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.	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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148	Second Amended Complaint	10/07/21	21 22	5246–5250 5251–5264
458	Second Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits (Filed Under Seal)	01/05/22	126 127	31,309–31,393 31,394–31,500
231	Special Verdict Form	11/16/21	41	10,169–10,197
257	Special Verdict Form	11/29/21	49	12,035–12,046
265	Special Verdict Form	12/07/21	49	12,150–12,152
6	Summons – Health Plan of Nevada, Inc.	04/30/19	1	29–31
9	Summons – Oxford Health Plans, Inc.	05/06/19	1	38–41
8	Summons – Sierra Health and Life Insurance Company, Inc.	04/30/19	1	35–37
7	Summons – Sierra Health-Care Options, Inc.	04/30/19	1	32–34
3	Summons - UMR, Inc. dba United Medical Resources	04/25/19	1	20–22
4	Summons – United Health Care Services Inc. dba UnitedHealthcare	04/25/19	1	23–25
5	Summons – United Healthcare Insurance Company	04/25/19	1	26–28
433	Supplement to Defendants' Motion to Seal Certain Confidential Trial Exhibits (Filed	12/08/21	110 111	27,383–27,393 27,394–27,400

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170	Supplement to Defendants' Objection to Media Requests	10/31/21	29	7019–7039
439	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 1 of 18 (Filed Under Seal)	12/24/21	114	28,189–28,290
440	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 2 of 18 (Filed Under Seal)	12/24/21	114 115	28,291–28,393 28,394–28,484
441	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 3 of 18 (Filed Under Seal)	12/24/21	115 116	28,485–28,643 28,644–28,742
442	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 4 of 18 (Filed Under Seal)	12/24/21	116 117	28,743–28,893 28,894–28,938
443	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 5 of 18 (Filed Under Seal)	12/24/21	117	28,939–29,084
444	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 6 of 18 (Filed Under Seal)	12/24/21	117 118	29,085–29,143 29,144–29,219
445	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 7 of 18 (Filed Under Seal)	12/24/21	118	29,220–29,384
446	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 8 of 18 (Filed Under Seal)	12/24/21	118 119	29,385–29,393 29,394–29,527
447	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 9 of 18 (Filed Under Seal)	12/24/21	119 120	29,528–29,643 29,644–29,727
448	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial	12/24/21	120 121	29,728–29,893 29,894–29,907

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449	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 11 of 18 (Filed Under Seal)	12/24/21	121	29,908–30,051
450	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 12 of 18 (Filed Under Seal)	12/24/21	121 122	30,052–30,143 30,144–30,297
451	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 13 of 18 (Filed Under Seal)	12/24/21	122 123	30,298–30,393 30,394–30,516
452	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 14 of 18 (Filed Under Seal)	12/24/21	123 124	30,517–30,643 30,644–30,677
453	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 15 of 18 (Filed Under Seal)	12/24/21	124	30,678–30,835
454	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 16 of 18 (Filed Under Seal)	12/24/21	124 125	30,836–30,893 30,894–30,952
455	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 17 of 18 (Filed Under Seal)	12/24/21	125	30,953–31,122
456	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 18 of 18 (Filed Under	12/24/21	125 126	30,123–31,143 31,144–31,258

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466	Transcript of Proceedings re Hearing Regarding Unsealing Record (Filed Under Seal)	10/05/22	129	31,923–31,943
350	Transcript of Proceedings re Status Check	10/10/22	72 73	17,994–18,000 18,001–18,004
467	Transcript of Proceedings re Status Check (Filed Under Seal)	10/06/22	129	31,944–31,953
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160	Transcript of Proceedings Re: Motions	10/22/21	24 25	5908–6000 6001–6115
459	Transcript of Proceedings Re: Motions (Filed Under Seal)	01/12/22	127	31,501–31,596
460	Transcript of Proceedings Re: Motions (Filed Under Seal)	01/20/22	127 128	31,597–31,643 31,644–31,650
461	Transcript of Proceedings Re: Motions (Filed Under Seal)	01/27/22	128	31,651–31,661
146	Transcript of Proceedings Re: Motions (Via Blue Jeans)	10/06/21	21	5202–5234
290	Transcript of Proceedings Re: Motions Hearing	02/17/22	53	13,098–13,160
319	Transcript of Proceedings Re: Motions Hearing	04/07/22	68	16,837–16,855
323	Transcript of Proceedings Re: Motions Hearing	04/21/22	69	17,102–17,113
336	Transcript of Proceedings Re: Motions Hearing	06/29/22	71	17,610–17,681
463	Transcript of Proceedings Re: Motions Hearing (Filed Under Seal)	02/10/22	128	31,673–31,793

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464	Transcript of Proceedings Re: Motions Hearing (Filed Under Seal)	02/16/22	128	31,794–31,887
38	Transcript of Proceedings, All Pending Motions	06/05/20	6	1350–1384
39	Transcript of Proceedings, All Pending Motions	06/09/20	6	1385–1471
46	Transcript of Proceedings, Plaintiff's Motion to Compel Defendants' Production of Unredacted MultiPlan, Inc. Agreement	07/29/20	7	1644–1663
482	Transcript of Status Check (Filed Under Seal)	10/10/22	142	35,248–35,258
492	Transcript Re: Proposed Jury Instructions	11/21/21	146	36,086–36,250
425	Trial Brief Regarding Evidence and Argument Relating to Out-of-State Harms to Non-Parties (Filed Under Seal)	10/31/21	109	26,953–26,964
232	Trial Brief Regarding Jury Instructions on Formation of an Implied-In-Fact Contract	11/16/21	41	10,198–10,231
233	Trial Brief Regarding Jury Instructions on Unjust Enrichment	11/16/21	41	10,232–10,248
484	Trial Exhibit D5499 (Filed Under Seal)		142 143	35,264–35,393 35,394–35,445
362	Trial Exhibit D5502		76 77	18,856–19,000 19,001–19,143
485	Trial Exhibit D5506 (Filed Under Seal)		143	35,446
372	United's Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified on Order Shortening Time (Filed Under Seal)	06/24/21	82	20,266–20,290
112	United's Reply in Support of Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified	07/12/21	18	4326–4340

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258	Verdict(s) Submitted to Jury but Returned Unsigned	11/29/21	49	12,047–12,048

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. Siegelaub
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

including, but not limited to: information that was prepared for, or in anticipation of, litigation; that contains or reflects the analysis, mental impressions, or work of counsel; that contains or reflects attorney-client communications; or that is otherwise privileged.

6. Defendants object to the definition of the terms "Defendants," as used in the context of the Requests, and "You," and/or "Your" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not proportional to the needs of the case, and seeking information that is not relevant to the outcome of any claims or defenses in this litigation. Plaintiff's definition includes, for example, "predecessors-in-interest," "partners," "any past or present agents," and "every person acting or purporting to act, or who has ever acted or purported to act, on their behalf," which suggests that Plaintiff seeks materials beyond Defendants' possession, custody, or control. Defendants will not search for or produce materials beyond their possession, custody, or control. Defendants have answered the Requests on behalf of Defendants, *as defined herein*, only based upon Defendants' knowledge, materials and information in Defendants' possession, and belief formed after reasonable inquiry.

7. Defendants object to the definition of "Fremont" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not proportional to the needs of the case, and seeking information that is not relevant to the outcome of any claims or defenses in this litigation Plaintiff's definition includes, for example, "any past or present agents," "representatives," " partners," "predecessors-in-interest," "affiliates," and "every person acting or purporting to act, or who has ever acted or purported to act, on [its] behalf" without identifying these entities or persons with reasonable particularity, and creating an undue burden by requiring Defendants to identify them. In responding to the Requests, Defendants will construe "Fremont" to refer to those parties who were known to have been affiliated with Fremont Emergency Services (Mandavia), Ltd. during the Relevant Period.

8. Defendants object to the definition of "Emergency Services and Care," "Emergency Medicine Services," and "Emergency Department Services" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not relevant to the claims or defenses in this case, and not proportional to the needs of this case to the extent they (1) include

any medical services not related to the at-issue claims, or (2) relate to any medical services for claims, patients, or health benefits plans for which Defendants are not responsible for the at-issue claims administration.

9. Defendants object to the definition of "Nonemergency Services and Care" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not relevant to the claims or defenses in this case, and not proportional to the needs of this case to the extent it (1) includes services by not related to the at-issue claims, or (2) relates to the services for claims, patients, or health benefits plans for which Defendants are not responsible for the at-issue claims administration.

10. Defendants object to the definition of "Non-Participating Provider," "Non-Network Provider," "Participating Provider," and "Network Provider" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not relevant to the claims or defenses in this case, and not proportional to the needs of this case to the extent they (1) include persons or entities that are not parties to this case, or (2) concern persons or entities unrelated to the at-issue claims.

11. Defendants object to the definition of "Plans" and "Plan Members" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not relevant to the claims or defenses in this case, and not proportional to the needs of this case to the extent they (1) include health benefits plans and members of such plans not specifically identified by Plaintiff, (2) include health benefits plans that are not related to the at-issue claims, or (3) are referring to health benefits plans for which Defendants are not responsible for the at-issue claims administration.

12. Defendants object to the definition of "Provider" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not relevant to the claims or defenses in this case, and not proportional to the needs of this case to the extent it (1) includes persons or entities that are not parties to this case, or (2) concern persons or entities unrelated to the at-issue claims.

13. Defendants object to Instruction No. 1 as vague and not described with reasonable particularity, as it uses the term Defendant, in the singular, without defining which of the Defendants it is referring to. Defendants also object to Instruction No. 1 to the extent it seeks to impose obligations and/or penalties on Defendants beyond what is contemplated by the Federal Rules of Civil Procedure or applicable local rules.

14. Defendants object to Instruction Nos. 2, 3, 4, 5, 6, 7, and 8 to the extent they seek to impose obligations and/or penalties on Defendants beyond what is contemplated by the Federal Rules of Civil Procedure or applicable local rules.

15. Defendants object to Instruction No. 9 as unduly burdensome and not proportional to the needs of the case insofar as it asks Defendants to provide "[f]or each document produced, identify the specific document request number or numbers to which the document is responsive." Defendants also object to Instruction No. 9 to the extent it seeks to impose obligations and/or penalties on Defendants beyond what is contemplated by the Federal Rules of Civil Procedure or applicable local rules.

16. Defendants object to Instruction Nos. 10, 11, and 12 to the extent they seek to impose obligations and/or penalties on Defendants beyond what is contemplated by the Federal Rules of Civil Procedure or applicable local rules.

17. Defendants object to Instruction No. 13 as unduly burdensome and not proportional to the needs of the case insofar as it asks Defendants to provide the name of "the person you believe to have possession of the missing documents, and the facts upon which you base your response." Defendants also object to Instruction No. 13 to the extent it seeks to impose obligations and/or penalties on Defendants beyond what is contemplated by the Federal Rules of Civil Procedure or applicable local rules.

RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

Produce all Documents and/or Communications with the Nevada Division of Insurance and/or Nevada Insurance Commissioner relating to or concerning NRS 679B.152.

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RESPONSE:

Defendants object to this Request because the documents sought are expressly classified as confidential pursuant to NRS 679B.152. The only exception to this confidentiality is set forth in NRS 239B.0115 and does not apply here. Defendants further object that this Request is overbroad and unduly burdensome as it is not limited to a specific time period, and seeks information that is not relevant and not proportional to the needs of the case.

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 are not currently aware of any documents or communications that are responsive to this Request in the Relevant Period.

REQUEST FOR PRODUCTION NO. 2:

Produce any and all Documents and/or Communications regarding, discussing, or referring to NRS 679B.152.

RESPONSE:

Defendants object to this Request because the documents sought are expressly classified as confidential pursuant to NRS 679B.152. The only exception to this confidentiality is set forth in NRS 239B.0115 and does not apply here. Defendants further object that this Request is overbroad and unduly burdensome as it is not limited to a specific time period, and seeks information that is not relevant and not proportional to the needs of the case.

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 are not currently aware of any documents or communications that are responsive to this Request in the Relevant Period.

REQUEST FOR PRODUCTION NO. 3:

Produce any and all Documents and/or Communications between You and Fremont regarding any of the CLAIMS.

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RESPONSE:

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' 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 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 FOR PRODUCTION 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:

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' 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 someway 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 FOR PRODUCTION 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:

Subject to and without waiving Defendants' objections, including Defendants' specific

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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' 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 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 someway 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 FOR PRODUCTION NO. 6:

Produce any and all Documents and/or Communications relating to Your decision to reduce payment for any CLAIM.

RESPONSE:

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" as 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 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 someway 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.

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REQUEST FOR PRODUCTION 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:

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' 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 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 Plaintiff's 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 someway 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 FOR PRODUCTION NO. 8:

If you contend that any course of prior business dealing(s) by and between You and Fremont entitle(s) 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, produce any Documents and/or Communications relating to any such prior course of business dealing(s)

RESPONSE:

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 phrase "prior business dealing(s)" is vague. Defendants are not certain what is intended by this phrase and are thus unable to determine whether or not they would make the contention referenced in this Request (i.e. is Fremont referring to prior payments by Defendants to Fremont, prior contracts between Defendants and Fremont, etc.). Defendants request clarification as what is meant by this phrase and Defendants will then supplement their response to this Request, if supplementation is warranted.

Defendants further object that documentation of prior business dealings 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 FOR PRODUCTION NO. 9:

If you contend that any agreement(s) by and between You and Fremont entitles 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, produce any Documents and/or Communications relating to any agreements(s).

RESPONSE:

Subject to and without waiving Defendants' objections, including Defendants' specific objections to Plaintiff's Definitions, Instructions and Rules of Construction, Defendants state as follows: During 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

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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 for each CLAIM, including, but not limited to, the applicable health benefits plan documents. Defendants are continuing to attempt to determine whether any such contracts/agreements exist and will supplement this response, if any such contracts or agreements are found.

REQUEST FOR PRODUCTION NO. 10:

Produce any and all Documents and/or Communications relating to the methodology You currently use, or used during calendar or Plan years 2016, 2017, 2018 and/or 2019 to determine and/or calculate Your reimbursement of Non-Participating Providers in Nevada for Emergency Medicine Services.

RESPONSE:

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 this Request is overbroad, unduly burdensome and seeks information that is not relevant and not proportional to the needs of the case. This Request is overbroad as it seeks information on methodologies used prior to July 1, 2017 (the date of the first claim Fremont is asserting). This Request is also overbroad as it seeks information on the methodologies used to calculate reimbursement rates for all non-participating emergency services providers in Nevada, as opposed to being limited to information related to methodologies used to calculate the rate of reimbursement on the claims Fremont is asserting in this litigation. The information sought in this Request is also not relevant as Defendants often use different reimbursement methodologies depending on, for example, the particular claim, provider, and/or the applicable health benefits plan documents.

Defendants request that Fremont meet and confer to narrow the scope of this Request to ensure that it is not unduly burdensome to Defendants and that Fremont is able to get the information it is seeking.

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REQUEST FOR PRODUCTION 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:

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 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** s, 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 propriety 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 FOR PRODUCTION 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:

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 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 adjudicated and paid any Claims in accordance with re-pricing information recommended by Data iSight." 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 whether information from Data iSight impacted how any of the 15,210 claims were reimbursed, 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 the portion of this Request that seeks information on "all products or services Data iSight provides to You." This portion of this Request appears to seek information that is not relevant to any of Plaintiff's claims and that is not proportional to the needs of the case as not all services Data iSight provides relate to Plaintiff's claims. No documents will produced in response to this portion of this Request.

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 propriety 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.

For the other aspects of this Request that were objected to, Defendants request that Plaintiff meet and confer to narrow the scope of this Request to ensure that it is not unduly burdensome to Defendants, seeks relevant information and that Plaintiff is able to get the information it is seeking.

REQUEST FOR PRODUCTION NO. 13:

Produce all Documents and/or Communications concerning, evidencing, or relating to any negotiations or discussions concerning Non-Participating Provider reimbursement rates between You and Fremont, including, without limitation, documents and/or communications relating to the meeting in or around December 2017 between You, including, but not limited to, Dan Rosenthal, John Haben, and Greg Dosedel, and Fremont, where Defendants proposed new benchmark pricing program and new contractual rates.

RESPONSE:

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 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 relate to any discussions or negotiations over 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.

Moreover, 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.

Defendants further respond by referring Fremont to the following bates numbered

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documents produced with these responses that relate to negotiations between Fremont and the Sierra Defendants: **DEF000114 – DEF000156**. Defendants are in the process of collecting responsive document that relate to negotiations between Fremont and the other Defendants will produce those documents by February 26, 2020.

For the other aspects of this Request that were objected to, Defendants request that Plaintiff meet and confer to narrow the scope of this Request to ensure that it is not unduly burdensome to Defendants, seeks relevant information and that Plaintiff is able to get the information it is seeking.

REQUEST FOR PRODUCTION NO. 14:

Produce all Documents regarding rates insurers and/or payors other than You have paid for Emergency Services and Care in Nevada to either or both Participating or Non-Participating Providers from July 1, 2016, to the present.

RESPONSE:

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 this Request seeks information that is not within its possession, custody or control. To the extent Plaintiff believes this information would be within Defendants' possession, custody or control, Defendants request that Plaintiff clarify this Request. Defendants further object that this Request is overbroad and unduly burdensome as it appears to seek documents on all emergency medical services claims that have ever been paid by any insurer or payor in Nevada during the specified time frame. Thus, the Request likely covers hundreds of thousands of claims for payment and seeks information that is not proportional to the needs of this litigation. Defendants further object that this Request is overbroad as it seeks information starting on July 1, 2016, but the earliest claim Fremont has asserted is dated July 1, 2017. Defendants further state that to the extent Defendants do have any responsive documents these document would likely be publicly available to Plaintiff as well.

REQUEST FOR PRODUCTION 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:

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 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 non-participating 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 FOR PRODUCTION 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:

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 this Request seeks information that is not relevant to Plaintiff's 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**, 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.

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REQUEST FOR PRODUCTION NO. 17:

All Communications between You and any third-party, 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:

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' 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 communications between Defendants and third parties 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 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 FOR PRODUCTION 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:

Subject to and without waiving Defendants' objections, including Defendants' specific

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objections to Plaintiff's 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 FOR PRODUCTION 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:

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, even with the limitation proposed by Fremont, this Request is

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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 FOR PRODUCTION 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:

Subject to and without waiving Defendants' objections, including Defendants' specific objections to Plaintiff's Definitions, Instructions and Rules of Construction, Defendants state as

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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 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 someway 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 FOR PRODUCTION NO. 21:

All Documents relating to Your relationship [to] Data iSight, including any and all agreements between You and Data iSight, and any and all documents that explain the scope and extent of the relationship, Your permitted uses of the data provided by Data iSight, and the services performed by Data iSight.

RESPONSE:

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 this Request is overbroad, unduly burdensome and seeks facts that are not relevant Plaintiff's claims and not proportional to the needs of the case, as it seeks "all agreements" and "all documents" regardless of whether they relate to Plaintiff's claims.

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 propriety 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 FOR PRODUCTION NO. 22:

Produce any and all Documents and/or Communications relating to any analysis of the usual and customary provider charges for similar services in Nevada for Emergency Medicine Services.

RESPONSE:

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 this Request is vague in regard to what type of "analysis" it is referring to and vague in regard to what "similar services" it is referring to. Defendants are thus unable to determine whether they have documents that are responsive to this Request. Defendants further object that this Request appears to be overbroad, unduly burdensome and seeks information that is not relevant to Plaintiff's claims and not proportional to the needs of the case.

