paragraphs, 1 through 226, as
19 though fully set forth herein.

20 228. Answering paragraph 228 of the First Amended Complaint, this paragraph sets
21 forth legal conclusions that do not require a response. To the extent this paragraph requires a
22 response, United responds that the Nevada Insurance Code speaks for itself. To the extent this
23 paragraph alleges any violation of the Nevada Insurance Code, United denies any such allegation.

24 229. Answering paragraph 229 of the First Amended Complaint, United admits that
25 NRS § 686A.310(a)(e) contains the text that is quoted in this paragraph. To the extent this
26 paragraph alleges any violation of NRS § 686A.310(a)(e), United denies any such allegation.

27 230. Answering paragraph 230 of the First Amended Complaint, United denies the
28 allegations contained in this paragraph. United denies any allegation, implicit or explicit, in



Paragraph 230 that any services Plaintiffs provided qualify as “emergency” services.

231. Answering paragraph 231 of the First Amended Complaint, United denies the allegations contained in this paragraph. United denies any allegation, implicit or explicit, in Paragraph 231 that any services Plaintiffs provided qualify as “emergency” services.

232. Answering paragraph 232 of the First Amended Complaint, United denies the allegations contained in this paragraph.

233. Answering paragraph 233 of the First Amended Complaint, United denies the allegations contained in this paragraph.

234. Answering paragraph 234 of the First Amended Complaint, United denies the allegations contained in this paragraph.

FIFTH CLAIM FOR RELIEF

(Violations of Nevada Prompt Pay Statutes & Regulations)

235. Answering paragraph 235 of the First Amended Complaint, United repeats and incorporates each and every response contained the preceding paragraphs, 1 through 234, as though fully set forth herein.

236. Answering paragraph 236 of the First Amended Complaint, this paragraph sets forth legal conclusions that do not require a response. To the extent this paragraph requires a response, United responds that the Nevada Insurance Code speaks for itself. To the extent this paragraph alleges any violation of the Nevada Insurance Code, United denies any such allegation. United specifically denies any implicit or explicit allegations that United failed to appropriately process and pay out-of-network claims from Plaintiffs.

237. Answering paragraph 237 of the First Amended Complaint, United denies the allegations contained in this paragraph.

238. Answering paragraph 238 of the First Amended Complaint, United denies the allegations contained in this paragraph.

239. Answering paragraph 239 of the First Amended Complaint, United denies the allegations contained in this paragraph.

240. Answering paragraph 240 of the First Amended Complaint, this paragraph



1 contains Plaintiffs' characterization of this action, which requires no response. To the extent this
2 paragraph requires a response, United denies the allegations contained in this paragraph, and
3 further denies that Plaintiffs are entitled to the relief sought.

4 241. Answering paragraph 241 of the First Amended Complaint, United denies the
5 allegations contained in this paragraph.

6 242. Answering paragraph 242 of the First Amended Complaint, United denies the
7 allegations contained in this paragraph.

8 **SIXTH CLAIM FOR RELIEF**

9 **(Consumer Fraud & Deceptive Trade Practices Acts)**

10 243. Answering paragraph 243 of the First Amended Complaint, United repeats and
11 incorporates each and every response contained the preceding paragraphs, 1 through 242, as
12 though fully set forth herein.

13 244. Answering paragraph 244 of the First Amended Complaint, this paragraph sets
14 forth legal conclusions that do not require a response. To the extent this paragraph requires a
15 response, United admits that the Nevada Deceptive Trade Practices Act contains the provisions
16 that are quoted in this paragraph. To the extent this paragraph alleges any violation of the
17 Nevada Deceptive Trade Practices Act, United denies any such allegation.

18 245. Answering paragraph 245 of the First Amended Complaint, this paragraph sets
19 forth legal conclusions that do not require a response. To the extent this paragraph requires a
20 response, United admits that NRS § 41.600(1) contains the text that is quoted in this paragraph.
21 To the extent this paragraph alleges any violation of the Nevada Deceptive Trade Practices Act,
22 United denies any such allegation.

23 246. Answering paragraph 246 of the First Amended Complaint, United denies the
24 allegations contained in this paragraph.

25 247. Answering paragraph 247 of the First Amended Complaint, United denies the
26 allegations contained in this paragraph.

27 248. Answering paragraph 248 of the First Amended Complaint, United denies the
28 allegations contained in this paragraph.



1 extent the remainder of this paragraph contains allegations requiring a response, United denies
2 them.

3 255. Answering paragraph 255 of the First Amended Complaint, United admits the
4 allegations in the first sentence of this paragraph. The remaining allegations in Paragraph 255
5 contain Plaintiffs' characterization of this action and legal conclusions, which require no
6 response. United specifically denies that it had any responsibility to pay Plaintiffs for covered
7 services rendered at any rate other than the rates specified in the applicable health plans. To the
8 extent the remainder of this paragraph contains allegations requiring a response, United denies
9 them.

10 256. Answering paragraph 256 of the First Amended Complaint, this paragraph
11 contains Plaintiffs' characterization of this action, which requires no response. To the extent this
12 paragraph contains allegations requiring a response, United denies them. United specifically
13 denies that it had any responsibility to pay Plaintiffs for covered services rendered at any rate
14 other than the rates specified in the applicable health plans. United specifically denies any
15 allegation, implicit or explicit, in Paragraph 256 that any services Plaintiffs provided qualify as
16 "emergency" services.

17 257. Answering paragraph 257 of the First Amended Complaint, this paragraph
18 contains Plaintiffs' characterization of this action, which requires no response. To the extent this
19 paragraph contains allegations requiring a response, United denies them.

20 258. Answering paragraph 258 of the First Amended Complaint, this paragraph
21 contains Plaintiffs' characterization of this action, which requires no response. To the extent this
22 paragraph contains allegations requiring a response, United denies them.

23 259. Answering paragraph 259 of the First Amended Complaint, this paragraph
24 contains Plaintiffs' characterization of this action, which requires no response. To the extent this
25 paragraph contains allegations requiring a response, United denies them.

26 260. Answering paragraph 260 of the First Amended Complaint, United denies the
27 allegations contained in this paragraph.

28 ///



EIGHTH CLAIM FOR RELIEF**(Violation of NRS 207.350 *et seq.*)**

261. Answering paragraph 261 of the First Amended Complaint, United repeats and incorporates each and every response contained the preceding paragraphs, 1 through 260, as though fully set forth herein.

262. Answering paragraph 262 of the First Amended Complaint, the first and second sentences of Paragraph 262 set forth legal conclusions that require no response. To the extent those sentences contain allegations requiring a response, United responds that the provisions of “Nevada RICO” speak for themselves, and United denies any allegations in Paragraph 262 inconsistent with those provisions. United admits that NRS § 207.470(1) contains the text that is quoted in this paragraph. To the extent this paragraph alleges any violation of the Nevada RICO statute, United denies any such allegation.

263. Answering paragraph 263 of the First Amended Complaint, this paragraph contains Plaintiffs’ characterization of this action, which requires no response. To the extent this paragraph contains allegations requiring a response, United denies them.

264. Answering paragraph 264 of the First Amended Complaint, United denies the allegations contained in this paragraph.

265. Answering paragraph 265 of the First Amended Complaint, United denies the allegations contained in this paragraph. United specifically denies any allegation, implicit or explicit, in Paragraph 265 that any services Plaintiffs provided qualify as “emergency” services.

266. Answering paragraph 266 of the First Amended Complaint, United denies the allegations contained in this paragraph.

267. Answering paragraph 267 of the First Amended Complaint, United denies the allegations contained in this paragraph.

268. Answering paragraph 268 of the First Amended Complaint, United denies the allegations contained in this paragraph.

269. Answering paragraph 269 of the First Amended Complaint, United denies the allegations contained in this paragraph.



274. Responding to Plaintiff’s **“REQUEST FOR RELIEF”**, including the “WHEREFORE” statement and all subparts thereto, Defendants deny that they are liable to Plaintiffs in any fashion or in any amount.

Defendants have not yet completed their investigation in this matter. Notably, Plaintiffs have failed to adequately plead the specific claims at issue, including as to individual members, the health care coverage they possessed on the dates of service at issue, the terms of their various health care plans, the specific services rendered, and the payment and processing history to date. Without such basic identification, United is unable to adequately respond to the asserted claims. United reserves all rights to alter or amend its responsive pleading and affirmative defenses at such time as Plaintiffs provide the information necessary to identify the claims at issue.

Without assuming the burden of proof where it otherwise rests with Plaintiffs, United asserts the following defenses as may prove applicable after discovery or trial:

For the reasons detailed in United's Motion to Dismiss, Plaintiffs' First Amended Complaint fails to state a claim upon which relief can be granted.

To the extent to be determined through review of subsequently identified claims, some or all of the claims may be preempted by the Employee Retirement Income Security Act of 1974

1 (“ERISA”) to the extent the members in question obtain their health care coverage through
2 employer-based health plans. Such claims relate to payments under plans governed by ERISA,
3 and all such claims are both conflict and completely preempted by ERISA for the reasons
4 detailed in United’s Motion to Dismiss.

5 **THIRD AFFIRMATIVE DEFENSE**

6 This Court does not have subject matter jurisdiction over the claims asserted against
7 United. Plaintiffs’ claims arise under ERISA and therefore implicate federal question
8 jurisdiction.

9 **FOURTH AFFIRMATIVE DEFENSE**

10 The claims asserted are barred by the absence of an applicable duty running from United
11 to Plaintiffs. Among other reasons, as out-of-network providers, Plaintiffs have chosen not to
12 enter into any contractual relationship or rate agreement with United, nor has any duty arisen by
13 operation of Nevada law for the reasons detailed in United’s Motion to Dismiss.

14 **FIFTH AFFIRMATIVE DEFENSE**

15 The terms and conditions of the applicable health plans are incorporated by reference, as
16 if fully set forth herein, and stand as a bar to some or all of the relief requested. United reserves
17 all rights with respect to asserting this defense once Plaintiffs have adequately identified the
18 specific benefit claims that they contend were underpaid for purposes of the lawsuit, and the
19 specific plans at issue

20 **SIXTH AFFIRMATIVE DEFENSE**

21 Some or all of Plaintiffs’ billed charges are excessive under the applicable standards,
22 and/or Plaintiffs have failed to identify any basis for entitlement to demand receipt of any fixed
23 percentage of billed charges.

24 **SEVENTH AFFIRMATIVE DEFENSE**

25 Some or all of the claims asserted are untimely, and/or subject to statute of limitations or
26 contractual limitations periods. United reserves all rights with respect to asserting this defense
27 once Plaintiffs have adequately identified the specific benefit claims that they contend were
28 underpaid for purposes of the lawsuit, and the specific plans at issue.



EIGHTH AFFIRMATIVE DEFENSE

Some or all of the claims asserted are subject to rates set by Plaintiffs' participation in MultiPlan, Inc. United reserves all rights with respect to asserting this defense once Plaintiffs have adequately identified the specific benefit claims that they contend were underpaid for purposes of the lawsuit.

NINTH AFFIRMATIVE DEFENSE

To the extent that Plaintiffs have any right to receive plan benefits, that right is subject to basic preconditions and prerequisites that have not been established, such as that the patients are members of United on the date of service, that the coordination of benefits has been applied, that the services were medically necessary, that an emergency medical condition was present, that Plaintiffs timely submitted correctly coded claims and supplied any requested documentation, and/or that any necessary authorizations were obtained, and United reserves all rights with respect to asserting any and all such defenses once Plaintiffs have adequately identified the specific claims that they contend were underpaid for purposes of the lawsuit.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs lack standing to pursue claims against United.

ELEVENTH AFFIRMATIVE DEFENSE

Upon information and belief, and to the extent to be determined through subsequent claims identification by Plaintiffs, some or all of the Defendants did not function as an insurer or issuer of the unspecified health plan coverage alleged to be at issue, and Plaintiffs therefore lack standing as to any such Defendant.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs failed to timely correct known defects with respect to some or all of the claims asserted. United reserves all rights with respect to asserting this defense once Plaintiffs have adequately identified the specific benefit claims that they contend were underpaid for purposes of the lawsuit, and the specific plans at issue.

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THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, to the extent that they seek to unjustly enrich Plaintiffs by allowing them to retain funds in excess of any amounts due for covered services under plans insured or administered by United. United reserves all rights with respect to asserting this defense once Plaintiffs have adequately identified the specific benefit claims that they contend were underpaid for purposes of the lawsuit, and the specific plans at issue.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, to the extent they have not suffered any damages.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, to the extent any alleged liability to or damages suffered by Plaintiffs were not proximately caused by United, or by the conduct alleged.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred in whole or in part by the failure to exhaust mandatory administrative and/or contractual remedies. United reserves all rights with respect to asserting this defense once Plaintiffs have adequately identified the specific benefit claims that they contend were underpaid for purposes of the lawsuit, and the specific plans at issue.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred in whole or in part to the extent Plaintiffs are pursuing claims that they do not possess the legal right to pursue, including, but not limited to, benefit claims with respect to which they did not obtain effective assignments from their patients.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, to the extent that Plaintiffs have not mitigated their damages by seeking reimbursement from other sources, including, but not limited to, other health plans, programs, or entities that may have had an obligation to pay.

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NINETEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred in whole or in part, by the equitable doctrines of waiver, estoppel, laches, and/or unclean hands. United reserves all rights with respect to asserting this defense once Plaintiffs have adequately identified the specific benefit claims that they contend were underpaid for purposes of the lawsuit, and the specific plans at issue.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred to the extent the monetary relief sought under theories of restitution, disgorgement, constructive trust and/or any other theory is not equitable, and thus not available under those theories.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, to the extent Plaintiffs failed to sue the appropriate entity. United reserves all rights with respect to asserting this defense once Plaintiffs have adequately identified the specific benefit claims that they contend were underpaid for purposes of the lawsuit, and the specific plans at issue.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrines of accord and satisfaction and/or release. United reserves all rights with respect to asserting this defense once Plaintiffs have adequately identified the specific benefit claims that they contend were underpaid for purposes of the lawsuit, and the specific plans at issue.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrines of res judicata and/or collateral estoppel. United reserves all rights with respect to asserting this defense once Plaintiffs have adequately identified the specific benefit claims that they contend were underpaid for purposes of the lawsuit, and the specific plans at issue.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are subject to setoff and/or recoupment with respect to claims for which United made payment on the basis of current procedural terminology ("CPT") or other billing codes included in Plaintiffs' submissions that Plaintiffs' clinical records of their patients' care



1 reveal to have been improperly submitted, either because Plaintiffs' clinical records do not
2 support submission of the codes at all, or because Plaintiffs' clinical records establish that
3 different codes should have been submitted.

4 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

5 Plaintiffs' claims are subject to setoff and/or recoupment with respect to claims for which
6 United made payment on the basis of Plaintiffs' billed charges and those billed charges exceeded
7 the billed charges submitted to other payors, where Plaintiffs never intended to collect such
8 charges from any other payors, or where the charges were otherwise in error.

9 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

10 Plaintiffs are not entitled to relief because they have received all payments due, if any, for
11 the covered services they provided in accordance with the terms of their patients' health plans.

12 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

13 Plaintiffs' claim for punitive damages cannot be sustained because an award of punitive
14 damages that is subject to no predetermined limit, such as a maximum multiple of compensatory
15 damages or a maximum amount of punitive damages that may be imposed, would: (1) violate
16 Defendants' Due Process rights guaranteed by the Fifth and Fourteenth Amendments to the
17 United States Constitution; (2) violate Defendants' rights not to be subjected to an excessive
18 award; and (3) be improper under the Constitution, common law and public policies of Nevada.

19 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

20 It has been necessary for Defendants to employ the services of an attorney to defend the
21 action and a reasonable sum should be allowed Defendants for attorney's fees and all incurred
22 costs of the suit.

23 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

24 Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been
25 alleged herein insofar as facts were not available after reasonable inquiry upon the filing of this
26 Answer, and therefore, Defendants reserve the right to amend their Answer to Plaintiffs' First
27 Amended Complaint to allege additional affirmative defenses if subsequent investigation
28 warrants.



1 WHEREFORE, having fully responded to the allegations of the First Amended
2 Complaint, United prays:

- 3 1. That Plaintiffs' First Amended Complaint be dismissed with prejudice and that
- 4 Plaintiffs take nothing thereby;
- 5 2. That Plaintiffs take nothing by their First Amended Complaint;
- 6 3. That Defendants be discharged from this action without liability;
- 7 4. That the Court award to Defendants all of their costs and attorneys' fees in
- 8 defending this action; and
- 9 5. That the Court award to Defendants such other and further relief as the Court
- 10 deems just and proper.

11 Dated this 8th day of July, 2020.

12 /s/ Brittany M. Llewellyn

13 D. Lee Roberts, Jr., Esq.

14 Colby L. Balkenbush, Esq.

15 Brittany M. Llewellyn, Esq.

16 WEINBERG, WHEELER, HUDGINS,

17 GUNN & DIAL, LLC

18 6385 South Rainbow Blvd., Suite 400

19 Las Vegas, Nevada 89118

20 Telephone: (702) 938-3838

21 Facsimile: (702) 938-3864

22 *Attorneys for Defendants*

23 *UnitedHealth Group, Inc., UnitedHealthcare*
24 *Insurance Company,*

25 *United HealthCare Services Inc.,*

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

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

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

Health Plan of Nevada, Inc.



CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of July, 2020, a true and correct copy of the foregoing **DEFENDANTS' ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT** 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:

Pat Lundvall, Esq.
Kristen T. Gallagher, Esq.
Amanda M. Perach, Esq.
McDonald Carano LLP
2300 W. Sahara Ave., Suite 1200
Las Vegas, Nevada 89102
plundvall@mcdonaldcarano.com
kgallagher@mcdonaldcarano.com
aperach@mcdonaldcarano.com
Attorneys for Plaintiffs

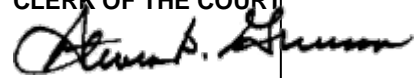
/s/ Kelly L. Pierce

An employee of WEINBERG, WHEELER, HUDGINS
GUNN & DIAL, LLC



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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

FREMONT EMERGENCY
SERVICES (MANDAVIA) LTD.,

Plaintiff(s),

vs.

UNITED HEALTHCARE
INSURANCE COMPANY,

Defendant(s).

CASE NO: A-19-792978-B

DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

THURSDAY, JULY 9, 2020

RECORDER'S TRANSCRIPT OF PROCEEDINGS
RE: MOTIONS (via Blue Jeans)

APPEARANCES (Attorneys appeared via Blue Jeans):

For the Plaintiff(s): PATRICIA K. LUNDVALL, ESQ.
 KRISTEN T. GALLAGHER, ESQ.

For the Defendant(s): COLBY L. BALKENBUSH, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER
TRANSCRIBED BY: KATHERINE MCNALLY, TRANSCRIBER

1 **LAS VEGAS, NEVADA, THURSDAY, JULY 9, 2020**

2 [Proceeding commenced at 11:03 a.m.]

3
4 THE COURT: The next matter we have is the -- something
5 that I put on calendar -- Fremont Emergency versus United
6 Healthcare.

7 And let's have appearances, please, starting first with the
8 plaintiff.

9 MS. GALLAGHER: Good morning, Your Honor. Kristen
10 Gallagher --

11 MR. BALKENBUSH: Good morning.

12 MS. GALLAGHER: Kristen Gallagher, on behalf of the
13 healthcare providers, also appearing is Pat Lundvall, Your Honor.

14 THE COURT: Thank you, both.

15 And for the defendants, please.

16 MR. BALKENBUSH: Good morning, Your Honor. Colby
17 Balkenbush for the defendants.

18 THE COURT: Is there anyone else appearing with you,
19 Mr. Balkenbush?

20 MR. BALKENBUSH: Not today, Your Honor.

21 THE COURT: Okay. I put this on calendar based upon a
22 letter from Mr. Balkenbush with regard to entry of an order. It's an
23 order I reviewed for accuracy.

24 I was unaware that the defendant hadn't had a final
25 chance to comment on it. I've read the status reports.

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1 What I can tell you is that we have a new system. We're
2 trying to go less paperless here. I have a new program, on -- I'm a
3 beta tester -- on my computer, so that I can review orders, sign them
4 electronically, and file them. They automatically get served.

5 When I saw the order come through, it was in good shape,
6 so I signed it. And so that's my explanation.

7 But let me hear from Mr. Balkenbush, and then
8 Ms. Gallagher in response to that.

9 MR. BALKENBUSH: Thank you, Your Honor.

10 So let me just first make clear that we didn't send the letter
11 we sent because we're concerned with the substance of the order
12 that was actually entered. We agree that, you know, the order more
13 or less tracks what the Court decided on the Motion to Compel. And
14 so candidly, what happened has not prejudiced my client. But what
15 does give us concern is the process for how the order resulted.

16 So going back, this was a Motion to Compel that Fremont
17 filed --

18 THE COURT: Right.

19 MR. BALKENBUSH: -- to compel United to do certain
20 things.

21 This Court heard the motion and denied it without
22 prejudice and found that United should prepare the order since it
23 was the prevailing party.

24 We prepared the order and sent a draft of it to Fremont's
25 counsel, asking that they let us know if they had any revisions. They

1 responded that same day and said, We have a few redline edits, and
2 they sent those over to us.

3 And I think the timeline here is really important because --
4 so they sent us their redline edits on June 23rd at 4:51 p.m. That's
5 when we received them. On June 24th at 3:47 p.m., less than
6 24 hours later, they unilaterally submitted our order with their
7 redline edits to the Court to be signed.

8 The order was on our pleading paper, not their pleading
9 paper. They never informed us that if we didn't get back to them
10 within less than 24 hours, they were going to go ahead and just
11 submit our order unilaterally. We weren't copied on the e-mail to
12 the Court that sent our order to the Court. And perhaps most
13 concerning, we only found this out after the Court -- we suddenly
14 saw an E-filing notice come across saying that our order had just
15 entered, and we had no idea that our order had even been
16 submitted.

17 And when we reached out to opposing counsel about this,
18 we -- honestly, I assumed that it must have been some clerical error.
19 I assumed that maybe someone at their office had accidentally -- you
20 know, a secretary sent this over to the court and not realized that the
21 parties hadn't signed off on it. But the response was, Well, we didn't
22 hear back from you soon enough, so we just submitted the order.
23 And it's fine for us to just go ahead and e-mail the Court your order
24 without even informing you that we're doing that.

25 And the content of the -- the communication to the Court

1 is important too, because what they said in that e-mail when they
2 submitted our order is that there was a disagreement among the
3 parties about Fremont's redline edits and that the Court needed to
4 resolve that. I mean, that's simply inaccurate.

5 And if you look at my e-mail and you look at their status
6 report, I mean, the facts are really undisputed here. We never
7 disagreed with their redline edits. In fact, we intended to accept
8 them. We had one minor nonsubstantive redliner that we were
9 going to add, but there was no disagreement. And yet they sent an
10 e-mail to the Court, without copying us, saying there was one. And
11 they sent that e-mail less than 24 hours after they sent their redline
12 edits to us.

13 And so, as I mentioned earlier, again, my client wasn't
14 prejudiced by this particular order. It really was a pretty minor
15 motion. It's a minor order.

16 But this process does give us concern going forward
17 because this is a contentious case. There's going to be lots of
18 motion work. And what happens if, you know, somebody is a
19 prevailing party on a Partial Motion for Summary Judgment and the
20 nonprevailing party just unilaterally just submits an order without
21 even notifying the other party that they're going to submit it, without
22 even sending an e-mail saying, If I don't hear back from you within
23 three days, I'm going to submit this to the Court? And then we're
24 left to try to unwind the issue and file some kind of motion to amend
25 the judgment, if necessary. So that's concerning.

1 So in light of all of this, we think it would be appropriate
2 for the Court to issue some guidelines, at least and as far as this case
3 goes for orders going forward. And what we've proposed is, one,
4 that the Court clarify that parties may not e-mail the Court on an
5 *ex parte* basis, that you have to copy the other parties on any e-mail
6 sent to the Court. I think that should be pretty noncontroversial.

7 And two, that if you intend to submit your own order to
8 the Court, without the other sides' input or consent, that you need to
9 give reasonable notice to the other side that you're going to do that,
10 so they have an opportunity to object or to submit their own
11 competing order.

12 And that's not what happened here. They just sent an
13 e-mail to the Court with our order on our pleading party, without
14 ever notifying us. Our notice was the E-filing notice that came
15 across our e-mail saying that our order had, unbeknownst to us, just
16 been entered.

17 So I think so if the Court issues some guidelines going
18 forward, that'll prevent this from happening in the future, and
19 hopefully allow this case to flow much more smoothly.

20 THE COURT: Thank you, Mr. Balkenbush.

21 And Ms. Gallagher, your response, please.

22 MS. GALLAGHER: Thank you, Your Honor.

23 I always appreciate the opportunity to talk about this case
24 and its status.

25 What I heard Mr. Balkenbush just describe was, I suppose,

1 conveyed in the July 3rd e-mail that was sent to chambers. And I
2 think what we did in our status report that we filed on the docket
3 explains exactly the timeline. And I think that timeline is important
4 because I think a lot of what was left out is significant because EDCR
5 7.21 indicates that orders are supposed to be submitted within
6 14 days.

7 I also note that Mr. Balkenbush takes issue with having an
8 amount of time to review. But Your Honor has posted guidelines in
9 this regard, and our office simply followed those guidelines -- or at
10 least how we interpreted those guidelines. And certainly, if you
11 think that there was a misstep in that, we are happy to address that.

12 But I think what's important is that the message of the
13 e-mail that was sent by my assistant at my direction indicated simply
14 that there was a dispute in line with what Your Honor has suggested
15 as the message be.

16 And as you've indicated, things are a little bit different
17 now. Typically what would have happened is that that would have
18 been sent down in a hand delivery to chambers, and so the same
19 communication would have happened from my office to the Court in
20 the same manner. This time it just happens to be via e-mail because
21 of the certain circumstances that we're under in the COVID-19
22 situation.

23 And so Your Honor also indicates on our guidelines that
24 approximately one day's notice would be reasonable, but not
25 necessarily required. Your Honor also indicates that a redline should

1 be submitted therewith so that the Court can determine what the
2 dispute may be.

3 And so we thought we followed the spirit of the guidelines
4 that were posted. We don't think that we undertook any
5 inappropriate conversation or exchanges with the Court. We
6 explained that to Mr. Balkenbush and his colleague, Ms. Llewellyn, in
7 an e-mail exchange. The Court didn't have the benefit of that when
8 you set this hearing, but then did have the benefit of that in
9 connection with our status report.

10 And so I think that exchange is important as well, because,
11 you know, it's interesting that we've been dealing with United
12 outside of this Court in response to discovery matters that have been
13 ongoing. And your Court -- Your Honor is aware that there was a
14 denial of the Motion to Compel without prejudice, meaning the
15 parties were engaging in those discussions that were ongoing.
16 Those discussions have been ongoing for now six weeks. And what
17 we often hear from United is that we haven't exhausted our meet
18 and confer efforts. And in response to that they tell us, routinely,
19 that they will oppose any Motion to Compel.

20 And the reason I realize that that particular issue is not
21 before your court -- Your Honor today. But I think it's important for
22 you to understand that what they are asking of us, which is to
23 exhaust every last meet and confer effort, we did see the same
24 reciprocal exchange in connection with this.

25 We see this as nothing, Your Honor. The order as it was

1 exchanged at the time that it was due, which is the 24th, I believe it
2 was, or the 23rd, we submitted it a day later when we didn't hear
3 from United. And United's exchange with us indicated they had no
4 intention of getting back to us for several more days.

5 And so we pointed that out to them. We offered to have
6 any further discussion with them, if they wanted to further discuss.
7 And what we saw then was a week lapsed in between that time, and
8 then the filing -- or I'm sorry -- the e-mail exchange to you through
9 chambers on July 3rd.

10 You know, what we expected to see on July 3rd,
11 Your Honor, was additional document production and information
12 from United that had been promised and we still don't have. So we
13 were a little bit surprised to see an issue that, really, we view as not
14 having any substantive issue, having wanted a confirmation or
15 information about what parties might agree to in connection with
16 submission of orders. We certainly didn't see that exchange from
17 them prior to them filing the e-mail or submitting the e-mail.

18 Like I said, we don't think that we made a misstatement to
19 the Court. It expressly identified what the situation was. And it
20 would be no different had we submitted this in the old routine,
21 which is just sending a runner down and depositing in the chamber's
22 box.

23 So that is our position. I'm happy to ask -- or answer any
24 questions that Your Honor may have of me.

25 THE COURT: All right. I don't. Thank you.

1 Mr. Balkenbush, do you have a reply?

2 MR. BALKENBUSH: Briefly, Your Honor. I -- I think it's
3 good that we have this hearing because, again, our concern is it's
4 not the order that was issued. It's the process.

5 And what we're hearing from Fremont's counsel now is
6 that, again, they don't think they did anything wrong. They think it's
7 fine for them to just submit order -- e-mail orders to the Court with
8 an explanation as to what the dispute is over the order without
9 copying us. They think it's fine to submit orders without giving us
10 any notice that they are intending to submit it.

11 And that just gives us great concern going forward. We're
12 going to have, you know, much more important and even more
13 contentious motions being heard.

14 So I do think it's important for this Court to confirm that
15 it's inappropriate for parties to e-mail the Court in any manner
16 without copying the other side and that parties need to give the
17 other side reasonable notice if they intend to unilaterally submit their
18 own order.

19 You know, Ms. Gallagher tried to kind of, I guess, twist and
20 turn her way out of the situation. But if you look at the e-mail she
21 sent us, responding to our proposed order, that e-mail doesn't say
22 anything about, If we don't hear back from you within less than
23 24 hours, we're going to submit this. It simply says, We approve, as
24 to this current form of the order with these red line edits that we've
25 sent. That's it. There's nothing in there about them submitting our

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1 order to Your Honor without copying the Court *[sic]* on it.

2 So I think that just shows the need for the Court to issue
3 some guidelines here, so that this doesn't occur in the future.

4 THE COURT: Thank you, both.

5 I do think, Ms. Gallagher, that the order was submitted
6 prematurely, given the facts.

7 And usually, at the end of every hearing, I'm specific with
8 the lawyers as to who should prepare the order and what to do if
9 you have issues with regard to the language of the order. I always
10 indicate that I will review, interlineate, sign, or convene a telephonic.

11 So as a guideline for all of you in the future, there will be
12 no submission of orders on an *ex parte* basis. I will not accept them.

13 And number two is that when approval is required, if you
14 can't agree, you need to let me know. And you can always e-mail
15 the JEA or the law clerk to bring the issue to the attention. I will then
16 determine whether or not a telephonic is necessary.

17 In business court, we're really responsive on these issues.
18 And I realize it's a contentious litigation. You guys are great lawyers.
19 You all have the highest quality of integrity. And so I find that
20 there's no prejudice in the fact that this order was submitted, but it
21 was premature.

22 And in the future, and going forward, if you ever have a
23 reason to seek relief from the 14-day rule under EDCR, you can
24 always stipulate or notify me because it's more important to me that
25 we move the case along as expeditiously and as fairly as possible to

1 both sides. So I will request -- and I'll be careful too, on all of the
2 rulings I make in this case to specify who should prepare and who
3 should submit the order on a going-forward basis.

4 Now, were there any questions or comments from either
5 of you?

6 MS. GALLAGHER: If I may, Your Honor. This is Kristen
7 Gallagher.

8 If there is an opportunity to have a directive that a
9 reasonable response time so that we don't have a week or more go
10 by in between discussions about the substance of an order, that
11 would be helpful.

12 And if there is a point where there is no response after,
13 you know, several follow ups, if it then would be appropriate to send
14 an e-mail, copying the other side, with the submission?

15 THE COURT: Is there a response, Mr. Balkenbush?

16 MR. BALKENBUSH: Yeah. I think if we leave it at, you
17 know, the other side should be given a reasonable amount of time
18 to, you know, review an order and get back with any proposed
19 changes, that would probably address it.

20 I think it may be hard to know -- I mean for some orders, I
21 think, you know, something like two or three days, like, would be
22 fine, like this one. But for other ones, you know, for example, the
23 Court just heard the Motion to Dismiss and denied it, and the written
24 order denying our motion to dismiss was over 40 pages long.

25 So, you know, if we're having orders like that, I don't think

1 we could turn those around in just, you know, for example, three
2 days. And there will be, I think, complicated motions going forward.

3 So I think if the Court leaves it at a reasonable amount of
4 time, and I think if there's -- if a party believes that another party is
5 being unreasonable or delaying too long, then, you know, they're
6 free to raise that issue with the Court, as long they just copy the
7 other side. That's our only concern really.

8 THE COURT: Good enough. Reasonable --

9 MS. GALLAGHER: If I --

10 THE COURT: You may, Ms. Gallagher.

11 MS. GALLAGHER: Thank you.

12 THE COURT: I was just going to say reasonableness
13 depends on the situation and the circumstances.

14 So your response, please.

15 MS. GALLAGHER: Sure. And I understand that,
16 Your Honor.

17 You know, just consistent with your guidelines was at
18 least a day's review. So if we're -- you know, it looks to me like
19 we're departing from that standard guideline with respect to this
20 case. You know, I just -- perhaps that's an issue we take up when
21 there's an order that has been issued and a party directed to prepare
22 an order, that for that particular order we identify what would be
23 reasonable.