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 FOR PRODUCTION NO. 23:

Produce any and all Documents and/or Communications relating to any analysis of any

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Nevada statutes or guidelines You currently use, or used during calendar or Plan years 2016, 2017, 2018 and/or 2019, to determine and/or calculate Your reimbursement of Non-Participating Providers in Nevada for Emergency Medicine Services.

RESPONSE:

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 this Request is overbroad, unduly burdensome and seeks information that is not relevant to Plaintiff's claims and not proportional to the needs of the case. This improper Request seeks documents and communications relating to reimbursement calculations for all non-participating providers in Nevada rather than just Fremont. Defendants further object that this Request is vague in referring to "any Nevada statutes or guidelines" rather than to specific statutes. This vagueness, in turn, makes it 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 and guidelines. Defendants further object to the extend this Request seeks information from prior to July 1, 2017, the date of the earliest claim submitted by Fremont, as such information is not relevant to Plaintiff's claims.

To the extent that Fremont intended this Request to refer to NRS 679B.152, Defendants incorporate by reference their responses to requests for production nos. 1 and 2.

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 FOR PRODUCTION 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:

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' 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 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 FOR PRODUCTION NO. 25:

Produce all agreements between You and any Participating Providers in Nevada relating to the provision of Emergency Medicine Services to Plan Members.

RESPONSE:

Subject to and without waiving Defendants' objections, including Defendants' specific objections to Plaintiff's Definitions, Instructions and Rules of Construction, Defendants state as follows:

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Defendants object that this Request seeks information that is not relevant to Plaintiff's claims and not proportional to the needs of the case. Fremont is a non-participating provider and thus Defendants' contracts with participating providers are not relevant. Defendants further object that this Request is not limited to any specific time period.

Defendants also object that this Request improperly asks that they reveal information about their agreements with other providers. Defendants' agreements with other providers typically contain confidentiality clauses such that producing these agreements 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.

REQUEST FOR PRODUCTION NO. 26:

Produce any and all Documents and/or Communications regarding the provider charges and/or reimbursement rates that other insurers and/or payors have paid for Emergency Medicine Services in Nevada to either or both participating or non-participating providers from January 1, 2016, to the present, including Documents and/or Communications containing any such data or information produced in a blinded or redacted form and/or aggregated or summarized form.

RESPONSE:

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 this Request seeks information that is not within its possession, custody or control. To the extent Plaintiff believes this information would be within Defendants' possession, custody or control, Defendants request that Plaintiff clarify its Request. Defendants further object that this Request is overbroad and unduly burdensome as it appears to seek documents on all emergency medical services claims that have ever been paid by any insurer or payor in Nevada during the specified time frame. Thus, the Request likely covers hundreds of thousands of claims for payment and seeks information that is not proportional to

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the needs of this litigation. Defendants further object that this Request is overbroad and seeks irrelevant information as it seeks information starting on July 1, 2016 but the earliest claim Plaintiff has asserted is dated July 1, 2017. Defendants further state that to the extent Defendants do have any responsive documents these document would likely be publicly available to Fremont as well.

REQUEST FOR PRODUCTION NO. 27:

Produce any and All Documents and/or Communications concerning, evidencing, or relating to any negotiations or discussions concerning non-participating provider reimbursement rates between the UH Parties and Fremont, including negotiations or discussions leading up to any participation agreements or contracts with Fremont in effect prior to July 1, 2017.

RESPONSE:

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 to this Request to the extent that it seeks documents and communications from prior to July 1, 2017 as this portion of the Request seeks information that is not relevant to Fremont's claims and that is not proportional to the needs of the case. Defendants will not be providing documents that are responsive to this portion of the Request.

Moreover, 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.

Defendants further respond that they are in the process of attempting to locate responsive documents and intend to produce said documents on February 26, 2020.

REQUEST FOR PRODUCTION NO. 28:

Produce any and All Documents and/or Communications concerning, evidencing, or relating to any negotiations or discussions concerning non-participating provider reimbursement rates between the Sierra Affiliates and Fremont, including negotiations or discussions leading up

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to any participation agreements or contracts with Fremont in effect prior to March 1, 2019.

RESPONSE:

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 to this Request to the extent that it seeks documents and communications from prior to March 1, 2019 as this portion of the Request seeks information that is not relevant to Plaintiff's claims and that is not proportional to the needs of the case. Defendants will not be providing documents that are responsive to this portion of the Request.

Moreover, 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.

Defendants further respond by referring Plaintiff to the following bates numbered documents produced with these responses: **DEF000114 – DEF000156.**

REQUEST FOR PRODUCTION NO. 29:

Produce any and all contracts and participation agreements that You have or had with any Emergency Medicine Groups and/or any hospitals or other providers of Emergency Department Services other than Fremont that were in effect at any point from January 1, 2016, through the present, including all fee or rate schedules and amendments and addendums, and all other documents reflecting the agreed-upon terms for reimbursement for any product or service.

RESPONSE:

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 this Request seeks information that is not relevant to Plaintiff's claims and not proportional to the needs of the case. Fremont is a non-participating provider and thus Defendants' contracts with participating providers are not relevant. Defendants further

object that this Request seeks irrelevant information as it is seeking information from prior to July 1, 2017, the date of the earliest claim asserted by Plaintiff.

Defendants also object that this Request improperly asks that they reveal information about their agreements with other providers. Defendants' agreements with other providers typically contain confidentiality clauses such that producing these agreements 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.

REQUEST FOR PRODUCTION NO. 30:

Produce any and all Documents and/or Communications between You and any Emergency Medicine Groups and/or any hospitals or other providers of Emergency Department Services other than Fremont occurring at any point from January 1, 2016, through the present relating to negotiations of any reimbursement rates and/or fee schedules for Emergency Medicine Services and/or Emergency Department Services.

RESPONSE:

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 this Request seeks information that is not relevant to Plaintiff's claims and not proportional to the needs of the case. This Request seeks a substantial amount of information regarding Defendants' negotiations, relationship and rates of reimbursement to numerous non-parties which has no relevance to Plaintiff's claims. Defendants further object that this Request seeks irrelevant information as it is seeking information from prior to July 1, 2017, the date of the earliest claim asserted by Plaintiff.

Defendants also object that this Request improperly asks that they reveal information about their agreements with other providers. Defendants' agreements with other providers typically contain confidentiality clauses such that producing these agreements 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.

REQUEST FOR PRODUCTION NO. 31:

Produce any and all documents and/or Communications regarding Your goals, thoughts, discussions, considerations, and/or strategy regarding reimbursement rates and/or fee schedules for participating Emergency Medicine Groups and/or any hospitals or other providers of Emergency Department Services from January 1, 2015, through the present.

RESPONSE:

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 this Request is overbroad, unduly burdensome and seeks information that is not relevant to Plaintiff's claims and not proportional to the needs of the case. This Request seeks a substantial amount of information regarding Defendants' negotiations, strategy, relationship, and rates of reimbursement to numerous non-parties which has no relevance to Plaintiff's claims. Defendants further object that this Request seeks irrelevant information to the extent this Request seeks information from prior to July 1, 2017 as Plaintiff is not asserting any claims for services prior to that date. Defendants further object that, as written, this Request is vague and it is unclear exactly what documents would be responsive to this Request. Defendants further object that, since this Request refers to Defendants' "goals." "thoughts," and "strategy," it may be seeking information that is protected by the attorney-client and/or attorney work product privileges.

Defendants also object that this Request improperly asks that they reveal information about their agreements with other providers. Defendants' agreements with other providers typically contain confidentiality clauses such that producing these agreements 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.

REQUEST FOR PRODUCTION NO. 32:

Produce any and all Documents and/or Communications regarding Your goals, thoughts, discussions, considerations, and/or strategy regarding reimbursement rates and/or fee schedules for non-participating Emergency Medicine Groups and/or any hospitals or other providers of Emergency Department Services from January 1, 2016, through the present.

RESPONSE:

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 this Request is overbroad, unduly burdensome and seeks information that is not relevant to Plaintiff's claims and not proportional to the needs of the case. This Request seeks a substantial amount of information regarding Defendants' negotiations, strategy, relationship, and rates of reimbursement to numerous non-parties which has no relevance to Plaintiff's claims. Defendants further object that this Request seeks irrelevant information to the extent this Request seeks information from prior to July 1, 2017 as Fremont is not asserting any claims for services prior to that date. Defendants further object that, as written, this Request is vague and it is unclear exactly what documents would be responsive to this Request. Defendants further object that, since this Request refers to Defendants' "goals." "thoughts," and "strategy," it may be seeking information that is protected by the attorney-client and/or attorney work product privileges.

Defendants also object that this Request improperly asks that they reveal information about their agreements with other providers. Defendants' agreements with other providers typically contain confidentiality clauses such that producing these agreements 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

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information has independent value due to, among other things, the fact that it is not known to other providers like Fremont.

REQUEST FOR PRODUCTION NO. 33:

Produce any and all Documents and/or Communications regarding Your reimbursement rates paid or to be paid to out-of-network Emergency Medicine Groups and/or Complaints about Your level of payment for Emergency Medicine Services and/or Emergency Department Services received from out-of-network providers.

RESPONSE:

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 this Request is overbroad, unduly burdensome and seeks information that is not relevant to Plaintiff's claims and not proportional to the needs of the case. This Request seeks a substantial amount of information regarding Defendants' rates of reimbursement to numerous non-parties which has no relevance to Plaintiff's claims. Defendants further object that this Request is overbroad since it is not limited to any specific time period. The term "Complaints" is also vague and overbroad, as noted in Defendants' objections to Plaintiff's Definitions. Indeed, as written, this Request appears to call for Defendants to produce any communication from any out of network provider to Defendants where the provider complains in any way about payment, regardless of when that communication was sent. There are likely hundreds of thousands if not millions of documents that could be responsive to this Request.

Defendants also object that this Request improperly asks that they reveal information about their agreements with other providers. Defendants' agreements with other providers typically contain confidentiality clauses such that producing these agreements 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.

REQUEST FOR PRODUCTION NO. 34:

Produce any and all Documents and/or Communications regarding the impact, if any, that reimbursement rates paid by You to non-participating providers have had on profits You earned and/or premiums You charged with respect to one or more of Your commercial heath plans offered in the State of Nevada from 2016 to the present.

RESPONSE:

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 this Request is overbroad, unduly burdensome and seeks information that is not relevant to Plaintiff's claims and not proportional to the needs of the case. This Request is overbroad in that it is not limited to the impact of reimbursement rates paid to Fremont on Defendants profits but rather includes numerous non-party non-participating providers. This Request also seeks irrelevant information as the impact of reimbursement rates to numerous non-parties (or to Plaintiff for that matter) on Defendants' profits has no bearing on whether or not Fremont was reimbursed at the appropriate rate for the services it provided to Defendants' plan members. This Request is also overbroad and seeks irrelevant information to the extent it seeks information from prior to July 1, 2017, which is the date of the earliest claim asserted by Plaintiff in this litigation.

In addition, this Request is objectionable as it infringes on Defendants' privacy interests and seeks proprietary and confidential business information that the Defendants are entitled to shield from disclosure. *Ranney-Brown Distributors, Inc. v. E. T. Barwick Indus., Inc.*, 75 F.R.D. 3, 5 (S.D. Ohio 1977) ("Ordinarily, Rule 26 will not permit the discovery of facts concerning a defendant's financial status, or ability to satisfy a judgment, since such matters are not relevant, and cannot lead to the discovery of admissible evidence."); *U.S. for the Use and Benefit of P.W. Berry Co. v. Gen. Elec. Co.*, 158 F.R.D. 161, 164 (D.Or.1994) (granting motion for protective order in a breach of contract action, precluding discovery of corporate and individual financial

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information including tax returns and financial statements, because that information was not relevant within the meaning of Rule 26(b)(1)) when the core of the parties' dispute was over whether or not the plaintiff had been adequately compensated for the work it performed).

Moreover, this information is 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.

REQUEST FOR PRODUCTION NO. 35:

Produce any and all Documents and/or Communications regarding Your reimbursement policies for non-participating providers considered or adopted, effective January 1, 2016, to the present.

RESPONSE:

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 this Request is overbroad and seeks information that is not relevant and not proportional to the needs of the case. This Request is overbroad in that it seeks reimbursement policies for all non-participating providers rather than just those that would apply to Plaintiff. It is also overbroad in that it seeks documents from prior to July 1, 2017, which is the date of the earliest claim asserted by Plaintiff.

Defendants also object that the term "reimbursement policies" is unreasonably vague and could arguably apply to numerous irrelevant documents. In general, the amounts paid to non-participating providers are based on the terms of the applicable health benefits plan documents. It is unclear if these are the documents Fremont is seeking or if Fremont is seeking something else. 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 FOR PRODUCTION NO. 36:

Produce any and all Documents and/or Communications regarding or reflecting the

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average or typical rate of payment, or an aggregation, summary or synopsis of those payments, that You allowed from January 1, 2016, to the present for all or any portion of the Emergency Medicine Services and/or Emergency Department Services rendered to Your Plan Members covered under any plan You offer in Nevada.

RESPONSE:

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 this Request is overbroad, unduly burdensome and seeks information that is not relevant to Plaintiff's claims and not proportional to the needs of the case. This Request seeks a substantial amount of information regarding Defendants' rates of payment to numerous non-parties which has no relevance to Plaintiff's claims. Defendants further object that this Request is overbroad since it seeks documents from prior to July 1, 2017, which is the date of the earliest claim asserted by Plaintiff. Indeed, as written, this Request calls for the production of documents and communications relating to "any plan" the Defendants have offered in Nevada in the last four years, regardless of whether Fremont ever treated any of those plan members. There are likely hundreds of thousands if not millions of documents that could be responsive to this Request.

Defendants also object that this Request improperly asks that they reveal information about their payments to other providers. Defendants' agreements with other providers typically contain confidentiality clauses such that producing 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.

REQUEST FOR PRODUCTION 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.

RESPONSE:

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 30,420hours 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**. Defendants are continuing to search for additional responsive documents and will supplement this response on or about February 26, 2020.

In regard to the portions of this Request that were objected to, Defendants request that Plaintiff meet and confer to narrow the scope of this Request to ensure that it is not unduly burdensome to Defendants, seeks relevant information and that Plaintiff is able to get the information it is seeking.

///

REQUEST FOR PRODUCTION NO. 38:

Produce any and all Documents and/or Communications concerning Your adjudication and/or payment of each claim for Emergency Medicine Services and/or Emergency Department Services that either participating or non-participating Emergency Medical Groups and/or any hospitals or other providers of Emergency Department Services other than Fremont submitted to You for payment between January 1, 2016, and the present.

RESPONSE:

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 this Request is overbroad, unduly burdensome and seeks information that is not relevant to Plaintiff's claims and not proportional to the needs of the case. This Request seeks a substantial amount of information regarding Defendants' payments on non-party claims which have no relevance to Plaintiff's claims. Defendants further object that this Request is overbroad since it seeks documents from prior to July 1, 2017, which is the date of the earliest claim asserted by Plaintiff. There are likely hundreds of thousands of documents that could be responsive to this Request.

Defendants also object that this Request improperly asks that they reveal information about their payments to other providers. Defendants' agreements with other providers typically contain confidentiality clauses such that producing 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.

REQUEST FOR PRODUCTION 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.

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RESPONSE:

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 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 FOR PRODUCTION 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:

Subject to and without waiving Defendants' objections, including Defendants' specific

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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' 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 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.

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 information and disputes connected to 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 FOR PRODUCTION NO. 41:

Produce any and all Documents and/or Communications regarding any challenges by any other non-participating Emergency Medicine Group and/or any non-participating hospital or other non-participating provider of Emergency Department Services of the appropriateness of the reimbursement rates paid by You for Emergency Medicine Services and/or Emergency

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Department Services rendered to Your Plan Members from January 1, 2016, to the present.

RESPONSE:

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 this Request is overbroad, unduly burdensome and seeks information that is not relevant to Plaintiff's claims and not proportional to the needs of the case. This Request seeks "all documents and/or communications" relating to challenges by non-parties to Defendants' rates of reimbursement. Such information has no relevance to Plaintiff's claims. Defendants further object that this Request is overbroad since it seeks information from prior to July 1, 2017, the date of the earliest claim asserted by Plaintiff. The term "challenges" is also vague and overbroad in that it is unclear what type of challenges are intended to be encompassed by it (i.e. legal complaint, administrative appeals, other types of "challenges," etc.). Indeed, as written, this Request could be read to call for Defendants to produce any communication from any out of network provider to Defendants where the provider complains in any way about payment.

REQUEST FOR PRODUCTION NO. 42:

Produce any and all Documents and/or Communications regarding, discussing, or referring to any failure by You to attempt to effectuate a prompt, fair, and/or equitable settlement of any CLAIMS.

RESPONSE:

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 phrase "attempt to effectuate a prompt, fair, and/or equitable settlement of any CLAIMS" is vague as it is unclear exactly what type of failure by Defendants would make a document and/or communication responsive.

Defendants further object that the term "CLAIM" is vague, as noted in Defendants'

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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 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 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 FOR PRODUCTION NO. 43:

Produce any and all Documents and/or Communications suggesting that Medicare reimbursement rate for any Emergency Medicine Services is not a measure of either fair market value or the usual and customary rate for such services.

RESPONSE:

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 this Request is vague, overbroad, and, by extension, unduly burdensome. Defendants are uncertain what is meant by the phrase "suggesting that Medicare reimbursement rate . . . is not a measure of either fair market value or the usual and customary rate for such services" and request that Plaintiff clarify exactly what type of documents and communications it is seeking.

This Request is overbroad and unduly burdensome in that it is not limited to communications from any particular person or entity and is not limited in time frame. As written, the Request would require the Defendants to essentially search all their records and databases all over the country for any comments relating to "Medicare," "fair market value" and "usual and customary."

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 FOR PRODUCTION NO. 44:

Produce all Documents You reviewed or relied upon in preparing Your responses to Fremont's First Set of Interrogatories.

RESPONSE:

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 to being required to produce documents or information that they objected to having to produce in their interrogatory responses and incorporate by reference, to the extent necessary, the objections asserted in their interrogatory responses.

Defendants further respond by referring Plaintiff to the following documents: the documents produced with these responses and the documents that will be produced when these responses are supplemented on February 26, 2020, Plaintiff's original Complaint, Plaintiff's First Amended Complaint, Defendants' Motion to Dismiss, Fremont's Responses to Defendants' First Set of Requests for Production of Documents, Fremont's Responses to Defendants' First Set of Interrogatories, Fremont's Responses to Defendants' First Set of Requests for Admissions, Fremont's initial and supplemental disclosures, and Defendants' initial and supplemental disclosures.

REQUEST FOR PRODUCTION NO. 45:

Produce any and all Documents and/or Communications supporting, refuting, or relating

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to Your affirmative defenses identified in Your Answers to Fremont's First Set of Interrogatories to Defendants.

RESPONSE:

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 this Request is premature as the Defendants are not required to file an Answer to the Complaint yet and are thus not required to produce documents relating to their affirmative defenses at this time. Defendants further object that this Request seeks disclosure of information protected by the attorney work-product doctrine. Defendants will supplement this response within a reasonable time after filing their Answer to the Complaint.

Dated this 29th day of January, 2020.

/s/ Colby Balkenbush

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Brittany M. Llewellyn, Esq.
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Attorneys for Defendants Unitedhealth Group, Inc., United Healthcare Insurance Company, United Health Care Services, Inc. dba Unitedhealthcare, UMR, Inc. dba United Medical Resources, Oxford Health Plans, Inc., Sierra Health and Life Insurance Company, Inc., Sierra Health-Care Options, Inc., and Health Plan of Nevada, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of January, 2020, a true and correct copy of the foregoing **DEFENDANTS' RESPONSES TO FREMONT EMERGENCY SERVICES (MANDAVIA), LTD.'S FIRST SET OF REQUESTS FOR PRODUCTION** was served by U.S. Mail, postage prepaid, to the following:

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 Plaintiff
Fremont Emergency Services (Mandavia), Ltd.