24 Sometimes, you know, a day is reasonable, as that is your
25 standard guideline, Your Honor. Other times there may be a more

1 robust order that may require additional time, and I can understand
2 that and appreciate that.

3 So perhaps what we do is identify that reasonableness at
4 the time of an order being issued.

5 THE COURT: Okay. All right. So hopefully that gives both
6 sides an idea. It is business court. You're entitled to enhanced case
7 management. If you have snags, I expect for you to bring them to
8 my attention. And I'll be happy to waive EDCR for submission of
9 orders on the request of either party -- not because I want to slow
10 down your litigation, but there's a lot at stake. Your clients have
11 polarized views. You have personally shown professional courtesy
12 to each other. I expect that to continue. And again, if you need the
13 Court's intervention, I am always available.

14 Anything else now?

15 MR. BALKENBUSH: Nothing else from United,
16 Your Honor. Thank you.

17 THE COURT: All right. Thank you, both. And until I see
18 you next, stay safe and stay healthy.

19 MS. GALLAGHER: Thank you, Your Honor. Have a good
20 day.

21 MR. BALKENBUSH: Thank you, Your Honor.

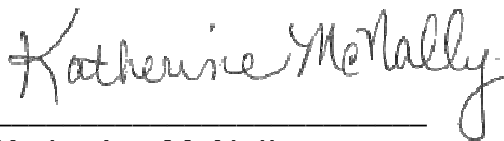
22 [Proceeding concluded at 11:22 a.m.]

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

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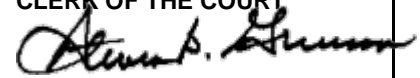
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PAT LUNDVALL (NSBN 3761)
KRISTEN T. GALLAGHER (NSBN 9561)
AMANDA M. PERACH (NSBN 12399)
McDONALD CARANO LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Telephone: (702) 873-4100
Facsimile: (702) 873-9966
plundvall@mcdonaldcarano.com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

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.: XXVII

JOINT CASE CONFERENCE REPORT

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JOINT CASE CONFERENCE REPORT

DISPUTE RESOLUTION
CONFERENCE REQUIRED:

YES _____ NO X _____

SETTLEMENT CONFERENCE
REQUESTED:

YES _____ NO X _____

Pursuant to the Court's June 26, 2020 Order, plaintiffs Fremont Emergency Services (Mandavia), Ltd. ("Fremont"); Team Physicians of Nevada-Mandavia, P.C. ("Team Physicians"); Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine ("Ruby Crest") (collectively, "Plaintiffs" or "Health Care Providers") and UnitedHealth Group, Inc., UnitedHealthcare Insurance Company ("UHC"), United HealthCare Services, Inc. ("UHS"), UMR, Inc. ("UMR"), Oxford Health Plans, LLC, improperly named as 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" or "United") file their joint case conference report in the above-referenced matter.

I. PROCEEDINGS PRIOR TO CASE CONFERENCE REPORT

- A. Date of Filing of Complaint: April 15, 2019
- B. Date of Filing First Amended Complaint ("FAC"): May 15, 2020
- C. Date of Filing of Answer to FAC: July 8, 2020
- D. Early Case Conference: June 19, 2019¹

1. Location: Telephonic

2. Attended By:

Health Care Providers: Kristen T. Gallagher, Amanda M. Perach

Defendants: Colby Balkenbush

¹ Prior to remand, the parties participated in a discovery conference pursuant to Fed. R. Civ. P. 26(f) on June 19, 2019 and a supplemental conference on January 13, 2020. On January 15, 2020, the Parties submitted competing scheduling orders.

II. BRIEF DESCRIPTION OF THE NATURE OF THE ACTION AND EACH CLAIM FOR RELIEF OR DEFENSE:

HEALTH CARE PROVIDERS' DESCRIPTION OF THE ACTION: The Health Care Providers are professional emergency medicine service groups that staff the emergency departments at ten hospitals and other facilities throughout Nevada. First Amended Complaint (hereinafter "FAC") ¶¶ 3-5. Defendants ("United") are large health insurance companies and claims administrators. FAC ¶¶ 6-13. United provides healthcare benefits to its members ("United's Members"), including coverage for emergency care. FAC ¶¶ 19, 33. At all relevant times, United and the Health Care Providers have not had a written "network" agreement governing rates of reimbursement for emergency services rendered by the Health Care Providers to United's Members. FAC ¶ 20. The Health Care Providers have submitted claims to United seeking reimbursement for this emergency care. FAC ¶¶ 25-26, 40. United, in turn, has paid the Health Care Providers. This longstanding and historical practice establishes the basis for an implied-in-fact contract, as well as the usual and customary (or reasonable) rates of reimbursement for the emergency services. FAC ¶¶ 54, 189-206, 216-226. Thereafter, however, circumstances changed. United continued to pay the Health Care Providers' claims for emergency services, but arbitrarily and drastically reduced the rates of reimbursement to levels below the billed charges and usual and customary rates. FAC ¶ 55. As alleged, due to the unilateral and self-serving reduction in United's rates of reimbursement, Fremont brought suit against United in this Court, asserting claims for (1) breach of implied-in-fact contract, (2) tortious breach of the implied covenant of good faith and fair dealing, (3) unjust enrichment, (4) violation of NRS 686A.020 and 686A.310, (5) violations of Nevada Prompt Pay statutes and regulations, (6) violations of Nevada Consumer Fraud & Deceptive Trade Practices Acts, (7) declaratory judgment, and (8) violation of NRS 207.350 *et seq.* All of these legal claims are based on United's underpayment of claims which it had determined were payable and paid, i.e., a dispute over the proper rates of payment rather than the right to payment.

The Court has already considered and rejected United's position that the Health Care Providers' claims are subject to conflict or complete preemption under Employee Retirement

Income Security Act of 1974 (“ERISA”) and, therefore, the Health Care Providers submit that any arguments which are based on ERISA are inappropriate.

DEFENDANTS’ DESCRIPTION OF THE ACTION: The TeamHealth Nevada Plaintiffs are for-profit, private equity-backed out-of-network medical providers affiliated with one of the largest national physician management companies in the United States. The TeamHealth Providers are separate entities from the Nevada hospitals within which they work and with whom they contract. The out-of-network providers have no contracts with United, and charge patients at the direction of their corporate parent, TeamHealth, far more than the reasonable value of their services. A recent class action by patients alleges that TeamHealth charges nearly three times the median rate for in-network physicians at participating hospitals, and their billed charges are significantly higher, at more than four times the median rate.²

United administers health plans, some of whose members have allegedly received medical treatment from the TeamHealth Providers. Plaintiffs allege that the health plans have underpaid Plaintiffs for medical services rendered to plan members, and seek to compel the controlling plans to pay Plaintiffs at what they suggest is the “usual and customary rate”—without any regard to the explicit terms of the plans. Plaintiffs do not contend that United did not allow payment of the claims at issue; they contend that the United-administered plans did not pay *enough* for Plaintiffs’ services. Defendants contend that Plaintiffs are entitled only to payment on their claims at the out-of-network rates set forth in each patient’s applicable health plan since Plaintiffs otherwise lack a contract, oral promise, or statute setting forth any particular rate of reimbursement for the services at issue.

All of Plaintiffs’ claims are subject to dismissal because they suffer from the same defect—they are preempted by the Employee Retirement Income Security Act (“ERISA”). The claims also

² The class action lawsuit, brought by patients of TeamHealth, asserts federal racketeering claims that bring TeamHealth’s rates under serious scrutiny. *See Fraser v. Team Health Holdings, Inc.*, Case 3:20-cv-04600-LB, Doc. 1 (N.D. Ca. Filed July 10, 2020). In particular, the complaint alleges that TeamHealth “inflate[s] the rates it charges patient-consumers far above those that it knows it is legally entitled to collect,” and then “pursues patients ruthlessly” including “through a medical debt collector that is a TeamHealth subsidiary” and by suing “patients who would qualify for free care and reduced rates under hospitals’ ‘charity care’ programs.” *Id.* ¶¶ 6, 7, 10.

fail under NRCP 12(b)(5) because Plaintiffs cannot establish the requisite elements of any claim.

A. CLAIMS FOR RELIEF:

The Health Care Providers have asserted claims for: (1) breach of implied-in-fact contract, (2) tortious breach of the implied covenant of good faith and fair dealing, (3) unjust enrichment, (4) violation of NRS 686A.020 and 686A.310, (5) violations of Nevada Prompt Pay statutes and regulations, (6) violations of Nevada Consumer Fraud & Deceptive Trade Practices Acts, (7) declaratory judgment, and (8) violation of NRS 207.350 *et seq.*

B. DEFENDANTS' DEFENSES:

1. Defenses to the First Amended Complaint:

Defendants have not yet completed their investigation in this matter. Notably, Plaintiffs have failed to adequately plead the specific claims at issue, including, as to individual members, the health care coverage they possessed on the dates of service at issue, the terms of their various health care plans, the specific services rendered, and the payment and processing history to date. Without such basic information, United is unable to adequately respond to the asserted claims. United reserves all rights to alter or amend its responsive pleading and affirmative defenses at such time as Plaintiffs provide the information necessary to identify the claims at issue.

Without assuming the burden of proof where it otherwise rests with Plaintiffs, United asserts the following defenses as may prove applicable after discovery or trial:

FIRST AFFIRMATIVE DEFENSE

For the reasons detailed in United's Motion to Dismiss, Plaintiffs' First Amended Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

To the extent to be determined through review of subsequently identified claims, some or all of the claims may be preempted by the Employee Retirement Income Security Act of 1974 ("ERISA") to the extent the members in question obtain their health care coverage through employer-based health plans. Such claims relate to payments under plans governed by ERISA, and all such claims are both conflict and completely preempted by ERISA for the reasons detailed in United's Motion to Dismiss.

THIRD AFFIRMATIVE DEFENSE

This Court does not have subject matter jurisdiction over the claims asserted against United. Plaintiffs' claims arise under ERISA and therefore implicate federal question jurisdiction.

FOURTH AFFIRMATIVE DEFENSE

The claims asserted are barred by the absence of an applicable duty running from United to Plaintiffs. Among other reasons, as out-of-network providers, Plaintiffs have chosen not to enter into any contractual relationship or rate agreement with United, nor has any duty arisen by operation of Nevada law for the reasons detailed in United's Motion to Dismiss.

FIFTH AFFIRMATIVE DEFENSE

The terms and conditions of the applicable health plans are incorporated by reference, as if fully set forth herein, and stand as a bar to some or all of the relief requested. United reserves all rights with respect to asserting this defense once Plaintiffs have adequately identified the specific benefit claims that they contend were underpaid for purposes of the lawsuit, and the specific plans at issue

SIXTH AFFIRMATIVE DEFENSE

Some or all of Plaintiffs' billed charges are excessive under the applicable standards, and/or Plaintiffs have failed to identify any basis for entitlement to demand receipt of any fixed percentage of billed charges.

SEVENTH AFFIRMATIVE DEFENSE

Some or all of the claims asserted are untimely, and/or subject to statute of limitations or contractual limitations periods. United reserves all rights with respect to asserting this defense once Plaintiffs have adequately identified the specific benefit claims that they contend were underpaid for purposes of the lawsuit, and the specific plans at issue.

EIGHTH AFFIRMATIVE DEFENSE

Some or all of the claims asserted are subject to rates set by Plaintiffs' participation in MultiPlan, Inc. United reserves all rights with respect to asserting this defense once Plaintiffs have adequately identified the specific benefit claims that they contend were underpaid for purposes of the lawsuit.

NINTH AFFIRMATIVE DEFENSE

To the extent that Plaintiffs have any right to receive plan benefits, that right is subject to basic preconditions and prerequisites that have not been established, such as that the patients are members of United on the date of service, that the coordination of benefits has been applied, that the services were medically necessary, that an emergency medical condition was present, that Plaintiffs timely submitted correctly coded claims and supplied any requested documentation, and/or that any necessary authorizations were obtained, and United reserves all rights with respect to asserting any and all such defenses once Plaintiffs have adequately identified the specific claims that they contend were underpaid for purposes of the lawsuit.

TENTH AFFIRMATIVE DEFENSE

Plaintiffs lack standing to pursue claims against United.

ELEVENTH AFFIRMATIVE DEFENSE

Upon information and belief, and to the extent to be determined through subsequent claims identification by Plaintiffs, some or all of the Defendants did not function as an insurer or issuer of the unspecified health plan coverage alleged to be at issue, and Plaintiffs therefore lack standing as to any such Defendant.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs failed to timely correct known defects with respect to some or all of the claims asserted. United reserves all rights with respect to asserting this defense once Plaintiffs have adequately identified the specific benefit claims that they contend were underpaid for purposes of the lawsuit, and the specific plans at issue.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, to the extent that they seek to unjustly enrich Plaintiffs by allowing them to retain funds in excess of any amounts due for covered services under plans insured or administered by United. United reserves all rights with respect to asserting this defense once Plaintiffs have adequately identified the specific benefit claims that they contend were underpaid for purposes of the lawsuit, and the specific plans at issue.

...

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, to the extent they have not suffered any damages.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, to the extent any alleged liability to or damages suffered by Plaintiffs were not proximately caused by United, or by the conduct alleged.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred in whole or in part by the failure to exhaust mandatory administrative and/or contractual remedies. United reserves all rights with respect to asserting this defense once Plaintiffs have adequately identified the specific benefit claims that they contend were underpaid for purposes of the lawsuit, and the specific plans at issue.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred in whole or in part to the extent Plaintiffs are pursuing claims that they do not possess the legal right to pursue, including, but not limited to, benefit claims with respect to which they did not obtain effective assignments from their patients.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, to the extent that Plaintiffs have not mitigated their damages by seeking reimbursement from other sources, including, but not limited to, other health plans, programs, or entities that may have had an obligation to pay.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred in whole or in part, by the equitable doctrines of waiver, estoppel, laches, and/or unclean hands. United reserves all rights with respect to asserting this defense once Plaintiffs have adequately identified the specific benefit claims that they contend were underpaid for purposes of the lawsuit, and the specific plans at issue.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred to the extent the monetary relief sought under theories of restitution, disgorgement, constructive trust and/or any other theory is not equitable, and thus not available under those theories.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, to the extent Plaintiffs failed to sue the appropriate entity. United reserves all rights with respect to asserting this defense once Plaintiffs have adequately identified the specific benefit claims that they contend were underpaid for purposes of the lawsuit, and the specific plans at issue.

TWENTY-SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrines of accord and satisfaction and/or release. United reserves all rights with respect to asserting this defense once Plaintiffs have adequately identified the specific benefit claims that they contend were underpaid for purposes of the lawsuit, and the specific plans at issue.

TWENTY-THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred, in whole or in part, by the doctrines of res judicata and/or collateral estoppel. United reserves all rights with respect to asserting this defense once Plaintiffs have adequately identified the specific benefit claims that they contend were underpaid for purposes of the lawsuit, and the specific plans at issue.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are subject to setoff and/or recoupment with respect to claims for which United made payment on the basis of current procedural terminology ("CPT") or other billing codes included in Plaintiffs' submissions that Plaintiffs' clinical records of their patients' care reveal to have been improperly submitted, either because Plaintiffs' clinical records do not support submission of the codes at all, or because Plaintiffs' clinical records establish that different codes should have been submitted.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are subject to setoff and/or recoupment with respect to claims for which United made payment on the basis of Plaintiffs' billed charges and those billed charges exceeded the billed charges submitted to other payors, where Plaintiffs never intended to collect such charges from any other payors, or where the charges were otherwise in error.

...

TWENTY-SIXTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to relief because they have received all payments due, if any, for the covered services they provided in accordance with the terms of their patients' health plans.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claim for punitive damages cannot be sustained because an award of punitive damages that is subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum amount of punitive damages that may be imposed, would: (1) violate Defendants' Due Process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution; (2) violate Defendants' rights not to be subjected to an excessive award; and (3) be improper under the Constitution, common law and public policies of Nevada.

TWENTY-EIGHTH AFFIRMATIVE DEFENSE

It has been necessary for Defendants to employ the services of an attorney to defend the action and a reasonable sum should be allowed Defendants for attorney's fees and all incurred costs of the suit.

TWENTY-NINTH AFFIRMATIVE DEFENSE

Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been alleged herein insofar as facts were not available after reasonable inquiry upon the filing of this Answer, and therefore, Defendants reserve the right to amend their Answer to Plaintiffs' First Amended Complaint to allege additional affirmative defenses if subsequent investigation warrants.

III. A BRIEF STATEMENT OF WHETHER THE PARTIES DID OR DID NOT CONSIDER SETTLEMENT AND WHETHER SETTLEMENT OF THE CASE MAY BE POSSIBLE:

The Health Care Providers' Position: The parties discussed settlement generally in connection with the FRCP 26(f) conference. At this time, the Health Care Providers do not believe settlement is possible, but reserve the right to pursue settlement at a later date.

Defendants' Position: The parties have not considered settlement to date, but reserve their rights to pursue settlement at a later date.

IV. WRITTEN LIST OF NAMES EXCHANGED UNDER RULE 16.1(A)(1)(a)(I):

The Health Care Providers:

Witness List	
Kent Bristow	
Paula Dearolf	
Greg Dosedel	
David Greenberg	
John Haben	
Rena Harris	
Jacy Jefferson	
Custodian of Records for National Care Network, LLC	
Angie Nierman	
Dan Rosenthal	
Dan Schumacher	
Jennifer Shrader	

Defendants:

Witness List	
Kent Bristow	
Jennifer Shrader	
Rena Harris	
Mark Kline	

V. LIST OF ALL DOCUMENTS, DATA COMPILATIONS AND TANGIBLE THINGS IN THE POSSESSION, CUSTODY OR CONTROL OF EACH PARTY WHICH WERE IDENTIFIED OR PROVIDED AT THE EARLY CASE CONFERENCE OR AS A RESULT THEREOF:

A. The Health Care Providers:

Bates Start	Bates End	Document Description
FESM00001	FESM00003	July 2, 2019 letter re Provider Dispute Reconsideration/Appeal for the Physician Practices to United Healthcare Services in Atlanta, GA
FESM00004	FESM00004	Exhibit 1 to July 2, 2019 letter re Provider Dispute Reconsideration/Appeal for Physician Practices to United Healthcare Services in Atlanta, GA - CONFIDENTIAL
FESM00005	FESM00007	July 2, 2019 letter re Provider Dispute Reconsideration/Appeal for the Physician Practices to United Healthcare Insurance Company in Salt Lake City, UT

Bates Start	Bates End	Document Description
FESM00008	FESM00008	Exhibit 1 to July 2, 2019 letter re Provider Dispute Reconsideration/Appeal for Physician Practices to United Healthcare Insurance Company in Salt Lake City, UT-CONFIDENTIAL
FESM00009	FESM00009	Spreadsheet of United Healthcare NV ED Claims July 1, 2017-April 30, 2019 – Claims Allowed in Full-CONFIDENTIAL
FESM00010	FESM00010	Spreadsheet of United Healthcare NV ED Claims July 1, 2017-April 30, 2019 – WRAP Network Claims-CONFIDENTIAL
FESM00011	FESM00011	Spreadsheet of United Healthcare NV ED Claims July 1, 2017-April 30, 2019 – Litigation Claims-CONFIDENTIAL
FESM00012	FESM00018	March 19, 2019 letter re UHG Surprise Billing Chairmen Letter
FESM00019	FESM00104	Health Plan of Nevada, Inc. – Medicaid/Nevada Check-up Consulting Provider Agreement
FESM00105	FESM00107	Health Plan of Nevada, Inc. Consulting Provider Amendment
FESM00108	FESM00108	March 1, 2019 letter re Health Plan of Nevada and Fremont Emergency Services Termination Confirmation
FESM00109	FESM00117	September 10, 2018 letter re Request to Renegotiate or Terminate Intention
FESM00118	FESM00120	Sierra Health & Life Insurance Company, Inc. Amendment to Individual/Group Provider Agreement
FESM00121	FESM00200	Sierra Health & Life Insurance Company, Inc. Individual/Group Provider Agreement
FESM00201	FESM00203	Sierra Health & Life Insurance Company, Inc. Amendment to Individual/Group Provider Agreement
FESM00204	FESM00219	Sierra Health & Life Insurance Company, Inc. Individual/Group Provider Agreement
FESM00220	FESM00220	March 1, 2019 letter re Sierra Healthcare Options (Sierra Health and Life) and Fremont Emergency Services Termination Confirmation
FESM00221	FESM00223	Amendment to Medical Group Participation Agreement MGA Commercial Rate Increase
FESM00224	FESM00224	June 30, 2017 letter re United Healthcare and Fremont Emergency Services Termination Notification
FESM00225	FESM00255	December 19, 2014 letter re Executed Participation Agreement/Notice of Effective Date
FESM00256	FESM00256	March 9, 2017 letter
FESM00257	FESM00287	December 19, 2014 letter re Executed Participation Agreement/Notice of Effective Date
FESM00288	FESM00334	Complaint filed in Middle District of Pennsylvania against United Healthcare
FESM00256	FESM00341	Information on Payment of Out-of-Network Benefits

Bates Start	Bates End	Document Description
FESM00342	FESM00342	Spreadsheet of United Healthcare NV ED Claims July 1, 2017-January 31, 2020 – Claims Allowed in Full-CONFIDENTIAL
FESM00343	FESM00343	Spreadsheet of United Healthcare NV ED Claims July 1, 2017- January 31, 2020 – WRAP Network Claims-CONFIDENTIAL
FESM00344	FESM00344	Spreadsheet of United Healthcare NV ED Claims July 1, 2017-January 31, 2020 – Litigation Claims-CONFIDENTIAL
FESM00345	FESM00349	Letter dated July 9, 2019 from Angie Nierman to Kent Bristow
FESM00350	FESM00352	Letter dated July 9, 2019 from Chris Parillo to Kent Bristow
FESM00353	FESM00355	Letter dated July 9, 2019 from Chris Parillo to Jennifer Shrader
FESM00356	FESM01381	Additional documents

B. Defendants:

Bates Start	Bates End	Document Description
DEF000001	DEF000003	Decl of Jane Stalinski in support of motion to dismiss
DEF000004	DEF000006	Decl of Maryann Britto In Support of Motion to Dismiss
DEF000007	DEF000009	Decl of Shawna Reed in support of Motion to Dismiss
DEF000010	DEF000012	Decl of Ellen Sinclair in Support of Motion to Dismiss
DEF000013	DEF000015	Decl of Jane Stalinski in support of Opps to Mtn to Remand
DEF000016	DEF000018	Decl of Maryann Britto in support of Def Opps to Mtn to Remand
DEF000019	DEF000021	Decl Shawn Reed in Support of Def Opps to Mtn to Remand
DEF000022	DEF000024	Decl Ellen Sinclair in support of Def Opps to Mtn to Remand
DEF000025	DEF000069	Sample claims forms for Fremont claims
DEF000070	DEF000108	Sample claims forms for SHO
DEF000109	DEF000113	Article in NV Independent
DEF000114	DEF000114	Fremont ER SHL Amendment
DEF000115	DEF000122	Fremont Medicaid Amendment
DEF000123	DEF000124	Fremont Responses to 07/14/2018 Term

Bates Start	Bates End	Document Description
DEF000125	DEF000127	Fremont Responses to 08/30/18 term
DEF000128	DEF000136	HPN Amendment
DEF000137	DEF000139	HPN response to 08/30 Fremont Term
DEF000140	DEF000141	January 2018 Term HPN Response
DEF000142	DEF000144	July 14/2018 Term
DEF000145	DEF000153	Sierra Response to Fremont Term
DEF000154	DEF000156	SHO Amendment
DEF000157	DEF000418	2019 UHC Care Provider Admin Guide
DEF000419	DEF000687	2020 UHC Care Provider Admin Guide
DEF000688	DEF000688	Policy for Out of Network Providers
DEF000689	DEF000700	Emergency Health Care Services
DEF000701	DEF000711	Emergency and Urgently needed health Care Services
DEF000712	DEF000714	Hospital Notifications
DEF000715	DEF000721	Information on payment of out of network benefits
DEF000722	DEF000787	Network Access Agreement
DEF000788	DEF000821	Amendment to Network Access Agreement
DEF000822	DEF000836	Amendment to Network Access Agreement
DEF000837	DEF000854	Amendment to Network Access Agreement
DEF000855	DEF001379	Out of Network information
DEF001380	DEF001387	Data iSight Client Preferences

VI. STATEMENT OF DAMAGES COMPUTATION IDENTIFIED UNDER RULE 16.1(a)(1)(A)(iv)

Health Care Providers' Statement:

The Health Care Providers have provided the following calculation of damages in their NRCF 16.1 initial disclosures and supplements thereto:

Plaintiffs seek damages described in the First Amended Complaint. Specifically, Plaintiffs' damages for its claims for relief are to be determined as (i) the difference between the lesser of (a) amounts Plaintiffs charged for the specified emergency medicine services provided

1 to Defendants' members and (b) the reasonable value or usual and customary rate for its
2 professional emergency medicine services and the amount Defendants unilaterally allowed as
3 payable for the claims at issue in the litigation plus (ii) the Plaintiffs' loss of use of those funds.
4 In addition, Plaintiffs seek damages based on the statutory penalties for late-paid and partially
5 paid claims as set forth in the Nevada Insurance Code under its claim for violation of Nevada's
6 prompt pay statutes. Plaintiffs also seek to recover treble damages and all profits derived from
7 Defendants' knowing and willful violation of Nevada's consumer fraud and deceptive trade
8 practices statutes. Finally, Plaintiffs seek damages based on its eighth claim for relief for violation
9 of NRS 207.350 *et seq.* Under NRS 207.470, Plaintiffs are entitled to recover three times the
10 actual damages it has sustained, its attorneys' fees incurred in trial and appellate courts and its
11 costs of investigation and litigation reasonably incurred.

12 The reasonable value of and/or usual and customary rate for Plaintiffs' emergency
13 medicine services in the marketplace will be determined by the finder of fact at trial. Plaintiffs
14 will continue to gather information concerning those calculations and their total amount of
15 damages, which will also be the subject of expert testimony. Plaintiffs' damages continue to
16 accrue and will be amended, adjusted and supplemented as necessary during the course of this
17 litigation as additional claims are adjudicated and paid by Defendants. Plaintiffs also seek punitive
18 damages, attorneys' fees, costs and interest under each of the claims asserted in this action.
19 Plaintiffs seek equitable relief for which a calculation of damages is not required by the Nevada
20 Rules of Civil Procedure; however, Plaintiffs seek special damages under this claim.

21 Subject to the foregoing, Plaintiffs have provided Defendants with a spreadsheet providing
22 the details for each of the claims at issue in this litigation regarding the services provided, the
23 billed charges for the services provided and the amount Defendants adjudicated as payable, among
24 other information. For the claims with dates of services through January 31, 2020, the difference
25 between the Plaintiffs' billed charges and the amounts allowed by Defendants as payable is
26 approximately \$20,998,329 prior to any calculation of interest due thereon.

27 In response to United's position below, the Health Care Providers respectfully state that
28 the Court has already considered and rejected United's position that the Health Care Providers'

claims are subject to conflict or complete preemption under ERISA.

Defendants' Statement:

The employer-sponsored health plans implicated by Plaintiffs' claims contain terms governing the amount of reimbursement owed to Plaintiffs (and other out-of-network providers) when those providers treat a plan member. Defendants contend that Plaintiffs' computation of damages is not supported by Nevada law, as Plaintiffs are entitled only to payment on their claims at the out-of-network rates set forth in each patient's applicable health plan. Plaintiffs otherwise lack a contract, oral promise, or statute setting forth any particular rate of reimbursement for the services at issue. Further, by bringing state law claims that ask a court/jury to force the employer-sponsored health plans to pay out-of-network providers at a higher rate than required by the plan terms, the Plaintiffs claims are subject to conflict and complete preemption by ERISA.

VII. WRITTEN LIST OF INSURANCE AGREEMENTS DISCLOSED UNDER RULE 16.1(a)(1)(A)(v):

The Health Care Providers: Plaintiffs are not currently aware of any relevant insurance agreements.

Defendants: Defendants are not currently aware of any relevant insurance agreements.

VIII. WRITTEN LIST OF EXPERTS DISCLOSED UNDER RULE 16.1(a)(2) AND A STATEMENT INDICATING WHETHER THE IDENTIFIED EXPERTS WILL PROVIDE OR HAVE PROVIDED EXPERT REPORTS

The Health Care Providers: Not applicable at this time.

Defendants: Not applicable at this time.

IX. A STATEMENT IDENTIFYING ANY ISSUES ABOUT PRESERVING DISCOVERABLE INFORMATION

The Health Care Providers: No known issues at this time.

Defendants: No known issues at this time.

X. DISCOVERY PLAN

A. What changes, if any, should be made in the timing, form or requirements for disclosures under 16.1(a):

1. The Health Care Providers' Position: Not applicable.

2. Defendants' Position: Not applicable.

B. When disclosures under 16.1(a)(1) were made or will be made:

1. The Health Care Providers: October 2, 2019³

2. Defendants: August 9, 2019⁴

C. Subjects on which discovery may be needed:

1. The Health Care Providers' Position: All matters within the scope of NRC

26.

2. Defendants' Position: All matters within the scope of Nev. R. Civ. P. 26.

However, as set forth more fully in United's January 29, 2020 responses and objections to the Health Care Providers' discovery requests, United believes significant limitations must be placed on discovery to ensure it is limited to information relevant to what is at its heart an ERISA "claims for benefits" case and to ensure the discovery propounded on United is not unduly burdensome and is instead proportional to the needs of the case. *Ehrenschaft v. Dimension Works Inc. Long Term Disability Plan*, 120 F. Supp. 2d 1253, 1261–62 (D. Nev. 2000) (In an ERISA case, evidence should be limited to administrative record).

D. Should discovery be conducted in phases or limited to or focused upon particular issues?

1. The Health Care Providers' Position: Yes, discovery should be conducted in phases as indicated in the proposed discovery schedule below.

2. Defendants' Position: Yes, discovery should be conducted in phases as indicated in the proposed discovery schedule below.

E. What changes, if any, should be made in limitations on discovery imposed under these rules and what, if any, other limitations should be imposed?

1. Health Care Providers' Position: Each party shall have 45 days to respond to written discovery served pursuant to NRC 33, 34 or 36. The Health Care Providers do not

³ The Health Care Providers made initial disclosures in federal court while awaiting remand and have subsequently served two supplements thereto.

⁴ Defendants made their initial disclosures in federal court.

1 intend to limit or restrict the parties from stipulating or moving to extend response deadlines in
2 accordance with local rules.

3 2. Defendants' Position: Defendants are amenable to a 45-day response time
4 for written discovery made under Nev. R. Civ. P. 33, 34, and 36. However, Defendants have
5 asserted and expect to continue to assert certain undue burden and proportionality objections,
6 among others, to certain of the Health Care Providers' written discovery requests. To the extent
7 these objections are not upheld by the Court, Defendants will need considerably more than 45
8 days to substantively respond to certain requests. Plaintiffs have represented that there are
9 approximately 15,210 claims at issue in this litigation. Defendants have estimated that the
10 minimum time for searching for and retrieving the administrative record for each claim is two
11 hours, which would need to be done for each of the 15,210 claims at issue. This would amount to
12 a total of 30,420 hours, or more than 3 years for a team of four people working full-time on
13 gathering documents. Defendants reserve their right to specify rolling production deadlines as
14 permitted under NRCP 34.

15 F. What, if any, other Orders should be entered by the Court under Rule 26(c) or Rule
16 16(b) and (c):

17 On June 24, 2020, the Court entered a Confidentiality Agreement and Protective Order.

18 1. The Health Care Providers' proposed additional orders: On February 10,
19 2020, the Health Care Providers proposed the following protocol aimed at providing an expedited
20 ability for the parties to agree on the health care claims data and eliminate or greatly reduce the
21 need for United to collect and produce provider remittance forms/provider EOBs except for where
22 the parties identify a discrepancy in the billed amount or allowed amounts or as specified below.
23 Similarly, the proposal eliminates or greatly reduces the need for Plaintiffs to collect and produce
24 HCFA forms and related billing documents. Specifically,

- 25 • the Health Care Providers have produced a spreadsheet that includes member name
26 and Defendants' claim no. (to the extent available in Health Care Providers' automated
27 system), in addition to other fields.
- 28 • Within 14 days, United provides matched spreadsheets and identifies any discrepancy

in billed or allowed amounts fields;

- Within 7 days thereafter, for claims upon which the billed and allowed data match, parties stipulate that there is no need for further production of EOBs and provider remittances for evidentiary purposes related to establishing the existence of the claim, services provided, amount billed by Health Care Providers and amount allowed by United.
- Approximately every quarter, this process will take place again with any new claims included in the Litigation Claims Spreadsheet that accrued after the previous spreadsheet was submitted.
- United produces all EOBs/provider remittances for all Data iSight processed NV claims submitted by the Health Care Providers; and
- United and the Health Care Providers respectively agree to provide a market file, i.e. a spreadsheet of payments from other payers (Health Care Providers) or a spreadsheet of payments to other providers (United) in the market which de-identifies the specific payer or provider, as applicable (for the time period 2016-Present). The parties agree to meet and confer promptly to agree on specified fields.