/s/ Cynthia S. Bowman
An employee of WEINBERG, WHEELER, HUDGINS GUNN & DIAL, LLC

EXHIBIT 1

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D. Lee Roberts, Jr., Esq.
Nevada Bar No. 8877
lroberts@wwhgd.com
Colby L. Balkenbush, Esq.
Nevada Bar No. 13066
cbalkenbush@wwhgd.com
Brittany M. Llewellyn, Esq.
Nevada Bar No. 13527
bllewellyn@wwhgd.com
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Attorneys for Defendants Unitedhealth Group, Inc., United Healthcare Insurance Company, United Health Care Services, Inc. dba Unitedhealthcare, UMR, Inc. dba United Medical Resources, Oxford Health Plans, Inc., Sierra Health and Life Insurance Company, Inc., Sierra Health-Care Options, Inc., and Health Plan of Nevada, Inc.

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UNITED STATES DISTRICT COURT

DISTRICT OF 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

Plaintiff,

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

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

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

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

Defendants.

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

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

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

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

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

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

a. Member Explanations of Benefits ("EOBs");

b. Provider EOBs and/or Provider Remittance Advices ("PRAs");

c. Appeals documents;

d. Any other documents comprising the administrative records, such as correspondence or clinical records submitted by Plaintiffs;

e. The plan documents in effect at the time of service.

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

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

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

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

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

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

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

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

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

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

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a. Member Explanations of Benefits ("EOBs"): ***45 minutes.***[1]

b. Provider EOBs and/or Provider Remittance Advice ("PRAs"); ***20 minutes.***

c. Appeals documents: ***30 minutes.***

d. Other documents comprising the administrative records: ***15 minutes.***

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

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

a. United stores EOBs as images that are stored in EDSS and marked with "Film Locator Numbers" or "FLNs".

b. To locate the correct EOB for a given claim, we must first determine the correct FLN by running queries in the system based on the data given to us by the provider. This process can take substantial time, because United-administered plans have tens of millions of members, each of whom is likely to see multiple

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

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

c. Once we use the claim data that is furnished to us by the provider to identify what we believe to be the correct FLN, we must then enter that FLN into EDSS to pull up and download the EOB in question.

d. Once the targeted EOB has completed downloading, our rigorous HIPAA protection protocol requires us to review the entire downloaded document to ensure (1) that it is the correct EOB that matches the claim at issue in the litigation and (2) that there are no extraneous pages included that might result in the inadvertent but unauthorized disclosure of HIPAA–protected information. Some EOB records are simple, but others may contain several pages, and the process of confirming a match and confirming that no extraneous information is included takes substantial time.

e. Once the EOB has been verified, we must take the additional step of processing and uploading it to the specific share drive that has been established for the particular instance of litigation.

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

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

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

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

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

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

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

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

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

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

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

Executed on January 29th, 2020 in Moline, Illinois

SANDRA WAY
Business Manager
Claim & Appeal Regulatory Adherence
United Healthcare

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EXHIBIT 3

EXHIBIT 3

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RSPN
D. Lee Roberts, Jr., Esq.
Nevada Bar No. 8877
lroberts@wwhgd.com
Colby L. Balkenbush, Esq.
Nevada Bar No. 13066
cbalkenbush@wwhgd.com
Brittany M. Llewellyn, Esq.
Nevada Bar No. 13527
bllewellyn@wwhgd.com
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864
Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

FREMONT EMERGENCY SERVICES (MANDAVIA), LTD., a Nevada professional corporation; TEAM PHYSICIANS OF NEVADA-MANDAVIA, P.C., a Nevada professional corporation; CRUM, STEFANKO AND JONES, LTD. dba RUBY CREST EMERGENCY MEDICINE, a Nevada professional corporation, Plaintiffs, vs. UNITEDHEALTH GROUP, INC., a Delaware corporation; UNITED HEALTHCARE INSURANCE COMPANY, a Connecticut corporation; UNITED HEALTH CARE SERVICES INC., dba UNITEDHEALTHCARE, a Minnesota corporation; UMR, INC., dba UNITED MEDICAL RESOURCES, a Delaware corporation; OXFORD HEALTH PLANS, INC., a Delaware corporation; SIERRA HEALTH AND LIFE INSURANCE COMPANY, INC., a Nevada corporation; SIERRA HEALTH-CARE OPTIONS, INC., a Nevada corporation; HEALTH PLAN OF NEVADA, INC., a Nevada corporation; DOES 1-10; ROE ENTITIES 11-20, Defendants.	Case No.: A-19-792978-B Dept. No.: 27 **DEFENDANTS' SECOND SUPPLEMENTAL RESPONSES TO FREMONT EMERGENCY SERVICES (MANDAVIA) LTD.'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Defendants UnitedHealth Group, Inc., UnitedHealthcare Insurance Company, United HealthCare Services Inc., UMR, Inc., Oxford Health Plans, Inc., Sierra Health and Life

Case Number: A-19-792978-B

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WEINBERG WHEELER HUDGINS GUNN & DIAL

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Insurance Co., Inc., Sierra Health-Care Options, Inc., and Health Plan of Nevada, Inc. ("United HealthCare"), by and through their attorneys of the law firm of Weinberg Wheeler Hudgins Gunn & Dial, LLC, hereby submit these supplemental responses to Plaintiff's ("Plaintiff" or "Fremont") First Set of Requests for Production of Documents ("Requests") as follows (supplemental responses in **bold**):

PRELIMINARY STATEMENT

Defendants have made diligent efforts to respond to the Requests, but reserve the right to change, amend, or supplement their responses and objections. Defendants also reserve the right to use discovered documents and documents now known, but whose relevance, significance, or applicability has not yet been ascertained. Additionally, Defendants do not waive their right to assert any and all applicable privileges, doctrines, and protections, and hereby expressly state their intent and reserve their right to withhold responsive information on the basis of any and all applicable privileges, doctrines, and protections.

Defendants' responses are made without in any way waiving or intending to waive, but on the contrary, intending to preserve and preserving, their right, in this litigation or any subsequent proceeding, to object on any grounds to the use of documents produced in response to the Request, including objecting on the basis of authenticity, foundation, relevancy, materiality, privilege, and admissibility of any documents produced in response to the Requests.

The documents produced in conjunction with these supplemental responses are being produced subject to the confidentiality and attorneys' eyes only protections permitted pursuant to Section 3(f) of the Stipulation and Order Re: Pending Matters that was entered on May 15, 2020 and pursuant to the terms of Confidentiality and Protective Order that the Parties are currently in the process of negotiating.

Defendants are limiting their responses to the Requests to the reasonable time-frame of July 1, 2017 to present ("Relevant Period") and object to the Requests to the extent that Plaintiff fails to limit the Requests to a specific time period.

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SPECIFIC OBJECTIONS TO PLAINTIFF'S DEFINITIONS, INSTRUCTIONS, AND RULES OF CONSTRUCTION

1. Defendants object to the "Instructions," "Definitions," and "Rules of Construction" accompanying the Requests to the extent they purport to impose any obligation on Defendants different from or greater than those imposed by the Nevada Rules of Civil Procedure.

2. Defendants object to the "Instructions," "Definitions," and "Rules of Construction" to the extent they purport to require the production of Protected Health Information or other confidential or proprietary information without confidentiality protections sufficient to protect such information from disclosure.

3. Defendants object to the definition of "Claim" or "Claims" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not relevant to the claims or defenses in this case, and not proportional to the needs of this case to the extent they (1) include claims not specifically identified by Plaintiff in FESM000011, or (2) relate to claims, patients, or health benefits plans for which Defendants are not responsible for the at-issue claims administration.

4. Defendants object to the definition of "Data iSight" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not relevant to the claims or defenses in this case, and not proportional to the needs of this case. Defendants contend that Plaintiff does not fully or accurately describe Data iSight, which is a service offered by MultiPlan, Inc. that provides pricing information concerning medical claims.

5. Defendants object to the definition of "Document," "Communication," and "Communicate" to the extent those terms include within their scope materials, at to the Requests, to the extent they seek documents or information protected by the attorney-client privilege, the attorney work product doctrine, the settlement privilege, or any other applicable privilege, including, but not limited to: information that was prepared for, or in anticipation of, litigation; that contains or reflects the analysis, mental impressions, or work of counsel; that contains or reflects attorney-client communications; or that is otherwise privileged.

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6. Defendants object to the definition of the terms "Defendants," as used in the context of the Requests, and "You," and/or "Your" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not proportional to the needs of the case, and seeking information that is not relevant to the outcome of any claims or defenses in this litigation. Plaintiff's definition includes, for example, "predecessors-in-interest," "partners," "any past or present agents," and "every person acting or purporting to act, or who has ever acted or purported to act, on their behalf," which suggests that Plaintiff seeks materials beyond Defendants' possession, custody, or control. Defendants will not search for or produce materials beyond their possession, custody, or control. Defendants have answered the Requests on behalf of Defendants, *as defined herein*, only based upon Defendants' knowledge, materials and information in Defendants' possession, and belief formed after reasonable inquiry.

7. Defendants object to the definition of "Fremont" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not proportional to the needs of the case, and seeking information that is not relevant to the outcome of any claims or defenses in this litigation Plaintiff's definition includes, for example, "any past or present agents," "representatives," " partners," "predecessors-in-interest," "affiliates," and "every person acting or purporting to act, or who has ever acted or purported to act, on [its] behalf' without identifying these entities or persons with reasonable particularity, and creating an undue burden by requiring Defendants to identify them. In responding to the Requests, Defendants will construe "Fremont" to refer to those parties who were known to have been affiliated with Fremont Emergency Services (Mandavia), Ltd. during the Relevant Period.

8. Defendants object to the definition of "Emergency Services and Care," "Emergency Medicine Services," and "Emergency Department Services" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not relevant to the claims or defenses in this case, and not proportional to the needs of this case to the extent they (1) include any medical services not related to the at-issue claims, or (2) relate to any medical services for claims, patients, or health benefits plans for which Defendants are not responsible

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for the at-issue claims administration.

9. Defendants object to the definition of "Nonemergency Services and Care" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not relevant to the claims or defenses in this case, and not proportional to the needs of this case to the extent it (1) includes services by not related to the at-issue claims, or (2) relates to the services for claims, patients, or health benefits plans for which Defendants are not responsible for the at-issue claims administration.

10. Defendants object to the definition of "Non-Participating Provider," "Non-Network Provider," "Participating Provider," and "Network Provider" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not relevant to the claims or defenses in this case, and not proportional to the needs of this case to the extent they (1) include persons or entities that are not parties to this case, or (2) concern persons or entities unrelated to the at-issue claims.

11. Defendants object to the definition of "Plans" and "Plan Members" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not relevant to the claims or defenses in this case, and not proportional to the needs of this case to the extent they (1) include health benefits plans and members of such plans not specifically identified by Plaintiff, (2) include health benefits plans that are not related to the at-issue claims, or (3) are referring to health benefits plans for which Defendants are not responsible for the at-issue claims administration.

12. Defendants object to the definition of "Provider" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not relevant to the claims or defenses in this case, and not proportional to the needs of this case to the extent it (1) includes persons or entities that are not parties to this case, or (2) concern persons or entities unrelated to the at-issue claims.

13. Defendants object to Instruction No. 1 as vague and not described with reasonable particularity, as it uses the term Defendant, in the singular, without defining which of the Defendants it is referring to. Defendants also object to Instruction No. 1 to the extent it seeks to

impose obligations and/or penalties on Defendants beyond what is contemplated by the Nevada Rules of Civil Procedure or applicable local rules.

14. Defendants object to Instruction Nos. 2, 3, 4, 5, 6, 7, and 8 to the extent they seek to impose obligations and/or penalties on Defendants beyond what is contemplated by the Nevada Rules of Civil Procedure.

15. Defendants object to Instruction No. 9 as unduly burdensome and not proportional to the needs of the case insofar as it asks Defendants to provide "[for each document produced, identify the specific document request number or numbers to which the document is responsive." Defendants also object to Instruction No. 9 to the extent it seeks to impose obligations and/or penalties on Defendants beyond what is contemplated by the Nevada Rules of Civil Procedure.

16. Defendants object to Instruction Nos. 10, 11, and 12 to the extent they seek to impose obligations and/or penalties on Defendants beyond what is contemplated by the Nevada Rules of Civil Procedure.

17. Defendants object to Instruction No. 13 as unduly burdensome and not proportional to the needs of the case insofar as it asks Defendants to provide the name of "the person you believe to have possession of the missing documents, and the facts upon which you base your response." Defendants also object to Instruction No. 13 to the extent it seeks to impose obligations and/or penalties on Defendants beyond what is contemplated by the Nevada Rules of Civil Procedure.

RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION 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.

RESPONSE:

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-objectionable documents but will supplement this response if any additional documents are located.

Dated this 29th day of June, 2020.

/s/ Brittany M. Llewellyn
D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Brittany M. Llewellyn, Esq.
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of June, 2020, a true and correct copy of the foregoing **DEFENDANTS' SECOND SUPPLEMENTAL RESPONSES TO FREMONT EMERGENCY SERVICES (MANDAVIA) LTD.'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS** 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/ Cynthia S. Bowman
An employee of WEINBERG, WHEELER, HUDGINS GUNN & DIAL, LLC

EXHIBIT 4

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EXHIBIT 4

D. Lee Roberts, Jr., Esq.
Nevada Bar No. 8877
lroberts@wwhgd.com
Colby L. Balkenbush, Esq.
Nevada Bar No. 13066
cbalkenbush@wwhgd.com
Brittany M. Llewellyn, Esq.
Nevada Bar No. 13527
bllewellyn@wwhgd.com
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Attorneys for Defendants Unitedhealth Group, Inc., United Healthcare Insurance Company, United Health Care Services, Inc. dba Unitedhealthcare, UMR, Inc. dba United Medical Resources, Oxford Health Plans, Inc., Sierra Health and Life Insurance Company, Inc., Sierra Health-Care Options, Inc., and Health Plan of Nevada, Inc.

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UNITED STATES DISTRICT COURT

DISTRICT OF 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

Plaintiff,

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

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

DEFENDANTS' RESPONSES TO FREMONT EMERGENCY SERVICES (MANDAVIA), LTD.'S FIRST SET OF INTERROGATORIES

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.

Defendants Unitedhealth Group, Inc., United Healthcare Insurance Company, United Health Care Services, Inc. dba Unitedhealthcare, UMR, Inc. dba United Medical Resources, Oxford Health Plans, Inc., Sierra Health and Life Insurance Company, Inc., Sierra Health-Care Options, Inc., and Health Plan of Nevada, Inc. (collectively "Defendants"), by and through their attorneys of the law firm of Weinberg Wheeler Hudgins Gunn & Dial, LLC, hereby respond to Plaintiff's ("Plaintiff" or "Fremont") First Set of Interrogatories:

PRELIMINARY STATEMENT

Defendants have made diligent efforts to respond to the Interrogatories, but reserve the right to change, amend, or supplement their responses and objections. Additionally, Defendants do not waive their right to assert any and all applicable privileges, doctrines, and protections, and hereby expressly state their intent and reserve their right to withhold responsive information on the basis of any and all applicable privileges, doctrines, and protections.

Defendants' responses are made without in any way waiving or intending to waive, but on the contrary, intending to preserve and preserving, their right, in this litigation or any subsequent proceeding, to object on any grounds to the use of documents or information provided/produced in response to the Interrogatories.

Defendants are limiting their responses to the Interrogatories to the reasonable time-frame of July 1, 2017 to present ("Relevant Period") and object to the Interrogatories to the extent that Plaintiff fails to limit the Interrogatories to a specific time period.

SPECIFIC OBJECTIONS TO PLAINTIFF'S DEFINITIONS, INSTRUCTIONS, AND RULES OF CONSTRUCTION

1. Defendants objects to the "Instructions," "Definitions," and "Rules of Construction" accompanying the Interrogatories to the extent they purport to impose any obligation on Defendants different from or greater than those imposed by the Federal Rules of Civil Procedure or applicable local rules.

2. Defendants object to the "Instructions," "Definitions," and "Rules of Construction" to the extent they purport to require information concerning Protected Health Information or other confidential or proprietary information without confidentiality protections sufficient to protect such information from disclosure, such as those found in the Stipulated Confidentiality and Protective Order entered on October 22, 2019. ECF No. 31.

3. Defendants object to the definition of "Claim" or "Claims" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not relevant to the claims or defenses in this case, and not proportional to the needs of this case to the extent they (1) include claims not specifically identified by Plaintiff in FESM000011, or (2) relate to claims, patients, or health benefits plans for which Defendants are not responsible for the at-issue claims administration.

4. Defendants object to the definition of "Clark County Market" as vague, not described with reasonable particularity, overbroad, unduly burdensome, and not relevant to the claims or defenses in this case to the extent that the phrase "geographic market," as utilized in that definition, (1) includes persons or entities that are not parties to this case, or (2) concerns persons or entities unrelated to the at-issue claims.

5. Defendants object to the Interrogatories to the extent they seek information protected by the attorney-client privilege, the attorney work product doctrine, the settlement privilege, or any other applicable privilege, including, but not limited to: information that was prepared for, or in anticipation of, litigation; that contains or reflects the analysis, mental impressions, or work of counsel; that contains or reflects attorney-client communications; or that is otherwise privileged. Defendants object on the same basis to the terms "identify," "describe," and "explain" as used in these Interrogatories to the extent they seek privileged or protected

information.

6. Defendants object to the definition of the terms "Defendants," as used in the context of the Interrogatories, and "You," and/or "Your" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not proportional to the needs of the case, and seeking information that is not relevant to the outcome of any claims or defenses in this litigation. Plaintiff's definition includes, for example, "predecessors-in-interest," "partners," "any past or present agents," and "every person acting or purporting to act, or who has ever acted or purported to act, on their behalf," which suggests that Plaintiff seeks information beyond Defendants' possession, custody, or control. Defendants will not search for information or materials beyond their possession, custody, or control. Defendants have answered the Interrogatories on behalf of Defendants, *as defined herein*, only based upon Defendants' knowledge, information in Defendants' possession, and belief formed after reasonable inquiry.

7. Defendants object to the definition of "Fremont" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not proportional to the needs of the case, and seeking information that is not relevant to the outcome of any claims or defenses in this litigation. Plaintiff's definition includes, for example, "any past or present agents," "representatives," " partners," "predecessors-in-interest," "affiliates," and "every person acting or purporting to act, or who has ever acted or purported to act, on [its] behalf" without identifying these entities or persons with reasonable particularity, and creating an undue burden by requiring Defendants to identify them. In responding to the Interrogatories, Defendants will construe "Fremont" to refer to those parties who were known to have been affiliated with Fremont Emergency Services (Mandavia), Ltd. during the Relevant Period.

8. Defendants object to the definition of "Emergency Services and Care," "Emergency Medicine Services," and "Emergency Department Services" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not relevant to the claims or defenses in this case, and not proportional to the needs of this case to the extent they (1) include any medical services not related to the at-issue claims, or (2) relate to any medical services for claims, patients, or health benefits plans for which Defendants are not responsible for the at-issue

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claims administration.

9. Defendants object to the definition of "HMO" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not relevant to the claims or defenses in this case, and not proportional to the needs of this case to the extent it (1) includes health benefits plans and members of such plans not specifically identified by Plaintiff, (2) includes health benefits plans that are not related to the at-issue claims, or (3) refers to health benefits plans for which Defendants are not responsible for the at-issue claims administration.

10. Defendants object to the definition of "Nonemergency Services and Care" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not relevant to the claims or defenses in this case, and not proportional to the needs of this case to the extent it (1) includes services by not related to the at-issue claims, or (2) relate to the services for claims, patients, or health benefits plans for which Defendants are not responsible for the at-issue claims administration.

11. Defendants object to the definition of "Non-Participating Provider," "Non-Network Provider," "Participating Provider," and "Network Provider" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not relevant to the claims or defenses in this case, and not proportional to the needs of this case to the extent they (1) include persons or entities that are not parties to this case, or (2) concern persons or entities unrelated to the at-issue claims.

12. Defendants object to the definition of "Plans" and "Plan Members" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not relevant to the claims or defenses in this case, and not proportional to the needs of this case to the extent they (1) include health benefits plans and members of such plans not specifically identified by Plaintiff, (2) include health benefits plans that are not related to the at-issue claims, or (3) are referring to health benefits plans for which Defendants are not responsible for the at-issue claims administration.

13. Defendants object to the definition of "Provider" as vague, not described with reasonable particularity, overbroad, unduly burdensome, not relevant to the claims or defenses in

this case, and not proportional to the needs of this case to the extent it (1) includes persons or entities that are not parties to this case, or (2) concerns persons or entities unrelated to the at-issue claims.

14. Defendants object to Instruction No. 1 as unduly burdensome and not proportional to the needs of the case insofar as it asks Defendants to provide "the person's full name, present or last known address and telephone number, the present or last known business affiliation, including business address and telephone number, and their prior or current connection, interest or association with any Party to this litigation."

15. Defendants object to Instruction No. 2 as unduly burdensome and not proportional to the needs of the case insofar as it asks Defendants to provide "the identity of all persons affiliated with the organization having knowledge or documents concerning this lawsuit, and the entity's prior or current connection, interest or association with any Party to this litigation, including without limitation any account names and numbers."

16. Defendants object to Instruction No. 3 as vague and overbroad, and on the further ground that it renders the Interrogatories overbroad and unduly burdensome. Defendants have answered on behalf of Defendants only, and Defendants will not search for information or materials beyond their possession, custody, or control.

17. Defendants object to Instruction No. 4 as vague and overbroad, and on the further ground that it renders the Interrogatories overbroad and unduly burdensome. Defendants have answered on behalf of Defendants only, and Defendants will not search for information or materials beyond their possession, custody, or control.

18. Defendants object to Instruction Nos. 5, 6, 7, 8, 9, 10, 11, 12, and 13 to the extent they seek to impose obligations and/or penalties on Defendants beyond what is contemplated by the Federal Rules of Civil Procedure or applicable local rules. Defendants further object to Instruction Nos. 5, 6, 7, 8, 9, 10, 11, 12, and 13 to the extent those Instructions require disclosure of information or materials protected by the attorney-client privilege, the attorney work product doctrine, the settlement privilege, or any other applicable privilege, including, but not limited to: information that was prepared for, or in anticipation of, litigation; that contains or reflects the

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analysis, mental impressions, or work of counsel; that contains or reflects attorney-client communications; or that is otherwise privileged.

RESPONSES TO INTERROGATORIES

INTERROGATORY 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:

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 Plaintiff's' 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

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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. 2:

For the period July 1, 2016 through June 30, 2017, identify in detail the methodology that You used to calculate the amount of Your payment obligation (including both the allowed amount and the amount that You believed that You were obligated to pay) for Emergency Services and Care or Nonemergency Services and Care provided by Non-Participating Providers in Clark County, Nevada. If more than one methodology applied to different portions of a particular CLAIM, please identify in detail each methodology used and explain why different methodologies were used.

RESPONSE:

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 this Interrogatory is unduly burdensome and seeks irrelevant information as it is seeking information on the methodology used to determine Defendants'

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payment obligations to non-parties. Information on the methodology used to determine reimbursement amounts for non-party non-participating providers is not relevant or proportional to the needs of the litigation as many different factors impact the methodology used to determine such amounts. Defendants further object to the relevance of this Interrogatory as it seeks information solely for the period prior to July 1, 2017, which is the earliest claim at issue in this litigation.

To the extent Fremont intended to ask for information related to the methodology Defendants used to calculate the amount that would be paid to Fremont on the claims Fremont is asserting in this litigation from July 1, 2017 to present, Defendants incorporate their response to Interrogatory No. 1. Again, to determine what methodology was used on each of the 15,210 claims Fremont is asserting the Defendants would have to research each individual claim, which is unduly burdensome and not proportional to the needs of the case.

INTERROGATORY NO. 3:

For each CLAIM, identify in detail the methodology that You used to calculate the amount of Your payment obligation (including both the allowed amount and the amount that You believed that You were obligated to pay). If more than one methodology applied to different portions of a particular CLAIM, please identify in detail each methodology used and explain why different methodologies were used.

RESPONSE:

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 Plaintiff's' 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.

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To determine how the reimbursement amount 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 claim file 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 by incorporating their response to Interrogatory No. 1.

INTERROGATORY NO. 4:

If the payment methodology identified in Your Response to Interrogatory No. 1 above included an assessment of the usual and customary provider charges for similar services in the community or area where the services were provided, identify any providers whose charges You considered in determining the usual and customary charges, including the name, address, telephone number, and medical specialty for each such provider within that community; why You believe that each such provider rendered similar services to those rendered by the hospital; and why You believe that each such provider rendered those services in the same community where the Hospital services were provided. In the event that the methodology identified in Your Response to Interrogatory No. 1 above did not include such an assessment, please explain what alternative metrics You used.

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RESPONSE:

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 incorporate by reference their objections and response to Interrogatory No. 1 above.

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:

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 Plaintiff's' 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

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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. 6:

If You contend that any course of prior dealings 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 its otherwise relevant to the amounts paid for any of the CLAIMS, identify that prior course of business dealings that You contend entitles or entitled You to pay less than Fremont's full billed charges.

RESPONSE:

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 this Interrogatory is overbroad and vague as it is unclear what type of "prior dealings" are being referred to and during what period of time (i.e. is Fremont referring to prior payments by Defendants to Fremont, prior contracts between Defendants and Fremont, etc.). Defendants request clarification of what is meant by this phrase and Defendants will then supplement their response to this Interrogatory, if appropriate.

Notwithstanding Defendants' objection, Defendants 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. Defendants are continuing to investigate the CLAIMS asserted and will supplement their response to this Interrogatory if it is determined that "prior dealings"

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impacted any payments to Fremont.

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 or reimbursement and other payment scales under those agreements, and any provisions regarding the directing or steerage of Plan Members to those providers.

RESPONSE:

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 Plaintiff's' 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

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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:

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 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

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(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. 9:

Describe in detail Your relationship with Data iSight, including but not limited to the nature of any agreement You have with Data iSight, the scope and extent of the relationship, Your permitted uses of the data provided by Data iSight and the services performed by Data iSight.

RESPONSE:

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 this Interrogatory seeks irrelevant information that is not proportional to the needs of the case to the extent it seeks information on Defendants' relationship with Data iSight that does not pertain to how Fremont's claims for payment were adjudicated.

Defendants further respond that pursuant to FRCP 33(d), the answer to the portions of this Interrogatory that are not objectionable may be found by analyzing the contract(s) between United and MultiPlan, Inc. pursuant to which United received pricing information through MultiPlan's Data iSight tool that Defendants are in the process of producing pursuant to Fremont's Request for Production No. 12. The burden of deriving the answer to this Interrogatory by reviewing those contract(s) is substantially the same for either party.

INTERROGATORY NO. 10:

Explain why You ceased using the FAIR Health Database to establish the reasonable value of services and/or usual and customary fees for emergency services in Clark County.

RESPONSE:

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 to this Interrogatory as it seeks information that appears to not be relevant and also not proportional to the needs of the case. It is unclear how information related to why the Defendants allegedly ceased using the FAIR Health Database would have any impact

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on either party's claims or defenses. Defendants request that Plaintiff clarify why it believes this request is seeking relevant information in a meet and confer.

Defendants further respond to this Interrogatory that, in general, the amounts paid to Fremont would have been based on the terms of 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. 11:

Describe in detail all facts supporting Your affirmative defenses to the allegations in the Complaint filed in the Lawsuit.

RESPONSE:

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 this Interrogatory is premature as the Defendants are not required to file an Answer to the Complaint yet and are thus not required to state their affirmative defenses at this time. Defendants further object that this Interrogatory seeks disclosure of information protected by the attorney work-product doctrine. Defendants also object that this Interrogatory is overbroad, vague and unduly burdensome in that it calls for the identification of "all facts" rather than the material facts. *See e.g.*, *Bovarie v. Schwarzenegger*, No. 08CV1661 LAB NLS, 2011 WL 719206, at *1 (S.D. Cal. Feb. 22, 2011) ("The Court agrees that seeking every fact that underlies every affirmative defense is unduly burdensome."); *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."); *Grynberg v.*

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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"). Moreover, assuming that Defendants will assert more than one affirmative defense, the request is compound and may exceed the 25 interrogatory limit set forth by Rule 33.

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:

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 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).

INTERROGATORY NO. 13:

For each of the CLAIMS, identify which Plan Members are covered by plans fully-insured by You and which Plan Members are covered by self-funded plans (also known as

Administrative Service Only plans), to include the identity of the self-insurer.

RESPONSE:

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 Plaintiff's 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 are in the process of gathering additional information on whether the Plan Members referenced in FESM000011 are covered by plans fully-insured by Defendants or by self-funded plans administered by Defendants. Defendants intend to supplement this response by February 26, 2020.

Defendants further respond that all claims related to plans issued/administered by Health Plan of Nevada, Inc. and Sierra Health and Life Insurance Company, Inc. are fully insured.

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INTERROGATORY NO. 14:

Identify any self-funded plan (also known as Administrative Service Only plans) that contains a provision for indemnification of employees for amounts billed by a Provider of Emergency Medicine Services and not reimbursed by You.

RESPONSE:

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 this Interrogatory is vague and thus need clarification from Fremont before being able to respond. Defendants are not certain what is meant by the phrase "indemnification of employees" (i.e. who would be indemnifying the employees?). Defendants request an opportunity to meet and confer with Fremont to clarify what is sought by this Interrogatory.

Dated this 29th day of January, 2020.

/s/ Colby Balkenbush

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Brittany M. Llewellyn, Esq.
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Attorneys for Defendants Unitedhealth Group, Inc., United Healthcare Insurance Company, United Health Care Services, Inc. dba Unitedhealthcare, UMR, Inc. dba United Medical Resources, Oxford Health Plans, Inc., Sierra Health and Life Insurance Company, Inc., Sierra Health-Care Options, Inc., and Health Plan of Nevada, Inc.

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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of January, 2020, a true and correct copy of the foregoing **DEFENDANTS' RESPONSES TO FREMONT EMERGENCY SERVICES (MANDAVIA), LTD.'S FIRST SET OF INTERROGATORIES** was served by U.S. Mail, postage pre-paid, to the following:

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 Plaintiff
Fremont Emergency Services (Mandavia), Ltd.

/s/ Cynthia S. Bowman
An employee of WEINBERG, WHEELER, HUDGINS GUNN & DIAL, LLC

VERIFICATION

I, Rebecca Paradise, have read the foregoing **DEFENDANTS' RESPONSES TO FREMONT EMERGENCY SERVICES (MANDAVIA), LTD.'S FIRST SET OF INTERROGATORIES** and know its contents. I am the Vice President of Out of Network Programs at UnitedHealthcare, and am authorized to verify these responses on behalf of Defendants. While I do not have personal knowledge of all of the facts recited in the foregoing answers to interrogatories, the information contained in said document has been collected and made available to me; said information is true to the best of my knowledge, information, and belief based upon such information as is presently available; and the foregoing document is therefore verified on behalf of Defendants.

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

Executed on January 31st, 2020.

Rebecca Paradise

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EXHIBIT 1

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EXHIBIT 1

D. Lee Roberts, Jr., Esq.
Nevada Bar No. 8877
lroberts@wwhgd.com
Colby L. Balkenbush, Esq.
Nevada Bar No. 13066
cbalkenbush@wwhgd.com
Brittany M. Llewellyn, Esq.
Nevada Bar No. 13527
bllewellyn@wwhgd.com
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Attorneys for Defendants Unitedhealth Group, Inc., United Healthcare Insurance Company, United Health Care Services, Inc. dba Unitedhealthcare, UMR, Inc. dba United Medical Resources, Oxford Health Plans, Inc., Sierra Health and Life Insurance Company, Inc., Sierra Health-Care Options, Inc., and Health Plan of Nevada, Inc.

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UNITED STATES DISTRICT COURT

DISTRICT OF 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

Plaintiff,

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

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

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

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

Defendants.

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

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

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

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

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

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

a. Member Explanations of Benefits ("EOBs");

b. Provider EOBs and/or Provider Remittance Advices ("PRAs");

c. Appeals documents;

d. Any other documents comprising the administrative records, such as correspondence or clinical records submitted by Plaintiffs;

e. The plan documents in effect at the time of service.

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

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

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

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

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

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

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

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

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

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

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a. Member Explanations of Benefits ("EOBs"): ***45 minutes.***[1]

b. Provider EOBs and/or Provider Remittance Advice ("PRAs"); ***20 minutes.***

c. Appeals documents: ***30 minutes.***

d. Other documents comprising the administrative records: ***15 minutes.***

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

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

a. United stores EOBs as images that are stored in EDSS and marked with "Film Locator Numbers" or "FLNs".

b. To locate the correct EOB for a given claim, we must first determine the correct FLN by running queries in the system based on the data given to us by the provider. This process can take substantial time, because United-administered plans have tens of millions of members, each of whom is likely to see multiple

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

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

c. Once we use the claim data that is furnished to us by the provider to identify what we believe to be the correct FLN, we must then enter that FLN into EDSS to pull up and download the EOB in question.

d. Once the targeted EOB has completed downloading, our rigorous HIPAA protection protocol requires us to review the entire downloaded document to ensure (1) that it is the correct EOB that matches the claim at issue in the litigation and (2) that there are no extraneous pages included that might result in the inadvertent but unauthorized disclosure of HIPAA-protected information. Some EOB records are simple, but others may contain several pages, and the process of confirming a match and confirming that no extraneous information is included takes substantial time.

e. Once the EOB has been verified, we must take the additional step of processing and uploading it to the specific share drive that has been established for the particular instance of litigation.

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

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

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

14. If a provider includes an accurate Claim Number and Member Number in their claim data, the average time listed above for identifying EOBs can be substantially shortened. That is because accurate Claim Number and Member Number information avoids the need to search through multiple duplicative member names and multiple and frequently overlapping dates of service to identify the specific claim at issue. I estimate that having accurate Claim Number and Member Number information would reduce the time it typically takes to locate, verify, and process an EOB from 45 minutes to 30 minutes, and the time that it would take to pull all of the documents described in Paragraph 9 from 2 hours to 1.5 hours. Based on my review of Fremont's list of claims (FESM0000011), Fremont appears to have provided some, but not all of the claim numbers and member numbers for the claims it is seeking information on. I have not yet been able to verify the accuracy of these numbers.

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

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

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

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

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

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

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

Executed on January 29th, 2020 in Moline, Illinois

SANDRA WAY
Business Manager
Claim & Appeal Regulatory Adherence
United Healthcare

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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. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Order Shortening Time 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: 8/28/2020

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

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Marianne Carter	mcarter@mcdonaldcarano.com
Karen Surowiec	ksurowiec@mcdonaldcarano.com
Flor Gonzalez-Pacheco	FGonzalez-Pacheco@wwhgd.com
Kelly Gaez	kgaez@wwhgd.com
Kimberly Kirn	kkirn@mcdonaldcarano.com

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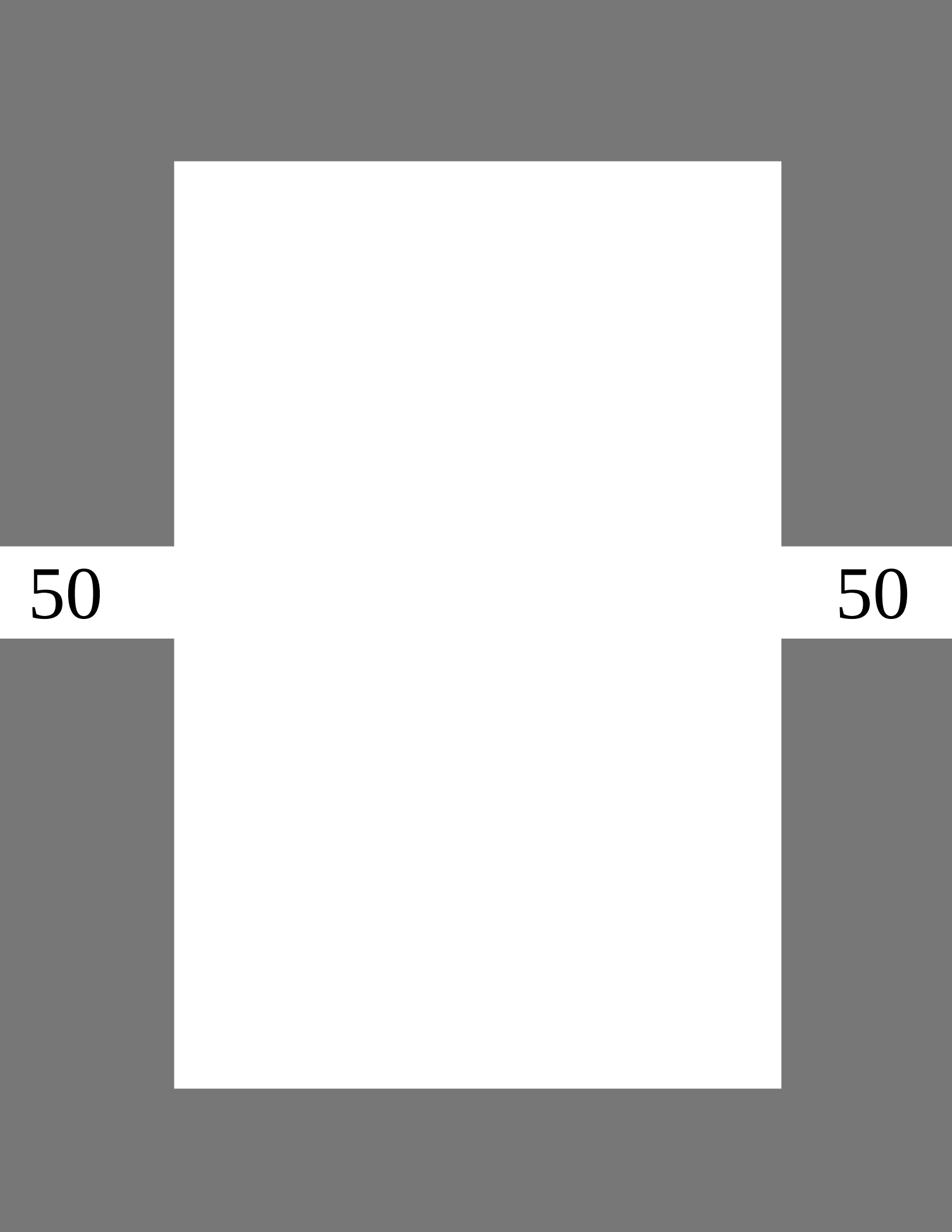
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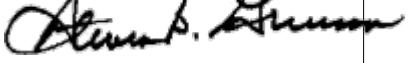

OPP
D. Lee Roberts, Jr., Esq.
Nevada Bar No. 8877
lroberts@wwhgd.com
Colby L. Balkenbush, Esq.
Nevada Bar No. 13066
cbalkenbush@wwhgd.com
Brittany M. Llewellyn, Esq.
Nevada Bar No. 13527
bllewellyn@wwhgd.com
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Attorneys for Defendants

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

Defendants.