The foregoing proposal is consistent with the goals of NRCP 16(c)(2)(A) (formulating and simplifying the issues) and Rule 16(c)(2)(D) (avoiding unnecessary proof and cumulative evidence).

In response to United's proposed ESI protocol below, the Health Care Providers have declined the proposal for several reasons, including but not limited to its protracted process, lack of meaningful custodial discovery and attempt to unduly limit discovery.

2. Defendants' proposed additional orders: In response to Plaintiffs' proposed protocol of February 10, 2020, the timelines that Plaintiffs have proposed are unworkable. United does not yet know if the proposal would meaningfully reduce the undue burden on United since United does not know how many of Plaintiffs' claims were processed by Data iSight. United is working to determine this, and will then respond to Plaintiffs' proposal.

On July 13, 2020, Defendants proposed an email protocol which provides for the exchange

of search terms and custodians to facilitate the search of the parties' respective email repositories. Defendants believe a search protocol is the most efficient way of gathering, reviewing, and producing emails.

The foregoing proposed protocol is consistent with the goals of NRC 16(c)(2)(A) (formulating and simplifying the issues) and Rule 16(c)(2)(D) (avoiding unnecessary proof and cumulative evidence).

G. Estimated time for trial:

1. Health Care Providers' Position: 12-15 days
2. Defendants' Position: at least 30 days

XI. DISCOVERY AND MOTION DATES

A. Health Care Providers' Position:

<u>Event</u>	<u>Deadline</u>
Fact Discovery Deadline	September 3, 2020 90 days triggered by Rule 16 conference
Initial Expert Report Deadline	October 5, 2020 30 days after close of fact discovery
Amending the Pleadings and Adding Parties	October 6, 2020 90 days before the close of discovery
Rebuttal Expert Report Deadline	November 4, 2020 30 days after initial expert report deadline
Expert Discovery Deadline/Complete Discovery Deadline	January 4, 2021 120 days after fact discovery deadline
Dispositive Motions	February 3, 2021

B. Defendants' Position:

Defendants propose one year of fact discovery starting from the upcoming July 23, 2020 Rule 16 Conference followed by 90 days of expert discovery. Defendants further propose that, rather than having the initial and rebuttal expert disclosures occur simultaneously (the default position of NRC 16.1(a)(2)(E)), that expert disclosures be staggered. Plaintiffs would disclose their initial experts first, Defendants would then disclose their initial and rebuttal experts 30 days

later and Plaintiffs would then disclose their reply experts 30 days after Defendants make their rebuttal expert disclosures. Defendants propose this modification as NRCP 16.1(a)(2)(E)(ii) and Nevada case law provide that if a rebuttal expert's testimony is intended to contradict a portion of another party's case in chief that should have been expected and anticipated by the disclosing party, it is appropriate to strike that rebuttal expert as they should have been disclosed as an initial expert. Given the complexity of the issues, the volume of health benefit claims Plaintiffs purport to put at issue, and the number of causes of action in this litigation, it is not reasonable to expect Defendants to anticipate the full spectrum of opinions Plaintiffs' experts will offer. Adopting staggered expert disclosures will allow Defendants to make a fulsome response to Plaintiffs' experts' opinions, and also give Plaintiffs the ability to fully respond to Defendants' rebuttal expert opinions via Plaintiffs' reply experts. Although not binding on this Court, the federal magistrate agreed with Defendants' above concerns and ordered staggered expert disclosures during a February 12, 2020 hearing. Defendants reserve the right to request more than 30 days to disclose their rebuttal experts depending on the scope of the opinions offered by Plaintiffs' initial experts. The above described proposed deadlines are set forth below:

<u>Event</u>	<u>Deadline</u>
Fact Discovery Deadline	July 23, 2021 365 days triggered by July 23, 2020 Rule 16 Conference
Plaintiffs' Initial Expert Report Deadline	June 23, 2021 30 days before close of fact discovery
Defendants' Initial and Rebuttal Expert Report Deadline	July 23, 2021 30 days after Plaintiffs' initial expert reports
Plaintiffs' Reply Expert Report Deadline	August 23, 2021 30 days after Defendants' initial and rebuttal expert reports
Amending the Pleadings and Adding Parties	July 23, 2021 90 days before complete discovery deadline
Expert Discovery Deadline/Complete Discovery Deadline	October 21, 2021 90 days after fact discovery deadline

<u>Event</u>	<u>Deadline</u>
Dispositive Motions	November 22, 2021
	30 days after complete discovery deadline

XII. JURY DEMAND

Yes.

XIII. INITIAL DISCLOSURES/OBJECTIONS

If a party objects during the Early Case Conference that initial disclosures are not appropriate in the circumstances of this case, those objections must be stated herein. The Court shall determine what disclosures, if any, are to be made and shall set the time for such disclosure.

This report is signed in accordance with Rule 26(g)(1) of the Nevada Rules of Civil Procedure. Each signature constitutes a certification that to the best of the signer's knowledge, information and belief, formed after a reasonable inquiry, the disclosures made by the signer are complete and correct as of this time.

The parties reserve their right to object to the authenticity and genuineness of the documents.

DATED this 17th day of July, 2020.

McDONALD CARANO LLP

WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC

By: /s/ Kristen T. Gallagher

By: /s/ Brittany M. Llewellyn

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

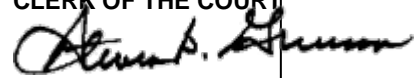
D. Lee Roberts, Jr.
Colby L. Balkenbush
Brittany M. Llewellyn
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
lroberts@wwhgd.com
cbalkenbush@wwhgd.com
bllewellyn@wwhgd.com

Attorneys for Defendants

Attorneys for Plaintiffs

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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

FREMONT EMERGENCY
SERVICES (MANDAVIA) LTD.,

Plaintiff(s),

vs.

UNITED HEALTHCARE
INSURANCE COMPANY,

Defendant(s).

CASE NO: A-19-792978-B

DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

THURSDAY, JULY 23, 2020

RECORDER'S TRANSCRIPT OF PROCEEDINGS

RE: MOTIONS (via Blue Jeans)

APPEARANCES (Attorneys appeared via Blue Jeans):

For the Plaintiff(s): PATRICIA K. LUNDVALL, ESQ.
 KRISTEN T. GALLAGHER, ESQ.
 AMANDA PERACH, ESQ.

For the Defendant(s): COLBY L. BALKENBUSH, ESQ.
 BRITTANY M. LLEWELLYN, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER
TRANSCRIBED BY: KATHERINE MCNALLY, TRANSCRIBER

1 **LAS VEGAS, NEVADA, THURSDAY, JULY 23, 2020**

2 [Proceeding commenced at 10:01 a.m.]

3
4 THE COURT: We have two things on the 10 o'clock
5 calendar.

6 And I'm going to call first Fremont Emergency Services
7 versus United Healthcare.

8 Let's take appearances, (indiscernible) plaintiff and then
9 defendant.

10 MS. LUNDVALL: Good morning, Your Honor. Pat
11 Lundvall, with McDonald Carano, here on behalf of plaintiffs and
12 Fremont Emergency Services and the additional plaintiffs.

13 THE COURT: Thank you. Defendants?

14 MS. GALLAGHER: Good morning, Your Honor. Kristen
15 Gallagher, on behalf of the healthcare provider plaintiff.

16 THE COURT: Thank you.

17 And for the defendants, please?

18 MR. BALKENBUSH: Good morning, Your Honor. Colby
19 Balkenbush, appearing on behalf of the defendants.

20 THE COURT: Thank you. Are there other appearances for
21 the defendant?

22 MS. LLEWELLYN: Yes. Good morning, Your Honor.
23 Brittany Llewellyn, on behalf of the United defendants.

24 THE COURT: All right. So am I correct that we have
25 Ms. Lundvall and Ms. Gallagher for the plaintiffs? And then

1 Mr. Balkenbush and Ms. Llewellyn for the defendants?

2 MS. LUNDVALL: I believe you also have --

3 THE COURT: Anyone else?

4 MS. PERACH: [Indiscernible.]

5 THE COURT: Anyone else?

6 MS. PERACH: This is also Amanda Perach, appearing on
7 behalf of the plaintiff, the healthcare providers.

8 Thank you, Your Honor.

9 THE COURT: Thank you.

10 Any other appearances?

11 All right. This is your Rule 16 Conference.

12 And I know you've exchanged initial disclosures, and you
13 have an agreed discovery cutoff at this point of September 3, 2020.

14 Does that date still work? Because that -- that seems to be
15 unreasonable given the COVID situation.

16 Let me hear from the plaintiff.

17 MS. GALLAGHER: Sure, Your Honor.

18 With respect to the discovery plan, there is a disagreement
19 among the parties and that is set forth in the Joint Case Conference
20 Report.

21 We did submit a schedule that we have asked for from the
22 outset of this. As you know, this is not typical. We didn't just file the
23 complaint in April of this year. This case has been pending for
24 15 months in federal court and discovery had commenced there first.

25 You'll see in the Joint Case Conference Report that was

1 filed on Friday that the biggest point of disagreement really lies in
2 what the true nature of this case is.

3 And I'd like to just spend a moment, if I can, just to give
4 you the general background about where we see this disparity.

5 In the case [indiscernible] court, United [indiscernible]
6 originally that says the case is not preempted by ERISA. It said,
7 United makes it clear in their joint case conference positions that
8 basically it just respects the order of the Court regarding the analysis
9 on ERISA preemptions and is trying to circumvent that order by
10 trying to narrow and trying to limit discovery in this case to what
11 we -- what they often refer to as the ERISA Administrative Record.

12 And so we take issue with those viewpoints that are stated
13 in the JCCR from United's perspective. Basically, it seems as though
14 that if United cannot get what they want from you, through the order
15 of the Court regarding their Motion to Dismiss, that they're going to
16 try and get it from us through trying to limit or otherwise prevent us
17 from getting the discovery that we've asked for.

18 I'd like to give you a few of those points, if I could, within
19 the JCCR. You'll see that in the description of the case, on page 4,
20 United refers to ERISA preemption again as being indicative of the
21 parameters of this case.

22 On page 16 in the damage calculation, they go on to
23 discuss how they're limited -- the damages should be limit pursuant
24 to an ERISA preemption matter in an ERISA case.

25 And in the scope of discovery, it's plain and simple that

1 they think that the case should be only guided by ERISA, and point
2 to a federal court case regarding that.

3 So with that those points now before the Court, you know,
4 I'd like to give the Court a little bit of flavor that we've been dealing
5 with that in each of our discovery requests that we have had to meet
6 and confer -- is that we see United pointing to an administrative
7 record, pointing to issues saying that they can't -- and at least not for
8 a period of three years, with four people working full time, be in a
9 position prepared to produce documentation relating to the claims
10 that we have.

11 And so although we do set forth that September 3rd
12 guideline for fact discovery closing, and we have submitted a phased
13 discovery period with fact first and then expert discovery following,
14 what we'd really like to see is the most aggressive schedule because
15 there has been delays, not only, you know, in this litigation, but
16 leading up to the litigation in terms of not being paid for these
17 services that were long ago provided to people in the community
18 that show up at emergency departments and need our services by
19 our physicians, Your Honor.

20 THE COURT: Thank you, Ms. Gallagher.

21 Mr. Balkenbush or Ms. Llewellyn, your response, please?

22 MR. BALKENBUSH: Thank you, Your Honor.

23 So there are, I guess, two issues that we think the Court
24 needs to resolve today. The first is what a discovery cutoff should
25 be.

1 As Ms. Gallagher pointed out, they've proposed a
2 September 3rd discovery cutoff. In contrast, we've proposed a
3 July 23rd, 2021, cutoff, which would be approximately one year from
4 today, the Rule 16 Conference.

5 We've proposed that the fact discovery cutoff would be
6 July 23rd, 2021, and then there would -- that would be followed by
7 three months of expert discovery, with the final complete discovery
8 cutoff being October 21st, 2021.

9 And so, I guess, let me just talk a little bit about why we
10 think that much time is necessary for discovery.

11 Oh -- and I guess let me just say also off the bat,
12 Ms. Gallagher said something about us, you know, trying to
13 disrespect the Court's order on the Motion to Dismiss by referencing
14 ERISA.

15 There's certainly no intent on our end, Your Honor, to
16 disrespect the Court's ruling. We understand that the Court found
17 that the ERISA preemption doesn't apply here. You know, the Court
18 entered a very detailed order on that. We occasionally do put
19 references to ERISA into documents we filed, just to ensure we're
20 not waiving anything as far as future appellate review. But we
21 certainly recognized that you've fully analyzed that issue and made
22 your decision. So there's no intent on our part to disrespect that.

23 But I guess moving on to the issues here, they've given a
24 47-page complaint they've filed with 8 different Causes of Action.
25 They've submitted a spreadsheet that identifies 15,210 claims for

1 underpayment.

2 And although there's only three plaintiffs, you'll see on the
3 caption here, what this case is really more similar to is a class action,
4 because the only reason the healthcare providers are able to bring
5 these 15,000 claims of underpayment is because they received
6 assignments from all of their -- all of United's plan members. But for
7 that assignment, what the Court would be faced with would be
8 15,210 plaintiffs bringing claims for underpayment and arguing that
9 United didn't reimbursement the appropriate amount.

10 So this is a massive case. And I think that's borne out by
11 some of the statements that the healthcare providers made in the
12 Joint Care Conference Report. You'll see in their damages
13 calculation, they note that they're seeking approximately 21 million
14 in damages from United for underpayment of the 15,210 claims.
15 And then, in addition to that, they've brought a RICO claim and a
16 number of other Nevada statutory claims.

17 So they're seeking -- and they explicitly state this in their
18 report -- they're seeking treble damages, statutory penalties under
19 Nevada law, interest on the judgment, and also recovery of their
20 attorney's fees under the Nevada RICO statute. So if you put those
21 together, it's pretty easy to see that this is akin -- the size of this case
22 is at least 60 to 70 million, if not more, based on plaintiff's own
23 allegations against United.

24 Certainly we dispute those allegations, you know. But the
25 idea that a 60 to \$70 million case is -- that we're going to be ready to

1 complete discovery in a little over a month -- this September 3rd,
2 2020, deadline they've proposed, is, in our view, just unrealistic.
3 That's why we've proposed a July 23rd, 2021, deadline. And I mean,
4 to be honest, even that may be ambitious, given the number of
5 documents at issue.

6 So we've submitted a burden declaration in response to a
7 number of their discovery requests seeking documents related to
8 these 15,000 claims. And we've pointed out that it takes, on average,
9 2 hours to pull a single claim. So if you just multiply that by the
10 15,000 claims, that's over 30,000 hours of work that it would take
11 to -- for us to pull all the documents. And that doesn't even touch,
12 Your Honor, the RICO discovery issue.

13 They have approximately 30 pages of their complaint are
14 just dedicated to this argument that there's a -- you know, essentially
15 a criminal conspiracy here. Obviously, that's a completely separate
16 issue that's going to require, you know, significant e-mail searches
17 and production and things related to that. So we think a year of
18 discovery is the minimum that the Court should order.

19 And then I guess the second issue of dispute, as far as the
20 JCCR, is expert disclosures. So under Rule 16, Nevada rules require
21 simultaneous expert disclosures -- initial and rebuttal disclosures.
22 We've proposed modifying that so that the healthcare providers
23 would go first and make their initial disclosures; United would go
24 second and make their rebuttal and initial disclosures; and then the
25 healthcare providers would then finally have replied expert

1 disclosures, where they would get to respond to United's initial and
2 rebuttal expert disclosures and have essentially the last bite at the
3 apple.

4 And the reason we proposed that modification to Rule 16.1
5 is just due to the complexity of this case. You know, Rule 16.1 in
6 Nevada case law is very clear that, you know, if a party discloses a
7 rebuttal expert that addresses a part of the plaintiff's case in chief
8 that it should have reasonably anticipated the plaintiff would
9 disclose an expert on, that the Court may strike that rebuttal expert
10 because the expert essentially should have been disclosed as an
11 initial expert, not a rebuttal expert.

12 And frankly, Your Honor, we're very concerned about
13 being able to anticipate all of the potential expert -- initial expert
14 disclosures the plaintiffs may make here.

15 There's a complex RICO claim with multiple RICO
16 predicate acts alleged. There's, you know, Nevada statutory claims
17 under the Unfair Claims Practices Act, and the Deceptive Trade
18 Practices Act, under the [indiscernible] Act. And so we think our
19 proposed modification to the Expert Disclosure Rules would, you
20 know, avoid the issue of essentially a gotcha situation where maybe
21 United discloses eight experts, but doesn't anticipate, you know, the
22 ninth expert that plaintiffs are going to disclose and then ends up
23 getting its rebuttal expert stricken because the Court finds we should
24 have anticipated that.

25 And we think our proposal is also very fair to the plaintiffs

1 because it gives them a last bite at the apple. The plaintiffs get to go
2 first, United goes second. And then the plaintiffs get to go again
3 third and have [indiscernible] for disclosures to address any new
4 issues or rebuttal disclosures that United may raise in its rebuttal
5 disclosures.

6 So I think those are just the two issues we're looking for
7 the Court to resolve today: One, discovery deadlines; and then, two,
8 whether it would be appropriate for the Court to modify the expert
9 disclosure -- expert disclosures under Rule 16.1.

10 THE COURT: Thank you.

11 And Ms. Gallagher, your response, please.

12 MS. GALLAGHER: Thank you, Your Honor.

13 So, you know, it's -- I'd like to address the fact that they
14 indicate to you that they're not trying to disrespect the order of the
15 Court, however, at every turn, you see exactly the opposite of that.
16 In fact, in the next sentence, after Mr. Balkenbush stated that, he
17 then went on to try and classify this as a class action regarding
18 assignment of benefits. That is true classic ERISA litigation
19 language, and we see it everywhere.

20 In fact, when they say they're not trying to do anything
21 other than preserve appeal rights, you know, we do have
22 information that they have indicated an intent to writ the denial of
23 the Motion to Dismiss [indiscernible] discovery, they -- they state it
24 plainly. There's no wishy-washy. They're not saying in order to
25 preserve our rights on appeal or on a writ. And in fact, in actual

1 discovery, in practicality, they are referring to an administrative
2 record. And then not only pointing to it, but also saying they can't
3 even produce it because it's too hard for them; it's too difficult for
4 them.

5 They have submitted an undue burden declaration that I
6 think, if you read it, Your Honor, it was submitted in connection with,
7 I think, a Motion to Dismiss or one of the other filings. Simply from
8 United Healthcare, which is a huge organization that filed
9 information probably, including in a 10-K SEC filing that states and
10 touts that they are highly dependent on integrity and timeliness of
11 data in connection with their members, their customers, and
12 healthcare professionals. And I'm literally quoting from their 10-K
13 that is on file, on page 15, that they submitted at the conclusion of
14 fiscal year 2019.

15 And so to have a declaration that says it will take three
16 years, with four people working constantly, in order to be able to
17 provide discovery in this case, just simply isn't reality, Your Honor,
18 from a company that publicly touts how important it is for them to
19 be able to have, maintain, and access data of their members.

20 We internally have information that we think it takes
21 substantially less, perhaps two minutes, to be able to identify and
22 pull a record. But even more important than that, Your Honor, is that
23 in February, we proposed a protocol that would relieve United and
24 the healthcare providers from having to go and pull each document
25 and each record in order to prove up the data points -- meaning, did

1 we bill a thousand dollars and did United pay X dollars?

2 We have proposed a protocol for that, Your Honor. We
3 have raised it numerous times in the meet and confers that we've
4 had. And that would substantially limit this undue burden that
5 United continues to claim. Yet we cannot get a substantive response
6 from them, claiming that part of the compromise is to identify how
7 many claims have been adjudicated by Data iSight, which, as you
8 know, is part of our RICO claim. To date, they have indicated that
9 their clients have not been able to identify that.

10 We just don't think that that is a reasonable position or
11 reasonable response based on the analytics we know that they run.
12 In fact, they have to run analytics as part of the agreement in order
13 to be able to figure out the compensation and what's owed to
14 everybody on a monthly basis.

15 And so to stand up and say that they just can't for a period
16 of years is just not realistic and is part of the reason we are in
17 litigation, Your Honor, is this constant pushing, trying to turn this
18 into an ERISA claim when it's not.

19 And so we think we have an aggressive schedule, but it
20 can be done, if Your Honor will order the compromise that we've set
21 out in the additional orders, Subsection F(1). And, basically, we have
22 already done part 1, which is provide them a spreadsheet of the
23 claims. We just ask that they match data points, because then the
24 entirety of that piece is certain. We have identified how much we
25 billed; they have identified how much they paid.

1 And then we can move on to the other issues that are
2 important concerning e-mail production, concerning e-mail
3 collection. But we just don't think that the year-plus that United is
4 asking for is realistic for this case, because it is not as broad and as
5 difficult or as complex as United's counsel has indicated to
6 Your Honor.

7 With respect to the initial experts and the scheduling of
8 experts, I would submit I don't believe that there's good cause that
9 has been shown under Rule 16(b)4 in order to modify that schedule.
10 We think that it is very clear what our allegations are. There's no
11 surprise about what we are saying. There's no now surprise about
12 United's affirmative defenses because now they have an answer on
13 file. But we just don't see that there has been good cause shown for
14 changing the ordering of what's consistent with our Rule 16.1,
15 Your Honor.

16 Thank you.

17 THE COURT: Thank you, both.

18 This is your Rule 16 conference. And there's a dispute
19 with regard to when fact discovery should end.

20 I am not doing this based on Solomon. I just don't think
21 that, given the fact-intensive nature of this case, you could complete
22 discovery by September 3. You've got limitations on travel already
23 through the COVID issue. So I'm going to arbitrarily set the
24 discovery cutoff at December 31, 2020.

25 We'll set a status hearing in mid-December to see where

1 you are on discovery, because I can already anticipate there will be
2 Motions to Compel, maybe from both sides, because you both see
3 the case so differently.

4 I'm going to deny the defendant's request to modify
5 Rule 16 to propose a different staggering of expert witnesses. The
6 initial experts will be done on a simultaneous basis; rebuttals will be
7 due on a simultaneous basis. And if, during the litigation, either of
8 you find that you need relief from the dates that will come in the
9 scheduling order and setting trial that will come from my office, then
10 we can always address those later.

11 So I will -- there's been a jury demand. The fact discovery
12 will end on December 31. My office will set the other dates in
13 accordance with -- we've got a program that does that. So that is --
14 that will be the ruling of the Court. That will affect your dispositive
15 deadline motions, as well.

16 Any comments from either side?

17 MS. GALLAGHER: As a point of clarification, Your Honor,
18 are you [indiscernible] discovery on December 31st for both fact and
19 experts?

20 THE COURT: No. Facts only.

21 MS. GALLAGHER: Okay. Thank you, Your Honor
22 [indiscernible].

23 THE COURT: You both seem to agree on a deadline for
24 fact discovery and then separate deadlines for experts, following the
25 fact discovery phase.

1 MS. GALLAGHER: [Indiscernible.]

2 THE COURT: Okay. Mr. Balkenbush, anything to say,
3 anything to add?

4 MR. BALKENBUSH: That's correct, Your Honor, that we --
5 both parties agree on that expert disclosure should be after the fact
6 discovery cutoff.

7 I guess the last thing I would just say is I wonder if the
8 Court would entertain our request that maybe the parties be required
9 prior to initial -- just expert disclosures, maybe 30 days prior or
10 something like that, to just identify the scopes of expert testimony
11 they anticipate disclosing, not the actual report.

12 But, you know, for example identifying, you know, we're
13 going to disclose a RICO expert that's going to generally address the
14 Involuntary Servitude RICO Predicate Act, and you know, the
15 application of that to, you know, I guess, disputes over fraud
16 between two large businesses, things -- something like that that
17 would just allow us to know if we're missing a scope, you know, that
18 they're going to disclose, so we don't end up failing to disclose an
19 expert that we should -- you know, that they argue then we should
20 have anticipated.

21 THE COURT: I'm going to deny that request now, because
22 I've already made it clear to both sides that I will be lenient in
23 making sure that both of you have the ability to present the case and
24 defend the case. So I'm going to deny that request now. So that --

25 MR. BALKENBUSH: Okay [indiscernible].

1 THE COURT: -- is with that [indiscernible] set for trial. I
2 believe that's everything we need to do today in this matter. And so
3 until I see you next, stay safe and stay healthy.

4 MS. GALLAGHER: Your Honor, if I may quickly -- just with
5 respect to the scope of discovery, just confirm that it is with respect
6 to what is permitted by the rules and not limited to an ERISA matter.

7 THE COURT: If it is defined -- the discovery is defined by
8 your complaint.

9 MS. GALLAGHER: Thank you, Your Honor.

10 THE COURT: All right. Good enough. Thank you, all.
11 Stay safe, stay healthy.

12 MR. BALKENBUSH: Thank you, Your Honor.

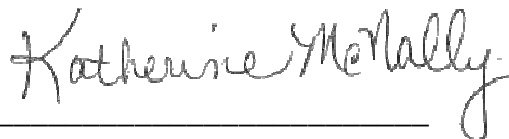
13 MS. GALLAGHER: Thank you, Your Honor.

14 THE COURT: Thank you.

15 [Proceeding concluded at 10:22 a.m.]

16 * * * * *

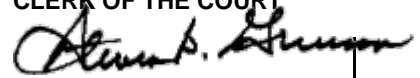
17
18 ATTEST: I do hereby certify that I have truly and correctly
19 transcribed the audio/video proceedings in the above-entitled case
20 to the best of my ability.

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23 Katherine McNally
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25 AZ-Accurate Transcription Service, LLC

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DISTRICT COURT
CLARK COUNTY, NEVADA
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FREMONT EMERGENCY SERVICES)	CASE NO. A-19-792978-B
(MANDAVIA) LTD.,)	
)	
Plaintiff,)	DEPT MO. XXVII
)	
vs.)	
)	
UNITED HEALTHCARE INSURANCE)	
COMPANY, et al,)	
)	
Defendants.)	Transcript of
)	Proceedings

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

**PLAINTIFF'S MOTION TO COMPEL DEFENDANTS' PRODUCTION OF
UNREDACTED MULTIPLAN, INC. AGREEMENT**

WEDNESDAY, JULY 29, 2020

APPEARANCES:

FOR THE PLAINTIFF:	KRISTEN T. GALLAGHER, ESQ.
	PATRICIA K. LUNDVALL, ESQ.

FOR THE DEFENDANTS:	BRITTANY M. LLEWELLYN, ESQ.
	COLBY L. BALKENBUSH, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

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1 LAS VEGAS, NEVADA, WEDNESDAY, JULY 29, 2020, 9:35 A.M.

2 (Court was called to order)

3 THE COURT: Calling the case of Fremont Emergency
4 versus United Healthcare. We'll take appearances, starting
5 first with the plaintiff.

6 MS. GALLAGHER: Good morning, Your Honor. Kristin
7 Gallagher on behalf of the plaintiff.

8 MS. LUNDVALL: Hello. With Ms. Gallagher it's Pat
9 Lundvall from McDonald Carano here on behalf of the plaintiffs.

10 THE COURT: Thank you.

11 MS. LLEWELLYN: Good morning, Your Honor. Brittany
12 Llewellyn on behalf of the United defendants.

13 MR. BALKENBUSH: Good morning, Your Honor. Colby
14 Balkenbush, also on behalf of the United defendants.

15 THE COURT: Thank you. Were there any other
16 appearances before I hear the motion? So, Ms. Gallagher, it is
17 your motion to compel.

18 MS. GALLAGHER: Thank you, Your Honor. Good morning.
19 We have brought this motion to compel on a single issue. It is
20 a network services agreement, a series of agreements starting
21 back in 2010 through the present. It concerns an entity that's
22 identified in our first amended complaint, MultiPlan, Inc. They
23 are the parent company of Data iSight, which is the doing
24 business as name, if you will, National Care Network, LLC is
25 that entity's legal name.

1 And so what we did back when the case was pending in
2 federal court is we issued requests for production of documents
3 that necessarily would encompass not only this agreement, but
4 what we anticipate to be additional agreements that may govern
5 the party's relationship. We have extensive allegations in the
6 first amended complaint that speaks to that relationship and
7 many of our claims are based upon that scheme in our Nevada RICO
8 racketeering claim, as well as some of our other claims
9 necessarily get to that relationship.

10 We know that that relationship is multifaceted based
11 on United's counsel's statement in the federal court proceedings
12 regarding a discovery matter, and they did, in fact, produce it
13 in connection with this Court's May 15th order, but that is they
14 produced it in a redacted format. And so although today, for
15 purposes of today, we are here on a very narrow and discrete
16 issue regarding this MultiPlan agreement, it's important for the
17 Court to understand that this is sort of demonstrable of what
18 the meet and confer efforts have been and other efforts have
19 been in this case regarding United's positioning.

20 So what typically happens is that we have a meet and
21 confer, there's no information substantively that's offered, we
22 engaged in another meet and confer. And particularly they're
23 good at protracted discussions. And you can see that play out
24 in the affidavit or my declaration submitted both in the motion
25 and reply in terms of making us come back again and again and

1 again to finally get what United's position is going to be.

2 And this one we -- it was fairly clear from the
3 outside that their position was going to remain that they were
4 not going to produce an unredacted copy without a motion to
5 compel and an order of this Court. However, unfortunately, it
6 took a length of time with respect to this one discrete issue.

7 So that's the frustration part, but with respect to
8 this issue, we had asked in response to No. 11, 12, and 21 of
9 our request for production and necessarily that this agreement
10 wasn't encompassed, that it was produced. And so what we
11 thought in the meet and confer and in the opposition papers is
12 United's position that this is an irrelevant document, or at
13 least the portions that are redacted, and then the other piece
14 of it is that it's trade secret protectable and, therefore, our
15 plaintiff's healthcare entities are not entitled to see it.

16 So we set forth reasons why we think that document is
17 relevant and proportional, which is the multi-test that needs to
18 be met here. And we set forth in our motion the various, and in
19 our reply, the various paragraph and allegations that this
20 speaks to, Your Honor. And so we think that it is relevant in
21 terms of a number of paragraphs relating to the relationship.

22 Although United has tried to narrow the scope again,
23 what we continue to see is an effort to try and limit this to an
24 ERISA case. If you see on page 2 of the opposition there's,
25 again, repeated references to how this is only leading to

1 reference a patient's health plan and we've got the Rule 16
2 conference last week.

3 This is a case that is outside of ERISA. This is a
4 case that is not being governed or is putting the four corners
5 around the discovery that we are permitted as the healthcare
6 providers to obtain and through the case that is being governed
7 by Rule 26 in terms of what the scope of discovery is.

8 And so when we had the meet and confer effort, one of
9 the other things we started hearing and we've since heard in
10 other meet and confer efforts apart from this is that United
11 Intends on withholding what they are deeming irrelevant
12 evidence, and they plan on issuing a privilege -- I guess a
13 relevancy law would be the correct terminology that would
14 reference withholding based on relevance.

15 And we've had the discussions about we simply don't
16 see that that is appropriate in this jurisdiction under
17 discovery that is quite broad and that we're permitted to
18 obtain. You also saw in defendants' opposition that they're
19 trying to essentially jump down the road to looking at what
20 would be admissible for purposes of trial. Obviously, we are at
21 the very early stages in terms of discovery. We're entitled to
22 the information. We think that the bars and barriers that
23 they're putting up are simply not related to the claims that we
24 have at issue in this case.

25 And then with respect to the confidentiality of the

1 trade secret assertions, Your Honor has already entered a
2 protective order. They have identified it as AEO, and at this
3 point it has been protected in accordance with the protective
4 order. We've set forth cases in our reply that basically speak
5 to the fact that just because something is a trade secret
6 doesn't mean that it is out of bounds for discovery.

7 Obviously, there's a whole lot of cases involving
8 intellectual property where people have the opportunity and the
9 need to see information that is trade secret, and that is why
10 the protective order is in place in this case. You know, we do
11 reserve our rights to determine whether or not it needs to have
12 a lower designation, but that's, you know, not before the Court
13 today and not a situation that we have triggered yet in terms of
14 discussion.

15 So what we are asking for is we're compelling United
16 to produce the MultiPlan series of agreements that have been
17 identified by them in completely unredacted form, and we've
18 asked for fees in connection with this because we simply don't
19 see that the proffered reasons, which is relevant to the
20 confidentiality, have any basis, true basis, that would require
21 us to have to come to the Court to ask for an unredacted copy.

22 We also set forth the proportionality analysis in our
23 moving papers, and I note that United did not dispute that.
24 Instead, wanting to sort of engage in a different sort of
25 evaluation, that isn't what the Court is required to look at in

1 terms of whether or not it's discoverable at this point.

2 And so if Your Honor is inclined to grant the motion,
3 I would just like to point out the fact in our Exhibit 5 we
4 pointed out that a Florida state court has similarly ruled and
5 has said that the MultiPlan agreement needs to be unredacted.

6 I note -- and we noted in our papers that United has
7 filed for a writ on that particular point. But nevertheless, we
8 find that here under the State of Nevada with respect to
9 discovery we would ask that Your Honor order the production of
10 that unredacted document. Thank you.

11 THE COURT: Thank you.

12 And the opposition, please.

13 MS. LLEWELLYN: Good morning, Your Honor. Sorry. My
14 computer wasn't unmuting there.

15 First, I just want to address counsel's
16 representations about the meet and confer efforts taking what
17 she deemed to be quite a length of time. I just want to make
18 the record clear that the initial meet and confer was on June 9,
19 2020, and lasted an entirety of nine days. The parties met once
20 more after the initial meet and confer, and United, nine days
21 later, made it clear that it would not be submitting an
22 unredacted agreement. So I just wanted to make that clear for
23 the record.

24 Addressing the substantive portion of the motion, as
25 Ms. Gallagher noted, this motion to compel follows their issue

1 of a three request for production No. 11, 12, and 21, which are
2 reproduced in their entirety with United's responses at pages 4
3 through 6 of plaintiff's motion.

4 Each of these requests, which United objected to as
5 overbroad, only seek documents related to Data iSight. And
6 while plaintiffs are now arguing that the requests go beyond
7 Data iSight, this is inaccurate and Your Honor can look to the
8 requests themselves to see that. They don't address MultiPlan
9 at all. They simply seek documents related to Data iSight.

10 Nevertheless, rather than standing on their
11 objections, United willingly produced its four separate
12 agreements with MultiPlan which date back to 2010. These
13 agreements are not formal contracts. They are nationwide
14 agreements and they cover a range of services that MultiPlan
15 provides to United beyond Data iSight.

16 The original 2010 network access agreement does not
17 actually even address the Data iSight tool because it was not
18 yet a service that MultiPlan provided to United. But United
19 still produced the entirety of all four agreements, subject only
20 to redactions of confidential business information and trade
21 secrets, all of that information being wholly irrelevant to
22 plaintiff's claims at issue.

23 The redactions appear in only five exhibits to the
24 agreement, and many of them do not address the Data iSight tool
25 because, as I mentioned, MultiPlan provides a range of services

1 to United. And we detailed in our opposition brief at page 5
2 the contents of each of the exhibits where the redactions are
3 found and what the redactions are related to. And I won't
4 belabor each of these individual points again here, but many of
5 the redacted material simply have no relation to plaintiff's
6 claims at issue.

7 The redactions that do pertain to the Data iSight tool
8 do not obscure how the reimbursement rates for medical services
9 are determined. They simply protect from disclosure the fee for
10 United's use of the tool. Plaintiff's claims, as we stated,
11 aren't any more or less reasonable depending on what United pays
12 to access MultiPlan services, including the Data iSight tool,
13 and plaintiffs have not provided any explanation in their
14 briefing or in their argument here today about how the global
15 compensation agreement between MultiPlan and United is somehow
16 relevant to the claims at issue in this litigation.

17 The redactions relate to the calculation or amount of
18 the fee that United pays MultiPlan, including membership or
19 volume commitments. There's no specific or discrete fee related
20 to the pricing of our network claims here in Nevada. And while
21 counsel mentioned that the Florida court had compelled the
22 production of the entirety of the MultiPlan agreement, in the
23 Florida litigation she did mention that the writ -- she
24 mentioned that there was a writ, but she did not mention that
25 review of the writ was actually granted by the appellate court

1 and is currently in the process of review.

2 Speaking to counsel's representations about there
3 being a protective order in place, I just want to reiterate that
4 as we noted in our opposition brief, the terms of the agreement
5 are strictly guarded within both United and MultiPlan, are
6 restricted to select employees of each of the companies, and the
7 reasons for this are detailed in the declaration of Rebecca
8 Paradise, which we've attached.

9 But simply because the -- there is a protective order
10 entered in this case, that doesn't necessarily mean that the
11 production of the unredacted agreement wouldn't have any impact
12 on United because, as I've stated, the terms of the agreement
13 are strictly guarded within the companies.

14 And furthermore, the disclosure of the agreements,
15 nationwide pricing terms, and performance metrics would
16 prejudice both United and MultiPlan because these are not form
17 agreements. These are negotiated agreements. And while Team
18 Health is not a competitor, they are a market purchase
19 [indiscernible]. And I won't go into the details again, but the
20 declaration of Rebecca Paradise addresses this in great detail.

21 Lastly, I know that I addressed the parties' meet and
22 confer efforts, but just turning to your request for fees that
23 is related to the parties' meet and confer efforts, plaintiffs
24 have not demonstrated any basis whatsoever for their request.
25 Their representation that counsel lacked information about the

1 stated reasons for redaction is inaccurate.

2 When we produced the redacted copies of the MultiPlan
3 agreement, our client informed us of what was being redacted.
4 And as I mentioned earlier, a review of the unredacted portions
5 of the agreement inform what is generally contained in the
6 redacted sections of the agreement, and plaintiff's request for
7 these, we request that this Court deny.

8 THE COURT: Thank you.

9 And the reply, please.

10 MS. GALLAGHER: Thank you, Your Honor. Let me just
11 start by saying that it is unusual to try and prevent a
12 plaintiff from being able to get information by submission of a
13 declaration that we will never be able to test because we don't
14 have the benefit of that particular unredacted document. I
15 don't know of any case that United pointed to for that
16 proposition, and I would say that there probably is none that
17 allows them to completely withhold the information that they --
18 they unilaterally deem as irrelevant.

19 As to the meet and confer effort, I don't want to
20 belabor the point we've set forth in our papers we exchanged and
21 the discussions relating to whether or not we could move to
22 compel. United took the position that they would not give us a
23 response one way or the other for two meet and confer efforts.
24 We actually had a third one scheduled when I received an email
25 that told us, you know, what we inevitably knew, which was going

1 to be United was not going to produce this without an order of
2 the Court.

3 And so when I initiated meet and confer efforts on
4 June 2nd and it took until June 18th to get the finality of
5 knowing, in just knowing whether or not they were going to take
6 the position that they would produce an unredacted copy is a
7 long time for a discrete issue. United was aware, at least
8 during the second, if not the first meet and confer of the
9 Florida action, and knew what their client and the position they
10 were taking there.

11 And when, you know, faced with a similar situation, I
12 imagine the client would be consistent across the different
13 action. But when asked that, I was told that it was not
14 necessarily true, that there could be, you know, a different
15 position taken in Nevada with respect to this agreement. But
16 given the fact that United has taken it up on a writ in Florida
17 tells me of the seriousness by which they try to protect this
18 document. And so to come to this Court and try and characterize
19 the meet and confer as something that was routine simply is not
20 the case in this situation.

21 And like I indicated earlier, what we unfortunately
22 see is successive meet and confers on very discrete and what
23 should be easy to answer questions. We should have been able to
24 get it on the first June 9th meet and confer and they should
25 have explained that they were standing on their -- on their

1 position so that we could move forward with what we need to do.
2 So it's that protraction and it is that cumulative to delay that
3 we see even when it is not necessary and even when United has
4 the position known to them.

5 With respect to the argument about why our national
6 agreement is relevant, they're relevant because we have
7 allegations that say so, Your Honor. We know that Data iSight
8 uses cost data if available or pay data, and that's in Exhibit 2
9 to our motion. The healthcare providers aren't entitled to
10 conduct discovery on this source of data.

11 This is information that United is putting on their
12 provider remittance forms and they are saying they're relying on
13 that and they are saying they are using this type of data. And
14 so we are entitled to test that. Our allegations are that that
15 is not accurate information. Our allegations in paragraphs 79
16 and 80 of the first amended complaint indicate that this is
17 consistent with what the healthcare -- consistent with what
18 United is doing on a global basis, as well.

19 And so they, as an organization, they are treating
20 Team Health Organization as one and engaging in negotiations,
21 telling our representatives that they intended to unilaterally
22 cut reimbursement rates. They are taking action against other
23 Team Health affiliates across the nation based on these
24 agreements. And so they are not only relevant, but they are
25 squarely within the four corners of our first amended complaint,

1 and so arguments that say they're not relevant on a global basis
2 just simply is making fantasy out of what the allegations are.

3 We also believe -- with respect to request for
4 production No. 11, it is a request that asks for information not
5 only from Data iSight, but between United and any third party.
6 So to have a response in opposition that it is not within one of
7 the requests for production simply is not accurate in terms of
8 the breadth of that particular request.

9 I would also say, Your Honor, this may even be a
10 document that falls within a 16.1 initial disclosure requirement
11 based on the allegations. So to try and block discovery saying
12 we didn't ask it right just simply isn't looking at the
13 allegations that are at issue in this complaint.

14 With respect to the request for fees, I believe that
15 Your Honor has the authority to order that under Rule 37 because
16 we didn't have to move to compel. The issues and the reasons
17 proper agreements for withholding are relevancy, which there is
18 no support, and for trade secret protection to which there is
19 already protection in place.

20 The other issue that United counsel raised is the fact
21 that they did not have actual knowledge of what the redactions
22 are when they engaged not only in the production, but in the
23 meet and confer effort. And that is troubling. You know, we
24 all get information from our client, you know, we tend to
25 believe it, we want to believe it, but sometimes when an

1 attorney takes a look at something, it might be a little bit
2 different or there may be a different theory that may be at
3 play.

4 And so it's important for counsel to have actual
5 information when they're engaging with us and when they're --
6 they're making assertions of irrelevancy. It just simply
7 doesn't seem like it meets the obligations under our Rule 26.
8 And on that basis, as well, we would ask for an award of fees in
9 connection with this hearing, Your Honor. Thank you.

10 THE COURT: Thank you. I have a few pointed questions
11 for Ms. Gallagher, and then I'll give Ms. Llewellyn a chance to
12 respond. Would that, obtaining the contract with Data iSight,
13 would you have any way to determine reimbursement rates?

14 MS. GALLAGHER: I think it's part of the entirety of
15 what we are learning and what we are trying to learn is, you
16 know, looking at each piece of it. What is this piece with Data
17 iSight and MultiPlan, what are their -- you know, what are they
18 obligated to do for each other.

19 And without the information unredacted, basically what
20 happens is they're sitting behind a screen using this contract
21 as a shield to do the very things that we're alleging that
22 they're doing, which is, you know, to manipulate rate, to
23 deflate them based on data that maybe isn't reflective of what's
24 actually happening in the marketplace.

25 I will say it's a piece of it because what we're also

1 looking for in our meet and confer efforts are the rest of the
2 documents relating to Data iSight in the MultiPlan agreement, or
3 MultiPlan arrangement, meaning there's policies and procedures,
4 I imagine there's -- there's spreadsheets because they're --
5 they're obviously getting paid, and so there has to be some
6 reporting mechanism or some way to be able to analyze what that
7 relationship and the metrics and are they happy with the work.

8 So I don't want to say it's the only way, but it
9 definitely is a piece to the puzzle and a piece that is
10 reflected in our allegations about what we think is happening in
11 that relationship.

12 THE COURT: Thank you.

13 Ms. Llewellyn, did you wish to respond?

14 MS. LLEWELLYN: Yes, Your Honor. The question asked
15 to counsel was without obtaining the agreements is there any way
16 of determining the reimbursement rates. And I just want to be
17 clear that the redacted information in the agreements, which is
18 minimal, do not shed any light on how reimbursement rates for
19 medical services are determined at all. So I'm not sure -- I
20 don't know that counsel directly answered your question except
21 to say that it was a piece of it, but -- but those redacted
22 portions don't actually speak to how reimbursement rates are
23 determined.

24 THE COURT: Okay. Thank you.

25 And then, Ms. Gallagher, the next question is why

1 would performance metrics and compensation paid be potentially
2 relevant?

3 MS. GALLAGHER: Sorry, Your Honor. I'm just writing a
4 few notes here. So the compensation structure is important
5 because, as we've alleged, that they are retaining the funds for
6 themselves. So, for example, if they reduce rates to 10 percent
7 of what the bill charges and they have an agreement to split
8 those profits and what they're basing that reimbursement rate on
9 is nothing of any reasonableness, then it would be important for
10 us to know that. That is part of the alleged scheme.

11 And so -- and with respect to performance metrics, as
12 well. That will tell us, you know, is -- you know, they're
13 measuring each other in terms of what are they accomplishing. I
14 can imagine they are able to tell how much they saved the United
15 customer in terms of what were they able to negotiate down based
16 on what they're calling a reimbursement rate based on national
17 standards, but one that we've alleged is something different.

18 So if they are either manufacturing or manipulating or
19 somehow otherwise changing or making up their data in an effort
20 to try and convince providers that that is actually a reasonable
21 rate and then reaping the benefits of it, then that certainly
22 goes to the allegations in our complaint, Your Honor.

23 THE COURT: Thank you.

24 And the response, please.

25 MS. LLEWELLYN: Your Honor, the -- I would submit the

1 performance metrics for the services that MultiPlan provides to
2 United have nothing to do with plaintiff's charges on a claim by
3 claim basis, nor does it have anything to do with the claims at
4 issue here. The performance metrics establish guardrails to
5 ensure that services to United are performed in an accurate and
6 timely manner.

7 And I just also want to address that plaintiffs have
8 submitted a separate motion that's not at issue here whereby
9 they're asking the -- they're submitting the unredacted
10 agreement to the Court for review. That's -- that should be
11 heard on a separate date, but just to address that here, if the
12 Court wished to review the unredacted agreement in camera,
13 United has offered to submit the unredacted copy of the
14 agreement for the Court's review.

15 THE COURT: I saw that this morning. Thank you.

16 All right. This is the plaintiff's motion to compel.
17 It deals with No. 11, 12, and 21. And based upon the argument
18 and the briefs, the motion will be granted in all parts, except
19 for the request for fees will be denied because this is a
20 contractual relationship or somehow contractual relationship
21 issue. They should not be determined on interim basis. I do
22 find that the agreement issue relates to this very specifically
23 pled first amended complaint.

24 I considered the burdensomeness, the burden to the
25 defendant, I considered the proportionality argument, and I

1 considered the argument with regard to the sensitivity of the
2 commercial information, but given the fact that you have a very
3 extensive protective order in place, it's appropriate for the
4 motion to be granted in all respects, except for the issue of
5 fees. Ms. Gallagher to prepare the order.

6 Ms. Llewellyn, do you wish to approve the form of that
7 before it's submitted?

8 MS. LLEWELLYN: Yes, please, Your Honor.

9 THE COURT: Okay. I do not -- I do not consider
10 competing orders. So if there's any issue with the law, would
11 you bring that to my attention through the law clerk.

12 MS. LLEWELLYN: We will do so, Your Honor.

13 THE COURT: All right. Thank you all. Until I see
14 you next, stay safe and stay healthy.

15 MS. GALLAGHER: Thank you, Your Honor. Same to you.

16 (Proceedings concluded at 10:04 a.m.)

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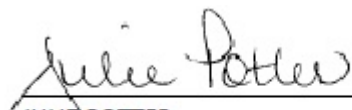
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

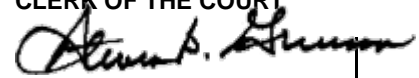
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Kingman, AZ 86402
(702) 635-0301



JULIE POTTER
TRANSCRIBER

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DISTRICT COURT
CLARK COUNTY, NEVADA
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FREMONT EMERGENCY SERVICES)	CASE NO. A-19-792978-B
(MANDAVIA) LTD.,)	
)	
Plaintiff,)	DEPT MO. XXVII
)	
vs.)	
)	
UNITED HEALTHCARE INSURANCE)	
COMPANY, et al,)	
)	
Defendants.)	Amended Transcript of Proceedings

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

**PLAINTIFF'S MOTION TO COMPEL DEFENDANTS' PRODUCTION OF
UNREDACTED MULTIPLAN, INC. AGREEMENT**

WEDNESDAY, JULY 29, 2020

APPEARANCES:

FOR THE PLAINTIFF:	KRISTEN T. GALLAGHER, ESQ.
	PATRICIA K. LUNDVALL, ESQ.

FOR THE DEFENDANTS:	BRITTANY M. LLEWELLYN, ESQ.
	COLBY L. BALKENBUSH, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER
TRANSCRIBED BY: JULIE POTTER, TRANSCRIBER

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1 LAS VEGAS, NEVADA, WEDNESDAY, JULY 29, 2020, 9:35 A.M.

2 (Court was called to order)

3 THE COURT: Calling the case of Fremont Emergency
4 versus United Healthcare. We'll take appearances, starting
5 first with the plaintiff.

6 MS. GALLAGHER: Good morning, Your Honor. Kristin
7 Gallagher on behalf of the plaintiff.

8 MS. LUNDVALL: Hello. With Ms. Gallagher it's Pat
9 Lundvall from McDonald Carano here on behalf of the plaintiffs.

10 THE COURT: Thank you.

11 MS. LLEWELLYN: Good morning, Your Honor. Brittany
12 Llewellyn on behalf of the United defendants.

13 MR. BALKENBUSH: Good morning, Your Honor. Colby
14 Balkenbush, also on behalf of the United defendants.

15 THE COURT: Thank you. Were there any other
16 appearances before I hear the motion? So, Ms. Gallagher, it is
17 your motion to compel.

18 MS. GALLAGHER: Thank you, Your Honor. Good morning.
19 We have brought this motion to compel on a single issue. It is
20 a network services agreement, a series of agreements starting
21 back in 2010 through the present. It concerns an entity that's
22 identified in our first amended complaint, MultiPlan, Inc. They
23 are the parent company of Data iSight, which is the doing
24 business as name, if you will, National Care Network, LLC is
25 that entity's legal name.

1 And so what we did back when the case was pending in
2 federal court is we issued requests for production of documents
3 that necessarily would encompass not only this agreement, but
4 what we anticipate to be additional agreements that may govern
5 the party's relationship. We have extensive allegations in the
6 first amended complaint that speaks to that relationship and
7 many of our claims are based upon that scheme in our Nevada RICO
8 racketeering claim, as well as some of our other claims
9 necessarily get to that relationship.

10 We know that that relationship is multifaceted based
11 on United's counsel's statement in the federal court proceedings
12 regarding a discovery matter, and they did, in fact, produce it
13 in connection with this Court's May 15th order, but that is they
14 produced it in a redacted format. And so although today, for
15 purposes of today, we are here on a very narrow and discrete
16 issue regarding this MultiPlan agreement, it's important for the
17 Court to understand that this is sort of demonstrable of what
18 the meet and confer efforts have been and other efforts have
19 been in this case regarding United's positioning.

20 So what typically happens is that we have a meet and
21 confer, there's no information substantively that's offered, we
22 engaged in another meet and confer. And particularly they're
23 good at protracted discussions. And you can see that play out
24 in the affidavit or my declaration submitted both in the motion
25 and reply in terms of making us come back again and again and

1 again to finally get what United's position is going to be.

2 And this one we -- it was fairly clear from the
3 outside that their position was going to remain that they were
4 not going to produce an unredacted copy without a motion to
5 compel and an order of this Court. However, unfortunately, it
6 took a length of time with respect to this one discrete issue.

7 So that's the frustration part, but with respect to
8 this issue, we had asked in response to No. 11, 12, and 21 of
9 our request for production and necessarily that this agreement
10 wasn't encompassed, that it was produced. And so what we
11 thought in the meet and confer and in the opposition papers is
12 United's position that this is an irrelevant document, or at
13 least the portions that are redacted, and then the other piece
14 of it is that it's trade secret protectable and, therefore, our
15 plaintiff's healthcare entities are not entitled to see it.

16 So we set forth reasons why we think that document is
17 relevant and proportional, which is the multi-test that needs to
18 be met here. And we set forth in our motion the various, and in
19 our reply, the various paragraph and allegations that this
20 speaks to, Your Honor. And so we think that it is relevant in
21 terms of a number of paragraphs relating to the relationship.

22 Although United has tried to narrow the scope again,
23 what we continue to see is an effort to try and limit this to an
24 ERISA case. If you see on page 2 of the opposition there's,
25 again, repeated references to how this is only leading to

1 reference a patient's health plan and we've got the Rule 16
2 conference last week.

3 This is a case that is outside of ERISA. This is a
4 case that is not being governed or is putting the four corners
5 around the discovery that we are permitted as the healthcare
6 providers to obtain and through the case that is being governed
7 by Rule 26 in terms of what the scope of discovery is.

8 And so when we had the meet and confer effort, one of
9 the other things we started hearing and we've since heard in
10 other meet and confer efforts apart from this is that United
11 Intends on withholding what they are deeming irrelevant
12 evidence, and they plan on issuing a privilege -- I guess a
13 relevancy law would be the correct terminology that would
14 reference withholding based on relevance.

15 And we've had the discussions about we simply don't
16 see that that is appropriate in this jurisdiction under
17 discovery that is quite broad and that we're permitted to
18 obtain. You also saw in defendants' opposition that they're
19 trying to essentially jump down the road to looking at what
20 would be admissible for purposes of trial. Obviously, we are at
21 the very early stages in terms of discovery. We're entitled to
22 the information. We think that the bars and barriers that
23 they're putting up are simply not related to the claims that we
24 have at issue in this case.

25 And then with respect to the confidentiality of the

1 trade secret assertions, Your Honor has already entered a
2 protective order. They have identified it as AEO, and at this
3 point it has been protected in accordance with the protective
4 order. We've set forth cases in our reply that basically speak
5 to the fact that just because something is a trade secret
6 doesn't mean that it is out of bounds for discovery.

7 Obviously, there's a whole lot of cases involving
8 intellectual property where people have the opportunity and the
9 need to see information that is trade secret, and that is why
10 the protective order is in place in this case. You know, we do
11 reserve our rights to determine whether or not it needs to have
12 a lower designation, but that's, you know, not before the Court
13 today and not a situation that we have triggered yet in terms of
14 discussion.

15 So what we are asking for is we're compelling United
16 to produce the MultiPlan series of agreements that have been
17 identified by them in completely unredacted form, and we've
18 asked for fees in connection with this because we simply don't
19 see that the proffered reasons, which is relevant to the
20 confidentiality, have any basis, true basis, that would require
21 us to have to come to the Court to ask for an unredacted copy.

22 We also set forth the proportionality analysis in our
23 moving papers, and I note that United did not dispute that.
24 Instead, wanting to sort of engage in a different sort of
25 evaluation, that isn't what the Court is required to look at in

1 terms of whether or not it's discoverable at this point.

2 And so if Your Honor is inclined to grant the motion,
3 I would just like to point out the fact in our Exhibit 5 we
4 pointed out that a Florida state court has similarly ruled and
5 has said that the MultiPlan agreement needs to be unredacted.

6 I note -- and we noted in our papers that United has
7 filed for a writ on that particular point. But nevertheless, we
8 find that here under the State of Nevada with respect to
9 discovery we would ask that Your Honor order the production of
10 that unredacted document. Thank you.

11 THE COURT: Thank you.

12 And the opposition, please.

13 MS. LLEWELLYN: Good morning, Your Honor. Sorry. My
14 computer wasn't unmuting there.

15 First, I just want to address counsel's
16 representations about the meet and confer efforts taking what
17 she deemed to be quite a length of time. I just want to make
18 the record clear that the initial meet and confer was on June 9,
19 2020, and lasted an entirety of nine days. The parties met once
20 more after the initial meet and confer, and United, nine days
21 later, made it clear that it would not be submitting an
22 unredacted agreement. So I just wanted to make that clear for
23 the record.

24 Addressing the substantive portion of the motion, as
25 Ms. Gallagher noted, this motion to compel follows their issue

1 of a three request for production No. 11, 12, and 21, which are
2 reproduced in their entirety with United's responses at pages 4
3 through 6 of plaintiff's motion.

4 Each of these requests, which United objected to as
5 overbroad, only seek documents related to Data iSight. And
6 while plaintiffs are now arguing that the requests go beyond
7 Data iSight, this is inaccurate and Your Honor can look to the
8 requests themselves to see that. They don't address MultiPlan
9 at all. They simply seek documents related to Data iSight.

10 Nevertheless, rather than standing on their
11 objections, United willingly produced its four separate
12 agreements with MultiPlan which date back to 2010. These
13 agreements are not formal contracts. They are nationwide
14 agreements and they cover a range of services that MultiPlan
15 provides to United beyond Data iSight.

16 The original 2010 network access agreement does not
17 actually even address the Data iSight tool because it was not
18 yet a service that MultiPlan provided to United. But United
19 still produced the entirety of all four agreements, subject only
20 to redactions of confidential business information and trade
21 secrets, all of that information being wholly irrelevant to
22 plaintiff's claims at issue.

23 The redactions appear in only five exhibits to the
24 agreement, and many of them do not address the Data iSight tool
25 because, as I mentioned, MultiPlan provides a range of services

1 to United. And we detailed in our opposition brief at page 5
2 the contents of each of the exhibits where the redactions are
3 found and what the redactions are related to. And I won't
4 belabor each of these individual points again here, but many of
5 the redacted material simply have no relation to plaintiff's
6 claims at issue.

7 The redactions that do pertain to the Data iSight tool
8 do not obscure how the reimbursement rates for medical services
9 are determined. They simply protect from disclosure the fee for
10 United's use of the tool. Plaintiff's claims, as we stated,
11 aren't any more or less reasonable depending on what United pays
12 to access MultiPlan services, including the Data iSight tool,
13 and plaintiffs have not provided any explanation in their
14 briefing or in their argument here today about how the global
15 compensation agreement between MultiPlan and United is somehow
16 relevant to the claims at issue in this litigation.

17 The redactions relate to the calculation or amount of
18 the fee that United pays MultiPlan, including membership or
19 volume commitments. There's no specific or discrete fee related
20 to the pricing of our network claims here in Nevada. And while
21 counsel mentioned that the Florida court had compelled the
22 production of the entirety of the MultiPlan agreement, in the
23 Florida litigation she did mention that the writ -- she
24 mentioned that there was a writ, but she did not mention that
25 review of the writ was actually granted by the appellate court

1 and is currently in the process of review.

2 Speaking to counsel's representations about there
3 being a protective order in place, I just want to reiterate that
4 as we noted in our opposition brief, the terms of the agreement
5 are strictly guarded within both United and MultiPlan, are
6 restricted to select employees of each of the companies, and the
7 reasons for this are detailed in the declaration of Rebecca
8 Paradise, which we've attached.

9 But simply because the -- there is a protective order
10 entered in this case, that doesn't necessarily mean that the
11 production of the unredacted agreement wouldn't have any impact
12 on United because, as I've stated, the terms of the agreement
13 are strictly guarded within the companies.

14 And furthermore, the disclosure of the agreements,
15 nationwide pricing terms, and performance metrics would
16 prejudice both United and MultiPlan because these are not form
17 agreements. These are negotiated agreements. And while Team
18 Health is not a competitor, they are a market purchase
19 [indiscernible]. And I won't go into the details again, but the
20 declaration of Rebecca Paradise addresses this in great detail.

21 Lastly, I know that I addressed the parties' meet and
22 confer efforts, but just turning to your request for fees that
23 is related to the parties' meet and confer efforts, plaintiffs
24 have not demonstrated any basis whatsoever for their request.
25 Their representation that counsel lacked information about the

1 stated reasons for redaction is inaccurate.

2 When we produced the redacted copies of the MultiPlan
3 agreement, our client informed us of what was being redacted.
4 And as I mentioned earlier, a review of the unredacted portions
5 of the agreement inform what is generally contained in the
6 redacted sections of the agreement, and plaintiff's request for
7 these, we request that this Court deny.

8 THE COURT: Thank you.

9 And the reply, please.

10 MS. GALLAGHER: Thank you, Your Honor. Let me just
11 start by saying that it is unusual to try and prevent a
12 plaintiff from being able to get information by submission of a
13 declaration that we will never be able to test because we don't
14 have the benefit of that particular unredacted document. I
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17 allows them to completely withhold the information that they --
18 they unilaterally deem as irrelevant.

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4 June 2nd and it took until June 18th to get the finality of
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7 long time for a discrete issue. United was aware, at least
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22 cut reimbursement rates. They are taking action against other
23 Team Health affiliates across the nation based on these
24 agreements. And so they are not only relevant, but they are
25 squarely within the four corners of our first amended complaint,

1 and so arguments that say they're not relevant on a global basis
2 just simply is making fantasy out of what the allegations are.

3 We also believe -- with respect to request for
4 production No. 11, it is a request that asks for information not
5 only from Data iSight, but between United and any third party.
6 So to have a response in opposition that it is not within one of
7 the requests for production simply is not accurate in terms of
8 the breadth of that particular request.

9 I would also say, Your Honor, this may even be a
10 document that falls within a 16.1 initial disclosure requirement
11 based on the allegations. So to try and block discovery saying
12 we didn't ask it right just simply isn't looking at the
13 allegations that are at issue in this complaint.

14 With respect to the request for fees, I believe that
15 Your Honor has the authority to order that under Rule 37 because
16 we didn't have to move to compel. The issues and the reasons
17 proper agreements for withholding are relevancy, which there is
18 no support, and for trade secret protection to which there is
19 already protection in place.

20 The other issue that United counsel raised is the fact
21 that they did not have actual knowledge of what the redactions
22 are when they engaged not only in the production, but in the
23 meet and confer effort. And that is troubling. You know, we
24 all get information from our client, you know, we tend to
25 believe it, we want to believe it, but sometimes when an

1 attorney takes a look at something, it might be a little bit
2 different or there may be a different theory that may be at
3 play.

4 And so it's important for counsel to have actual
5 information when they're engaging with us and when they're --
6 they're making assertions of irrelevancy. It just simply
7 doesn't seem like it meets the obligations under our Rule 26.
8 And on that basis, as well, we would ask for an award of fees in
9 connection with this hearing, Your Honor. Thank you.

10 THE COURT: Thank you. I have a few pointed questions
11 for Ms. Gallagher, and then I'll give Ms. Llewellyn a chance to
12 respond. Would that, obtaining the contract with Data iSight,
13 would you have any way to determine reimbursement rates?

14 MS. GALLAGHER: I think it's part of the entirety of
15 what we are learning and what we are trying to learn is, you
16 know, looking at each piece of it. What is this piece with Data
17 iSight and MultiPlan, what are their -- you know, what are they
18 obligated to do for each other.

19 And without the information unredacted, basically what
20 happens is they're sitting behind a screen using this contract
21 as a shield to do the very things that we're alleging that
22 they're doing, which is, you know, to manipulate rate, to
23 deflate them based on data that maybe isn't reflective of what's
24 actually happening in the marketplace.

25 I will say it's a piece of it because what we're also

1 looking for in our meet and confer efforts are the rest of the
2 documents relating to Data iSight in the MultiPlan agreement, or
3 MultiPlan arrangement, meaning there's policies and procedures,
4 I imagine there's -- there's spreadsheets because they're --
5 they're obviously getting paid, and so there has to be some
6 reporting mechanism or some way to be able to analyze what that
7 relationship and the metrics and are they happy with the work.

8 So I don't want to say it's the only way, but it
9 definitely is a piece to the puzzle and a piece that is
10 reflected in our allegations about what we think is happening in
11 that relationship.

12 THE COURT: Thank you.

13 Ms. Llewellyn, did you wish to respond?

14 MS. LLEWELLYN: Yes, Your Honor. The question asked
15 to counsel was without obtaining the agreements is there any way
16 of determining the reimbursement rates. And I just want to be
17 clear that the redacted information in the agreements, which is
18 minimal, do not shed any light on how reimbursement rates for
19 medical services are determined at all. So I'm not sure -- I
20 don't know that counsel directly answered your question except
21 to say that it was a piece of it, but -- but those redacted
22 portions don't actually speak to how reimbursement rates are
23 determined.

24 THE COURT: Okay. Thank you.

25 And then, Ms. Gallagher, the next question is why

1 would performance metrics and compensation paid be potentially
2 relevant?

3 MS. GALLAGHER: Sorry, Your Honor. I'm just writing a
4 few notes here. So the compensation structure is important
5 because, as we've alleged, that they are retaining the funds for
6 themselves. So, for example, if they reduce rates to 10 percent
7 of what the bill charges and they have an agreement to split
8 those profits and what they're basing that reimbursement rate on
9 is nothing of any reasonableness, then it would be important for
10 us to know that. That is part of the alleged scheme.

11 And so -- and with respect to performance metrics, as
12 well. That will tell us, you know, is -- you know, they're
13 measuring each other in terms of what are they accomplishing. I
14 can imagine they are able to tell how much they saved the United
15 customer in terms of what were they able to negotiate down based
16 on what they're calling a reimbursement rate based on national
17 standards, but one that we've alleged is something different.

18 So if they are either manufacturing or manipulating or
19 somehow otherwise changing or making up their data in an effort
20 to try and convince providers that that is actually a reasonable
21 rate and then reaping the benefits of it, then that certainly
22 goes to the allegations in our complaint, Your Honor.

23 THE COURT: Thank you.

24 And the response, please.

25 MS. LLEWELLYN: Your Honor, the -- I would submit the

1 performance metrics for the services that MultiPlan provides to
2 United have nothing to do with plaintiff's charges on a claim by
3 claim basis, nor does it have anything to do with the claims at
4 issue here. The performance metrics establish guardrails to
5 ensure that services to United are performed in an accurate and
6 timely manner.