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

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL DEFENDANTS' PRODUCTION OF CLAIMS FILE FOR AT-ISSUE CLAIMS, OR, IN THE ALTERNATIVE, MOTION IN LIMINE ON ORDER SHORTENING TIME

Hearing Date: September 9, 2020

Hearing Time: 10:30 AM

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Case Number: A-19-792978-B

Defendants UnitedHealth Group, Inc.; UnitedHealthcare Insurance Company; United HealthCare Services, Inc.; UMR, Inc.; Oxford Health Plans LLC (Incorrectly named as "Oxford Health Plans, Inc."); Sierra Health and Life Insurance Company, Inc.; Sierra Health-Care Options, Inc. and Health Plan of Nevada, Inc. (collectively, "United" or "Defendants") hereby oppose Plaintiffs' Motion to Compel ("Motion").

This Opposition is based on the following Memorandum of Points and Authorities, the exhibits attached hereto, the pleadings and papers on file herein, and any oral argument this Court may consider.

Dated this 4th day of September, 2020.

/s/ Colby L. Balkenbush

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Brittany M. Llewellyn, Esq.
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Attorneys for Defendants

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs seek to compel Defendants to produce the administrative record/claims file for each of the 22,153 claims for underpayment that Plaintiffs have asserted are at-issue in the case. This, despite the fact that Defendants have submitted a detailed burden declaration with their discovery objections explaining that searching for and collecting the requested documents is a manual process that takes approximately 2 hours per claim to complete, meaning it would require a team of four people working full time *over five years* (approximately 44,306 hours) to complete. Plaintiffs' Motion does not rebut any aspect of Defendants' thorough and well-reasoned burden declaration. Rather, Plaintiffs make the conclusory argument that because United is a large corporation that touts its efforts to use technology and data to its members' advantage, the Defendants' burden declaration is not plausible.

However, such an argument, in addition to being unsupported by case law, is undermined by Plaintiffs' own refusal to produce "all documents" in their possession that relate to the 22,153 claims they are asserting. For example, Plaintiffs have flatly refused Defendants' request for production of all of the clinical and cost records[1] for the claims, objecting that "the burden and expense of gathering thousands of medical records, adequately redacting confidential and information protected by HIPAA and producing this exceedingly large file outweighs any benefit." If Plaintiffs, affiliated with a multi-billion dollar physician management company owned by the private equity firm Blackstone Group, find it "unduly burdensome" to produce "all documents" related to the 22,153 claims how can they summarily discount United's well-supported burden objection? Plaintiffs' discovery requests are overbroad and not proportional to the needs of the case. Defendants' undue burden objection should be sustained.

Moreover, contrary to Plaintiffs' contentions, Defendants are not refusing to produce

[1] The clinical and cost records for each of Plaintiffs' claims are highly relevant to determining the reasonable value of the services Plaintiffs provided, for example. Plaintiffs' Third Claim for Relief is a claim for Unjust Enrichment that seeks to recover the "reasonable value of the services provided." FAC at ¶ 222.

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claims data for the claims at issue. Defendants are in the process of producing, among other things, (1) the administrative records for any of Plaintiffs' claims that were appealed (as these claims are the ones most likely to contain the claim-specific correspondence Plaintiffs have requested), (2) and summary-level market data related to the amounts paid by Defendants to other out-of-network providers in Clark County. In addition, Defendants are in the process of retaining an expert to attempt to match Defendants' own claims data spreadsheets to Plaintiffs' spreadsheets to identify any discrepancies in the alleged amounts billed and paid.

A more appropriate solution is for the Court to order the Parties to meet and confer on a more efficient and proportional way for Plaintiffs to get the information they actually need to litigate their claims. For example, courts dealing with similar situations involving large numbers of health benefit claims have ordered litigants to use statistical sampling methodologies or to produce only a discrete batch of the claims at issue—all potential solutions that Plaintiffs have declined to consider to date. Plaintiffs' alternative motion in limine seeking evidentiary sanctions should also be denied as premature and illogical. If the motion to compel is denied, this would mean the Court sustained Defendants' undue objection—a basis for denying sanctions, not awarding them.

II. FACTUAL BACKGROUND

A. Plaintiffs' Discovery Requests Are Extraordinarily Broad as They Seek Unfettered Discovery of 23,153 Claim Files/Administrative Records.

Plaintiffs assert that from July 1, 2017 to present, Defendants have underpaid Plaintiffs for the medical services that Plaintiffs have provided to Defendants' plan members. First Amended Complaint ("FAC") at ¶¶ 1, 25, 40. While the FAC does not identify the specific claims at issue, Plaintiffs have produced two spreadsheets identifying those claims. The first spreadsheet is bates numbered FESM000011 and identifies 15,210 separate claims for underpayment. On June 1, 2020,[2] Plaintiffs produced a second spreadsheet (FESM00344) that

[2] *See* **Exhibit 1**, Plaintiffs' Second Supplemental Disclosure of Documents.

identifies an additional 6,943 claims for a total of 22,153 claims for underpayment.[3] Through their Motion, Plaintiffs seek to compel Defendants to produce the claim file/administrative record for each of the 22,153 claims regardless of the burden associated with such a task. *See e.g.*, Exhibit 2 to Motion at Request for Production No. 2 (seeking production of "all Documents and/or Communications between You and Fremont regarding any of the CLAIMS").

The documents in Defendants' possession that relate to Plaintiffs' 22,153 claims for underpayment primarily consist of the "administrative record" for each claim. **Exhibit 2** at ¶ 4 (Declaration of Sandra Way in Support of Defendants' Discovery Objections). The administrative record consists of the following five categories of documents:

a. Member Explanations of Benefits ("EOBs");

b. Provider EOBs and/or Provider Remittance Advices ("PRAs");[4]

c. Appeals documents;

d. Any other documents comprising the administrative record, such as correspondence or clinical records submitted by the provider with its claim for reimbursement;

e. The plan documents in effect at the time of service.

Id. at ¶ 5. The above documents are what Plaintiffs are seeking to compel Defendants to produce for each of the 22,153 claims at issue. Importantly, categories **b**, **c** and **d** should already be in Plaintiffs' possession. The PRAs are included with each payment sent by Defendants to Plaintiffs and the appeals are initiated by Plaintiffs such that they would have access to those documents. Along those lines, Plaintiffs would also be privy to any correspondence or clinical

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[3] In an apparent attempt to cloak the sheer number of claims at issue, Plaintiffs did not even attach the claim spreadsheets on which their Motion is based to the Motion. To ensure the Court is aware of the scope of the discovery being requested and the number of claims at issue, United has submitted FESM000011 and FESM00344 to the Court for in-camera review concurrently with filing this Opposition. United has not filed these documents as exhibits as they contain protected health information such as patient names and CPT codes that identify the medical service allegedly provided.

[4] A provider EOB or PRA is typically included with each payment sent to a provider and includes codes explaining why a claim for reimbursement by the provider was processed in a particular way. Notably, these documents are equally accessible to the Plaintiffs, which was also a basis for United's objection to the at-issue discovery requests. *See e.g.*, Exhibit 2 to Motion at Responses to Requests for Production Nos. 3 and 5.

records they submitted to Defendants to support their claims for reimbursement.

B. The Declaration of Sandra Way Supports Upholding United's Burden Objections as it Establishes that it Would Take Over Five Years for United to Produce All 23,153 Administrative Records

The five categories of documents detailed above that comprise the administrative record are located in at least four different databases within United. *Id.* at ¶¶ 6-7. Each category of documents must be searched for and pulled individually on a claim-by-claim basis rather than in batches. *Id.* Thus, contrary to Plaintiffs' unsupported assertions, the present situation is completely inapposite to a run-of-the-mill insurance or employment case where the "claim file" or "employment file" may be located in a single folder on a single hard drive or server and can simply be forwarded to outside counsel for production. *See generally id*. Based on United's experience pulling administrative records for similar claims, it takes an average of 2 hours just to pull a set of the **a, b, c,** and **d** category documents for a single claim. *Id.* at ¶ 13. Therefore, based on Plaintiffs' original claim spreadsheet (FESM000011) which asserts 15,210 claims for underpayment, it would take United approximately 30,420 hours to pull all of the administrative records. *Id.* This means it would take a team of four people working full-time over 3 years[5] to pull the requested documents. *Id.* Moreover, on June 1, 2020 Plaintiffs submitted an updated claim spreadsheet (FESM00344) that brings the total number of claims asserted to 22,153 claims. Plaintiffs now demand that Defendants produce the administrative records for these claims as well. Such a task would take a team of four people over 5 years to accomplish.[6] *Id.* at ¶ 13.

Against the above undisputed factual background, Plaintiffs seek to compel Defendants to produce the administrative records for all 22,153 claims within just 14 calendar days. Motion

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[5] This calculation assumes an 8 hour work day and 261 working days per year.

[6] In addition, this does not take into account the burden involved in pulling the category **e** documents that are part of the administrative record (*i.e.*, the plan documents). While those documents could be pulled concurrently with the documents from categories **a-d** by a separate United team, it would take an average of 0.46 hours per claim to pull these documents for a total of 10,190 hours of additional labor. **Exhibit 2** at ¶ 15 (Declaration of Sandra Way).

at 12:13-15 ("The Health Care Providers ask that the Court require United's production within 14 calendar days of entry of an order granting relief."). The Court has seen these unreasonable tactics from the Plaintiffs before, such as when they requested a September 3, 2020 fact discovery cut-off in the Joint Case Conference Report (which would have amounted to less than two months of discovery given that the NRCP 16 conference did not take place until July 23, 2020), a request which the Court rightly rejected.

C. Defendants Are Not Stonewalling as Plaintiffs Allege But Rather Are in the Process of Producing Claims Data that is Relevant and Proportional to the Needs of the This Case

Plaintiffs contend that Defendants are engaging in delay tactics. To the contrary, Defendants have committed to producing claims data that that is proportional to the needs of this case and relevant to the Parties' claims and defenses. For example, Defendants have committed to producing the "administrative record" for all claims evidencing an administrative appeal and have been diligently working on gathering these documents – itself a manual process. *See* **Exhibit 3** under "Summary of meet and confer efforts" for RFP No. 3 ("Fremont has still not responded to United's compromise proposal of only producing correspondence for the appealed claims since those claims are the most likely to contain correspondence and non-appealed claims are unlikely to contain correspondence.") (July 29, 2020 email from B. Llewellyn to K. Gallagher). Defendants will be making their initial production of the administrative records for Plaintiffs' claims evidencing an administrative appeal within the next 30 days and will continue to produce these records on a rolling basis thereafter. Similarly, in order to determine whether the amounts billed and paid shown in Plaintiffs' claim spreadsheets are accurate, Defendants are working to retain an expert to attempt to match Plaintiffs' data with their own claims' data to identify any discrepancies.

Finally, Defendants have agreed to produce summary-level market data related to payments made by United to other out-of-network providers in Clark County for the time period encompassing Plaintiffs' claims (i.e. July 1, 2017 to Jan. 2020). *See* **Exhibit 3** under "Summary of meet and confer efforts" for RFP Nos. 14-17 ("we are working with our client to gather and

produce market data, and will provide a timeline for production.") (July 29, 2020 email from B. Llewellyn to K. Gallagher).

Documents such as the administrative records for claims evidencing appeal (which are more likely to have claim related correspondence than non-appealed claims), claim matching spreadsheets, and market data[7] for the relevant time period are far more likely to be relevant to the Parties' claims and defenses and proportional to the needs of this case than a half-a-decade-long wholesale production of the administrative records for each of Plaintiffs' 22,153 claims.

D. Plaintiffs Have Refused to Respond to Similar Discovery Requests From United Based on Their Own Undue Burden Objections.

Although Plaintiffs take issue with United's undue burden objections, they too have repeatedly objected to any United requests that sought certain categories of documents related to all 22,153 claims at issue. Further, the basis for Plaintiffs' objections was that the production of the requested information would impose an undue burden or expense on Plaintiffs, despite the fact that Plaintiffs are owned by Blackstone Group, a multi-billion dollar private equity firm.[8]

For example, more than fifteen (15) months ago, United propounded requests for production seeking the medical treatment records for the services that Plaintiffs allegedly provided underlying the claims at issue in this litigation. *See* United's First Set of Requests for Production at Request No. 6, **Exhibit 4**. Request No. 6 sought "all documents concerning the medical treatment that Fremont allegedly provided to the more than 10,800 patients referenced in paragraph 25 of the Complaint." Plaintiffs responded to this, and several other requests, as "overly broad, irrelevant and not proportional to the needs of the case," and also on the basis that "**the burden and expense of gathering thousands of medical records, adequately redacting**

[7] Plaintiffs have not produced any of their own market data nor have they committed to doing so despite receiving discovery requests that clearly call for this information. *See e.g.*, **Exhibit 5** at RFP No. 12 (Plaintiffs' First Supplemental Responses to Defendants' Requests for Production).

[8] The Plaintiffs are all ultimately owned and controlled by TeamHealth Holdings, Inc. which is in turn owned by the Blackstone Group, Inc., a private equity firm with over $360 billion in assets under management. *See* TeamHealth Press Release, TeamHealth Completes Previously Announced Transaction with Blackstone, CDPQ, PSP Investments and NPS and Becomes a Private Company, available at https://www.teamhealth.com/news-and-resources/press-release/blackstone/ (last accessed September 3, 2020).

confidential and information protected by HIPAA and producing this exceedingly large file outweighs any benefit. *See* Plaintiffs' First Supplemental Responses to United's First Set of Requests for Production, **Exhibit 5** at pp. 5-6 (emphasis added).

Plaintiffs' response to Defendants' Request for Production No. 7 is equally egregious given their current Motion. In that response, Plaintiffs objected as follows:

> This request seeks documents **not proportional to the needs of the case**. . . In particular, **explanation of benefits forms (the "EOBs")** (identifying, among other things, the amount and basis for payment) for all of the claims at issue **are unimportant to the issues at stake in this litigation**.

Exhibit 5 at p. 6 (emphasis added). Despite Plaintiffs' express acknowledgment that they believe EOBs are "unimportant to the issues at stake in this litigation," Plaintiffs seek to compel Defendants to produce the EOBs for all 22,153 claims via this Motion. *See* Motion at 11:24-25 (stating that Plaintiffs are seeking to force Defendants to produce "HCFA forms, PRAs[9] and payment information"). Plaintiffs' Motion is nothing more than a scorched earth discovery tactic designed to foist untenable discovery costs onto United and to seek information that Plaintiffs argued was unduly burdensome in their own discovery objections. *See also* **Exhibit 5** pp. 7-8, 13 (Plaintiffs' Responses to RFPs 9. 10, 22) (declining to produce responsive claim documents based on an undue burden objection because the requests encompassed "all of the claims.").

In response to Plaintiffs' objections, United requested that Plaintiffs "supplement [their] responses with a declaration and/or other evidence setting forth the particularized facts that support [their] undue burden objection so that [United could] better assess" the objection. *See* Meet and Confer letter regarding Plaintiffs' responses to United's First Set of Requests for Production, **Exhibit 6** at 2. This, because "an objection that a discovery request is 'unduly burdensome' must be supported by a declaration to carry weight." *Bresk v. Unimerica Ins. Co.*, 2017 WL 10439831, at *3 (C.D. Cal. Nov. 16, 2017). To date, Plaintiffs have not produced a single medical record relative to the claims at issue in this litigation, nor have they produced a declaration or affidavit in support of their objections. This Court should decline to require the

[9] As explained in Section II(A), *supra*, PRAs are synonymous with provider EOBs.

Defendants to produce "all documents" related to the 22,153 claims at issue for the additional reason that Plaintiffs have flatly refused the same discovery request from Defendants.

III. LEGAL ARGUMENT

A. In Assessing Plaintiffs' Motion, the Court Must Consider Both Proportionality and Whether the Information Sought is Not Reasonably Accessible Because of Undue Burden or Cost

NRCP 26 dictates that relevancy is no longer the only concern when assessing a motion to compel. Rather, the discovery sought must be "**proportional to the needs of the case**," and a court "must limit the frequency or extent of discovery otherwise allowed" if "the discovery sought . . . can be obtained from some other source that is more convenient, less burdensome, or less expensive." NRCP 26(b)(1) (emphasis added); NRCP 26(b)(2)(C)(i). In regard to electronically stored information, NRCP 26(b)(2)(B) provides that:

> A party need not provide discovery of electronically stored information from sources that the party identifies as **not reasonably accessible because of undue burden or cost**. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, 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). The court may specify conditions for the discovery, including costs of complying with the court's order.

(emphasis added). Recently, the Nevada Court of Appeals found that it is reversible error for a district court to consider only relevance and not proportionality in assessing a discovery request. *Venetian Casino Resort, LLC v. Eighth Judicial Dist. Court in & for Cty. of Clark*, 136 Nev. Adv. Op. 26, 467 P.3d 1, 5 (Nev. App. Ct. May 14, 2020) ("Problematically, the district court did not undertake any analysis of proportionality as required by the new rule.").[10]

[10] *See also In re Bard IVC Filters Prod. Liab. Litig.*, 317 F.R.D. 562, 564 (D. Ariz. 2016) ("Relevancy alone is no longer sufficient—discovery must also be proportional to the needs of the case.") (cited with approval in *Venetian Casino Resort*, 467 P.3d at 5).

B. The Sandra Way Declaration Demonstrates that the Claims Files Sought by Plaintiffs Are Not Reasonably Accessible Because of Undue Burden and Cost

When a party asserts an undue burden objection as United has here, courts have found that the proper way to make such an objection is through a detailed declaration explaining the nature and severity of the burden so that a court may conduct a proportionality analysis. "In opposing discovery on grounds of burdensomeness, the objecting party is required to demonstrate that the time and expense involved in responding to the requested discovery will, in fact, be unduly burdensome." *Residential Constructors, LLC v. Ace Prop. & Cas. Ins. Co.*, 2006 WL 3149362, at *9 (D. Nev. Nov. 1, 2006); *see also Jackson v. Montgomery Ward & Co.*, 173 F.R.D. 524, 528–29 (D. Nev. 1997) ("party claiming that a discovery request is unduly burdensome must allege specific facts which indicate the nature and extent of the burden, usually by affidavit or other reliable evidence."); *EnvTech, Inc. v. Suchard*, 2013 WL 4899085, at *5 (D. Nev. Sept. 11, 2013) ("Information regarding [searches] conducted should be provided through declarations under oath detailing the nature of the efforts to locate responsive documents.").

Here, the Sandra Way Declaration attached to Defendants' discovery responses demonstrates that it would take over five years for United to produce the administrative records for all 22,153 of Plaintiffs' claims because the documents are located in at least four different databases and must be manually searched for and pulled individually on a claim by claim basis. **Exhibit 2** at ¶¶ 7, 8, 13 (Way Declaration). This easily meets the definition of documents that are "not reasonably accessible because of undue burden or cost." NRCP 26(b)(2)(B). Plaintiffs respond by arguing that the Sandra Way Declaration is insufficient because it "makes no mention of cost." Motion at 9:16. First, NRCP 26(b)(2)(B) uses the phrase "undue burden **or** cost" not "**and** cost." Thus, a showing of the exact cost of producing the requested discovery is not required to sustain a discovery objection based on undue burden. Second, the cost of gathering 22,153 administrative records is self-evident given that it would take a team of four people working full time over five years to gather the responsive documents. **Exhibit 2** at ¶ 13. Assuming four salaried employees making $60,000/year were hired to complete such an

assignment, the cost would total $1.2 million over the course of five years, not to mention the loss to United from not assigning its employees to more gainful tasks. Defendants' burden objection should be sustained.