7 And I just also want to address that plaintiffs have
8 submitted a separate motion that's not at issue here whereby
9 they're asking the -- they're submitting the unredacted
10 agreement to the Court for review. That's -- that should be
11 heard on a separate date, but just to address that here, if the
12 Court wished to review the unredacted agreement in camera,
13 United has offered to submit the unredacted copy of the
14 agreement for the Court's review.

15 THE COURT: I saw that this morning. Thank you.

16 All right. This is the plaintiff's motion to compel.
17 It deals with No. 11, 12, and 21. And based upon the argument
18 and the briefs, the motion will be granted in all parts, except
19 for the request for fees will be denied because this is a
20 contractual relationship or somehow contractual relationship
21 issue. They should not be determined on interim basis. I do
22 find that the agreement issue relates to this very specifically
23 pled first amended complaint.

24 I considered the burdensomeness, the burden to the
25 defendant, I considered the proportionality argument, and I

1 considered the argument with regard to the sensitivity of the
2 commercial information, but given the fact that you have a very
3 extensive protective order in place, it's appropriate for the
4 motion to be granted in all respects, except for the issue of
5 fees. Ms. Gallagher to prepare the order.

6 Ms. Llewellyn, do you wish to approve the form of that
7 before it's submitted?

8 MS. LLEWELLYN: Yes, please, Your Honor.

9 THE COURT: Okay. I do not -- I do not consider
10 competing orders. So if there's any issue with the law, would
11 you bring that to my attention through the law clerk.

12 MS. LLEWELLYN: We will do so, Your Honor.

13 THE COURT: All right. Thank you all. Until I see
14 you next, stay safe and stay healthy.

15 MS. GALLAGHER: Thank you, Your Honor. Same to you.

16 (Proceedings concluded at 10:04 a.m.)

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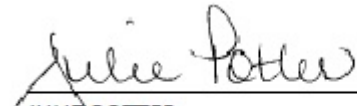
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

Julie Potter
Kingman, AZ 86402
(702) 635-0301



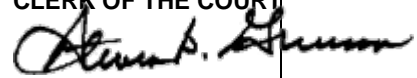
JULIE POTTER
TRANSCRIBER

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1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

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8 FREMONT EMERGENCY
9 SERVICES (MANDAVIA) LTD.,

10 Plaintiff,

11 vs.

12 UNITED HEALTHCARE
INSURANCE COMPANY,

13 Defendant.

CASE#: A-19-792978-B

DEPT. XXVII

14
15 **ERRATA**

16 A clerical error was discovered on page 13, line 9 in said case
17 of the transcript for July 29, 2020, filed August 3, 2020. Said transcript
18 reads, "aren't" when it should say "are".

19 The corrected transcript has been e-filed as amended.

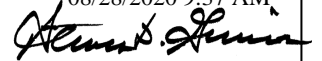
20
21 Dated this 4th day of August, 2020



22 Brynn White
23 Court Recorder/Transcriber

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CLERK OF THE COURT

MCOM

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

ENTERED kl

*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.: XXVII

HEARING REQUESTED

**PLAINTIFFS' MOTION TO COMPEL
 DEFENDANTS' PRODUCTION OF
 CLAIMS FILE FOR AT-ISSUE CLAIMS,
 OR, IN THE ALTERNATIVE,
 MOTION IN LIMINE ON ORDER
 SHORTENING TIME**

Plaintiffs Fremont Emergency Services (Mandavia), Ltd. ("Fremont"); Team Physicians
 of Nevada-Mandavia, P.C. ("Team Physicians"); Crum, Stefanko and Jones, Ltd. dba Ruby Crest

Emergency Medicine (“Ruby Crest” and collectively the “Health Care Providers”) request an order compelling defendants UnitedHealth Group, Inc.; UnitedHealthcare Insurance Company; United HealthCare Services, Inc.; UMR, Inc.; Oxford Health Plans, Inc.; Sierra Health and Life Insurance Co., Inc.; Sierra Health-Care Options, Inc.; and Health Plan of Nevada, Inc. (collectively, “United”) to respond to written discovery that it refuses to answer based on an asserted undue burden to retrieve and produce. Alternatively, if the Court is not inclined to compel United’s discovery participation as requested in this Motion, then the only proper remedy is to preclude United from disputing the Health Care Providers’ claims with respect to the amount charged by the Health Care Providers and the amount paid by United.

A statement in compliance with EDCR 2.34 and 2.26 is set forth in the Declaration of Kristen T. Gallagher attached hereto as **Exhibit 1**. The Health Care Providers respectfully request the Court shorten the time for adjudication of the Motion because United has refused to produce its claims file information on the health care claims at-issue in this litigation and is using its discovery objections as another tactic to avoid meaningful participation in discovery. The Health Care Providers request the instant dispute be heard during the September 9, 2020 at 10:30 a.m. hearing already scheduled by the Court.

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

DATED this 27th day of August, 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
 plundvall@mcdonaldcarano.com
 kgallagher@mcdonaldcarano.com
 aperach@mcdonaldcarano.com

Attorneys for Plaintiffs

ORDER SHORTENING TIME

It appearing to the satisfaction of the Court and good cause appearing therefor,

IT IS HEREBY ORDERED that the hearing on **PLAINTIFFS' MOTION TO COMPEL DEFENDANTS' PRODUCTION OF CLAIMS FILE FOR AT-ISSUE CLAIMS, OR IN THE ALTERNATIVE, MOTION IN LIMINE ON ORDER SHORTENING TIME** shall be shortened and heard before the above-entitled Court in Department XXVII on the 9th day of September, 2020 at 10:30 a.m./~~p.m.~~, or as soon thereafter as counsel may be heard; that Defendants' opposition, if any, shall be electronically filed and served on or before the _____ day of _____, 2020.

Dated this 28th day of August, 2020

Nancy L Alf
DISTRICT COURT JUDGE

378 996 3ED2 CD4B
Nancy Alf
District Court Judge

Submitted by:

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
plundvall@mcdonaldcarano.com
kgallagher@mcdonaldcarano.com
aperach@mcdonaldcarano.com

Attorneys for Plaintiffs

POINTS AND AUTHORITIES

I. OVERVIEW OF THE INSTANT DISPUTE

This Court is familiar with the Health Care Providers' allegations that United has improperly reduced its payment reimbursement rates for emergency medicine services. As part of their claims, the Health Care Providers allege that United has and is engaging in a scheme to manipulate the reimbursement data to then, in turn, point to that artificially manipulated data as justification for the deflated payments. *See, e.g.*, First Am. Compl. ("FAC") ¶¶ 80, 111, 115. In addition to damage arising from and related to the alleged scheme, the underlying damage to the Health Care Providers can be gleaned from simply comparing the amount billed versus the amount United unilaterally determined it wanted to pay. The Health Care Providers have produced this information in a spreadsheet containing sufficient information for United to identify which claims are at-issue.¹

A. Facts Relevant to the Current Dispute

United is blocking the Health Care Providers from obtaining relevant and proportional discovery in connection with their First Set of Interrogatories ("Interrogatories") and First Set of Requests for Production of Documents ("RFPs"). United asserts that certain information and documents are too difficult to access, review and/or produce – information that is expected to routinely be in an insurance claim file. United's objections also form part of United's continuing effort treat this case as though it is an ERISA case despite the Court's June 24, 2020 Order rejecting that argument. In response to 19 RFPs, United repeats the following objection with little variation other than to acknowledge the request at issue (in bold):

Fremont has asserted 15,210 CLAIMS where it alleges that Defendants did not reimburse Fremont for the full amount billed. **To produce the documents and communications related to any decision to reduce payment on a CLAIM**, Defendants would, among other things, have to pull the administrative record for each of the 15,210 individual CLAIMS, review the records for privileged/protected information and then produce them. As

¹ Spreadsheets labeled FESM000011 (claims from July 1, 2017-April 30, 2019) and FESM00344 (claims from July 1, 2017-January 31, 2020) detail the at-issue claims and provide fields that include the Health Care Provider name, TIN and location; patient name; date of birth; policy number; provider name; date of service; account number; billed CPT code; total charged; amount United allowed; information about patient deductibles, co-pays and co-insurance; total payments received from United and a payer reference number.

explained more fully in the burden declaration attached as Exhibit 1, this would be unduly burdensome as Defendants believe it will take 2 hours to pull each individual claim file for a total of 30,420 hours of employee labor.

Fremont has asserted 15,210 claims where it alleges that Defendants did not reimburse Fremont for the full amount billed. **To produce the documents and communications that relate to the methodology used to calculate the amount of reimbursement paid on Fremont's claims**, Defendants would, among other things, have to pull the administrative record for each of the 15,210 individual claims, review the records for privileged/protected information and then produce them. As explained more fully in the burden declaration attached as Exhibit 1 to, this would be unduly burdensome as Defendants believe it will take 2 hours to pull each individual claim file for a total of 30,420 hours of employee labor.

Exhibit 2, Resp. to RFP Nos. 3-7, 11-13, 15-20, 24, 37, 39-40, 42; *see also* **Exhibit 3**, United's Supplemental Resp. to RFP No. 37.² And with respect to 5 Interrogatories, United repeats the same objection with the same variation to account for the question:

Assuming those are the claims Fremont intended to refer to, Defendants object to this Interrogatory on the basis that it is unduly burdensome and seeks information that is not proportional to the needs of the case. Fremont has asserted 15,210 CLAIMS where it alleges that Defendants did not reimburse Fremont for the full amount billed. To determine how the amount of reimbursement for each CLAIM was determined, Defendants would, among other things, have to pull the administrative record for each of the 15,210 individual CLAIMS and analyze it. As explained more fully in the burden declaration attached as Exhibit 1, this would be unduly burdensome and not proportional to the needs of the case as Defendants believe it will take 2 hours to pull each individual administrative record for a total of 30,420 hours of employee labor.

Exhibit 4, Answers to Interrog. Nos. 1, 5, 7, 8, 12.

Each of these objections is based on United's assertion that it is unduly burdensome to retrieve and produce what United refers to as the "administrative record."³ United representative

² United uses the Way declaration as refuge to avoid answering discovery requests that have nothing to do with specific at-issue claims. For example, United hides behind the Way declaration in connection with RFPs that ask for how United determines its methodology (e.g. RFP No. 15), what third party shared-savings contracts may exist (RFP No. 16), information about what rates United has paid to other providers in Nevada (RFP No. 19); and the identification of United representative who has information about United's methodology (Interrogatory No. 8).

³ Because the term "administrative record" has legal significance that is not applicable to this case (*see* June 24, 2020 Order Denying United's motion to dismiss) and United's description of

Sandra Way (“Way”) provided a declaration setting forth the illogical contention that it would take four full-time United representatives working for three years to pull records for the at-issue claims in this litigation. Ex. 2 at Ex. 1 at ¶ 13; Ex. 4 at Ex. 1 at ¶ 13.⁴ Notably, Way’s declaration does not indicate she has tried to review or retrieve any information in connection with this litigation. In fact, she admittedly does not know whether certain documents exist. *Id.* at ¶ 5; (“to the extent that any such documents exist[.]”). United’s counsel does not dispute this fact. Ex. 1, at ¶ 23.

B. The Meet and Confer Efforts

In meet and confer efforts, United repeatedly referred to the Way declaration, representing that it was not possible for United to retrieve, review or produce the sought-after information in less than a three-year period of time with four employees working full-time. *See, e.g.,* Ex. 1 at ¶¶ 10, 11, 14, 16, 17, 21. When asked if any other team, division or unit had the ability to retrieve the information, United’s counsel inquired and then took the position that no other unit could retrieve the information in any less time. *Id.* at ¶¶ 13, 16. When asked if Way pulled any claim at issue in this case, United’s counsel did not believe so. *Id.* at ¶ 23. When asked if United had considered the Health Care Providers’ February 10, 2020 proposal⁵ that would

what is in the “administrative record” is amorphous, the Health Care Providers decline to adopt United’s vernacular.

⁴ The declaration is procedurally faulty in that it does not conform to NRS 53.045 which requires an out of state declarant to “declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.”

⁵ The proposal stated:

In advance of Wednesday’s hearing, below is a discovery proposal that would result in an expedited ability for the parties to agree on the health care claims data and would eliminate or greatly reduce the need for United to collect and produce provider remittance forms/provider EOBs except for where the parties identify a discrepancy in the billed amount or allowed amounts or as specified below. Similarly, it would eliminate or greatly reduce the need for Fremont to collect and produce HCFA forms and related billing documents. Please review and let me know in advance of Wednesday’s hearing whether United will agree to the following:

1. The Health Care Providers have already produced a spreadsheet that includes member name and Defendants’ claim no. (to the extent available in Health Care Providers’ automated system), in addition to other fields:

1 alleviate the need for the parties to exchange certain information like provider remittance advice
2 forms (PRAs), explanations of benefit forms (“EOBs”) and Health Insurance Claim Forms 1500
3 (“HCFA Forms”), United never accepted or rejected the proposal, only repeating that it could
4 not answer until it knew how many Data iSight adjudicated claims are involved in this litigation.
5 *Id.* at ¶ 24. When asked about the status of United’s ability to identify which claims it adjudicated
6 using Data iSight, the response varied from “it just takes time” to something like “we are working
7 on it.” *Id.* at ¶ 25. The Health Care Providers even offered to undertake the work to compare
8 which claims are at issue in the case if United could run a report of claims adjudicated by Data
9 iSight for a specific time period. *Id.* at ¶ 26. Surely United is able to identify which claims Data
10 iSight has adjudicated. However, the Health Care Providers have yet to receive a substantive
11 response to this latest offer which was made over three weeks ago on August 3, 2020. *Id.* at ¶
12 26. This discovery compromise has been an open issue for six months. *Id.*

13 In meet and confer efforts, the Health Care Providers responded to United’s objections
14 of undue burden that the requests at-issue in the instant Motion do not require United to look at
15 specific claims, but rather the requests seek more high-level information, such as policies,
16 procedures, directives or strategy-related documents and information. *Id.* at ¶ 27. Nevertheless,
17 United often referred the Health Care Providers back to the “administrative record” as being the
18

-
- 19 o Within 14 days, United provides matched spreadsheets and identifies
20 any discrepancy in billed or allowed amounts fields;
21 o Within 7 days thereafter, for claims upon which the billed and allowed
22 data match, parties stipulate that there is no need for further production
23 of EOBs and provider remittances for evidentiary purposes related to
24 establishing the existence of the claim, services provided, amount billed
25 by Health Care Providers and amount allowed by United.
26 o Approximately every quarter, this process will take place again with any
27 new claims included in the Litigation Claims Spreadsheet that accrued
28 after the previous spreadsheet was submitted.
2. United produces all EOBs/provider remittances for all Data iSight processed
NV claims submitted by the Health Care Providers; and
3. United and the Health Care Providers respectively agree to provide a market
file, i.e. a spreadsheet of payments from other payers (Health Care Providers)
or a spreadsheet of payments to other providers (United) in the market which
de-identifies the specific payer or provider, as applicable (for the time period
2016-Present). The parties agree to meet and confer promptly to agree on
specified fields.

only location that emails about a claim could be found. *Id.* at ¶ 28. On requests that might not be burdensome if there are no responsive documents, United responded that it had not looked at all because it was standing on the Way declaration and therefore took the position it need not do anything else until compelled otherwise. *Id.* at ¶ 29. This position is demonstrative of the delay strategy and tactics employed by United and the Health Care Providers intend to seek relief in connection with these unresolved discovery disputes.

United's objections are circular in that it is just too hard to retrieve and collect any information regarding the claims, then United declares that it interprets the request as only seeking information within the "administrative record." United's objections lead in one direction: it deems this an ERISA case and is unwilling to meet NRCP 16.1 and 26(b)(1) discovery obligations.

II. MOTION TO COMPEL

A. Relief Sought

The Health Care Providers seek an order compelling United to retrieve, review and produce the claims file for each of the at-issue claims in this litigation which have been identified in FESM00344.⁶ United has asserted the Way undue burden declaration in connection with the following Answers to Interrogatories and Requests for Production of Documents that seek, *inter alia*, claim information:

- Responses to RFP Nos. 3-7, 11-13, 15-20, 24, 37, 39-40, 42

⁶ Additionally, United has refused to acknowledge that a plain reading of many of the identified discovery requests seek more than just information that United claims is in the "administrative record." For example, Interrogatory No. 8 asks United to identify individuals that have information about the methodology United uses to calculate the at-issue claims, who has communicated with Fremont about the at-issue claims and who has information about whether United relies on provider charges by other providers to determine reimbursement rates. Among other reasons for completely failing to provide any witness information, United claims it would be unduly burdensome for it to review the at-issue claims. *See* Annex 1, United's Answer to Interrogatory No. 8. In answering Interrogatory No. 12, United raises the same undue burden assertions, yet that interrogatory asks United to identify companies that it has entered into an agreement, contract, subscription or other arrangement by which United receives information about usual and customary fees for emergency medicine service provided by out-of-network providers in Clark County, Nevada. *Id.* at Answer to Interrogatory No. 12. In response to RFP No. 11, which asked for documents and communications between United and any third-party, including but not limited to Data iSight, relating to a claim, United largely hides behind the undue burden declaration. The Health Care Providers will move separately to compel United's full and complete answers.

- Answers to Interrogatories Nos. 1, 5, 7, 8, 12

See Annex 1 (setting forth the full text and United's objections and responses). The Health Care Providers seek an order directing United to complete the foregoing document production and supplemental responses and answers within 14 calendar days of the Court's resolution of this Motion.

B. United's Refusal to Retrieve and Produce Documents is Another Delay Tactic

United, the party from whom discovery is sought, must show that the information is not reasonably accessible because of undue burden or cost. NRCP 26(b)(2)(B). "[T]he fact that discovery may involve some inconvenience or expenses is not sufficient, standing alone, to avoid the discovery process." *Martinez v. James River Ins. Co.*, No. 2:19-cv-01646-RFB-NJK, 2020 WL 1975371, at *1 (D. Nev. Apr. 24, 2020). The Way declaration does not assert that claim information is not reasonably accessible because of undue burden, nor does she assert any particular cost associated with retrieving and producing the information. Rather, Way identifies the systems that house the information and asserts it will take a very long time to retrieve the information. See e.g. Ex. 2 at Ex. 1 ¶¶ 7-9. Way makes no mention of any cost. As a result, the Way declaration does not meet the considerations under NRCP 26(b)(2)(B) and the declaration must be rejected as insufficient to avoid the Health Care Providers' discovery of claims file information.

Even if United could make that showing, the Court "may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C)."⁷ NRCP 26(b)(2)(B). The Health Care Providers' discovery aimed at obtaining the

⁷ NRCP 26(b)(2)(C) states:

(C) When Required. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules or by local rule if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

at-issue claims files are not controversial. Such requests for insurance claims files are considered relevant and discoverable. *Martinez*, 2020 WL 1975371 at *4 (“This request for production seeks documents and communications related to Plaintiff’s insurance claim, such as the claims file....The case law in this District has long made clear that an insurance claims file is generally relevant and discoverable”). There is no basis for the Court to limit the claim-file discovery under NRCP 26(b)(2)(C) because (1) the discovery sought is not unreasonably cumulative or duplicative, and cannot be obtained from a source other than United, much less from another source that is more convenient, less burdensome, or less expensive; (2) the Health Care Providers have not had ample opportunity to obtain the information by discovery in the action; or (3) the proposed discovery is not outside the scope permitted by Rule 26(b)(1).

United publicly touts its data management and analytics capabilities:

Through our diversified family of businesses, *we leverage core competencies in data and health information, advanced technology*, and clinical expertise, focused on improving health outcomes, lowering health care costs and creating a better experience for patients, their caregivers and physicians. These core competencies are deployed within our two distinct, but strategically aligned, business platforms: health benefits operating under UnitedHealthcare and health services operating under Optum.

See United’s 10-Q, Executive Overview, General, filed with the SEC on August 3, 2020 (emphasis added).⁸ United further asserts that its “market position is built on...service and advanced technology, including digital consumer engagement.” United’s 10-K, filed with the SEC on February 14, 2020 at p.1 (Introduction, Overview).⁹ The Way declaration that claims it

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the proposed discovery is outside the scope permitted by Rule 26(b)(1).

⁸ Available at:

<https://www.sec.gov/ix?doc=/Archives/edgar/data/731766/000073176620000042/unh-20200630.htm>.

⁹ Available at:

<https://www.sec.gov/ix?doc=/Archives/edgar/data/731766/000073176620000006/unh2019123110-k.htm>.

is just too difficult for United to retrieve the at-issue claims is contradicted by United's SEC filings that highlight technology and data analytics as a critical competencies:

If we fail to maintain properly the integrity or availability of our data or successfully consolidate, integrate, upgrade or expand our existing information systems, or if our technology products do not operate as intended, our business could be materially and adversely affected.

Our business is highly dependent on the integrity and timeliness of the data we use to serve our members, customers and health care professionals and to operate our business. The volume of health care data generated, and the uses of data, including electronic health records, are rapidly expanding. Our ability to implement new and innovative services, price adequately our products and services, provide effective service to our customers in an efficient and uninterrupted fashion, and report accurately our results of operations depends on the integrity of the data in our information systems. In addition, connectivity among technologies is becoming increasingly important and recent trends toward greater consumer engagement in health care require new and enhanced technologies, including more sophisticated applications for mobile devices. Our information systems require an ongoing commitment of significant resources to maintain, protect and enhance existing systems and develop new systems to keep pace with continuing changes in information processing technology, evolving systems and regulatory standards and changing customer preferences. If the data we rely upon to run our businesses is found to be inaccurate or unreliable or if we fail to maintain or protect our information systems and data integrity effectively, we could experience failures in our health, wellness and information technology products; lose existing customers; have difficulty attracting new customers; experience problems in determining medical cost estimates and establishing appropriate pricing; have difficulty preventing, detecting and controlling fraud; have disputes with customers, physicians and other health care professionals; become subject to regulatory sanctions or penalties; incur increases in operating expenses or suffer other adverse consequences.

See United's 10-K, filed with the SEC on February 14, 2020, at p.15-16 (bold in original, underlining added).¹⁰ Given United's acclaimed core competencies and business model, it is simply not plausible that it will take four United employees three years to access and produce typical claims file information like how much was billed and paid (including HCFA forms, PRAs and payment information); and documentation by United's claims adjusters regarding what they considered, communicated and evaluated in processing the claims.

¹⁰ Available at:

<https://www.sec.gov/ix?doc=/Archives/edgar/data/731766/000073176620000006/unh2019123110-k.htm>.

As a result, the Health Care Providers ask this Court to find the Way declaration insufficient under NRCP 26(b)(2)(B) to avoid the requested discovery and certainly not an avenue by which United can avoid retrieving and producing its claims file on the at-issue claims. Further, the Health Care Providers seek an order compelling United's production of all claim-related information for each of the at-issue claims identified by the Health Care Providers on FESM00344, and an order directing United to promptly supplement as the Health Care Providers may supplement the list of at-issue claims from time to time during this action. For each of the at-issue claims, the Health Care Providers seek United's production of all claims file information to include PRAs; HCFA forms; information that adjusters considered (including but not limited to any logs or information entered into or captured by claims management software, systems or databases); emails received or exchanged; any information about adjudication by, or involving, Data iSight or any other third party re-pricing or reimbursement service (RFP Nos.11, 12); and any other document or information concerning each of the at-issue claims. The Health Care Providers ask that the Court require United's production within 14 calendar days of entry of an order granting the relief.

C. The Health Care Providers Reserve the Right to Seek Fees and Costs Incurred in Bringing the Motion

Pursuant to the Court's August 10, 2020 Order, the Health Care Providers reserve the right to seek recovery of attorneys' fees and costs at the appropriate time.

III. ALTERNATIVE MOTION IN LIMINE

Alternatively, if the Court does not grant the relief requested and United is relieved from producing responsive documents and information concerning the claims file for the at-issue claims, the only appropriate remedy is for United to then be precluded from using the ruling as a shield to the Health Care Providers' claims.

A. Legal Standard

Motions in limine are the proper vehicle to exclude inadmissible or inappropriate evidence in advance of trial. EDCR 2.47. Pursuant to NRS 47.060(1), "[p]reliminary questions concerning the qualification of a person to be a witness, the existence of a privilege or the

admissibility of evidence shall be determined by the judge.” A ruling on a motion in limine lies soundly within the district court's discretion. *State ex. rel. Dept. of Highways v. Nevada Aggregates and Asphalt Co.*, 92 Nev. 370, 551 P.2d 1095, 1098 (1976).

B. United’s Asserted Inability to Retrieve Claims File Information Should Preclude it From Contradicting or Disputing the Health Care Providers’ Claims

If it is too hard for one of the largest health insurance companies in the United States to produce claims files for the at-issue claims, the Health Care Providers ask the Court for an order in limine that prohibits United from taking refuge in its inability and failure to produce documents or making assertions against the Health Care Providers that cannot be refuted due to United’s tactics to block legitimate discovery. Specifically, the Health Care Providers seek an order that United cannot contradict or dispute any of the Health Care Providers’ allegations or claims in this action where United has pointed to Way’s declaration and refused to retrieve or produce documents or respond to interrogatories.¹¹ For example, United should be precluded from disputing any of the information contained in the claims spreadsheet (FESM00344) and any supplements thereto. Further, United should be precluded from pursuing any affirmative defense, or from introducing designated matters into evidence, to which it claimed was unduly burdensome to retrieve and produce. Finally, the Health Care Providers seek an evidentiary presumption that, had the claims information been produced, it would be adverse. NRS 47.250.

IV. CONCLUSION

Based on the foregoing, the Health Care Providers respectfully request that the Motion to Compel be granted and that United shall be compelled to retrieve, review and produce the claims file for each of the at-issue claims in this litigation which have been identified in FESM000011 and FESM00344. Further, the Health Care Providers seek an order directing United to complete the foregoing document production and supplemental responses and answers within 14 calendar days of the Court’s resolution of this Motion. Alternatively, the Health Care

¹¹ Responses to RFP Nos. 3-7, 11-13, 15-20, 24, 37, 39-40, 42; Answers to Interrogatories Nos. 1, 5, 7, 8, 12.

1 Providers seek an order in limine precluding United from disputing or contradicting any
2 information that it has refused to produce based on the Way declaration.

3 DATED this 27th day of August, 2020.

4 McDONALD CARANO LLP

5 By: /s/ Kristen T. Gallagher

6 Pat Lundvall (NSBN 3761)
7 Kristen T. Gallagher (NSBN 9561)
8 Amanda M. Perach (NSBN 12399)
9 2300 West Sahara Avenue, Suite 1200
10 Las Vegas, Nevada 89102
11 plundvall@mcdonaldcarano.com
12 kgallagher@mcdonaldcarano.com
13 aperach@mcdonaldcarano.com

14 *Attorneys for Plaintiffs*

869 440
McDONALD CARANO

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

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ANNEX 1UNITED'S RESPONSES TO INTERROGATORIESInterrogatory No. 1:

Once You determine Fremont's CLAIMS are covered and payable under Your Plan, explain why You do not reimburse Fremont for the CLAIMS at the full billed amount.

Response to Interrogatory No. 1:

Subject to and without waiving Defendants' objections, including Defendants' specific objections to Plaintiffs Definitions, Instructions and Rules of Construction, Defendants state as follows:

Defendants object that the term "CLAIM" is vague, as noted in Defendants' specific objections to Plaintiffs' Definitions, as the definition does not identify what specific list of claims it is referring to. However, Defendants interpret this Interrogatory as referring to the claims listed in FESM000011. Assuming those are the claims Fremont intended to refer to, Defendants object to this Interrogatory on the basis that it is unduly burdensome and seeks information that is not proportional to the needs of the case. Fremont has asserted 15,210 CLAIMS where it alleges that Defendants did not reimburse Fremont for the full amount billed. To determine how the amount of reimbursement for each CLAIM was determined, Defendants would, among other things, have to pull the administrative record for each of the 15,210 individual CLAIMS and analyze it. As explained more fully in the burden declaration attached as Exhibit 1, this would be unduly burdensome and not proportional to the needs of the case as Defendants believe it will take 2 hours to pull each individual administrative record for a total of 30,420 hours of employee labor.

Defendants further object to this Interrogatory as it essentially seeks to force Defendants to explain their entire defense to Fremont's CLAIMS in narrative form. Courts have held this is an inappropriate use of written discovery and constitutes an inappropriate "blockbuster" interrogatory. *Bashkin v. San Diego Cty.*, No. 08-CV-1450-WQH WVG, 2011 WL 109229, at *2 (S.D. Cal. Jan. 13, 2011) ("to the extent Plaintiff seeks every minute detail and narratives about the subject incident and every possible surrounding circumstance, written discovery is not the proper vehicle to obtain such detail."); *Grynberg v. Total S.A.*, No. 03-CV-01280-WYD- BNB, 2006 WL 1186836, at *6 (D. Colo. May 3, 2006) (providing that the use of blockbuster interrogatories that call for every conceivable detail and fact which may relate to a case does not "comport with the just, speedy, and inexpensive determination of the action").

Defendants further respond that there are many reasons billed charges by out of network providers are not paid in full. These reasons include, but are not limited to the following reasons: (1) not all of the billed charges are eligible charges under or are covered by the treated member's health benefits plan, (2) improper billing by the provider (e.g., improper unbundling of charges), (3) lack of prior authorization and/or inpatient notification, as may be required depending on the terms of the plan and/or type of service rendered, (4) the out-of-network reimbursement methodology set forth in the member's applicable health benefits plan (which often differs from plan to plan) establishes a different amount of reimbursement, and/or (5) lack of entitlement under applicable health benefits plans. As explained above, Defendants would have to research each and every one of Fremont's 15,210 claims to determine how the reimbursement amount for each CLAIM was determined.

Interrogatory No. 5:

If You contend that any agreement(s) by and between You and Fremont entitles or entitled You to pay less than Fremont's full billed charges for any of the CLAIMS, or is otherwise relevant to the amounts paid for any of the CLAIMS, identify that agreement, specifying the portion(s) thereof that You contend entitles or entitled You to pay less than Fremont's full billed charges.

Response to Interrogatory No. 5:

Subject to and without waiving Defendants' objections, including Defendants' specific objections to Plaintiff s Definitions, Instructions and Rules of Construction, Defendants state as follows:

Defendants object that the term "CLAIM" is vague, as noted in Defendants' specific objections to Plaintiffs' Definitions, as the definition does not identify what specific list of claims it is referring to. However, Defendants interpret this Interrogatory as referring to the claims listed in FESM000011. Assuming those are the claims Fremont intended to refer to, Defendants object to this Interrogatory on the basis that it is unduly burdensome and seeks information that is not proportional to the needs of the case. Fremont has asserted 15,210 CLAIMS where it alleges that Defendants did not reimburse Fremont for the full amount billed. To determine how the reimbursement for each CLAIM was determined, including the applicable health benefits plan documents specifying which medical services are covered, the amount of benefits the plan will pay for covered services, or another applicable contract/agreement that may be in place, Defendants would, among other things, have to pull the administrative record for each of the 15,210 individual CLAIMS and analyze it. As explained more fully in the burden declaration attached as Exhibit 1, this would be unduly burdensome and not proportional to the needs of the case as Defendants believe it will take 2 hours to pull each individual claim file for a total of 30,420 hours of employee labor.

Defendants further respond as follows: with respect to the time period after which Fremont became a non-participating out-of-network provider, Defendants are not currently aware of any direct written participation agreement between Defendants and Fremont that would govern the amount of reimbursement (if any) for the CLAIMS. However, there may be other contracts/agreements that governed the amount of reimbursement Fremont received on its CLAIMS, including, but not limited to, the plan documents for the patients that Fremont treated. Defendants are continuing to attempt to determine whether any other contracts/agreements exist and will supplement this response if any are found.

Interrogatory No. 7:

If You rely in whole or in part on the rates from any agreement(s) with any other provider in determining the amount of reimbursement for the CLAIMS, describe in detail such agreement(s), including the rates of reimbursement and other payment scales under those agreements, and any provisions regarding the directing or steorage of Plan Members to those providers.

Response to Interrogatory No. 7:

Subject to and without waiving Defendants' objections, including Defendants' specific objections to Plaintiffs Definitions, Instructions and Rules of Construction, Defendants state as follows:

Defendants object that the term "CLAIM" is vague, as noted in Defendants' specific objections to Plaintiffs' Definitions, as the definition does not identify what specific list of claims it is referring to. However, Defendants interpret this Interrogatory as referring to the claims listed in FESM000011. Assuming those are the claims Fremont intended to refer to, Defendants object to this Interrogatory on the basis that it is unduly burdensome and seeks information that is not proportional to the needs of the case. Fremont has asserted 15,210 CLAIMS where it alleges that Defendants did not reimburse Fremont for the full amount billed. To determine whether agreements with any other provider and/or amounts paid to any other provider would have impacted the determination of the amount of reimbursement for each of the CLAIMS, Defendants would, among other things, have to pull the administrative record for each of the 15,210 individual CLAIMS and analyze it. As explained more fully in the burden declaration attached as **Exhibit 1**, this would be unduly burdensome and not proportional to the needs of the case as Defendants believe it will take 2 hours to pull each individual claim file for a total of 30,420 hours of employee labor.