C. The Plaintiffs Have Failed to Rebut Any Aspect of the Sandra Way Declaration and Thus They Cannot Overcome Defendants' Undue Burden Objection

The only "undue burden" case cited in Plaintiffs' Motion is *Martinez v. James River Ins. Co.*, No. 2:19-cv-01646-RFB-NJK, 2020 WL 1975371 (D. Nev. Apr. 20, 2020). In *Martinez*, which involved a single claim by a single insured rather than 22,153 claims, the federal district court rejected the defendant insurer's undue burden objections to certain discovery requests because "[t]his assertion is supported by only conclusory argument of burden unsupported by any factual showing." *Id.* at *1. In contrast, here the Defendants have submitted a detailed burden declaration rather than relying on conclusory boilerplate objections. *See generally* **Exhibit 2** (Sandra Way Declaration).

In cases similar to this one where the party resisting discovery has demonstrated undue burden through a detailed and factually supported declaration, courts have upheld the undue burden objection. For example, in *State Farm Mut. Auto. Ins. Co. v. Gray*, "Petitioner had moved for a protective order, with a supporting affidavit, on the grounds that the request was so unduly burdensome as to be oppressive, that petitioner maintained no central file from which the requested information could be readily retrieved, and that, therefore, petitioner could not comply without expending great amounts of both time and money." *State Farm Mut. Auto. Ins. Co. v. Gray*, 546 So. 2d 36, 37 (Fla. Dist. Ct. App. 1989). The Court found that "Respondents have not sufficiently contradicted petitioner's affidavit which states that petitioner does not maintain a central records file from which the requested information can be readily extracted," and that "the requested production to be so unduly burdensome as to be oppressive." *Id.* In so finding, the court relied on *North Miami General Hospital v. Royal Palm Beach Colony, Inc.*, 397 So.2d 1033 (Fla. 3d DCA 1981) (request which required manual retrieval and review of more than 37,000 admission files found burdensome) and *Travelers Indemnity Co. v. Salido*, 354 So.2d 963

(Fla. 3d DCA 1978) (request for insurer's paid bills found unduly burdensome where insurer maintained no central records file and compliance would require examination and review of thousands of claim files).

Plaintiffs contend that the statements of fact in the Sandra Way Declaration are not plausible given that (1) United is a very large company and (2) United's SEC filings discuss its efforts to use "advanced technology" and "maintain the integrity" of its data. Motion at pp. 10-11. However, Plaintiffs' arguments fail, as the Way Declaration goes into explicit detail explaining why it takes approximately 2 hours for United to gather an entire administrative record (even detailing the average minutes per task) while Plaintiffs rely exclusively on vague generalizations about technology and efficiency. Moreover, once again Plaintiffs' own discovery objections defeat their Motion. If Plaintiffs, a multi-billion dollar physician management company owned by a private equity firm, find it unduly burdensome to produce the clinical records for the 22,153 claims at issue, how can they criticize United for asserting undue burden with respect to a similar task? *See* **Exhibit 5** at p. 5 (Plaintiffs' response to RFP No. 6).

Overbroad scorched earth discovery requests do not suddenly become immune from judicial scrutiny when directed at a large sophisticated corporation and courts have upheld undue burden objections on facts less egregious than those present here. *Marozsan v. Veterans Admin.*, 1991 WL 441905, at *2 (N.D. Ind. June 24, 1991) ("While a party responding to discovery cannot simply claim ignorance or a lack of knowledge if requested information is accessible through reasonable inquiry and investigation, it would be manifestly unreasonable to expect or require a responding party, even a government agency with its considerable resources, to manually sift through thousands of individual files and then . . . analyze the data.") (emphasis added); *In re Fontaine*, 402 F. Supp. 1219, 1222 (E.D.N.Y. 1975) ("[T]he extreme burden placed upon plaintiff to produce over 250 files with supporting papers out of several thousand would require, upon the balancing of the interests to be served, a limitation upon such discovery."); *Grimes v. UPS*, 2007 WL 2891411 at * 4 (N.D. Cal. 2007) (request for information on all management employees that would require the defendant to search through hundreds of personnel files was unduly burdensome).

Given that Plaintiffs have not factually rebutted any aspect of the Sandra Way Burden Declaration (*i.e.*, number of databases that must be searched, time to search, whether documents must be pulled individually or can be pulled in batches, etc.), the Motion must be denied.

D. Plaintiffs' Motion Should Not Be Granted Due to Their Own Unclean Hands—They Have Refused to Produce Similar Claim Documents Based on Undue Burden Objections

Given that Plaintiffs have refused to produce similar claim documents for "all" 22,153 claims they are asserting, such as the clinical and cost records underlying each claim, they cannot now attempt to force nonreciprocal discovery on the Defendants. **Exhibit 5** pp. 5-8, 13 (Plaintiffs' Responses to RFPs 6, 7, 9, 10, and 22). Indeed, Plaintiffs have admitted in their own discovery objections that they believe many of the documents they seek through the present Motion are irrelevant which provides an additional basis for denying the Motion. *Id.* at p. 6 (RFP No. 7) (objecting that "explanation of benefits forms (the "EOBs") are unimportant to the issues at stake in this litigation."). Alternatively, if the Court is inclined to grant the Motion in some fashion, Plaintiffs must not be allowed to continue avoiding reciprocal discovery from the Defendants.

E. The Court Should Order the Parties to Meet and Confer to Agree On an Appropriate Method of Discovery for the 22,153 At-Issue Claims That is Proportional and Not Unduly Burdensome

There are a variety of possible ways to ensure discovery related to Plaintiffs' 22,153 claims is proportional to the needs of the case. These include, among other things, employing a statistical sampling methodology, requiring the parties to employ experts to attempt to match each party's claims data, and/or only requiring the Parties to produce documents related to a smaller set of the at-issue claims. *Blue Cross and Blue Shield of New Jersey, Inc. v. Philip Morris, Inc.*, 178 F.Supp.2d 198, 250 (E.D.N.Y. 2001) ("Sampling and survey techniques are a well-accepted alternative for [a] trial judge facing crippling discovery and evidentiary costs."), rev'd on other grounds, *McLaughlin v. Am. Tobacco Co.*, 522 F.3d 215 (2d Cir. 2008). This Court is also empowered to appoint an independent expert or special master to deal with complex discovery issues. *In re Fine*, 116 Nev. 1001, 1015, 13 P.3d 400, 409 (2000) ("Experts

[may be] appointed pursuant to an order of a court for the purpose of providing information that a court may utilize in rendering a decision.").

Given that Defendants are in the process of producing claims' data for appealed claims as well as market data rather than attempting to avoid their discovery obligations, Defendants suggest that it would be appropriate for the Court to order the Parties to further meet and confer and attempt to come up with an appropriate methodology for conducting discovery on the 22,153 at-issue claims that is not unduly burdensome and can be completed within a reasonable amount of time. If the Parties cannot agree on a compromise then they can bring this issue before the Court and ask the Court to fashion an appropriate solution.

F. Plaintiffs' Alternative Motion in Limine is Punitive, Premature and Should be Denied

Plaintiffs also advance an alternative argument that if the Court is not inclined to compel Defendants to produce the administrative records for all 22,153 claims, the Court should essentially sanction the Defendants for not voluntarily producing the documents by prohibiting them from challenging Plaintiffs' assertions regarding the claims.

First, this argument is illogical on its face. If the Court denies the motion compel, this would mean that the Court has found that Plaintiffs' discovery requests were overbroad and has sustained Defendants' undue burden objection. In that case, there would be no basis to sanction Defendants. *Cf. Day v. Forman Auto. Grp*., No. 2:12-CV-577 JCM CWH, 2015 WL 1250447, at *6 (D. Nev. Mar. 18, 2015) (discussing granting a motion in limine to exclude evidence because of a discovery violation); *Perfumania, Inc. v. Fashion Outlet of Las Vegas, LLC*, No. 2:05-CV-00054-ECR, 2006 WL 3040914, at *2 (D. Nev. Oct. 26, 2006) (characterizing a motion in limine seeking exclusion of evidence as an "extreme sanction.").

Second, Plaintiffs' request for evidentiary sanctions ignores the likelihood that, after meeting and conferring, the Parties will be able to come to a compromise that allows the necessary claims data to be produced within a reasonable period of time, such as through using a sampling methodology, requiring the parties' to retain experts to attempt to match claims data and flag discrepancies, or through an agreement to produce a more discrete batch of the claim

files and clinical records at issue. The Court is not constrained to the Hobson's choice of (1) ordering production of all documents related to the 22,153 claims or (2) barring introduction of any evidence whatsoever related to the claims.

Third, the motion in limine is premature. The fact discovery cut-off is December 31, 2020. *See* July 23, 2020 Minute Order. In addition, Plaintiffs have failed to comply with EDCR 2.47)(b) which requires a meet and confer[11] before filing a motion in limine. While Plaintiffs did meet and confer in regard to their motion to compel, the issue of a motion in limine or a request for evidentiary sanctions was never discussed. Plaintiffs' counsel tacitly acknowledges this by only referencing EDCR 2.34 and 2.26 in her declaration. For all these reasons, Plaintiffs' alternative request for evidentiary sanctions against Defendants should be denied.

IV. CONCLUSION

For the reasons set forth above, Defendants request that the Court deny the Motion and instead order the Parties to meet and confer to attempt to reach a compromise on how to produce the necessary claims data related to the 22,153 claims at issue in a way that is not unduly burdensome to either side.

Dated this 4th day of September, 2020.

/s/ Colby L. Balkenbush

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Brittany M. Llewellyn, Esq.
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Attorneys for Defendants

[11] As has been her practice throughout this case, Plaintiffs' counsel's lengthy meet and confer declaration casts various aspersions on Defendants' counsel and inaccurately represents the meet and confer efforts that actually occurred.

CERTIFICATE OF SERVICE

I hereby certify that on the 4th day of September, 2020, a true and correct copy of the foregoing **DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL DEFENDANTS' PRODUCTION OF CLAIMS FILE FOR AT-ISSUE CLAIMS, OR, IN THE ALTERNATIVE, MOTION IN LIMINE ON ORDER SHORTENING TIME** was electronically filed and 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 Plaintiff
Fremont Emergency Services (Mandavia), Ltd.

/s/ Colby L. Balkenbush
An employee of WEINBERG, WHEELER, HUDGINS GUNN & DIAL, LLC

EXHIBIT 1

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EXHIBIT 1

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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
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 **HEALTH CARE PROVIDERS' SECOND SUPPLEMENT TO NRCP 16.1 INITIAL DISCLOSURES[1]**

[1] The Health Care Providers made initial disclosures in federal court while awaiting remand.

Pursuant to **Rule 16.1 of the Nevada Rules of Civil Procedure ("NRCP")**, 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")[2], hereby supplement their initial disclosures **(in bold)** as follows:

I. INDIVIDUALS LIKELY TO HAVE DISCOVERABLE INFORMATION.

1. Based on information to date, Plaintiffs identify the individuals listed below as likely to have discoverable information under **NRCP** 26(b).

Name	Contact Information	General Subject Matter
Kent Bristow	265 Brookview Centre Way Suite 400 Knoxville, TN 37919 This witness may only be contacted through counsel of record: Pat Lundvall Kristen T. Gallagher McDonald Carano LLP 2300 W. Sahara Ave., Suite 1200 Las Vegas, NV 89102	This witness is expected to have knowledge relating to the facts and circumstances surrounding the claims and defenses in this litigation, particularly Defendant's[3] underpayment of covered emergency medicine services provided by Plaintiffs to Defendants' insureds; the course of conduct that existed between Plaintiffs and Defendants prior to Defendants' decision to unilaterally reduce payments due to Plaintiffs; Plaintiffs' damages; and Defendants' conduct in its negotiations with Plaintiffs.
Paula Dearolf	265 Brookview Centre Way Suite 400 Knoxville, TN 37919 This witness may only be contacted through counsel of record: Pat Lundvall Kristen T. Gallagher McDonald Carano LLP 2300 W. Sahara Ave., Suite 1200 Las Vegas, NV 89102	This witness is expected to have knowledge relating to the facts and circumstances surrounding the claims and defenses in this litigation, particularly Defendants' underpayment of covered emergency medicine services provided by Plaintiffs to Defendants' insureds; the course of conduct that existed between Plaintiffs and Defendants prior to Defendants' decision to unilaterally

[2] Although Team Physicians and Ruby Crest did not make the previous disclosures, they join in these disclosures as their initial disclosures in this matter.

[3] UnitedHealth Group, Inc., United Healthcare Insurance Company, United Health Care Services Inc., d/b/a Unitedhealthcare, UMR, Inc., d/b/a United Medical Resources, Oxford Health Plans, Inc., Sierra Health and Life Insurance Company, Inc., Sierra Health-Care Options, Inc. and Health Plan of Nevada, Inc. shall collectively be referred to herein as "Defendants."

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

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Name	Contact Information	General Subject Matter
		reduce payments due to Plaintiffs; and Plaintiffs' damages.
Greg Dosedel	c/o D. Lee Roberts, Jr. Colby L. Balkenbush **Brittany Llewellyn** Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC 6385 South Rainbow Blvd. Suite 400 Las Vegas, NV 89118	This witness is expected to have knowledge relating to the facts and circumstances surrounding the claims and defenses in this litigation, particularly Defendants' underpayment of covered emergency medicine services provided by Plaintiffs to Defendants' insureds; the course of conduct that existed between Plaintiffs and Defendants prior to Defendants' decision to unilaterally reduce payments due to Plaintiffs; Plaintiffs' damages; and Defendants' conduct in its negotiations with Plaintiffs.
David Greenberg	1643 NW 136th Ave. Building H, Suite 100 Sunrise, FL 33323 This witness may only be contacted through counsel of record: Pat Lundvall Kristen T. Gallagher McDonald Carano LLP 2300 W. Sahara Ave., Suite 1200 Las Vegas, NV 89102	This witness is expected to have knowledge relating to the facts and circumstances surrounding the claims and defenses in this litigation, particularly Defendants' underpayment of covered emergency medicine services provided by Plaintiffs to Defendants' insureds; the course of conduct that existed between Plaintiffs and Defendants prior to Defendants' decision to unilaterally reduce payments due to Plaintiffs; Plaintiffs' damages; Defendants' conduct in its negotiations with Plaintiffs; and Data iSight's representations made to Plaintiffs with respect to the amount to be paid for covered emergency medicine services provided by Plaintiffs to Defendants' insureds.
John Haben	c/o D. Lee Roberts, Jr. Colby L. Balkenbush **Brittany Llewellyn** Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC 6385 South Rainbow Blvd. Suite 400 Las Vegas, NV 89118	This witness is expected to have knowledge relating to the facts and circumstances surrounding the claims and defenses in this litigation, particularly Defendants' underpayment of covered emergency medicine services provided by Plaintiffs to Defendants' insureds; the course of conduct that existed between Plaintiffs and Defendants prior to Defendants' decision to unilaterally

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

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Name	Contact Information	General Subject Matter
		reduce payments due to Plaintiffs; Plaintiffs' damages; and Defendants' conduct in its negotiations with Plaintiffs.
Rena Harris	8511 Fallbrook Ave. Suite 120 West Hills, CA 91304 This witness may only be contacted through counsel of record: Pat Lundvall Kristen T. Gallagher McDonald Carano LLP 2300 W. Sahara Ave., Suite 1200 Las Vegas, NV 89102	This witness is expected to have knowledge relating to the facts and circumstances surrounding the claims and defenses in this litigation, particularly Defendants' underpayment of covered emergency medicine services provided by Plaintiffs to Defendants' insureds; the course of conduct that existed between Plaintiffs and Defendants prior to Defendants' decision to unilaterally reduce payments due to Plaintiffs; Plaintiffs' damages; and Defendants' conduct in its negotiations with Plaintiffs.
Jacy Jefferson	c/o D. Lee Roberts, Jr. Colby L. Balkenbush **Brittany Llewellyn** Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC 6385 South Rainbow Blvd. Suite 400 Las Vegas, NV 89118	This witness is expected to have knowledge relating to the facts and circumstances surrounding the claims and defenses in this litigation, particularly Defendants' underpayment of covered emergency medicine services provided by Plaintiffs to Defendants' insureds; the course of conduct that existed between Plaintiffs and Defendants prior to Defendants' decision to unilaterally reduce payments due to Plaintiffs; Plaintiffs' damages; and Defendants' conduct in its negotiations with Plaintiffs.
Custodian of Records for National Care Network, LLC	211 E. 7th Street, Suite 620 Austin, TX 78701	This witness is expected to have knowledge relating to the facts and circumstances surrounding the claims and defenses in this litigation, particularly Defendants' underpayment of covered emergency medicine services provided by Plaintiffs to Defendants' insureds; Defendants' decision to unilaterally reduce payments due to Plaintiffs; Plaintiffs' damages; and the method for determining the payment made by Defendants to Plaintiffs.

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

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Name	Contact Information	General Subject Matter
Angie Nierman	c/o D. Lee Roberts, Jr. Colby L. Balkenbush **Brittany Llewellyn** Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC 6385 South Rainbow Blvd. Suite 400 Las Vegas, NV 89118	This witness is expected to have knowledge relating to the facts and circumstances surrounding the claims and defenses in this litigation, particularly Defendants' underpayment of covered emergency medicine services provided by Plaintiffs to Defendants' insureds; the course of conduct that existed between Plaintiffs and Defendants prior to Defendants' decision to unilaterally reduce payments due to Plaintiffs; Plaintiffs' damages; and Defendants' conduct in its negotiations with Plaintiffs.
Dan Rosenthal	c/o D. Lee Roberts, Jr. Colby L. Balkenbush **Brittany Llewellyn** Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC 6385 South Rainbow Blvd. Suite 400 Las Vegas, NV 89118	This witness is expected to have knowledge relating to the facts and circumstances surrounding the claims and defenses in this litigation, particularly Defendants' underpayment of covered emergency medicine services provided by Plaintiffs to Defendants' insureds; the course of conduct that existed between Plaintiffs and Defendants prior to Defendants' decision to unilaterally reduce payments due to Plaintiffs; Plaintiffs' damages; and Defendants' conduct in its negotiations with Plaintiffs.
Dan Schumacher	c/o D. Lee Roberts, Jr. Colby L. Balkenbush **Brittany Llewellyn** Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC 6385 South Rainbow Blvd. Suite 400 Las Vegas, NV 89118	This witness is expected to have knowledge relating to the facts and circumstances surrounding the claims and defenses in this litigation, particularly Defendants' underpayment of covered emergency medicine services provided by Plaintiffs to Defendants' insureds; the course of conduct that existed between Plaintiffs and Defendants prior to Defendants' decision to unilaterally reduce payments due to Plaintiffs; Plaintiffs' damages; and Defendants' conduct in its negotiations with Plaintiffs.
Jennifer Shrader	265 Brookview Centre Way, Suite 400 Knoxville, TN 37919	This witness is expected to have knowledge relating to the facts and circumstances surrounding the claims and defenses in this litigation, particularly

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

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Name	Contact Information	General Subject Matter
	This witness may only be contacted through counsel of record: Pat Lundvall Kristen T. Gallagher. McDonald Carano LLP 2300 W. Sahara Ave., Suite 1200 Las Vegas, NV 89102	Defendants' underpayment of covered emergency medicine services provided by Plaintiffs to Defendants' insureds; the course of conduct that existed between Plaintiffs and Defendants prior to Defendants' decision to unilaterally reduce payments due to Plaintiffs; Plaintiffs' damages; and Defendants' conduct in its negotiations with Plaintiffs.