Defendants further object to the extent this interrogatory calls for them to reveal information about their agreements with other providers. Defendants' agreements with other providers typically contain confidentiality clauses such that revealing this information could force Defendants to breach their obligations to these third parties. Moreover, the information sought is proprietary and subject to protection as a trade secret pursuant to NRS 600A.030(5) as this information has independent value due to, among other things, the fact that it is not known to other providers like Fremont.

Defendants further respond that, in general, the amounts paid to Fremont would have been based on the terms of the applicable health benefits plan documents specifying which medical services are covered, and the amount of benefits the plan will pay for covered services.

Interrogatory No. 8:

Identify all persons with knowledge of the following subject areas, identifying for each person their name, address, phone number, employer, title, and the subject matter(s) of their knowledge:

(a) The development of the methodology, the materials considered in developing the methodology, and the methodology itself You used to calculate the allowed amount and the amount of Your alleged payment obligations for the CLAIMS in the Clark County Market;

(b) Communications with Fremont regarding the CLAIMS;

(c) To the extent that You contend or rely on provider charges by other providers to determine Your alleged payment obligation for the CLAIMS, the identity of those other providers, the amount of their charges, and any agreement(s) with those providers regarding those charges.

Response to Interrogatory No. 8:

Subject to and without waiving Defendants' objections, including Defendants' specific objections to Plaintiffs Definitions, Instructions and Rules of Construction, Defendants state as follows:

Defendants object that this Interrogatory is overbroad and unduly burdensome to the extent it seeks the identification of "all persons" with knowledge of the particular subject areas. *Mancini v. Ins. Corp. of New York*, No. CIV. 07CV1750-L NLS, 2009 WL 1765295, at *3 (S.D. Cal. June 18, 2009) ("Contention interrogatories are often overly broad and unduly burdensome when they require a party to state "every fact" or "all facts" supporting identified allegations or defenses."); *Bashkin v. San Diego Cty.*, No. 08-CV-1450-WQH WVG, 2011 WL 109229, at *2 (S.D. Cal. Jan. 13, 2011) ("In the written discovery process, parties are not entitled to each and every detail that could possibly exist in the universe of facts . . . Further, to the extent Plaintiff seeks every minute detail and narratives about the subject incident and every possible surrounding circumstance, written discovery is not the proper vehicle to obtain such detail."). Defendants will not be listing every single person who has any knowledge of the listed topics.

Defendants also object that all three categories listed (a, b and c) are overbroad, vague and by extension unduly burdensome. As to category a, Defendants object that information on the development of the methodology is not relevant to Fremont's claims and not proportional to the needs of the case. Moreover, to identify the persons who would have knowledge of the methodologies used to determine the amount of reimbursement for each of Fremont's 15,210 claims, Defendants would have to pull the administrative record for each of the 15,210 claims, which, as set forth more fully in Defendants' objection to Interrogatory No. 1, would be unduly burdensome and not proportional to the needs of the case.

As to category b, Defendants object that this category is vague, overbroad and unduly burdensome. The number of individuals who may have knowledge of any communications between Defendants and Fremont regarding the 15,210 claims at issue is huge. Defendants request that Fremont narrow this Interrogatory to specific type(s) of communications that will allow Defendants to identify a reasonable number of individuals with information on those specific communications.

As to category c, Defendants object that this category calls for them to reveal information about their agreements with other providers. Defendants' agreements with other providers typically contain confidentiality clauses such that revealing this information could force Defendants to breach their obligations to these third parties. Moreover, the information sought is proprietary and subject to protection as a trade secret pursuant to NRS 600A.030(5) as this information has independent value due to, among other things, the fact that it is not known to other providers like Fremont.

Defendants further object to the extent this interrogatory is intended to force Defendants

to name Rule 30(b)(6) witnesses for these categories prior to a Rule 30(b)(6) deposition notice being issued.

Interrogatory No. 12:

Identify all companies that You have entered into an agreement, contract, subscription or other arrangement by which You receive information regarding usual and customary fees or rates for Emergency Medicine Services provided by Non-Participating Providers or Non-Network Providers in Clark County, Nevada.

Response to Interrogatory No. 12:

Subject to and without waiving Defendants' objections, including Defendants' specific objections to Plaintiffs Definitions, Instructions and Rules of Construction, Defendants state as follows:

Defendants object that this Interrogatory is overbroad, seeks irrelevant information, and is unduly burdensome and not proportional to the needs of the case. The Interrogatory asks that all companies be identified regardless of whether the information provided by those companies to the Defendants was actually used to determine the amount of reimbursement for each of Fremont's 15,210 claims. Further, to determine the responsive list of companies, Defendants would have to first retrieve and analyze the administrative record for each of the 15,210 claims, which, as explained more fully in Defendants' objection to Interrogatory No. 1, would be unduly burdensome and not proportional to the needs of the case. Defendants further object that this Interrogatory seeks irrelevant information that is not proportional to the needs of the case to the extent that it seeks information related to usual and customary fees or rates outside of the time period of Fremont's claims (i.e. July 1, 2017 to present).

RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS

Request No. 3:

Produce any and all Documents and/or Communications between You and Fremont regarding any of the CLAIMS.

Response to Request No. 3:

Subject to and without waiving Defendants' objections, including Defendants' specific objections to Plaintiffs Definitions, Instructions and Rules of Construction, Defendants state as follows:

Defendants object that the term "CLAIM" is vague, as noted in Defendants' objections to Plaintiffs Definitions, as the definition does not identify what specific list of claims it is referring to. However, Defendants interpret this Request as referring to the claims listed in FESM000011. Assuming those are the claims Fremont intended to refer to, Defendants object to this Request on the basis that it is unduly burdensome and seeks information that is not proportional to the needs of the case. Fremont has asserted 15,210 CLAIMS where it alleges that Defendants did not reimburse Fremont for the full amount billed. To produce the documents and communications related to those CLAIMS, Defendants would, among other things, have to pull the administrative record for each of the 15,210 individual CLAIMS, review the records for privileged/protected information and then produce them. As explained more fully in the burden declaration attached as Exhibit 1, this would be unduly burdensome as Defendants believe it will take 2 hours to pull each individual claim file for a total of 30,420 hours of employee labor.

Defendants further object that all documents and communications exchanged between Defendants and Fremont would necessarily be possessed by Fremont. There is no justification for imposing the burden on Defendants to identify, collect, review, and produce such documents when Fremont already possesses the same.

Request No. 4:

Produce all Documents and/or Communications regarding Your adjudication and/or payment of each CLAIMS that Fremont submitted to You for payment between July 1, 2017, and the present.

Response to Request No. 4:

Subject to and without waiving Defendants' objections, including Defendants' specific objections to Plaintiffs Definitions, Instructions and Rules of Construction, Defendants state as follows: Defendants object that the term "CLAIM" is vague, as noted in Defendants' objections to Plaintiff's Definitions, as the definition does not identify what specific list of claims it is referring to. However, Defendants interpret this Request as referring to the claims listed in FESM000011. Assuming those are the claims Fremont intended to refer to, Defendants object to this Request on the basis that it is unduly burdensome and seeks information that is not proportional to the needs of the case. Fremont has asserted 15,210 CLAIMS where it alleges that Defendants did not reimburse Fremont for the full amount billed. To produce the documents and communications related to the adjudication of those CLAIMS, Defendants would, among other things, have to pull the administrative record for each of the 15,210 individual CLAIMS, review the records for privileged/protected information and then produce them. As explained more fully in the burden declaration attached as **Exhibit 1**, this would be unduly burdensome as Defendants believe it will take 2 hours to pull each individual claim file for a total of 30,420 hours of employee labor.

Defendants further object that the request is overbroad, unduly burdensome, not reasonably particular, and not proportional to the needs of the case as it essentially requests all documents related to the parties' claims and defenses. It would be essentially impossible for Defendants to perform the investigation necessary to identify all documents and communications that in some way relate to the payment and/or adjudication of the 15,210 CLAIMS.

Defendants request that Fremont meet and confer to narrow the scope of this request and provide some semblance of reasonable particularity with respect to the type of documents they are seeking so as to reduce the burden imposed on Defendants.

Request No. 5:

Produce any and all Documents and/or Communications relating to Your determination and/or calculation of the allowed amount and reimbursement for any of the CLAIMS, including the following: (i) the method by which the allowed amount and reimbursement for the Claim was calculated; (ii) the total amount You allowed and agreed to pay; (iii) any contractual or other allowance taken; and (iv) the method, date, and final amount of payment.

Response to Request No. 5:

Subject to and without waiving Defendants' objections, including Defendants' specific objections to Plaintiffs Definitions, Instructions and Rules of Construction, Defendants state as follows: Defendants object that the term "CLAIM" is vague, as noted in Defendants' objections to Plaintiffs Definitions, as the definition does not identify what specific list of claims it is referring to. However, Defendants interpret this Request as referring to the claims listed in FESM000011. Assuming those are the claims Fremont intended to refer to, Defendants object to this Request on the basis that it is unduly burdensome and seeks information that is not proportional to the needs of the case. Fremont has asserted 15,210 CLAIMS where it alleges that Defendants did not reimburse Fremont for the full amount billed. To produce the documents and communications related to the four categories set forth in this Request (i.e. (i) the reimbursement methodology, (ii) the total amount allowed and agreed to pay, (iii) any contractual or other allowance taken and (iv) the method, date and final amount of payment), Defendants would, among other things, have to pull the administrative record for each of the 15,210 individual CLAIMS, review the records for privileged/protected information and then produce them. As explained more fully in the burden declaration attached as **Exhibit 1**, this would be unduly burdensome as Defendants believe it will take 2 hours to pull each individual claim file for a total of 30,420 hours of employee labor.

Defendants further object to categories (ii), (iii) and (iv) of this Request as they seek information that is equally, if not more accessible, to Fremont. There is no justification for imposing the burden on Defendants to identify, collect, review, and produce such documents when Fremont already possesses the same.

Moreover, the request is overbroad, unduly burdensome, not reasonably particular, and not proportional to the needs of the case as it essentially requests all documents related to the parties' claims and defenses. It would be essentially impossible for Defendants to perform the investigation necessary to identify all documents and communications that in some way relate to the determination and calculation of the allowed amounts for all of the 15,210 CLAIMS.

Defendants request that Fremont meet and confer to narrow the scope of this request and provide some semblance of reasonable particularity with respect to the type of documents they are seeking so as to reduce the burden imposed on Defendants.

Request No. 6:

Produce any and all Documents and/or Communications relating to Your decision to reduce payment for any CLAIM.

Response to Request No. 6:

Subject to and without waiving Defendants' objections, including Defendants' specific objections to Plaintiffs Definitions, Instructions and Rules of Construction, Defendants state as follows: Defendants object that the term "CLAIM" is vague, as noted in Defendants' objections to Plaintiffs Definitions, as the definition does not identify what specific list of claims it is referring to. However, Defendants interpret this Request as referring to the claims listed in FESM000011. Assuming those are the claims Fremont intended to refer to, Defendants object to this Request on the basis that it is unduly burdensome and seeks information that is not proportional to the needs of the case. Fremont has asserted 15,210 CLAIMS where it alleges that Defendants did not reimburse Fremont for the full amount billed. To produce the documents and communications related to any decision to reduce payment on a CLAIM, Defendants would, among other things, have to pull the administrative record for each of the 15,210 individual CLAIMS, review the records for privileged/protected information and then produce them. As explained more fully in the burden declaration attached as **Exhibit 1**, this would be unduly burdensome as Defendants believe it will take 2 hours to pull each individual claim file for a total of 30,420 hours of employee labor.

Moreover, the request is overbroad, unduly burdensome, not reasonably particular, and not proportional to the needs of the case as it essentially requests all documents related to the parties' claims and defenses. It would be essentially impossible for Defendants to perform the investigation necessary to identify all documents and communications that in some way relate to the decision to not pay the full billed charges on all of the 15,210 CLAIMS.

Defendants request that Fremont meet and confer to narrow the scope of this request and provide some semblance of reasonable particularity with respect to the type of documents they are seeking so as to reduce the burden imposed on Defendants.

Request No. 7:

Produce any and all Documents and/or Communications supporting or relating to Your contention or belief that You are entitled to pay or allow less than Fremont's full billed charges for any of the CLAIMS.

Response to Request No. 7:

Subject to and without waiving Defendants' objections, including Defendants' specific objections to Plaintiffs Definitions, Instructions and Rules of Construction, Defendants state as follows: Defendants object that the term "CLAIM" is vague, as noted in Defendants' objections to Plaintiffs Definitions, as the definition does not identify what specific list of claims it is referring to. However, Defendants interpret this Request as referring to the claims listed in FESM000011. Assuming those are the claims Plaintiff intended to refer to, Defendants object to this Request on the basis that it is unduly burdensome and seeks information that is not proportional to the needs of the case. Plaintiff has asserted 15,210 CLAIMS where it alleges that

Defendants did not reimburse Plaintiff for the full amount billed. To produce the documents and communications related to any decision to pay or allow less than Plaintiffs full billed charges on a CLAIM, Defendants would, among other things, have to pull the administrative record for each of the 15,210 individual CLAIMS, review the records for privileged/protected information and then produce them. As explained more fully in the burden declaration attached as **Exhibit 1**, this would be unduly burdensome as Defendants believe it will take 2 hours to pull each individual claim file for a total of 30,420 hours of employee labor.

Moreover, the request is overbroad, unduly burdensome, not reasonably particular, and not proportional to the needs of the case as it essentially requests all documents related to the parties' claims and defenses. It would be essentially impossible for Defendants to perform the investigation necessary to identify all documents and communications that in some way relate to the decision to not pay the full billed charges on all of the 15,210 CLAIMS.

Defendants request that Fremont meet and confer to narrow the scope of this request and provide some semblance of reasonable particularity with respect to the type of documents they are seeking so as to reduce the burden imposed on Defendants.

Request No. 11:

Produce all Documents and/or Communications between You and any third-party, including but not limited to Data iSight, relating to (a) any claim for payment for medical services rendered by Fremont to any Plan Member, or (b) any medical services rendered by Fremont to any Plan Member.

Response to Request No. 11:

Subject to and without waiving Defendants' objections, including Defendants' specific objections to Plaintiffs Definitions, Instructions and Rules of Construction, Defendants state as follows: Defendants object that this Request is unduly burdensome and seeks information that is not proportional to the needs of the case. Fremont has asserted 15,210 claims where it alleges that Defendants did not reimburse Fremont for the full amount billed. To produce the documents and communications that may have been exchanged between Defendants, Data iSight, and other third parties related to these claims and medical services, Defendants would, among other things, have to pull the administrative record for each of the 15,210 individual CLAIMS, review the records for privileged/protected information and then produce them. As explained more fully in the burden declaration attached as **Exhibit 1**, this would be unduly burdensome as Defendants believe it will take 2 hours to pull each individual claim file for a total of 30,420 hours of employee labor. Defendants further object that this Request is vague and overbroad to the extent it seeks documents and communications with unnamed "third parties" beyond Data iSight. Defendants will not be producing "all" documents and communications with Data iSight and these unnamed third parties.

Defendants further respond that they will produce the relevant contract(s) between United and MultiPlan, Inc. pursuant to which United received pricing information through MultiPlan's Data iSight tool, redacted as necessary to protect irrelevant proprietary information, on or about February 26, 2020. Defendants further state that, while they believe they can meet this deadline, their ability to meet it is partially dependent on the cooperation of third parties.

Request No. 12:

Produce all Documents identifying and describing all products or services Data iSight, provides to You with respect to Your Health Plans issued in Nevada or any other state, including without limitation repricing services provided to You, whether You adjudicated and paid any claims in accordance with re-pricing information recommended by Data iSight, and the appeals administration services provided to You.

Response to Request No. 12:

Subject to and without waiving Defendants' objections, including Defendants' specific objections to Plaintiffs Definitions, Instructions and Rules of Construction, Defendants state as follows: Defendants object that this Request is unduly burdensome and seeks information that is not proportional to the needs of the case to the extent it asks for information on "whether You

1 adjudicated and paid any Claims in accordance with re-pricing information recommended by
2 Data iSight." Fremont has asserted 15,210 claims where it alleges that Defendants did not
3 reimburse Fremont for the full amount billed. To produce the documents related to whether
4 information from Data iSight impacted how any of the 15,210 claims were reimbursed,
5 Defendants would, among other things, have to pull the administrative record for each of the
6 15,210 individual claims, review the records for privileged/protected information and then
7 produce them. As explained more fully in the burden declaration attached as **Exhibit 1**, this
8 would be unduly burdensome as Defendants believe it will take 2 hours to pull each individual
9 claim file for a total of 30,420 hours of employee labor.

10 Defendants further object to the portion of this Request that seeks information on "all
11 products or services Data iSight provides to You." This portion of this Request appears to seek
12 information that is not relevant to any of Plaintiffs claims and that is not proportional to the
13 needs of the case as not all services Data iSight provides relate to Plaintiffs claims. No
14 documents will produced in response to this portion of this Request.

15 Defendants further respond that they will produce the relevant contract(s) between United
16 and MultiPlan, Inc. pursuant to which United received pricing information through MultiPlan's
17 Data iSight tool, redacted as necessary to protect irrelevant propriety information, on or about
18 February 26, 2020. Defendants further state that, while they believe they can meet this deadline,
19 their ability to meet it is partially dependent on the cooperation of third parties.

20 For the other aspects of this Request that were objected to, Defendants request that Plaintiff
21 meet and confer to narrow the scope of this Request to ensure that it is not unduly burdensome to
22 Defendants, seeks relevant information and that Plaintiff is able to get the information it is seeking.

23 **Request No. 13:**

24 Produce all Documents and/or Communications concerning, evidencing, or relating to any
25 negotiations or discussions concerning Non-Participating Provider reimbursement rates between
26 You and Fremont, including, without limitation, documents and/or communications relating to the
27 meeting in or around December 2017 between You, including, but not limited to, Dan Rosenthal,
28 John Haben, and Greg Dosedel, and Fremont, where Defendants proposed new benchmark pricing
program and new contractual rates.

29 **Response to Request No. 13:**

30 Subject to and without waiving Defendants' objections, including Defendants' specific
31 objections to Plaintiffs Definitions, Instructions and Rules of Construction, Defendants state as
32 follows: Defendants object that this Request is unduly burdensome and seeks information that is
33 not proportional to the needs of the case. Fremont has asserted 15,210 claims where it alleges
34 that Defendants did not reimburse Fremont for the full amount billed. To produce the documents
35 and communications that relate to any discussions or negotiations over the reimbursement rates
36 on those claims, Defendants would, among other things, have to pull the administrative record
37 for each of the 15,210 individual claims, review the records for privileged/protected information
38 and then produce them. As explained more fully in the burden declaration attached as **Exhibit 1**,
39 this would be unduly burdensome as Defendants believe it will take 2 hours to pull each
40 individual claim file for a total of 30,420 hours of employee labor.

41 Moreover, all documents and communications exchanged between Defendants and
42 Fremont would necessarily be possessed by Fremont. There is no justification for imposing the
43 burden on Defendants to identify, collect, review, and produce such documents when Fremont
44 already possesses the same.

45 Defendants further respond by referring Fremont to the following bates numbered
46 documents produced with these responses that relate to negotiations between Fremont and the
47 Sierra Defendants: **DEF000114 - DEF000156**. Defendants are in the process of collecting
48 responsive document that relate to negotiations between Fremont and the other Defendants will
produce those documents by February 26, 2020.

49 For the other aspects of this Request that were objected to, Defendants request that
50 Plaintiff meet and confer to narrow the scope of this Request to ensure that it is not unduly
51 burdensome to Defendants, seeks relevant information and that Plaintiff is able to get the
52 information it is seeking.

Request No. 15:

Produce all Documents and/or Communications, reflecting, analyzing, or discussing the methodology you used to calculate or determine Non-Participating Provider reimbursement rates for Emergency Services in Nevada, including, but not limited to, any documents and/or communications you used or created in the process of calculating and/or determining the prevailing charges, the reasonable and customary charges, the usual and customary charges, the average area charges, the reasonable value, and/or the fair market value for Emergency Services in Clark County.

Response to Request No. 15:

Subject to and without waiving Defendants' objections, including Defendants' specific objections to Plaintiffs Definitions, Instructions and Rules of Construction, Defendants state as follows: Defendants object that this Request is overbroad, unduly burdensome and seeks information that is not relevant and not proportional to the needs of the case since it is not limited to a specific time frame and/or not limited to the methodology used to calculate reimbursement rates for emergency services provided by Fremont, as opposed to other non-party emergency services providers. Rather, this improper Request appears to seek documents and communications relating to rates of reimbursement to providers other than Fremont.

A portion of this Request does seek relevant information as Fremont is a nonparticipating provider that provides emergency services in Nevada. However, that portion of this Request, as currently framed, is unduly burdensome and seeks information that is not proportional to the needs of the case. Fremont has asserted 15,210 claims where it alleges that Defendants did not reimburse Fremont for the full amount billed. To produce the documents and communications that relate to the methodology used to calculate the amount of reimbursement paid on Fremont's claims, Defendants would, among other things, have to pull the administrative record for each of the 15,210 individual claims, review the records for privileged/protected information and then produce them. As explained more fully in the burden declaration attached as **Exhibit 1** to, this would be unduly burdensome as Defendants believe it will take 2 hours to pull each individual claim file for a total of 30,420 hours of employee labor.

Defendants request that Plaintiff meet and confer to narrow the scope of this Request to ensure that it is not unduly burdensome to Defendants and that Plaintiff is able to get the information it is seeking.

Request No. 16:

Produce all Documents that refer, relate or otherwise reflect shared savings programs in Nevada for Fremont's out-of-network claims from July 1, 2017 to present. This request includes, without limitation, contracts with third parties regarding Your shared savings program, amounts invoiced by You to third parties for the shared savings program for Fremont's out-of-network claims, amount You were compensated for the shared savings program for Fremont's out-of-network claims.

Response to Request No. 16:

Subject to and without waiving Defendants' objections, including Defendants' specific objections to Plaintiffs Definitions, Instructions and Rules of Construction, Defendants state as follows: Defendants object that this Request seeks information that is not relevant to Plaintiffs claims and not proportional to the needs of the case. Defendants further object that this Request is vague in regard to what is meant by "shared savings programs." Defendants request that Plaintiff clarify what is meant by this term so that Defendants can determine whether they have responsive documents in their possession.

Defendants further object that this Request is unduly burdensome and seeks information that is not proportional to the needs of the case. Fremont has asserted 15,210 claims where it alleges that Defendants did not reimburse Fremont for the full amount billed. To produce the documents that relate to amounts invoiced to third parties for those claims and amounts received by Defendants, Defendants would, among other things, have to pull the administrative record for each of the 15,210 individual claims, review the records for privileged/protected information and then produce them. As explained more fully in the burden declaration attached as **Exhibit 1**,

1 this would be unduly burdensome as Defendants believe it will take 2 hours to pull each
2 individual claim file for a total of 30,420 hours of employee labor.

3 Defendants request that Plaintiff meet and confer to narrow the scope of this Request to
4 ensure that it is not unduly burdensome to Defendants and that Plaintiff is able to get the
5 information it is seeking.

6 **Request No. 17:**

7 All Communications between You and any third-party, relating to (a) any CLAIM for
8 payment for medical services rendered by Fremont to any Plan Member, or (b) any medical
9 services rendered by Fremont to any Plan Member.

10 **Response to Request No. 17:**

11 Subject to and without waiving Defendants' objections, including Defendants' specific
12 objections to Plaintiffs Definitions, Instructions and Rules of Construction, Defendants state as
13 follows: Defendants object that the term "CLAIM" is vague, as noted in Defendants' objections
14 to Plaintiffs Definitions, as the definition does not identify what specific list of claims it is referring
15 to. However, Defendants interpret this Request as referring to the claims listed in FESM000011.
16 Assuming those are the claims Fremont intended to refer to, Defendants object to this Request on
17 the basis that it is unduly burdensome and seeks information that is not proportional to the needs
18 of the case. Fremont has asserted 15,210 CLAIMS where it alleges that Defendants did not
19 reimburse Fremont for the full amount billed. To produce the communications between
20 Defendants and third parties related to those CLAIMS, Defendants would, among other things,
21 have to pull the administrative record for each of the 15,210 individual CLAIMS, review the
22 records for privileged/protected information and then produce them. As explained more fully in
23 the burden declaration attached as **Exhibit 1**, this would be unduly burdensome as Defendants
24 believe it will take 2 hours to pull each individual claim file for a total of 30,420 hours of employee
25 labor.

26 Defendants request that Plaintiff meet and confer to narrow the scope of this Request to
27 ensure that it is not unduly burdensome to Defendants and that Plaintiff is able to get the
28 information it is seeking.

Request No. 18:

All documents and/or communications regarding the rational, basis, or justification for the
reduced rates for emergency services proposed to Fremont in or around 2017 to Present.

Response to Request No. 18:

Subject to and without waiving Defendants' objections, including Defendants' specific
objections to Plaintiffs Definitions, Instructions and Rules of Construction, Defendants state as
follows: Defendants object to this Request on the basis that it is unduly burdensome and seeks
information that is not proportional to the needs of the case. Fremont has asserted 15,210 claims
where it alleges that Defendants did not reimburse Fremont for the full amount billed. To
produce the documents related to why those claims were paid at a particulate rate, Defendants
would, among other things, have to pull the administrative record for each of the 15,210
individual CLAIMS, review the records for privileged/protected information and then produce
them. As explained more fully in the burden declaration attached as **Exhibit 1**, this would be
unduly burdensome as Defendants believe it will take 2 hours to pull each individual claim file
for a total of 30,420 hours of employee labor.

Moreover, the request is overbroad, unduly burdensome, not reasonably particular, and
not proportional to the needs of the case as it essentially requests all documents related to the
parties' claims and defenses. It would be essentially impossible for Defendants to perform the
investigation necessary to identify all documents and communications that in someway relate to
the justification for the payments made on all of the 15,210 CLAIMS.

Defendants request that Fremont meet and confer to narrow the scope of this request and
provide some semblance of reasonable particularity with respect to the type of documents they
are seeking so as to reduce the burden imposed on Defendants.

Request No. 19:

All documents regarding the Provider charges and/or reimbursement rates that You have paid to Participating or Non-Participating Providers from July 1, 2017, to the present in Nevada. Without waiving any right to seek further categories of documentation, at this juncture, Fremont is willing to accept, in lieu of contractual documents, data which is blinded or redacted and/or aggregated or summarized form.

Response to Request No. 19:

Subject to and without waiving Defendants' objections, including Defendants' specific objections to Plaintiffs Definitions, Instructions and Rules of Construction, Defendants state as follows: Defendants object that, even with the limitation proposed by Fremont, this Request is overbroad, unduly burdensome and seeks irrelevant information that is not proportional to the needs of the case. It is unclear what the relevance is of documents showing what the amounts Defendants paid to providers other than Fremont. Depending on, for example, the provider, the claim at issue, and/or the applicable health benefits plan documents, Defendants use different methodologies to calculate the allowed amount of reimbursement. The documents sought in this Request are therefore not relevant to determining the usual and customary rate of reimbursement for the claims Fremont is asserting in this litigation. To the extent this Request is also seeking documents related to the reimbursement rates for claims of Fremont as a Non-Participating Provider, Defendants object to this Request on the basis that it is unduly burdensome and seeks information that is not proportional to the needs of the case. Fremont has asserted 15,210 claims where it alleges that Defendants did not reimburse Fremont for the full amount billed. To produce the documents relating to the reimbursement rates on those claims, Defendants would, among other things, have to pull the administrative record for each of the 15,210 individual CLAIMS, review the records for privileged/protected information and then produce them. As explained more fully in the burden declaration attached as **Exhibit 1**, this would be unduly burdensome as Defendants believe it will take 2 hours to pull each individual claim file for a total of 30,420 hours of employee labor.

Defendants request that Plaintiff meet and confer to explain the relevancy of the information sought in this Request and to narrow the scope of this Request to ensure that it is not unduly burdensome to Defendants and that Plaintiff is able to get the information it is seeking.

Request No. 20:

All Documents relied on for the determination of the recommended rate of reimbursement for any CLAIM by Fremont for payment for services rendered to any Plan Member. This request includes, without limitation, all cost data, reimbursement data, and other data and Documents upon which such recommended rates are based.

Response to Request No. 20:

Subject to and without waiving Defendants' objections, including Defendants' specific objections to Plaintiffs Definitions, Instructions and Rules of Construction, Defendants state as follows: Defendants object that the term "CLAIM" is vague, as noted in Defendants' objections to Plaintiffs Definitions, as the definition does not identify what specific list of claims it is referring to. However, Defendants interpret this Request as referring to the claims listed in FESM000011. Assuming those are the claims Fremont intended to refer to, Defendants object to this Request on the basis that it is unduly burdensome and seeks information that is not proportional to the needs of the case. Fremont has asserted 15,210 CLAIMS where it alleges that Defendants did not reimburse Fremont for the full amount billed. To produce the documents relied on to determine the amount of reimbursement to be issued on a CLAIM, Defendants would, among other things, have to pull the administrative record for each of the 15,210 individual CLAIMS, review the records for privileged/protected information and then produce them. As explained more fully in the burden declaration attached as **Exhibit 1**, this would be unduly burdensome as Defendants believe it will take 2 hours to pull each individual claim file for a total of 30,420 hours of employee labor.

Moreover, the request is overbroad, unduly burdensome, not reasonably particular, and not proportional to the needs of the case as it essentially requests all documents related to the

parties' claims and defenses. It would be essentially impossible for Defendants to perform the investigation necessary to identify all documents and communications that in some way relate to the reimbursement issued to Fremont on all of the 15,210 CLAIMS.

Defendants request that Fremont meet and confer to narrow the scope of this request and provide some semblance of reasonable particularity with respect to the type of documents they are seeking so as to reduce the burden imposed on Defendants.

Request No. 24:

Produce any and all Documents and/or Communications relating to any analysis of Nevada statutes with regard to the payment of the CLAIMS.

Response to Request No. 24:

Subject to and without waiving Defendants' objections, including Defendants' specific objections to Plaintiffs Definitions, Instructions and Rules of Construction, Defendants state as follows: Defendants object that the term "CLAIM" is vague, as noted in Defendants' objections to Plaintiffs Definitions, as the definition does not identify what specific list of claims it is referring to. However, Defendants interpret this Request as referring to the claims listed in FESM000011. Assuming those are the claims Plaintiff intended to refer to, Defendants object to this Request on the basis that it is unduly burdensome and seeks information that is not proportional to the needs of the case. Plaintiff has asserted 15,210 CLAIMS where it alleges that Defendants did not reimburse Fremont for the full amount billed. To produce the documents and communications relating to any legal analysis that impacted the amount paid on those CLAIMS (assuming such documents even exist), Defendants would, among other things, have to pull the administrative record for each of the 15,210 individual CLAIMS, review the records for privileged/protected information and then produce them. As explained more fully in the burden declaration attached as **Exhibit 1**, this would be unduly burdensome as Defendants believe it will take 2 hours to pull each individual claim file for a total of 30,420 hours of employee labor.

Defendants further object that this Request is vague in referring to "Nevada statutes" rather than to specific statutes. This vagueness, in turn, makes the Request unduly burdensome for Defendants to find responsive documents. Further, this Request appears to potentially call for information that is subject to the attorney-client and/or work product privileges as it is seeking analysis of Nevada statutes.

Defendants request that Plaintiff meet and confer to narrow the scope of this Request to ensure that it is not unduly burdensome to Defendants and that Plaintiff is able to get the information it is seeking.

Request No. 37:

Produce any and all Documents and/or Communications concerning Emergency Medicine Services and/or Emergency Department Services You published, provided or made available to either Emergency Medicine Groups or Your Plan Members in Nevada from 2016 to the present concerning Your reimbursement of out-of-network services.

Supplement Response to Request No. 37:

Subject to and without waiving Defendants' objections, including Defendants' specific objections to Plaintiff's Definitions, Instructions and Rules of Construction, Defendants state as follows:

In regard to documents and communications that would have been made available to plan members, Defendants object to this Request on the basis that it is unduly burdensome and seeks information that is not proportional to the needs of the case. Plaintiff has asserted 15,210 claims where it alleges that Defendants did not reimburse Fremont for the full amount billed. To locate the documents and communications related to reimbursement of out-of-network services that would have been made available to plan members, Defendants would, among other things, have to pull the administrative record for each of the 15,210 individual claims and review those records for responsive documents. As explained more fully in the burden declaration attached as **Exhibit 1**, this would be unduly burdensome as Defendants believe it will take 2 hours to pull each individual claim record for a total of 30,420 hours of employee labor.

Defendants further object to the extent this Request seeks information from prior to July 1, 2017 as such information is not relevant to Plaintiff's claims and is not proportional to the needs of the case.

In regard to documents made available to Emergency Medicine Groups, Defendants refer Plaintiff to the following bates numbered documents that may be potentially responsive: DEF000157 – DEF000721, and DEF 000855 – DEF001379. Defendants have been unable to find any additional responsive and non-objectable documents but will supplement this response if any additional documents are located.

Request No. 39:

Produce any and all Documents and/or Communications reflecting any policies, procedures, and/or protocols that You contend governs the appeal of Your adjudication and/or payment decision with respect to one or more of the CLAIMS.

Response to Request No. 39:

Subject to and without waiving Defendants' objections, including Defendants' specific objections to Plaintiffs Definitions, Instructions and Rules of Construction, Defendants state as follows:

Defendants object to this Request in that it is unclear exactly what type of policies, procedures and protocols are being sought by Plaintiff. Defendants believe Plaintiff may be referring to information that would be contained within the applicable health benefits plan documents. If this is not the type of information Plaintiff is seeking, Defendants ask that Plaintiff clarify this Request.

Assuming Fremont is seeking information on policies that would be contained within the applicable health benefits plan documents, Defendants object to this Request on the basis that it is unduly burdensome and seeks information that is not proportional to the needs of the case. Fremont has asserted 15,210 claims where it alleges that Defendants did not reimburse Fremont for the full amount billed. To locate the applicable health benefits plan documents for all of Fremont's claims, Defendants would, among other things, have to pull the administrative record for each of the 15,210 individual claims and review those records for responsive documents. As explained more fully in the burden declaration attached as **Exhibit 1**, this would be unduly burdensome as Defendants believe it will take 2 hours to pull each individual claim record for a total of 30,420 hours of employee labor.

Defendants request that Plaintiff meet and confer to narrow the scope of this Request to ensure that it is not unduly burdensome to Defendants and that Plaintiff is able to get the information it is seeking.

Request No. 40:

Produce any and all Documents and/or Communications regarding any appeals of adverse determinations, disputes of payment, or any submission of clinical information concerning the CLAIMS.

Response to Request No. 40:

Subject to and without waiving Defendants' objections, including Defendants' specific objections to Plaintiffs Definitions, Instructions and Rules of Construction, Defendants state as follows:

Defendants object that the term "CLAIM" is vague, as noted in Defendants' objections to Plaintiffs Definitions, as the definition does not identify what specific list of claims it is referring to. However, Defendants interpret this Request as referring to the claims listed in FESM000011. Assuming those are the claims Plaintiff intended to refer to, Defendants object to this Request on the basis that it is unduly burdensome and seeks information that is not proportional to the needs of the case. Plaintiff has asserted 15,210 CLAIMS where it alleges that Defendants did not reimburse Fremont for the full amount billed. To produce the documents and communications relating to any legal analysis that impacted the amount paid on those CLAIMS (assuming such documents even exist), Defendants would, among other things, have to pull the administrative record for each of the 15,210 individual CLAIMS, review the records for privileged/protected information and then produce them. As explained more fully in the burden

1 declaration attached as **Exhibit 1**, this would be unduly burdensome as Defendants believe it will
 2 take 2 hours to pull each individual claim file for a total of 30,420 hours of employee labor.

3 Moreover, the request is overbroad, unduly burdensome, not reasonably particular, and
 4 not proportional to the needs of the case as it essentially requests all documents related to the
 5 parties' claims and defenses. It would be essentially impossible for Defendants to perform the
 6 investigation necessary to identify all documents and communications that in some way relate to
 7 information and disputes connected to the 15,210 CLAIMS.

8 Defendants request that Fremont meet and confer to narrow the scope of this request and
 9 provide some semblance of reasonable particularity with respect to the type of documents they
 10 are seeking so as to reduce the burden imposed on Defendants.

11 **Request No. 42:**

12 Produce any and all Documents and/or Communications regarding, discussing, or referring
 13 to any failure by You to attempt to effectuate a prompt, fair, and/or equitable settlement of any
 14 CLAIMS.

15 **Response to Request No. 42:**

16 Subject to and without waiving Defendants' objections, including Defendants' specific
 17 objections to Plaintiffs Definitions, Instructions and Rules of Construction, Defendants state as
 18 follows:

19 Defendants object that the phrase "attempt to effectuate a prompt, fair, and/or equitable
 20 settlement of any CLAIMS" is vague as it is unclear exactly what type of failure by Defendants
 21 would make a document and/or communication responsive.

22 Defendants further object that the term "CLAIM" is vague, as noted in Defendants
 23 objections to Plaintiffs Definitions, as the definition does not identify what specific list of
 24 claims it is referring to. However, Defendants interpret this Request as referring to the claims
 25 listed in FESM000011. Assuming those are the claims Plaintiff intended to refer to, Defendants
 26 object to this Request on the basis that it is unduly burdensome and seeks information that is not
 27 proportional to the needs of the case. Plaintiff has asserted 15,210 CLAIMS where it alleges that
 28 Defendants did not reimburse Fremont for the full amount billed. To produce the documents and
 communications relating to any legal analysis that impacted the amount paid on those CLAIMS
 (assuming such documents even exist), Defendants would, among other things, have to pull the
 administrative record for each of the 15,210 individual CLAIMS, review the records for
 privileged/protected information and then produce them. As explained more fully in the burden
 declaration attached as **Exhibit 1**, this would be unduly burdensome as Defendants believe it will
 take 2 hours to pull each individual claim file for a total of 30,420 hours of employee labor.

Defendants request that Plaintiff meet and confer to narrow the scope of this Request to
 ensure that it is not unduly burdensome to Defendants and that Plaintiff is able to get the
 information it is seeking.

APEN

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

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.: XXVII

**APPENDIX OF EXHIBITS IN SUPPORT
 OF PLAINTIFFS' MOTION TO
 COMPEL DEFENDANTS'
 PRODUCTION OF CLAIMS FILE FOR
 AT-ISSUE CLAIMS, OR, IN THE
 ALTERNATIVE,
 MOTION IN LIMINE ON ORDER
 SHORTENING TIME**

Plaintiffs file this Appendix in Support of Plaintiffs' Motion to Compel Defendants' Production of Claims File for At-Issue Claims, or, in the Alternative, Motion in Limine on Order Shortening Time as follows:

Exhibit No.	Exhibit Description	Bates No.
1	Kristen T. Gallagher Declaration in Support of Plaintiffs' Motion to Compel Defendants' Production of Claims File for At-Issue Claims, Or In The Alternative, Motion in Limine	001-031
	1A - February 26, 2020 email	009-013
	1B - February 27, 2020 letter	014-016
	1C - July 15, 2020 email	017-025
	1D - July 1, 2020 email	026-031
2	Defendants' Responses to Fremont Emergency Services (Mandavia), Ltd.'s First set of Requests for Production	032-086
3	Defendants' Second Supplemental Responses to Fremont Emergency Services (Mandavia) Ltd.'s First Set of Requests for Production of Documents	087-094
4	Defendants' Responses to Fremont Emergency Services (Mandavia), Ltd.'s First Set of Interrogatories	095-125

DATED this 27th day of August, 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
 plundvall@mcdonaldcarano.com
 kgallagher@mcdonaldcarano.com
 aperach@mcdonaldcarano.com

Attorneys for Plaintiffs

EXHIBIT 1

001715

001715

EXHIBIT 1

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

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.: XXVII

**KRISTEN T. GALLAGHER
DECLARATION IN SUPPORT OF
PLAINTIFFS' MOTION TO COMPEL
DEFENDANTS' PRODUCTION OF
CLAIMS FILE FOR AT-ISSUE CLAIMS,
OR IN THE ALTERNATIVE, MOTION
IN LIMINE**

I, KRISTEN T. GALLAGHER, declare as follows:

1. I am an attorney licensed to practice law in the State of Nevada and am a partner
in the law firm of McDonald Carano LLP, counsel for plaintiffs Fremont Emergency Services

(Mandavia), Ltd. (“Fremont”); Team Physicians of Nevada-Mandavia, P.C. (“Team Physicians”); Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine (“Ruby Crest” and collectively the “Health Care Providers”).

2. This declaration is submitted in support of the Health Care Providers’ Motion to Compel Defendants’ Production of Claims File for At-Issue Claims, or in the Alternative, Motion in Limine (“Motion to Compel”), and is made of my own personal knowledge, unless otherwise indicated. I am over 18 years of age, and I am competent to testify as to same.

3. Prior to remand, on December 9, 2019, Fremont served its First Set of Requests for Admission (“RFAs”), Interrogatories and Production of Documents (“RFPs”) (collectively, the “Written Discovery”) on United.

4. While motions were pending in connection with United’s responses to the Written Discovery, but before a February 12, 2020 hearing on the discovery dispute, on January 29, 2020 United served responses that largely fell short of providing meaningful substance. Exhibit 4, United’s Answers to Interrogatories; Exhibits 2, United’s Resp. to RFPs.¹

5. On February 10, 2020, the Health Care Providers made the following discovery proposal to United:

In advance of Wednesday’s hearing, below is a discovery proposal that would result in an expedited ability for the parties to agree on the health care claims data and would eliminate or greatly reduce the need for United to collect and produce provider remittance forms/provider EOBs except for where the parties identify a discrepancy in the billed amount or allowed amounts or as specified below. Similarly, it would eliminate or greatly reduce the need for Fremont to collect and produce HCFA forms and related billing documents. Please review and let me know in advance of Wednesday’s hearing whether United will agree to the following:

The Health Care Providers have already produced a spreadsheet that includes member name and Defendants’ claim no. (to the extent available in Health Care Providers’ automated system), in addition to other fields:

- Within 14 days, United provides matched spreadsheets and identifies any discrepancy in billed or allowed amounts fields;
- Within 7 days thereafter, for claims upon which the billed and allowed data match, parties stipulate that there is no need for further production of EOBs and provider remittances for evidentiary purposes related to establishing the existence of the claim, services

¹ Additionally, United responded to RFAs and the Health Care Providers have previously asserted that United failed to timely respond and maintain this position.

1 provided, amount billed by Health Care Providers and amount
2 allowed by United.

- 3 • Approximately every quarter, this process will take place again with
4 any new claims included in the Litigation Claims Spreadsheet that
5 accrued after the previous spreadsheet was submitted.

6 United produces all EOBs/provider remittances for all Data iSight processed NV
7 claims submitted by the Health Care Providers; and

8 United and the Health Care Providers respectively agree to provide a market file,
9 i.e. a spreadsheet of payments from other payers (Health Care Providers) or a
10 spreadsheet of payments to other providers (United) in the market which de-
11 identifies the specific payer or provider, as applicable (for the time period 2016-
12 Present). The parties agree to meet and confer promptly to agree on specified
13 fields.

14 6. As set forth in my May 4, 2020 Declaration contained within Plaintiffs' Motion
15 to Compel Defendants' Meet and Confer Participation and Related Action, several disputes have
16 arisen in connection with United's Responses to the Written Discovery, some of which remain
17 unresolved.

18 7. At the February 12 hearing, Mr. Balkenbush stated he drafted United's responses.
19 On February 24, 2020, although not required in advance of a meet and confer, I provided United
20 a summary of the at-issue responses to admissions and interrogatories that I intended to discuss
21 with Mr. Balkenbush on February 25, 2020. Exhibit 1A, February 24, 2020 email at p. 2-3.
22 Thereafter, Mr. Balkenbush declined to meet and confer on February 25, claiming he did not
23 have enough time "to consider our position on the issues prior to the call." *Id.*, February 24, 2020
24 email at p. 1-2. In order to accommodate Mr. Balkenbush's request for preparation time and
25 move the process forward, I agreed to continue the meet and confer to March 2, 2020. *Id.* at p.1.

26 8. In the interim, on February 27, 2020, United adopted the position that all federal
27 court proceedings should be deemed void and discovery should not proceed at all in state court
28 until Defendants' answer and a joint case conference report had been submitted. Exhibit 1B,
February 27, 2020 Letter from Colby Balkenbush.

9. Since then, the Court has ordered discovery may proceed.

10. Amanda Perach and I telephonically met and conferred with United's counsel,
Colby Balkenbush and/or Brittany Llewellyn, on June 9, 15 and 23 (addressing RFP Nos. 11, 12,
13, 21, 27, 37 and 44); and July 20, 21, and August 3, 2020 (addressing RFP Nos. 3-7, 11-13, 15-

20, 24, 37, 39-40, 42 and Interrog. Nos. 1, 5, 7, 8, 12). As part of these discussions, Ms. Perach and I met and conferred with United's counsel concerning Sandra Way's ("Way") declaration which asserts an undue burden exists and United cannot retrieve and produce claims file material. In addition to these calls, counsel for the parties exchanged emails and materials summarizing or further explaining their respective positions.

11. During the above-identified meet and confer efforts, United repeatedly referred to the Way declaration that was attached to United's written discovery responses, representing that it was not possible for United to retrieve, review or produce the sought-after information in less than a three-year period of time with four employees working full-time.

12. United also referred to the Way declaration in the Joint Case Conference Report as a basis for its refusal to produce information about the at-issue claims. *See* JCCR at 18:3-14.

13. During the June 15 conference, I asked United's counsel if there was any other method of pulling records that United has characterized as the "administrative record," for example a different person, team, unit, division or department.

14. In advance of the June 23 continued meet and confer, United's counsel, Ms. Llewellyn, sent an email stating in part:

Request for Production 11: As we have discussed on prior calls, information responsive to this request is generally found within the administrative record. We have detailed the process of gathering the administrative record in the burden declaration of Sandra Way. ***On our last call, you asked us to confirm that the timeline set forth in the declaration is still accurate, and that the records could not be pulled any faster. We have since confirmed with our client that the statements in the burden declaration are still accurate, and that this is the fastest timeframe possible for pulling each of the claims.***

Exhibit 1C, at p. 5.

15. During the June 23, 2020 continued meet and confer, I asked United's counsel if United had tried to access any part of the "administrative record." United admitted it did not, claiming that the Health Care Providers never asked United to retrieve only some documents and not others. Ex. 1C at pp. 4-5. Ms. Llewellyn further stated that she needed "to discuss [United's] ability and willingness to dedicate their employees to working on this task, which (by our quick

estimate) would work out to approximately a year of work for two people working full-time. We again submit that we will discuss this with our client, and will respond to.” *Id.*

16. After discussing the Way declaration during the June 9 and 15 conference, on June 23, 2020, United’s counsel stated that it intended to stand on Way’s declaration regarding collection of information United characterized as the “administrative record.” In earlier meet and confer discussions, United’s counsel indicated that due to the alleged burden, United had not started any collection or production of documents that United asserted were in the “administrative record” and stated that the information is contained in no other database than the one that holds the “administrative record.” United’s counsel indicated that United has not tried to access parts of the “administrative record” like emails in connection with any of Plaintiffs’ document requests even though such emails would be responsive to such requests. United’s counsel also stated that, after inquiring with United, no other unit could retrieve the information identified in the Way declaration in any less time.

17. On June 24, my law partner, Amanda Perach, sent the following response (in red) to which Ms. Llewellyn responded (in blue):

On our call, you confirmed that you specifically asked your client whether there was a different method available for pulling these records which was more efficient and you were informed that there was not. You were not willing to disclose the name of the person who confirmed this, but stated that it was not Sandra Way.

This is correct.

Id. at p. 5.

18. After the June 23, 2020 meet and confer, on June 24, Ms. Perach sent an email asking if United’s counsel had an update about United’s “willingness to dedicate their employees to working on this task, which (by our quick estimate) would work out to approximately a year of work for two people working full-time. We again submit that we will discuss this with our client, and will respond to.”

19. Although United’s counsel stated that she was speaking with United on July 2, 2020 about pulling the administrative record and aspects of that record and that she would update the Health Care Providers by July 3, 2020, that did not happen. *Id.* at p. 2; *see also* Exhibit 1D.

1 20. On July 9, 2020, Ms. Llewellyn finally responded:

2 We have spoken with our client about pulling the portion of the
3 administrative record, which you requested on 6/23 (outlined in our burden
4 declaration at ¶ (d) as “Any other documents comprising the administrative
5 records, such as correspondence or clinical records submitted by Plaintiffs”
6 which was estimated to take 15 minutes per claim). We again note that your
7 request (15 minutes spent on each of the 15,210 claims you are asserting)
8 still amounts to approximately 3,803 man-hours of time dedicated to pulling
9 only a portion of the documents you are seeking. After speaking with our
10 client, we learned that “correspondence” as used in ¶ (d) would *only* likely
11 be contained within those claims files that were administratively appealed.
12 We have asked our client how long it would take them to identify which of
13 your 15,210 claims have been administratively appealed, and were told that
14 it would be a lengthy process. That said, if you are able/amenable to getting
15 us a list of all claims that you know were administratively appealed, we
16 could begin working on pulling these portions of those claims records.

17 Ex. 1C at p. 2.

18 21. On July 15, 2020, Ms. Llewellyn stated: “we stand on our objections to your
19 requests to the extent they are unduly burdensome and not proportional to the needs of this case,
20 as further detailed in the responses themselves and in the Sandra Way burden declaration.” *Id.*
21 at p. 1.

22 22. During the July 20, 2020 meet and confer, I made it clear that the Health Care
23 Providers do not agree to the proposal set forth in Ms. Llewellyn’s July 9 email because United’s
24 attempt to limit discovery to a subset of what United has called the “administrative record” and
25 efforts to put boundaries around this case as though it is governed by ERISA is unfounded and
26 contrary to the Court’s June 24 Order.

27 23. On July 20, 2020, when I asked if Way pulled any claim at issue in this case,
28 United’s counsel did not believe so.

29 24. When asked if United had considered the Health Care Providers’ February 10
30 discovery proposal that would alleviate the need for the parties to exchange certain information
31 like provider remittance advice forms (PRAs), explanations of benefit forms (“EOBs”) and Health
32 Insurance Claim Forms 1500 (“HCFA Forms”), United never accepted or rejected the proposal,
33 only repeating that it could not answer until it knew how many Data iSight adjudicated claims are
34 involved in this litigation. *Id.* at p. 5.

1 25. When asked about the status of United's ability to identify which claims it
2 adjudicated using Data iSight, the response varied from "it just takes time" to something like "we
3 are working on it."

4 26. On August 3, 2020, the Health Care Providers even offered to undertake the work
5 to compare which claims are at issue in the case if United could run a report of claims adjudicated
6 by Data iSight for a specific time period. However, the Health Care Providers have yet to receive
7 a substantive response to this latest attempt to reach a reasonable resolution. This discovery
8 compromise has been an open issue for six months.

9 27. Additionally, over the course of the meet and confer efforts, the Health Care
10 Providers responded to United's objections of undue burden that the requests at-issue in the
11 instant Motion do not require United to look at specific claims, but rather the requests seek more
12 high-level information, such as policies, procedures, directives or strategy-related documents
13 and information.

14 28. Nevertheless, United often referred the Health Care Providers back to the
15 "administrative record" as being the **only** location that emails about a claim could be found.

16 29. On requests that might not be burdensome if there are no responsive documents,
17 United responded that it had not looked at all because it was standing on the Way declaration
18 and therefore took the position it need not do anything else until compelled otherwise.

19 30. United's position is clear: it has not or will not produce its claim file on the health
20 care claims at-issue in this litigation.

21 31. The Health Care Providers respectfully submit that good cause exists to grant the
22 order shortening time because the discovery issues that are involved in the Motion should be
23 quickly heard and adjudicated given United's ongoing delay.

24 ...

25 ...

26 ...

27 ...

28 ...

001723

MCDONALD CARANO2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

1 32. Based on the foregoing, the Health Care Providers respectfully request that this
2 Court set the Motion to Compel on an order shortening time in order to resolve this dispute.
3 Specifically, the Health Care Providers request the Court set this during the already scheduled
4 hearing on September 9, 2020 at 10:30 a.m. There can be no prejudice to United because there
5 is ample time for United to file an opposition prior to being heard.

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

7 Executed: August 27, 2020.

/s/ Kristen T. Gallagher

Kristen T. Gallagher

001723

EXHIBIT 1A

001724

001724

EXHIBIT 1A

Kristen T. Gallagher

From: Kristen T. Gallagher
Sent: Wednesday, February 26, 2020 11:41 AM
To: 'Balkenbush, Colby'
Cc: Pat Lundvall; Amanda Perach; Roberts, Lee; Llewellyn, Brittany M.
Subject: RE: Fremont Emergency Services (Mandavia), Ltd v. UnitedHealth Group, Inc. et al. - tomorrow's meet and confer
Attachments: Stipulated Confidentiality Agreement and Protective Order (EDCR version) - version 1.docx

Colby –

As I mentioned during our call, I agreed to provide a summary of the issues, but we are not required to provide a detailed letter in order to meet and confer. You drafted United's responses to the discovery requests, so you are able to substantively discuss them. But in an effort to accommodate your request for preparation time, I suggest we use Monday's 10:30 am scheduled follow up as the initial call. Please confirm.

Because we are in Business Court, I suggest that we call the Court to ask for a Rule 16 conference setting. Please let me know when you are available. I also want to note that a scheduling order was not entered while the case pending in federal court.

I have attached a protective order for submission to the Court. Other than changes in captions/case nos. to the protective order and Exhibit A, I have added par. 25 to address documents already produced. If agreeable, please sign and return your scanned signature for submission to the Court.

-Kristy

Kristen T. Gallagher | Partner

McDONALD CARANO

P: 702.873.4100 | E: kgallagher@mcdonaldcarano.com

From: Balkenbush, Colby <CBalkenbush@wwhgd.com>
Sent: Monday, February 24, 2020 6:03 PM
To: Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>
Cc: Pat Lundvall <plundvall@mcdonaldcarano.com>; Amanda Perach <aperach@mcdonaldcarano.com>; Roberts, Lee <LRoberts@wwhgd.com>; Llewellyn, Brittany M. <BLlewellyn@wwhgd.com>
Subject: RE: Fremont Emergency Services (Mandavia), Ltd v. UnitedHealth Group, Inc. et al. - tomorrow's meet and confer

Hi Kristy,

On our February 13 meet and confer call regarding the sufficiency of Fremont's discovery responses, you agreed to provide us with a summary of the issues you had with United's discovery responses by February 19. We asked that you provide this summary in advance so that we could engage in a substantive meet and confer and hopefully avoid the need for court intervention. Sending us this long email after 5 PM the day before the meet and confer (which does not even cover the issues you apparently take with the RFP responses) does not give us enough time to consider our

position on these issues prior to the call. We are going to need to reschedule the meet and confer so we have time to consider what our position will be on the issues you raise below.

Your email also brings up another issue that we need to address. What is Fremont's position as to the validity of the actions taken in the federal action prior to the remand order? For example, does Fremont contend that a Rule 16.1 conference is not necessary as the FRCP 26(f) conference and the scheduling order issued in the federal action takes its place?

Best,

Colby



Colby Balkenbush, Attorney
Weinberg Wheeler Hudgins Gunn & Dial
 6385 South Rainbow Blvd. | Suite 400 | Las Vegas, NV
 89118
 D: 702.938.3821 | F: 702.938.3864
www.wwhgd.com | vCard

From: Kristen T. Gallagher [<mailto:kgallagher@mcdonaldcarano.com>]

Sent: Monday, February 24, 2020 5:50 PM

To: Balkenbush, Colby; Roberts, Lee; Llewellyn, Brittany M.

Cc: Pat Lundvall; Amanda Perach

Subject: Fremont Emergency Services (Mandavia), Ltd v. UnitedHealth Group, Inc. et al. - tomorrow's meet and confer

This Message originated outside your organization.

Colby –

We are scheduled to talk tomorrow at 1 pm regarding United's discovery responses. Below are the RFA and Interrogatory responses that I would like to discuss. I anticipate sending you a summary of the RFP responses prior to the call.

Requests for Admissions

“Specific Objections” – has United refused to respond based on any of them? Has United withheld documents on this basis? Has United denied any specific response on the basis of your objection?

RFA No. 1 & RFA No. 3: The two responses seem inconsistent. Please explain.

RFA Nos. 6 & 7: are the denials based on the objections?

RFA No. 11:

Among other objections, United objects to the term “usual and customary” - how does United define usual and customary?

Has United identified other written agreements/contracts that govern the amount of payment?

RFA No. 12: Confirm the denial at 11:2 is a denial that United submitted data to the Nevada Division of Insurance with reference to NRS 679B.152.

Interrogatories

“Specific Objections” – Has United refused to respond based on any of them? Has United withheld documents on this basis?

Answer to No. 1: The answer is non-responsive as it does not answer the question posed. This request seeks information about why United does not pay full billed charges once it has deemed the claim payable for the billed CPT code. This request does not seek information about reductions for reasons one through 5 that are listed in the answer. Instead, the Health Care Providers want to know what/how United determine rates.

Answer to No. 2: Similar non-responsive answer to No. 1. The request does not require United to review each claim to provide an answer.

Answer to Nos. 3 & 4: Similar non-responsive answer to Nos. 1 and 2.

Answer to No. 5: Does not require United to pull each claim to determine whether there is another contract/agreement that governs payment of the claims. Whether a contract/agreement governs a member’s visit would not be at the granular level. The response states there may be other agreements; has United confirmed one way or the other?

Answer to No. 6: United objects on the basis that it does not know the timeframe. Fremont identified the timeframe as July 1, 2017-present, unless otherwise indicated. This then informs the phrase “prior dealings” necessarily means conduct during that timeframe. Does United have information to supplement?

Answer to No. 7: If United is relying on another agreement with any other provider to determine how much it reimbursed Fremont for the health care claims at issue, Fremont is entitled to the information. United objected on the basis that the requests requires it to reveal information about agreements with other providers, but then circularly argues that the health benefit plans set the amount a plan will pay for covered services. If United is making determinations about the amount it will pay for emergency services based on what it pays other providers, or what other providers agree to accept, the information is relevant to the case and Fremont is entitled to the information.

Answer to No. 8: Non-responsive answer.

Answer to No. 9: Non-responsive answer, improper limitation to just the contract when the request is broader than that.

Answer to No. 10: Non-responsive answer.

Answer to No. 12: Non-responsive answer.

Answer to No. 13: United to supplement by February 26, 2020

Answer to No. 14: United refused to answer; asked to meet and confer

Kristen T. Gallagher | Partner

McDONALD CARANO

2300 West Sahara Avenue | Suite 1200

Las Vegas, NV 89102

P: 702.873.4100 | **F:** 702.873.9966

[BIO](#) | [WEBSITE](#) | [V-CARD](#) | [LINKEDIN](#)

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EXHIBIT 1B

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001729

EXHIBIT 1B



WEINBERG WHEELER
HUDGINS GUNN & DIAL
TRIAL LAWYERS

6385 South Rainbow Blvd.
Suite 400
Las Vegas, NV 89118

702.938.3838 Office
702.938.3864 Fax

Colby L. Balkenbush
cbalkenbush@wwhgd.com
Direct 702.938.3821

February 27, 2020

VIA EMAIL

Kristen T. Gallagher
McDONALD CARANO
2300 W Sahara Ave #1200
Las Vegas, NV 89102
kgallagher@mcdonaldcarano.com

Re: Fremont Emergency Services, LTD. v UHC, et al.
Case No.: 2:19-cv-00832-JCM-VCF
United's Position on the Current Posture of State Court Proceedings

Kristy:

As you are aware, on February 20, 2020, the Nevada Federal District Court issued an order granting Plaintiffs' motion to remand. ECF No. 78. Thus, this case is now headed back to the Eighth Judicial District Court.

This raises the question of what procedural posture the case will be in once the Eighth Judicial District Court receives a certified copy of the order of remand from the clerk of the Nevada Federal District Court. See 28 U.S.C. § 1447(c) (providing that the state court may not proceed with the case until it receives a certified copy of the remand order from the federal court's clerk).

The purpose of this letter is to set forth United's position on what procedural posture the case is now in. "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, 5 S.Ct. 90, 92, 28 L.Ed. 693, 695 (1884). While Nevada has not yet taken a position on this issue, we believe that all the federal court filings should be deemed void and the state court case should proceed from the posture it was in when United filed its Notice of Removal on May 14, 2019. ECF No. 1.

In its February 20 remand order, the federal court found that it had lacked jurisdiction all along. Thus, the most logical conclusion is that the filings and orders entered by the federal court from May 14, 2019 to present are of no effect. 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



WEINBERG WHEELER
HUDGINS GUNN & DIAL
TRIAL LAWYERS

February 27, 2020

Page 2

removed from state court, and what happened in federal court has no bearing on the proceeding in state court.”).

Thus, United’s position is that the operative complaint is now Fremont’s original April 15, 2019 Complaint. At the required time, United will file a response to that Complaint. As to discovery, it is no longer permitted. In Nevada state court, discovery may only begin after the filing of the joint case conference report (“JCCR”). See NRCP 26(a). In turn, the JCCR may only be filed after the NRCP 16.1(b) early case conference takes place. The early case conference may not occur until after United files an answer in this case, which has not occurred.

Thus, while United acknowledges that, during the federal court litigation, both United and Fremont specified rolling production deadlines in responses to various discovery requests, United believes that discovery schedule is no longer binding since all federal court proceedings are void and the Nevada Rules of Civil Procedure do not permit discovery at this stage of the litigation.¹ Absent an order from the Court disagreeing with its analysis of this issue, United does not intend to produce any additional documents or participate in any further meet and confers with Fremont regarding the discovery requests/responses that were issued as part of the federal court litigation. Once the JCCR has been filed, discovery can begin again.

If you disagree with our analysis of the current posture of the state court litigation, please let us know so we can assess Fremont’s position and any legal authority that supports it.

Regards,

WEINBERG WHEELER HUDGINS
GUNN & DIAL LLC

/s/ Colby Balkenbush

Colby L. Balkenbush

CLB

cc: D. Lee Roberts, Esq.
Brittany Llewellyn, Esq.
Pat Lundvall, Esq.
Amanda Perach, Esq.

¹ There is also the issue of there now being no protective order in place to protect any documents that United might produce since the stipulated order entered by the federal court (ECF No. 31) is now void.

EXHIBIT 1C

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EXHIBIT 1C

Kristen T. Gallagher

From: Llewellyn, Brittany M. <BLlewellyn@wwhgd.com>
Sent: Wednesday, July 15, 2020 10:14 AM
To: Amanda Perach
Cc: Pat Lundvall; Kristen T. Gallagher; Balkenbush, Colby
Subject: RE: TeamHealth v UHC discovery

Good Morning Amanda,

As an initial point of clarification, I just want to note that there was not a single document produced with Defendants' Third Supplemental responses, but four separate documents. As to the remainder of your email, we stand on our objections to your requests to the extent they are unduly burdensome and not proportional to the needs of this case, as further detailed in the responses themselves and in the Sandra Way burden declaration. Further, I would point out that our Third Supplemental responses identify the "performance reports" that we had previously discussed and that we are objecting to producing and withholding. Notwithstanding those objections, Defendants are continuing to search for documents which are relevant and responsive to Plaintiffs' Requests for Production.

Thanks,

Brittany

From: Amanda Perach [mailto:aperach@mcdonaldcarano.com]
Sent: Tuesday, July 14, 2020 9:49 AM
To: Llewellyn, Brittany M.
Cc: Pat Lundvall; Kristen T. Gallagher; Balkenbush, Colby
Subject: RE: TeamHealth v UHC discovery

This Message originated outside your organization.

Brittany,

We received Defendants' Third Supplemental Responses to Fremont Emergency Services (Mandavia) Ltd.'s First Set of Requests for Production of Documents. The only document contained therein was a document titled "Data iSight Client Preferences." Is it Defendants' position that this is the only remaining document responsive to RFP Nos. 12 and 21? Or are Defendants withholding documents? You and Colby mentioned on our previous call that the Defendants intended to prepare a "log" which would list documents Defendants were withholding based on an alleged lack of relevance. Do you intend to produce this? To be clear and as we mentioned on the call, we object to Defendants withholding any documents on the basis of relevance.

Thank you,

Amanda M. Perach | Partner

McDONALD CARANO

P: 702.873.4100 | E: aperach@mcdonaldcarano.com

From: Llewellyn, Brittany M. <BLlewellyn@wwhgd.com>
Sent: Thursday, July 9, 2020 8:16 PM
To: Amanda Perach <aperach@mcdonaldcarano.com>
Cc: Pat Lundvall <plundvall@mcdonaldcarano.com>; Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>;

Balkenbush, Colby <CBalkenbush@wwhgd.com>

Subject: RE: TeamHealth v UHC discovery

Amanda,

My apologies for the delay. It was a holiday weekend and, as you know, we had other items due to be filed in this case yesterday. We have been working diligently with our client to get responses to your questions/requests, and have also been working to get a supplemental production finalized. I underestimated the time it would take, and I appreciate your patience. Here is where we stand on each of the items you've outlined below:

1. We will be objecting to the production of the "performance reports" for reasons that will be further detailed in our supplemental responses. We hope to have final approval on the responses tomorrow, but at the very latest, we will have them to you on Monday.
2. As above, we are working to get this supplemental production to you. Again, we hope to have final approval tomorrow, but at the very latest, we will have it to you on Monday.
3. We are in the process of finalizing the proposed email protocol. We began working on the proposal as soon as your office agreed to consider same, and have been working with our client on finalizing a draft agreement that we hope will be agreeable to all parties. On this, we also hope to have final approval tomorrow, but at the very latest, we will have it to you on Monday.
4. We have spoken with our client about pulling the portion of the administrative record, which you requested on 6/23 (outlined in our burden declaration at ¶ (d) as "Any other documents comprising the administrative records, such as correspondence or clinical records submitted by Plaintiffs" which was estimated to take 15 minutes per claim). We again note that your request (15 minutes spent on each of the 15,210 claims you are asserting) still amounts to approximately 3,803 man-hours of time dedicated to pulling only a portion of the documents you are seeking. After speaking with our client, we learned that "correspondence" as used in ¶ (d) would *only* likely be contained within those claims files that were administratively appealed. We have asked our client how long it would take them to identify which of your 15,210 claims have been administratively appealed, and were told that it would be a lengthy process. That said, if you are able/amenable to getting us a list of all claims that you know were administratively appealed, we could begin working on pulling these portions of those claims records.