2. Any and all persons and entities identified by Defendants regarding this matter. **Plaintiffs reserve** the right to call any witness identified by any party in this matter.

II. DOCUMENTS.

1. Plaintiffs disclose the following documents[4] in support of its claims, defenses, and denials asserted in the **First Amended** Complaint:

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
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

[4] Documents bates-labeled FESM00001-FESM00341 (other than those withheld as confidential) were previously produced in Fremont's Response to Defendants' First Set of Requests for Production of Documents to Fremont dated July 29, 2019.

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

Bates Start	Bates End	Document Description
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
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**

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

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In addition, the Health Care Providers further disclose the following documents: FESM00356-FESM01381.

2. All documents or other evidence identified in any pleadings or papers filed by any party in this matter or during discovery.

III. <u>DAMAGES COMPUTATION</u>.

Plaintiffs provide the following calculation of damages:

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

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

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

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seek special damages under this claim.

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

IV. INSURANCE AGREEMENTS.

Plaintiffs are not currently aware of any relevant insurance agreements.

Plaintiffs' investigation and discovery concerning this case is continuing, and, if additional information is obtained after the date of these disclosures, Plaintiffs will supplement these disclosures.

DATED this 1st day of June, 2020.

McDONALD CARANO LLP

By: /s/ *Amanda M. Perach*

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
Attorneys for Plaintiffs

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

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 1st day of June, 2020, I caused a true and correct copy of the foregoing **HEALTH CARE PROVIDERS' SECOND SUPPLEMENT TO NRCP 16.1 INITIAL DISCLOSURES** to be served to be served via this Court's Electronic Filing system in the above-captioned case, upon the following:

D. Lee Roberts, Jr.
Colby L. Balkenbush
Brittany Llewellyn
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
lroberts@wwhgd.corn
cbalkenbush@wwhgd.corn
bllewellyn@wwhgdcorn

Attorneys for Defendants

/s/ Marianne Carter
An employee of McDonald Carano LLP

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

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EXHIBIT 2

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EXHIBIT 2

D. Lee Roberts, Jr., Esq.
Nevada Bar No. 8877
lroberts@wwhgd.com
Colby L. Balkenbush, Esq.
Nevada Bar No. 13066
cbalkenbush@wwhgd.com
Brittany M. Llewellyn, Esq.
Nevada Bar No. 13527
bllewellyn@wwhgd.com
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Attorneys for Defendants Unitedhealth Group, Inc., United Healthcare Insurance Company, United Health Care Services, Inc. dba Unitedhealthcare, UMR, Inc. dba United Medical Resources, Oxford Health Plans, Inc., Sierra Health and Life Insurance Company, Inc., Sierra Health-Care Options, Inc., and Health Plan of Nevada, Inc.

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UNITED STATES DISTRICT COURT

DISTRICT OF 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 Plaintiff, 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	Case No.: 2:19-cv-00832-JCM-VCF **DECLARATION OF SANDRA WAY IN SUPPORT OF DEFENDANTS' OBJECTIONS TO FREMONT'S REQUESTS FOR PRODUCTION, INTERROGATORIES AND REQUESTS FOR ADMISSIONS**

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

Defendants.

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

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

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

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

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

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

a. Member Explanations of Benefits ("EOBs");

b. Provider EOBs and/or Provider Remittance Advices ("PRAs");

c. Appeals documents;

d. Any other documents comprising the administrative records, such as correspondence or clinical records submitted by Plaintiffs;

e. The plan documents in effect at the time of service.

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

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

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

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

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

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

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

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

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

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

a. Member Explanations of Benefits ("EOBs"): ***45 minutes.***[1]

b. Provider EOBs and/or Provider Remittance Advice ("PRAs"); ***20 minutes.***

c. Appeals documents: ***30 minutes.***

d. Other documents comprising the administrative records: ***15 minutes.***

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

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

a. United stores EOBs as images that are stored in EDSS and marked with "Film Locator Numbers" or "FLNs".

b. To locate the correct EOB for a given claim, we must first determine the correct FLN by running queries in the system based on the data given to us by the provider. This process can take substantial time, because United-administered plans have tens of millions of members, each of whom is likely to see multiple

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

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

c. Once we use the claim data that is furnished to us by the provider to identify what we believe to be the correct FLN, we must then enter that FLN into EDSS to pull up and download the EOB in question.

d. Once the targeted EOB has completed downloading, our rigorous HIPAA protection protocol requires us to review the entire downloaded document to ensure (1) that it is the correct EOB that matches the claim at issue in the litigation and (2) that there are no extraneous pages included that might result in the inadvertent but unauthorized disclosure of HIPAA–protected information. Some EOB records are simple, but others may contain several pages, and the process of confirming a match and confirming that no extraneous information is included takes substantial time.

e. Once the EOB has been verified, we must take the additional step of processing and uploading it to the specific share drive that has been established for the particular instance of litigation.

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

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

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

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

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

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

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

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

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

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

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

Executed on January 29th, 2020 in Moline, Illinois

SANDRA WAY
Business Manager
Claim & Appeal Regulatory Adherence
United Healthcare

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EXHIBIT 3

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EXHIBIT 3

Archived: Friday, September 4, 2020 5:11:07 PM
From: Llewellyn, Brittany M.
Sent: Wed, 29 Jul 2020 17:04:44
To: 'Kristen T. Gallagher' Amanda Perach
Cc: Balkenbush, Colby
Subject: Fremont v UHC - written discovery
Sensitivity: Normal

Kristen,

Per my email of July 26, I am writing to summarize the parties' meet and confer efforts that took place last week regarding Plaintiffs' First set of Interrogatories and Requests for Production. We are available on August 3 at 10:00 a.m. for a follow-up call related to the below. If you believe anything below is inaccurate, please respond in writing and explain the inaccuracy.

Thank you,

Brittany

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INTERROGATORIES

Your statements from prior emails in black, our summaries in blue.

INTERROGATORY 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.

Summary of meet and confer efforts: We objected to this request because, as written, responding to it would require United to review the administrative record for all 15,210 claims and then explain why each claim was not paid in full. Then, subject to that objection, we listed various reasons a billed charge may not be paid in full (i.e. improper bundling of charges, charges not covered by member's health plan, etc.). Fremont contends the answer is non-responsive as it does not answer the question posed, and states that this request is seeking information about why United does not pay full billed charges once it has deemed the claim payable for the billed CPT code. As written, we think the request is unduly burdensome and that our objections are sound, but United intends to supplement this interrogatory.

INTERROGATORY NO. 2:

For the period July 1, 2016 through June 30, 2017, identify in detail the methodology that You used to calculate the amount of Your payment obligation (including both the allowed amount and the amount that You believed that You were obligated to pay) for Emergency Services and Care or Nonemergency Services and Care provided by Non-Participating Providers in Clark County, Nevada. If more than one methodology applied to different portions of a particular CLAIM, please identify in detail each methodology used and explain why different methodologies were used.

Summary of meet and confer efforts: We objected to this interrogatory for the same reasons we objected to interrogatory no. 1. Similar to number 1, you contend the answer is non-responsive, and claim that this request is seeking a methodology for payment calculations/explanation for methodologies in a general sense. Our understanding is that we do not have a way to know what rate of payment terms for out of network providers were included in each at issue plan apart from pulling each individual plan and reviewing it, which is unduly burdensome. We are making efforts to determine if there is another way to obtain this information.

INTERROGATORY NO. 3:

For each CLAIM, identify in detail the methodology that You used to calculate the amount of Your payment obligation (including both the allowed amount and the amount that You believed that You were obligated to pay). If more than one methodology applied to different portions of a particular CLAIM, please identify in detail each methodology used and explain why different methodologies were used.

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Summary of meet and confer efforts: We objected to this interrogatory for the same reasons we objected to interrogatory no. 1; you contend the answer is non-responsive as it does not answer the question posed. Again, it seems that the methodology would be set forth in the applicable plans. However, if there are other documents out there that set forth payment methodologies we used on Fremont's claims, we will supplement our answer to this interrogatory.

INTERROGATORY NO. 4:

If the payment methodology identified in Your Response to Interrogatory No. 1 above included an assessment of the usual and customary provider charges for similar services in the community or area where the services were provided, identify any providers whose charges You considered in determining the usual and customary charges, including the name, address, telephone number, and medical specialty for each such provider within that community; why You believe that each such provider rendered similar services to those rendered by the hospital; and why You believe that each such provider rendered those services in the same community where the Hospital services were provided. In the event that the methodology identified in Your Response to Interrogatory No. 1 above did not include such an assessment, please explain what alternative metrics You used.

Summary of meet and confer efforts: Fremont is seeking market data and other documents relative to United's assessment of the usual and customary provider charges for similar services in the community. We have requested documents from our client in order to provide a supplemental response, but do not yet have a timeline for when they will be received.

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.

Summary of meet and confer efforts: Fremont claims that this interrogatory does not require United to pull each claim to determine whether there is another contract/agreement that governs payment of the claims. Rather, it is your position that there are a limited number of ways that each plan pays, and you want to know the different variations in the plans and you are particularly interested in any rental agreements that may have impacted the rate of reimbursement. In our initial response, we stated that "Defendants are continuing to attempt to determine whether any other contracts/agreements exist and will supplement this response if any are found." We are seeking this information and will supplement our response to state whether we have located other contracts/agreements.

INTERROGATORY NO. 6:

If You contend that any course of prior dealings 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 its otherwise relevant to the amounts paid for any of the CLAIMS, identify that prior course of business dealings that You contend entitles or entitled You to pay less than Fremont's full billed charges.

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Summary of meet and confer efforts: Per our phone call, you are requesting information regarding any "dealings" during the timeframe of 7/1/17 to present that we contend entitles United to pay less than Fremont's full billed charges. United intends to supplement this response.

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 or reimbursement and other payment scales under those agreements, and any provisions regarding the directing or steerage of Plan Members to those providers.

Summary of meet and confer efforts: You contend that 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, then Fremont is entitled to the information. We are in the process of discussing this item with our client, and will supplement our response to clarify whether United is relying on the rates from agreements with other providers in determining the amount of reimbursement for the claims at issue.

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.

Summary of meet and confer efforts: We objected that this request was vague, overbroad and unduly burdensome. You are defining "methodology" to mean "how United decides how much it will pay on Fremont's claims." In any case, Fremont contends we need to respond with a list of witnesses. Fremont has also stated it would potentially narrow the scope of (b) if United would agree to identify the primary points of contact at United for communications with Fremont. Category c goes to the issue of whether we intend to produce market data. We are working to determine whether United will supplement this response.

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INTERROGATORY NO. 9:

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Describe in detail Your relationship with Data iSight, including but not limited to the nature of any agreement You have with Data iSight, the scope and extent of the relationship, Your permitted uses of the data provided by Data iSight and the services performed by Data iSight.

Summary of meet and confer efforts: United will be supplementing this response.

INTERROGATORY NO. 10:

Explain why You ceased using the FAIR Health Database to establish the reasonable value of services and/or usual and customary fees for emergency services in Clark County.

Summary of meet and confer efforts: Fremont wants to know if United utilized the FAIR Health Database in the past to establish reasonable value of services/fees for emergency services. If yes, you want to know why United ceased using the database. We are working on determining the answer to this, and plan to supplement our response.

INTERROGATORY NO. 11:

Describe in detail all facts supporting Your affirmative defenses to the allegations in the Complaint filed in the Lawsuit.

Summary of meet and confer efforts: Our initial response was that this request was premature as we had not yet filed an answer. We also objected that contention interrogatories may only require "material facts" in support of affirmative defenses rather than "all facts" and cited to case law supporting this. We set forth our position again on the call, and you reserved the right to review what we consider to be material facts and ask for supplementation if they don't deem our response satisfactory. You agreed to limit the request from July 2017 to present, but reserved the right to seek information from further back. United intends to supplement this response.

INTERROGATORY NO. 13:

For each of the CLAIMS, identify which Plan Members are covered by plans fully-insured by You and which Plan Members are covered by self-funded plans (also known as Administrative Service Only plans), to include the identity of the self-insurer.

Summary of meet and confer efforts: We previously committed to supplementing this information in the Jan. 29 response to the interrogatory. We have requested this information, and plan to supplement this response as soon as it is received.

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INTERROGATORY NO. 14:

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Identify any self-funded plan (also known as Administrative Service Only plans) that contains a provision for indemnification of employees for amounts billed by a Provider of Emergency Medicine Services and not reimbursed by You.

Summary of meet and confer efforts: We previously objected that it was unclear what this request was asking for and asked for an explanation of what exactly you were seeking. On our call, you explained that Fremont is asking United to identify any plans that contain a provision where employers/plan administrators will indemnify employees if they are balance billed (employer would pay difference). You noted that this request is not limited to the claims at issue, but includes any self-funded plans. We objected that the request is overbroad, and your position is that "if there are none, then it's not over broad, but if there are thousands then maybe it is overbroad." We are working to determine if United will supplement this request.

REQUESTS FOR PRODUCTION

Your statements from prior emails in black, our summaries in blue.

"Specific Objections" – Has United refused to respond based on any of them? Has United withheld documents on this basis?

Summary of meet and confer efforts: As stated on our call, regarding emails generally, we intend to move for PO to ask

court to enter our email protocol or a version of it. We believe the best way to deal with email issues is to have protocol in place. Regarding market data, production, we are discussing and will provide a timeline for production of market data if our client agrees.

RFP Nos. 1 & 2: United unilaterally reduced the time duration of the request. Are there responsive documents within the scope as originally asked? United also raises an objection based on confidentiality. Are documents withheld on that basis?

Summary of meet and confer efforts: We objected as these RFPs were not limited in time, and on the basis that the statute itself contains a confidentiality requirement. We have not withheld anything, and are not aware of any responsive documents dating to July 2017. We agreed to discuss with out client if there are any relevant documents for a time period dating back to 2015. United will supplement this response if we discover responsive, relevant documents, but United does stand on its confidentiality objection to these requests.

RFP No. 3: United refused to respond on the basis the information is equally in each other's possession. But United asked for similar documents; therefore, this type of objection is not founded, nor does it relieve United from the requested information. *See* United's RFP Nos. 5, 7, 9, 12, 15, 16, 18, 21.

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Summary of meet and confer efforts: We objection on the basis of, among other things, overbreadth and undue burden since all 15,210 claim files would have to be reviewed to respond to this. Fremont has still not responded to United's compromise proposal of only producing correspondence for the appealed claims since those claims are the most likely to contain correspondence and non-appealed claims are unlikely to contain correspondence. We will review our response and determine whether United will supplement.

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RFP Nos. 4-7: United refused to answer; asked to meet and confer in addition to other objections.

Summary of meet and confer efforts: As written, it is United's understanding that these requests are specific to claims, and that any communications would be in the administrative record. On our call, we indicated that United is standing on its objections related to the burden declaration. You responded that you believe some responsive documents would exist outside of the administrative record, and that the response could include policies/procedures, spreadsheets, presentations. We have spoken with our client, and we are of the understanding that there are no "policies or procedures" responsive to this request, but are still in the process of seeking any other responsive documents. To the extent you believe this request also encompasses global communications and national level correspondence, we believe these documents would fall under an email protocol and we intend to move for a protective order.

RFP No. 8: Non-responsive answer.

Summary of meet and confer efforts: You indicated on our call that this request seeks information regarding United's contention that prior business dealings may allow United to pay less than full billed charges. Like your interrogatory #6, we are in the process of determining if United is in possession of responsive documents. We will supplement this response if appropriate.

RFP No. 10: United refused to answer; asked to meet and confer.

Summary of meet and confer efforts: As written, United understood this request to be asking for all health plans. On our phone call, you clarified that you are seeking the method utilized in the prior plan years identified (including chargemasters/spreadsheets/info/reports/analytics). Your position is that there is likely other documents beyond health plans that guides United's determination on how to pay. We are seeking responsive documents beyond health plans, if any, and will supplement our response.

RFP No. 14-17: Non-responsive answers. Questions re methodology and reimbursement rates applied (including reductions thereto) do not require specific review of each claim. Policies/procedures/directives in place; how is a claim processed to automatically know how to administer the claim? Market files are contemplated by these RFPs and other sources of rates and reimbursements. Shared savings programs, etc. are relevant and proportional to the needs of the case.

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Summary of meet and confer efforts: Fremont's position is that these requests encompass market data, and analyses/discussions regarding market data. As above, we are working with our client to gather and produce market data, and will provide a timeline for production. Regarding RFP 15 specifically, to the extent it seeks email/claim specific correspondence from the administrative record, we contend that our objection to overbreadth is appropriate because it asks for communications relating to payment methods for any non-par provider in Nevada, and is not time-limited. Regarding RFP 16, which seeks docs relating to "shared savings programs in NV," we are working to determine if we have responsive documents. Finally, for RFP 17, as written, there shouldn't be anything outside of the administrative record, if anything exists at all. We will confirm that there is nothing outside of the administrative record, but will stand on our burden declaration for documents contained in the admin record. Fremont has still not responded to our compromise proposal to produce correspondence located in the admin record for appealed claims only.

RFP No. 18: Non-responsive answer. Questions re decisions for reducing the rates do not require specific review of each claim. This request seeks, among other things, documents reflecting discussions about why United is reducing emergency reimbursement rates, and how it intends to do so. In other words, documents reflecting United's development of, discussion of, and implementation of strategy relating to reimbursement.

Summary of meet and confer efforts: On our call, you stated that this would include emails relating to negotiations and strategy for cost savings opportunities, as well as presentations and reports. We are in the process of determining whether United is in possession of responsive and discoverable documents, and will supplement this response if we uncover any.

RFP No. 19: Non responsive answer. Although United claims there are different methodologies used to calculate the reimbursement, United has conceded there are limited variations to the various methodologies. The request is relevant and proportional to the needs of the case based on the claims asserted and based on United's affirmative defenses, e.g. nos. 6, 8, 14

Summary of meet and confer efforts: As above, we are working with our client to gather and produce market data, and will provide a timeline for production.

RFP No. 20: Non responsive answer. A review of each specific claim is not necessary to identify and produce documents that relate to United's recommended rate of reimbursement, including cost data, reimbursement data and other data and documents the recommended rates are based upon.

Summary of meet and confer efforts: On our phone call, you indicated that Fremont is not requesting the health plans at issue, but is seeking documents like "memorandums on cost and reimbursement data." In initial discussions with our client, our understanding is that no such memorandums exist. We are still seeking responsive documents and will supplement this response if appropriate.

RFP No. 22: Analysis of usual and customary provider charges for similar services in NV. The use of terms like "analysis" and "similar services" are not ambiguous or difficult to understand in the context of this RFP.

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Summary of meet and confer efforts: On our phone call, you indicated that Fremont is seeking documents that provide an internal analysis of usual and customary charges – such like presentations/reports/spreadsheets/discussions. We are seeking responsive documents and will supplement this response if appropriate.

RFP Nos. 23 & 24: These requests regarding whether United has documents relating to analyses of NV statutes or guidelines are straightforward and do not need further explanation or narrowing.

Summary of meet and confer efforts: Fremont has indicated it is seeking an internal analysis of any statutes that United is relying on, and anything in connection with calculating reimbursement. You have indicated that you will limit this to the relevant statutory chapter and agreed to send us what statutory chapters you are seeking information on. We are still waiting on this information. We are also in the process of looking for documents. If we uncover any documents that are not protected by privilege, we will produce them. If we uncover documents that are protected by privilege, we will provide a log.