Again, we appreciate your patience.

Thanks,

Brittany

From: Amanda Perach [<mailto:aperach@mcdonaldcarano.com>]

Sent: Thursday, July 09, 2020 12:14 PM

To: Llewellyn, Brittany M.

Cc: Pat Lundvall; Kristen T. Gallagher; Balkenbush, Colby

Subject: RE: TeamHealth v UHC discovery

This Message originated outside your organization.

Brittany,

There are numerous items that were promised last week and then subsequently promised at the beginning of this week (after the former deadline was missed) which have not been received. I have listed these items below.

1. You state below that you planned to have an answer on whether "performance reports" were going to be produced by July 3, 2020. (We "will either produce these reports or object to their production by July 3."). You further

note that you had copies of these “performance reports” as of June 23, 2020. We have not received any information from you on this issue nor have any of these documents been produced.

2. With respect to RFP Nos. 12 and 21, you represented that United would “be producing documents relating to Data iSight on or before 7/3.” Again, we have not received any such documents.
3. Although the Health Care Providers never agreed to a search term protocol, you stated that United would like to propose this as a more efficient way of producing email correspondence. Despite United’s supposition that this would make any email production more efficient, we still have not even received a proposed protocol from you. This was promised to be sent no later than July 3rd.
4. In the attached email, you state that you were speaking with United on July 2nd about pulling the administrative record and aspects of that record. You stated that we would receive an update by July 3rd. Again, we have not received any information on this to date.

We are seeing repeated delays with respect to discovery from United. If we do not receive these documents/information by the end of the day today, we will proceed forward with a motion to compel on the same.

Thank you,

Amanda M. Perach | Partner

McDONALD CARANO

P: 702.873.4100 | E: aperach@mcdonaldcarano.com

From: Llewellyn, Brittany M. <BLlewellyn@wwhgd.com>

Sent: Friday, July 3, 2020 8:21 PM

To: Amanda Perach <aperach@mcdonaldcarano.com>

Cc: Pat Lundvall <plundvall@mcdonaldcarano.com>; Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>;

Balkenbush, Colby <CBalkenbush@wwhgd.com>

Subject: RE: TeamHealth v UHC discovery

Amanda,

We had promised a supplement by today, but we are still awaiting approval, and my office closed early today so I do not have anyone around to serve if approval comes in later tonight. We will have it to you at the beginning of next week.

Thanks,

Brittany

From: Amanda Perach [<mailto:aperach@mcdonaldcarano.com>]

Sent: Tuesday, June 30, 2020 1:38 PM

To: Llewellyn, Brittany M.

Cc: Pat Lundvall; Kristen T. Gallagher; Balkenbush, Colby

Subject: RE: TeamHealth v UHC discovery

This Message originated outside your organization.

Brittany,

We reserve our right to respond to the rest of the below as we disagree with many of your statements; however, with respect to the below-highlighted statement, do you have any updates from your client?

Thanks,

Amanda M. Perach | Partner

McDONALD CARANO

P: 702.873.4100 | E: aperach@mcdonaldcarano.com

From: Llewellyn, Brittany M. <BLlewellyn@wwhgd.com>
Sent: Friday, June 26, 2020 9:50 AM
To: Amanda Perach <aperach@mcdonaldcarano.com>
Cc: Pat Lundvall <plundvall@mcdonaldcarano.com>; Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>; Balkenbush, Colby <CBalkenbush@wwhgd.com>
Subject: RE: TeamHealth v UHC discovery

Amanda,

Please review our responses to your comments (in blue) below.

Thank you,

Brittany

From: Amanda Perach [<mailto:aperach@mcdonaldcarano.com>]
Sent: Wednesday, June 24, 2020 9:03 PM
To: Llewellyn, Brittany M.; Balkenbush, Colby
Cc: Pat Lundvall; Kristen T. Gallagher
Subject: RE: TeamHealth v UHC discovery

This Message originated outside your organization.

Brittany and Colby,

After having completed our last meet and confer, we wanted to address a few points referenced in your email and on our meet and confer calls.

One item not fully addressed in your email is United's position on pulling the "administrative record." To summarize that issue, during our June 23 meet and confer, you indicated that United stands on its Sandra Way declaration regarding collection of information that United has characterized as the "administrative record." In earlier meet and confer discussions, you indicated that due to the alleged burden, United has not started any collection or production of documents that you assert are in the "administrative record" and you have stated that information is contained in no other database than the one that holds the "administrative record." You have also indicated that United has not tried to access parts of the "administrative record" like emails in connection with any of Plaintiffs' document requests even though such emails would be responsive to such requests. Thus, we understand that United has not made any effort, at this point, to collect any portion of the "administrative record" for any claim at issue in this litigation based on United's contention that doing so would create an undue burden.

you as soon as we have an answer from our client This does not accurately reflect what we stated during the June 23 meet and confer. While we stand on our objections as stated in Sandra Way's burden declaration, this misconstrues our position. During our call, you asked if we had begun pulling certain portions of the administrative record, and gave the example of the documents referenced in ¶ (d) which states "Other documents comprising the administrative records: 15 minutes." You had not previously asked that we pull only certain portions of the administrative record, and we responded that we would speak with our client about pulling the "other documents" that would fall under ¶ (d). While we intend to ask our client about pulling certain portions of the record, please note that your request (15 minutes spent on each of the 15,210 claims you are asserting) still amounts to approximately 3,803 man-hours of time dedicated to pulling only a portion of the documents you are seeking. It cannot reasonably be disputed that this is still a tremendous

endeavor to undertake. Due to the enormity of this request, (which, again, was made for the first time during the 6/23 meet and confer) we could not simply agree without first speaking with our client. We will need to discuss their ability and willingness to dedicate their employees to working on this task, which (by our quick estimate) would work out to approximately a year of work for two people working full-time. We again submit that we will discuss this with our client, and will respond to.

Our remaining comments are below in red.

Thank you,

Amanda M. Perach | Partner

McDONALD CARANO

P: 702.873.4100 | E: aperach@mcdonaldcarano.com

From: Llewellyn, Brittany M. <BLlewellyn@wwhgd.com>

Sent: Tuesday, June 23, 2020 9:12 AM

To: Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>

Cc: Balkenbush, Colby <CBalkenbush@wwhgd.com>; Amanda Perach <aperach@mcdonaldcarano.com>

Subject: TeamHealth v UHC discovery

Kristen,

In advance of our call today, I am sending a general overview of where we are with respect to your request for supplementation of requests for production:

1. **Multiplan Contracts:** After considering the issues and conferring with our client, we cannot agree to produce un-redacted copies. We agree that you have met your meet and confer obligations and will not oppose a motion to compel on that ground. We will oppose the substance of any forthcoming motion to compel.
2. **Request for Production 11:** As we have discussed on prior calls, information responsive to this request is generally found within the administrative record. We have detailed the process of gathering the administrative record in the burden declaration of Sandra Way. On our last call, you asked us to confirm that the timeline set forth in the declaration is still accurate, and that the records could not be pulled any faster. We have since confirmed with our client that the statements in the burden declaration are still accurate, and that this is the fastest timeframe possible for pulling each of the claims. **On our call, you confirmed that you specifically asked your client whether there was a different method available for pulling these records which was more efficient and you were informed that there was not. You were not willing to disclose the name of the person who confirmed this, but stated that it was not Sandra Way.**
This is correct.

In addition to the administrative record, we are also in the process of gathering closure reports for the relevant claims. Before we are able to pull each closure report, we have to gather a list of claims processed by data iSight. We are working on compiling this list, and will then utilize that list to pull the closure reports. By our clients' estimate, the process of determining which of Plaintiffs' claims have been processed by Data iSight will be complete sometime between twenty-one (21) to sixty (60) days from today. Once we have determined which claims have been processed by Data iSight, it will take approximately 2 weeks to pull the actual closure reports for those claims. We further understand that the TeamHealth providers would be able to identify which of their claims were processed by Data iSight on their own. However, this information was not included in TeamHealth's claim spreadsheet (i.e. bates number FESM000011) To the extent the TeamHealth providers can identify which

of their claims were processed by Data iSight sooner than the Defendants can, this would certainly shorten the timeline for production.

Finally, per your request for “performance reports,” we have received these documents from our client yesterday afternoon, and we are in the process of reviewing same. We intend to have an answer to you on whether we will be producing them by the end of this week. We did identify reports evaluating performance of Data iSight as one group of documents we imagine exist and which would be responsive to this request; however, we never limited this request to only these such reports. Certainly, as the propounding party, we do not know the full scope of documents that exist. It is United’s obligation to identify any documents responsive to the request. That should include all email communications with Data iSight relating to claims or services provided by Plaintiffs. You have stated that there are no emails responsive to this request, but could not answer how performance reports or closure reports were delivered to your clients. You later indicated that if there are responsive emails, these would be captured in the search protocol you intend to circulate to us. To be clear, we have never limited this request for production and expect the production of all records responsive to this request, including any email correspondence with Data iSight relating to any claims or services provided by Plaintiffs. We also disagree with United’s attempt to narrow the request to only documents specific to an at-issue claim instead of the plain reading of the request.

We agree that it is United’s obligation to identify documents that are responsive to this request, but disagree with your contention that we are attempting to improperly narrow the request. Your request asks us to “[p]roduce all Documents and/or Communications between You and any third-party, including but not limited to Data iSight, relating to (a) any claim for payment for medical services rendered by Fremont to any Plan Member, or (b) any medical services rendered by Fremont to any Plan Member.” Per the language in subsections (a) and (b) of your request, it seeks documents/communications relating to claims for payment or medical services rendered by the Plaintiffs. To the extent your request seeks documents that pertain to non-party providers, claims, or issues that are beyond the scope of this litigation, United does not read the request to ask for this, but nevertheless will not produce documents that are indisputably beyond the scope of this litigation and therefore irrelevant.

Responding further, per our conversation on 6/23, we agreed to find out how performance reports and closure reports are delivered, and intend to respond when such information is received. Please note we are still evaluating whether the “performance reports” are responsive to this request, and will either produce these reports or object to their production by July 3.

As far as what this request calls for, our understanding is that the only emails that would be responsive to RFP 11 would be in the administrative record. We did not represent that “responsive emails . . . would be captured in the search protocol [we] intend to circulate to [you].” What is/will be captured by searches would depend on the custodians you name, and the search terms you propose.

3. **Request for Production 12/21:** We are still in the process of reviewing whether there are additional documents pertaining to United’s relationship with Data iSight that are potentially relevant to the claims at issue in this action other than the performance reports and contracts. To the extent we withhold anything related to this relationship based on relevance, privilege or on some other basis, we will notify you of same in our supplemental responses so that it is clear what is being produced and what is being withheld (and if so on what basis). We have requested all documents relating to Data iSight’s relationship with United. At the last meet and confer, you stated that you asked United to provide a list of all documents relating to relationship with Data iSight and that you would have all such information by the date of the next meet and confer. That did not happen. Instead, you noted that your client is still searching for documents and you could not provide us with a list of documents relating to the relationship between Data iSight and United. You also stated that you will be reviewing potentially responsive documents and if you deem them to be irrelevant you will be withholding such documents and putting the names of such documents in some type of log. We do not believe there is a legal basis to withhold responsive documents on the basis of relevance and object to United proceeding in this manner.

At no time did we ever represent that we would have all documents relating to Data iSight by 6/23. We are still working to collect and review documents that are responsive to this request. That said, we will be producing documents relating to Data iSight on or before 7/3. Finally, we disagree with your contention that there is no legal basis to withhold irrelevant documents. A party always has a right to withhold documents that it has evaluated and determined are not responsive. NRCP 26 does not dictate that a party must produce irrelevant documents.

4. **Requests for Production 13/27:** To address how emails should be produced in this matter, we have drafted a protocol for the exchange of search terms and custodians and the search of email repositories. We have just sent our client a second draft of the protocol. We expect to have a draft protocol to you no later than the next 7-10 days and hopefully sooner. The protocol will include a deadline for each party to name email custodians it is seeking emails from, a deadline for the selection of search terms and a deadline for the actual production of the responsive emails. We believe the protocol will effectively address not only RFPs 13 and 27 but also any other email RFPs the TeamHealth providers have served/will serve in the future as well as United's email RFPs. **As we stated on our call, we never agreed to search terms. We also asked if you could provide us with a target date for production of any of the over 100,000 emails you are reviewing and you would not provide us with any estimate for production.**

As stated on our phone call of 6/23, it does not make sense for us to work to provide a production target date until we know whether you are amenable to a protocol or not. We believe a search protocol is the most efficient way of gathering emails. If you are not amenable to a search protocol, we will evaluate targets for rolling productions or move the court for an order requiring a search term protocol.

5. **Request for Production 37:** We have identified further responsive documents for production and will serve a supplement before the end of this week (6/26). **On our call, you further stated that this production would not include any email correspondence with providers or form plan documents we had discussed on our previous meet and confer. You stated that your client does not have a set of plans that would have been issued to certain members for a certain time period that could serve as form plan documents. The only documents you will be supplementing appear to be member-facing policy documents relating to out of network providers.** We take issue with the way your response is worded as it suggests that we are withholding potentially responsive correspondence. Your request No. 37 asks that we "[p]roduce any and all Documents and/or Communications concerning Emergency Medicine Services and/or Emergency Department Services You published, provided or made available to either Emergency Medicine Groups or Your Plan Members in Nevada from 2016 to the present concerning Your reimbursement of out-of-network services." Our understanding from our client is that they do not have email correspondence that is responsive to this request. Finally, per our phone call, we will be providing a supplemental response to this request today (6/26).

Lastly, we all agreed that following the supplement this week, if we believe that there remain deficiencies, we may proceed with moving to compel as we have exhausted our meet and confer efforts on these topics.

We do not agree, and do not believe we have exhausted our efforts. We are continuing in our search efforts and need more time. TeamHealth has asserted 15,210 claims in this litigation, which include different members, plans, and treatment. The idea that we should be able to produce all information related to these claims within a month is unreasonable. These discovery efforts require coordination between different departments, which are currently tasked with handling litigation from TeamHealth Plaintiffs in several different jurisdictions. Accordingly, we do not agree that you are justified in filing a motion to compel, and again ask that you be patient with our continued attempts to fulfill our discovery obligations. Again, per the above, we will be producing documents today, June 26, and next Friday, July 3.

Thanks,

Brittany



Brittany M. Llewellyn, Attorney
Weinberg Wheeler Hudgins Gunn & Dial
6385 South Rainbow Blvd. | Suite 400 | Las Vegas, NV
89118
D: 702.938.3848 | F: 702.938.3864
www.wwhgd.com | vCard

The information contained in this message may contain privileged client confidential information. If you have received this message in error, please delete it and any copies immediately.

001740

001740

EXHIBIT 1D

001741

001741

EXHIBIT 1D

Kristen T. Gallagher

From: Llewellyn, Brittany M. <BLlewellyn@wwhgd.com>
Sent: Wednesday, July 1, 2020 9:57 PM
To: Amanda Perach
Cc: Pat Lundvall; Kristen T. Gallagher; Balkenbush, Colby
Subject: RE: TeamHealth v UHC discovery

Amanda,

We have a call set with our client for tomorrow afternoon and plan to have an update to you by the end of the week.

Thanks,

Brittany

From: Amanda Perach [mailto:aperach@mcdonaldcarano.com]
Sent: Tuesday, June 30, 2020 1:38 PM
To: Llewellyn, Brittany M.
Cc: Pat Lundvall; Kristen T. Gallagher; Balkenbush, Colby
Subject: RE: TeamHealth v UHC discovery

This Message originated outside your organization.

Brittany,

We reserve our right to respond to the rest of the below as we disagree with many of your statements; however, with respect to the below-highlighted statement, do you have any updates from your client?

Thanks,

Amanda M. Perach | Partner

McDONALD CARANO

P: 702.873.4100 | **E:** aperach@mcdonaldcarano.com

From: Llewellyn, Brittany M. <BLlewellyn@wwhgd.com>
Sent: Friday, June 26, 2020 9:50 AM
To: Amanda Perach <aperach@mcdonaldcarano.com>
Cc: Pat Lundvall <plundvall@mcdonaldcarano.com>; Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>; Balkenbush, Colby <CBalkenbush@wwhgd.com>
Subject: RE: TeamHealth v UHC discovery

Amanda,

Please review our responses to your comments (in blue) below.

Thank you,

Brittany

From: Amanda Perach [<mailto:aperach@mcdonaldcarano.com>]
Sent: Wednesday, June 24, 2020 9:03 PM
To: Llewellyn, Brittany M.; Balkenbush, Colby
Cc: Pat Lundvall; Kristen T. Gallagher
Subject: RE: TeamHealth v UHC discovery

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Brittany and Colby,

After having completed our last meet and confer, we wanted to address a few points referenced in your email and on our meet and confer calls.

One item not fully addressed in your email is United's position on pulling the "administrative record." To summarize that issue, during our June 23 meet and confer, you indicated that United stands on its Sandra Way declaration regarding collection of information that United has characterized as the "administrative record." In earlier meet and confer discussions, you indicated that due to the alleged burden, United has not started any collection or production of documents that you assert are in the "administrative record" and you have stated that information is contained in no other database than the one that holds the "administrative record." You have also indicated that United has not tried to access parts of the "administrative record" like emails in connection with any of Plaintiffs' document requests even though such emails would be responsive to such requests. Thus, we understand that United has not made any effort, at this point, to collect any portion of the "administrative record" for any claim at issue in this litigation based on United's contention that doing so would create an undue burden.

you as soon as we have an answer from our client This does not accurately reflect what we stated during the June 23 meet and confer. While we stand on our objections as stated in Sandra Way's burden declaration, this misconstrues our position. During our call, you asked if we had begun pulling certain portions of the administrative record, and gave the example of the documents referenced in ¶ (d) which states "Other documents comprising the administrative records: 15 minutes." You had not previously asked that we pull only certain portions of the administrative record, and we responded that we would speak with our client about pulling the "other documents" that would fall under ¶ (d). While we intend to ask our client about pulling certain portions of the record, please note that your request (15 minutes spent on each of the 15,210 claims you are asserting) still amounts to approximately 3,803 man-hours of time dedicated to pulling only a portion of the documents you are seeking. It cannot reasonably be disputed that this is still a tremendous endeavor to undertake. Due to the enormity of this request, (which, again, was made for the first time during the 6/23 meet and confer) we could not simply agree without first speaking with our client. We will need to discuss their ability and willingness to dedicate their employees to working on this task, which (by our quick estimate) would work out to approximately a year of work for two people working full-time. We again submit that we will discuss this with our client, and will respond to.

Our remaining comments are below in red.

Thank you,

Amanda M. Perach | Partner

McDONALD CARANO

P: 702.873.4100 | E: aperach@mcdonaldcarano.com

From: Llewellyn, Brittany M. <BLlewellyn@wwhgd.com>
Sent: Tuesday, June 23, 2020 9:12 AM
To: Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>
Cc: Balkenbush, Colby <CBalkenbush@wwhgd.com>; Amanda Perach <aperach@mcdonaldcarano.com>
Subject: TeamHealth v UHC discovery

Kristen,

In advance of our call today, I am sending a general overview of where we are with respect to your request for supplementation of requests for production:

1. **Multiplan Contracts:** After considering the issues and conferring with our client, we cannot agree to produce un-redacted copies. We agree that you have met your meet and confer obligations and will not oppose a motion to compel on that ground. We will oppose the substance of any forthcoming motion to compel.
2. **Request for Production 11:** As we have discussed on prior calls, information responsive to this request is generally found within the administrative record. We have detailed the process of gathering the administrative record in the burden declaration of Sandra Way. On our last call, you asked us to confirm that the timeline set forth in the declaration is still accurate, and that the records could not be pulled any faster. We have since confirmed with our client that the statements in the burden declaration are still accurate, and that this is the fastest timeframe possible for pulling each of the claims. **On our call, you confirmed that you specifically asked your client whether there was a different method available for pulling these records which was more efficient and you were informed that there was not. You were not willing to disclose the name of the person who confirmed this, but stated that it was not Sandra Way.**

This is correct.

In addition to the administrative record, we are also in the process of gathering closure reports for the relevant claims. Before we are able to pull each closure report, we have to gather a list of claims processed by Data iSight. We are working on compiling this list, and will then utilize that list to pull the closure reports. By our clients' estimate, the process of determining which of Plaintiffs' claims have been processed by Data iSight will be complete sometime between twenty-one (21) to sixty (60) days from today. Once we have determined which claims have been processed by Data iSight, it will take approximately 2 weeks to pull the actual closure reports for those claims. We further understand that the TeamHealth providers would be able to identify which of their claims were processed by Data iSight on their own. However, this information was not included in TeamHealth's claim spreadsheet (i.e. bates number FESM000011). To the extent the TeamHealth providers can identify which of their claims were processed by Data iSight sooner than the Defendants can, this would certainly shorten the timeline for production.

Finally, per your request for "performance reports," we have received these documents from our client yesterday afternoon, and we are in the process of reviewing same. We intend to have an answer to you on whether we will be producing them by the end of this week. **We did identify reports evaluating performance of Data iSight as one group of documents we imagine exist and which would be responsive to this request; however, we never limited this request to only these such reports. Certainly, as the propounding party, we do not know the full scope of documents that exist. It is United's obligation to identify any documents responsive to the request. That should include all email communications with Data iSight relating to claims or services provided by Plaintiffs. You have stated that there are no emails responsive to this request, but could not answer how performance reports or closure reports were delivered to your clients. You later indicated that if there are responsive emails, these would be captured in the search protocol you intend to circulate to us. To be clear, we have never limited this request for production and expect the production of all records responsive to this request, including any email correspondence with Data iSight relating to any claims or services provided by Plaintiffs. We also disagree with United's attempt to narrow the request to only documents specific to an at-issue claim instead of the plain reading of the request.**

We agree that it is United's obligation to identify documents that are responsive to this request, but disagree with your contention that we are attempting to improperly narrow the request. Your request asks us to "[p]roduce all Documents and/or Communications between You and any third-party, including but not limited to Data iSight, relating to (a) any claim for payment for medical services rendered by Fremont to any Plan

Member, or (b) any medical services rendered by Fremont to any Plan Member.” Per the language in subsections (a) and (b) of your request, it seeks documents/communications relating to claims for payment or medical services rendered by the Plaintiffs. To the extent your request seeks documents that pertain to non-party providers, claims, or issues that are beyond the scope of this litigation, United does not read the request to ask for this, but nevertheless will not produce documents that are indisputably beyond the scope of this litigation and therefore irrelevant.

Responding further, per our conversation on 6/23, we agreed to find out how performance reports and closure reports are delivered, and intend to respond when such information is received. Please note we are still evaluating whether the “performance reports” are responsive to this request, and will either produce these reports or object to their production by July 3.

As far as what this request calls for, our understanding is that the only emails that would be responsive to RFP 11 would be in the administrative record. We did not represent that “responsive emails . . . would be captured in the search protocol [we] intend to circulate to [you].” What is/will be captured by searches would depend on the custodians you name, and the search terms you propose.

3. **Request for Production 12/21:** We are still in the process of reviewing whether there are additional documents pertaining to United’s relationship with Data iSight that are potentially relevant to the claims at issue in this action other than the performance reports and contracts. To the extent we withhold anything related to this relationship based on relevance, privilege or on some other basis, we will notify you of same in our supplemental responses so that it is clear what is being produced and what is being withheld (and if so on what basis). **We have requested all documents relating to Data iSight’s relationship with United. At the last meet and confer, you stated that you asked United to provide a list of all documents relating to relationship with Data iSight and that you would have all such information by the date of the next meet and confer. That did not happen. Instead, you noted that your client is still searching for documents and you could not provide us with a list of documents relating to the relationship between Data iSight and United. You also stated that you will be reviewing potentially responsive documents and if you deem them to be irrelevant you will be withholding such documents and putting the names of such documents in some type of log. We do not believe there is a legal basis to withhold responsive documents on the basis of relevance and object to United proceeding in this manner.**

At no time did we ever represent that we would have all documents relating to Data iSight by 6/23. We are still working to collect and review documents that are responsive to this request. That said, we will be producing documents relating to Data iSight on or before 7/3. Finally, we disagree with your contention that there is no legal basis to withhold irrelevant documents. A party always has a right to withhold documents that it has evaluated and determined are not responsive. NRCP 26 does not dictate that a party must produce irrelevant documents.

4. **Requests for Production 13/27:** To address how emails should be produced in this matter, we have drafted a protocol for the exchange of search terms and custodians and the search of email repositories. We have just sent our client a second draft of the protocol. We expect to have a draft protocol to you no later than the next 7-10 days and hopefully sooner. The protocol will include a deadline for each party to name email custodians it is seeking emails from, a deadline for the selection of search terms and a deadline for the actual production of the responsive emails. We believe the protocol will effectively address not only RFPs 13 and 27 but also any other email RFPs the TeamHealth providers have served/will serve in the future as well as United’s email RFPs. **As we stated on our call, we never agreed to search terms. We also asked if you could provide us with a target date for production of any of the over 100,000 emails you are reviewing and you would not provide us with any estimate for production.**

As stated on our phone call of 6/23, it does not make sense for us to work to provide a production target date until we know whether you are amenable to a protocol or not. We believe a search protocol is the most efficient way of gathering emails. If you are not amenable to a search protocol, we will evaluate targets for rolling productions or move the court for an order requiring a search term protocol.

5. **Request for Production 37:** We have identified further responsive documents for production and will serve a supplement before the end of this week (6/26). On our call, you further stated that this production would not include any email correspondence with providers or form plan documents we had discussed on our previous meet and confer. You stated that your client does not have a set of plans that would have been issued to certain members for a certain time period that could serve as form plan documents. The only documents you will be supplementing appear to be member-facing policy documents relating to out of network providers. We take issue with the way your response is worded as it suggests that we are withholding potentially responsive correspondence. Your request No. 37 asks that we "[p]roduce any and all Documents and/or Communications concerning Emergency Medicine Services and/or Emergency Department Services You published, provided or made available to either Emergency Medicine Groups or Your Plan Members in Nevada from 2016 to the present concerning Your reimbursement of out-of-network services." Our understanding from our client is that they do not have email correspondence that is responsive to this request. Finally, per our phone call, we will be providing a supplemental response to this request today (6/26).

Lastly, we all agreed that following the supplement this week, if we believe that there remain deficiencies, we may proceed with moving to compel as we have exhausted our meet and confer efforts on these topics.

We do not agree, and do not believe we have exhausted our efforts. We are continuing in our search efforts and need more time. TeamHealth has asserted 15,210 claims in this litigation, which include different members, plans, and treatment. The idea that we should be able to produce all information related to these claims within a month is unreasonable. These discovery efforts require coordination between different departments, which are currently tasked with handling litigation from TeamHealth Plaintiffs in several different jurisdictions. Accordingly, we do not agree that you are justified in filing a motion to compel, and again ask that you be patient with our continued attempts to fulfill our discovery obligations. Again, per the above, we will be producing documents today, June 26, and next Friday, July 3.

Thanks,

Brittany



Brittany M. Llewellyn, Attorney
Weinberg Wheeler Hudgins Gunn & Dial
 6385 South Rainbow Blvd. | Suite 400 | Las Vegas, NV
 89118
 D: 702.938.3848 | F: 702.938.3864
 www.wwhgd.com | vCard

The information contained in this message may contain privileged client confidential information. If you have received this message in error, please delete it and any copies immediately.

EXHIBIT 2

001747

001747

EXHIBIT 2

001748

WEINBERG WHEELER
HUDGINS GUNN & DIAL

1 D. Lee Roberts, Jr., Esq.
Nevada Bar No. 8877
2 *lroberts@wwhgd.com*
Colby L. Balkenbush, Esq.
3 Nevada Bar No. 13066
cbalkenbush@wwhgd.com
4 Brittany M. Llewellyn, Esq.
Nevada Bar No. 13527
5 *bllewellyn@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
9 *Attorneys for Defendants Unitedhealth Group, Inc.,*
United Healthcare Insurance Company,
10 *United Health Care Services, Inc. dba Unitedhealthcare,*
UMR, Inc. dba United Medical Resources,
11 *Oxford Health Plans, Inc.,*
Sierra Health and Life Insurance Company, Inc.,
12 *Sierra Health-Care Options, Inc., and*
Health Plan of Nevada, Inc.
13

14
15 UNITED STATES DISTRICT COURT
16 DISTRICT OF NEVADA

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

22 Plaintiff,

23 vs.

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

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

**DEFENDANTS' RESPONSES TO
FREMONT EMERGENCY SERVICES
(MANDAVIA), LTD.'S FIRST SET OF
REQUESTS FOR PRODUCTION**

001748

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

5 Defendants.

6 Defendants Unitedhealth Group, Inc., United Healthcare Insurance Company, United
 7 Health Care Services, Inc. dba Unitedhealthcare, UMR, Inc. dba United Medical Resources,
 8 Oxford Health Plans, Inc., Sierra Health and Life Insurance Company, Inc., Sierra Health-Care
 9 Options, Inc., and Health Plan of Nevada, Inc. (collectively "Defendants"), by and through their
 10 attorneys of the law firm of Weinberg Wheeler Hudgins Gunn & Dial, LLC, hereby submit these
 11 responses to Plaintiff's ("Plaintiff" or "Fremont") First Set of Requests for Production of
 12 Documents ("Requests") as follows:

13 **PRELIMINARY STATEMENT**

14 Defendants have made diligent efforts to respond to the Requests, but reserve the right to
 15 change, amend, or supplement their responses and objections. Defendants also reserve the right
 16 to use discovered documents and documents now known, but whose relevance, significance, or
 17 applicability has not yet been ascertained. Additionally, Defendants do not waive their right to
 18 assert any and all applicable privileges, doctrines, and protections, and hereby expressly state
 19 their intent and reserve their right to withhold responsive information on the basis of any and all
 20 applicable privileges, doctrines, and protections.

21 Defendants' responses are made without in any way waiving or intending to waive, but on
 22 the contrary, intending to preserve and preserving, their right, in this litigation or any subsequent
 23 proceeding, to object on any grounds to the use of documents produced in response to the
 24 Request, including objecting on the basis of authenticity, foundation, relevancy, materiality,
 25 privilege, and admissibility of any documents produced in response to the Requests.

26 To the extent that Defendants produce materials responsive to the Requests, they will do
 27 so in accordance with the terms of the Confidentiality and Protective Order entered on October
 28 22, 2019. ECF No. 31.

Defendants are limiting their responses to the Requests to the reasonable time-frame of



1 July 1, 2017 to present (“Relevant Period”) and object to the Requests to the extent that Plaintiff
2 fails to limit the Requests to a specific time period.

3 **SPECIFIC OBJECTIONS TO PLAINTIFF’S DEFINITIONS, INSTRUCTIONS, AND**
4 **RULES OF CONSTRUCTION**

5 1. Defendants object to the “Instructions,” “Definitions,” and “Rules of
6 Construction” accompanying the Requests to the extent they purport to impose any obligation on
7 Defendants different from or greater than those imposed by the Federal Rules of Civil Procedure
8 or applicable local rules.

9 2. Defendants object to the “Instructions,” “Definitions,” and “Rules of
10 Construction” to the extent they purport to require the production of Protected Health
11 Information or other confidential or proprietary information without confidentiality protections
12 sufficient to protect such information from disclosure, such as those found in the the
13 Confidentiality and Protective Order entered on October 22, 2019. ECF No. 31.

14 3. Defendants object to the definition of “Claim” or “Claims” as vague, not
15 described with reasonable particularity, overbroad, unduly burdensome, not relevant to the
16 claims or defenses in this case, and not proportional to the needs of this case to the extent they
17 (1) include claims not specifically identified by Plaintiff in FESM000011, or (2) relate to claims,
18 patients, or health benefits plans for which Defendants are not responsible for the at-issue claims
19 administration.

20 4. Defendants object to the definition of “Data iSight” as vague, not described with
21 reasonable particularity, overbroad, unduly burdensome, not relevant to the claims or defenses in
22 this case, and not proportional to the needs of this case. Defendants contend that Plaintiff does
23 not fully or accurately describe Data iSight, which is a service offered by MultiPlan, Inc. that
24 provides pricing information concerning medical claims.

25 5. Defendants object to the definition of “Document,” “Communication,” and
26 “Communicate” to the extent those terms include within their scope materials, at to the Requests,
27 to the extent they seek documents or information protected by the attorney-client privilege, the
28 attorney work product doctrine, the settlement privilege, or any other applicable privilege,