RFP Nos. 25 & 29: There is a protective order in place that addresses United's objection. Further, the request is relevant and proportional to the needs of the case, *see e.g.* FAC ¶¶ 65, 107-108.

Summary of meet and confer efforts: We are discussing supplementation with out client, subject to the protective order in place.

RFP No. 26: This requests is looking for data in United's (as defined in the RFPs) care, custody or control regarding the amount that other insurers/payors have paid for emergency services in NV to other providers.

Summary of meet and confer efforts: You stated on our call that you are seeking information, not limited to rates paid by United, but from other insurers/payors. You contend it is typical that insurers buy data to learn what is happening in the marketplace. We are discussing with our client and will supplement if we uncover responsive documents. Our current understanding is that any documents would be publicly available.

RFP No. 28: United produced some documents (non-emails), but has United collected/reviewed emails responsive to this request? The request is relevant and proportional in connection with the allegations and United's affirmative defenses, e.g. no. 6.

Summary of meet and confer efforts: Our understanding at present is that there are no documents responsive to this request. To the extent this request seeks emails, we submit to you again that we will be seeking a protective order and an order compelling the entry of an email protocol. Nevertheless, we do not believe there are any responsive emails.

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RFP No. 30: The request is relevant and proportional in connection with the allegations and United's affirmative defenses, e.g. no. 6.

Summary of meet and confer efforts: To the extent this includes market data, we are working on this and will provide a timeline for production. If there are discoverable communications, we believe these would fall under the umbrella of the protective order and an order compelling the entry of an email protocol. We object to producing any communications with non-party providers.

RFP Nos. 31 & 32: There is a protective order in place that addresses United's objection. Further, the request is relevant and proportional to the needs of the case, *see e.g.* FAC ¶¶ 65, 80-81, 88-89, 107-108, etc.

Summary of meet and confer efforts: We are discussing supplementation with out client, subject to the protective order in place.

RFP Nos. 33 & 41: The requests are relevant and proportional to the needs of the case; the requests not broad as United objects and there is a protective order in place that addresses United's further objection.

Summary of meet and confer efforts: You agreed to limit this request to allegations of fraud by other providers. It is our position that these requests are overbroad as they are not limited in time or by geographic area and concern communications with non-party providers. We are discussing with out client whether we will be supplementing our response.

-

RFP No. 34: The request is directly related to the FAC's allegations regarding United's conduct and goal of financial gain. *See e.g.* FAC ¶¶ 113, 118, 186. The stated objection related to financial information is misplaced and not on point with this case in light of the allegations. Further, a protective order is in place.

Summary of meet and confer efforts: We are discussing supplementation with out client, subject to the protective order in place. We asked if you would be willing to limit this request to the TeamHealth plaintiffs.

-

RFP No. 35: The request is clear, the Health Care Providers are seeking policies or procedures related to reimbursement of non-participating providers. The objections are unfounded.

Summary of meet and confer efforts: You have stated that Fremont is seeking policies and procedures. On our phone call, we reiterated that this request is overbroad as written because it does not concern a specific geographic area, and the timeframe seeks documents from one year prior to the claims. You responded that, if there are policies, and if there are policies for geographic region including Nevada, then United needs to produce those. We will get back to you to state whether we will produce or stand on our objections.

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RFP No. 36: The request is relevant and proportional in connection with the allegations and United's affirmative defenses, e.g. no. 6.

Summary of meet and confer efforts: To the extent this includes market data, we are working on this and will provide a timeline for production.

-

RFP No. 38: The request is relevant and proportional in connection with the allegations and United's affirmative defenses, e.g. no. 6.

Summary of meet and confer efforts: You stated that this requests include adjudication of participating and non-participating provider claims. To the extent this includes market data, we are working on this and will provide a timeline for production. We object to producing communications with non-party providers.

-

RFP No. 39: The request is relevant and proportional in connection with the allegations and United's affirmative defenses, e.g. no.16. The request is not limited to a review of each specific claim as it asks for policies, procedures, protocols that United contends governs the appeal of United's adjudication and/or payment decision.

Summary of meet and confer efforts: We asked on our call if you were willing to agree that you are not seeking documents in the administrative record. You stated that you anticipate there are documents outside of the administrative record, but don't want to forego that you are entitled to information sitting in what is deemed the "admin record." United is standing on its burden declaration as to any documents contained in the administrative record, but will determine whether to supplement the response to documents outside of the record.

RFP No. 40: Has United looked to see how many claims might be at issue in connection with this request?

RFP No. 42: the request seeks information about documents/communications concerning a failure to effectuate a prompt, fair equitable settlement of the at-issue claims. The objections are unfounded and United has denied the Health Care Providers' allegations which suggests that it reviewed documents and communications in order to deny the allegations. Accordingly, the Health Care Providers are entitled to the information.

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Summary of meet and confer efforts: You contend that an example of a responsive document is where "United runs reports to see if any claims adjudicated have missed the timeline." We are determining whether United is in possession of responsive documents and will supplement if documents are located.

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RFP No. 43: the request is not ambiguous and seeks information about United's discussions of reimbursement framework(s) and regarding benchmark pricing.

Summary of meet and confer efforts: To the extent this seeks any and all discussions, this request would require searching all United employee emails for discussions of Medicare. We are standing on our objection that this request is overbroad.

RFP No. 45: when does United intend to supplement this response now that the Answer is on file?

Summary of meet and confer efforts: We are discussing with our client and intend to supplement. We will get back to you with a timeline for supplementation.

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

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EXHIBIT 4

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EXHIBIT 4

D. Lee Roberts, Jr., Esq.
Nevada Bar No. 8877
lroberts@wwhgd.com
Colby L. Balkenbush, Esq.
Nevada Bar No. 13066
cbalkenbush@wwhgd.com
Josephine E. Groh, Esq.
Nevada Bar No. 14209
jgroh@wwhgd.com
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Attorneys for Defendants UnitedHealthcare Insurance Company, United HealthCare Services, Inc., UMR, Inc., Oxford Health Plans, Inc., Sierra Health and Life Insurance Co., Inc., Sierra Health-Care Options, Inc., and Health Plan of Nevada, Inc.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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

Plaintiff,

vs.

UNITED HEALTHCARE INSURANCE COMPANY, a Connecticut corporation; UNITED HEALTH CARE SERVICES INC. dba UNITEDHEALTHCARE, a Minnesota corporation; UMR, INC. dba UNITED MEDICAL RESOURCES, a Delaware corporation; OXFORD HEALTH PLANS, INC., 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.: 2:19-cv-00832-JAD-VCF

DEFENDANTS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO FREMONT

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Defendants UnitedHealthcare Insurance Company ("UHIC"), United HealthCare Services, Inc. ("UHS"), UMR, Inc. ("UMR"), Oxford Health Plans, Inc. ("Oxford"), Sierra Health and Life Insurance Co., Inc. ("SHL"), Sierra Health-Care Options, Inc. ("SHO"), and Health Plan of Nevada, Inc. ("HPN") (collectively "Defendants"), request that Plaintiff Fremont Emergency Services (Mandavia), Ltd. ("Fremont," "you," or "your") produce the documents and things requested below at the offices of Weinberg, Wheeler, Hudgins, Gunn, & Dial, 6385 South Rainbow Boulevard, Suite 400, Las Vegas, Nevada 89118 within 30 days of the date of service of this request in accordance with Federal Rule of Civil Procedure 34. In responding to these requests, adhere to the following definitions and instructions.

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DEFINITIONS

Notwithstanding any definition below, each word, term, or phrase used herein is intended to have the broadest meaning permitted under the Federal Rules of Civil Procedure.

1. "Document" is defined to be synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a), which includes, but is not limited to, all electronic, written, or printed matter, information, communication, or data of any kind, including the originals and all copies thereof, such as, but not limited to, correspondence, letters, emails, text messages, electronic messages, contracts, reports, memoranda, notes, minutes, receipts, invoices, calendar entries, digital images, digital recordings, photographs, microfiche, videotapes, spreadsheets, drawings, all electronically stored information, unstructured data, and structured data. A draft of a nonidentical copy is a separate document within the meaning of this term.

2. "Communication" refers to the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

3. "Concerning" means relating to, referring to, describing, evidencing, or constituting.

4. "Fremont," "you," and "your" refer to Plaintiff Fremont Emergency Services (Mandavia), Ltd. and its past or present officers, directors, employees, corporate parents, subsidiaries, successors, predecessors, affiliates, agents, subcontractors and any other persons or

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entities who obtained or maintained information on its or their behalf.

5. "Action" refers to this litigation that is pending in Nevada Federal District Court, Case No.: 2:19-cv-00832-JAD-VCF.

6. "Defendants" refers to UnitedHealthcare Insurance Company ("UHIC"), United HealthCare Services, Inc. ("UHS"), UMR, Inc. ("UMR"), Oxford Health Plans, Inc. ("Oxford"), Sierra Health and Life Insurance Co., Inc. ("SHL"), Sierra Health-Care Options, Inc. ("SHO"), and Health Plan of Nevada, Inc. ("HPN") and their past or present officers, directors, employees, corporate parents, subsidiaries, successors, predecessors, affiliates, and agents.

7. "Healthcare Claims" has the same meaning as the term "healthcare claims" in paragraph 27 of the Complaint.

8. "Health Insurance Claim Form" refers to a standard form in the health industry that typically sets forth, among other things, the patient name, address, the diagnosis or nature of the illness or injury, the date the medical service was provided, the charges incurred for the medical service and the medical provider's name. Two representative examples of Health Insurance Claim Forms are attached hereto as **Exhibit 1**.

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INSTRUCTIONS

1. Produce all documents known or available to you after making a diligent search of your records that are within your possession, custody, or control, or in the possession, custody, or control of your counsel, agents, or representatives, or which can be obtained through reasonably diligent efforts.

2. Construe each request in accordance with the following: (i) construe each request for production independently; do not construe any request so as to limit the scope of any other request; (ii) references to the singular include the plural and vice versa; (iii) references to one gender include the other gender; (iv) references to the past include the present and vice versa; (v) disjunctive terms include the conjunctive and vice versa; (vi) the words "and" and "or" are conjunctive and disjunctive as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of its scope; (vii) the word "all" refers to all and each, and (viii) the word "each" refers to all and each.

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3. If any document or thing requested was at one time in existence, but is no longer in existence, please so state, specifying for each document and thing, (a) the type of document or thing, (b) the types of information contained therein, (c) the date upon which the document or thing was destroyed or ceased to exist, (d) the circumstances under which it was destroyed or ceased to exist, (e) the identity of all persons having knowledge of the circumstances under which it was destroyed or ceased to exist, and (f) the identity of all persons having knowledge or persons who had knowledge of the contents thereof.

4. If you object to a request, state your objection with specificity and state whether any responsive materials are being withheld on the basis of that objection.

5. If, in responding to these requests, you claim any ambiguity in interpreting either a request or a definition or instruction applicable thereto, you cannot use such a claim as a basis for failing to respond; instead, you must set forth as part of your response to the request the language deemed to be ambiguous and the interpretation chosen to be used in responding to the request.

6. If, in responding to these requests, you assert a privilege to any particular request, provide a privilege log as required by Fed. R. Civ. P. 26(b)(5), which identifies the nature of the claimed privilege and, at a minimum, includes enough information so that the propounding party and the Court can make an informed decision whether the matter is indeed privileged.

7. Each request is continuing in nature. If, after responding to these requests, you obtain or become aware of further documents responsive to these requests, promptly produce those documents and things in accordance with Fed. R. Civ. P. 26(e) and the definitions and instructions herein.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Please produce a list, chart, spreadsheet and/or table showing all the Healthcare Claims that Fremont is asserting in this Action. This document(s) should include, at a minimum, the following information: (a) the patient's name, (b) the patient's date of birth, (c) the patient's social security number, (d) the patient/insured's I.D. number, (e) the patient's account number, (f) the name of the medical provider, (g) the date the medical service was provided, (h) the

amount billed by Fremont for the medical service, (i) the amount Defendants paid to Fremont, (j) the additional amount of reimbursement Fremont is demanding from Defendants, and (k) a brief description of the nature of the illness or injury that was being treated.

2. Please produce all requests for payment sent by Fremont to any of the Defendants during the time period of July 1, 2017 to present.

3. Please produce all Health Insurance Claim Forms sent by Fremont to any of the Defendants during the time period of July 1, 2017 to present.

4. Please produce all Health Insurance Claim Forms that concern the claims that Fremont is asserting in this Action.

5. Please produce all documents showing the partial payments that Fremont has received from Defendants for the claims that Fremont is asserting in this Action.

6. Please produce all documents concerning the medical treatment that Fremont allegedly provided to the more than 10,800 patients referenced in paragraph 25 of the Complaint.

7. Please produce all documents supporting the allegation that "For each of the healthcare claims at issue in this litigation, United HealthCare determined the claim was payable." *See* Complaint at ¶ 27.

8. Please produce all documents supporting the allegation that "Fremont has adequately contested the unsatisfactory rate of payment received from the UH Parties in connection with the claims that are the subject of this action." *See* Complaint at ¶ 30.

9. Please produce all documents supporting the allegation that "the UH Parties have undertaken to pay for such services provided to UH Parties' Patients." *See* Complaint at ¶ 35.

10. Please produce all of "Fremont's bills" that are referenced in paragraph 37 of the Complaint.

11. Please produce all of the "substantially identical claims also submitted by Fremont" that are referenced in paragraph 38 of the Complaint.

12. Please produce all documents supporting the allegation in the Complaint that "the UH Parties generally pay lower reimbursement rates for services provided to members of their fully insured plans and authorize payment at higher reimbursement rates for services provided to

members of self-insured plans or those plans under which they provide administrator services only." *See* Complaint at ¶ 21.

13. Please produce all documents supporting the allegation in paragraph 55 of the Complaint that the UH Parties acted with "malice, oppression and/or fraud."

14. Please produce all documents showing that Fremont notified any of the Defendants prior to providing medical services to the Defendants' plan members that Fremont expected to be paid by Defendants for the medical services provided to the plan members.

15. Please produce all documents and communications concerning any negotiations between Fremont and any of the Defendants concerning Fremont potentially becoming a participating provider.

16. Please produce all documents and communications concerning the "business discussions" referenced in paragraph 26 of the Complaint.

17. Please produce all communications between Fremont and Defendants concerning that Healthcare Claims that Fremont is asserting in this Action.

18. Please produce all written agreements that have ever been entered into between Fremont and any of the Defendants.

19. Please produce all documents and communications evidencing that Defendants promised to pay Fremont for the Healthcare Claims that Fremont is asserting in this Action.

20. Please produce all documents and communications evidencing any oral agreement between Fremont and Defendants concerning the Healthcare Claims that Fremont is asserting in this Action.

21. Please produce all communications Fremont has had with Defendants concerning the Healthcare Claims that Fremont is asserting in this Action.

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22. Please produce all written agreements with any third parties concerning the Healthcare Claims that Fremont is asserting in this Action.

DATED this 28th day of June, 2019.

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Josephine E. Groh, Esq.
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838

Attorneys for Defendants UnitedHealthcare Insurance Company, United HealthCare Services, Inc., UMR, Inc., Oxford Health Plans, Inc., Sierra Health and Life Insurance Co., Inc., Sierra Health-Care Options, Inc., and Health Plan of Nevada, Inc.

RECEIPT OF COPY

RECEIPT OF COPY of **DEFENDANTS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO FREMONT** is hereby acknowledged this 28th of June, 2019.

Kristen T. Gallagher/KLC

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 Plaintiff
Fremont Emergency Services (Mandavia), Ltd.

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EXHIBIT 5

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EXHIBIT 5

SUPPL

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 **PLAINTIFFS' FIRST SUPPLEMENT TO RESPONSES TO DEFENDANTS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO FREMONT**

Pursuant to the Order entered on May 15, 2020, Fremont Emergency Services (Mandavia), Ltd. ("Fremont") Team Physicians of Nevada-Mandavia, P.C. ("Team Physicians"); Crum,

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Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine ("Ruby Crest") (collectively, "Plaintiffs" or "Health Care Providers") supplement Responses No. 15 and 16 (**in bold**) to the First Set of Requests for Production of Documents served by defendants HealthCare Insurance Company ("UHCIC"), United HealthCare Services, Inc. ("UHS"), UMR, Inc. ("UMR"), Oxford Health Plans, Inc. ("Oxford"), Sierra Health and Life Insurance Company, Inc. ("SHL"), Sierra Health-Care Options, Inc. ("SHO") and Health Plan of Nevada, Inc.'s ("HPN") (collectively "Defendants").[1] Additionally, the Health Care Providers supplement Responses to Nos. 1, 5, 6, 7 and 9.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Request No. 1:

Please provide a list, chart, spreadsheet and/or table showing all the Healthcare Claims that Fremont is asserting in this Action. This document(s) should include, at a minimum, the following information: (a) the patient's name, (b) the patient's date of birth, (c) the patient's social security number, (d) the patient/insured's I.D. number, (e) the patient's account number, (f) the name of the medical provider, (g) the date the medical service was provided, (h) the amount billed by Fremont for the medical service, (i) the amount Defendants paid to Fremont, (j) the additional amount of reimbursement Fremont is demanding from Defendants, and (k) a brief description of the nature of the illness or injury that was being treated.

Response to Request No. 1:

Objection. This Request seeks information that Defendants have in their own files; is not relevant or proportional to the needs of this case because certain subparts have no relevance or bearing on the claims at issue in the litigation (e.g. the nature of the illness or injury that was being treated); and is a request designed to unreasonably further delay these proceedings. By way of further objection, a request for a description of the nature of the illness or injury that was being treated is unduly burdensome in that it would require Fremont to affirmatively prepare descriptions of each injury or illness for thousands of claims. Given the amount at issue in this

[1] UnitedHealth Group, Inc. is also a defendant in this action, but was not a party at the time Defendants' served these written discovery requests.

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

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litigation, the effort required to prepare a report with the information sought by Defendants is not proportional to the needs of the case or the amount in controversy, especially against the backdrop that Fremont has already provided medical coding -- that Defendants accepted and paid upon -- which should provide Defendants with the necessary details to determine the type of injury/illness at issue for each claim.

Subject to and without waiving the foregoing objections, Fremont responds as follows: *See* FESM000011. Fremont further submits that the claims at issue continue to accrue and the list being produced is only for claims in which services were provided on or before April 30, 2019.

Supplement to Response No. 1: Subject to the foregoing objections, *see* FESM00344.

Request No. 2:

Please produce all requests for payment sent by Fremont to any of the Defendants during the time period of July 1, 2017 to present.

Response to Request No. 2:

Objection. The request is vague and ambiguous as to the term "requests for payment". Subject to and without waiving the foregoing objections, Fremont responds as follows: FESM000001-8 (certain portions of these documents have been withheld pending entry of a protective order).

Request No. 3:

Please produce all Health Insurance Claim Forms sent by Fremont to any of the Defendants during the time period of July 1, 2017 to present.

Response to Request No. 3:

Objection. The request is overly broad in that it seeks "all" Health Insurance Claim Forms and is not properly limited to the claims at issue; is irrelevant and not proportional to the needs of the case considering the importance of the issues at stake in the action, the amount in controversy, the parties' equal access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit as this case concerns a dispute over the rate of payment rather than a coverage determination and, consequently, does not concern the medical treatment provided to

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

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particular patients. Specifically, the information contained on all Health Insurance Claim Forms ("HCFA Forms") Fremont sent to Defendants during the stated timeline is unrelated to the claims at issue, making such information unimportant to the issues at stake in this action. Furthermore, these HCFA Forms are equally accessible to Defendants and Fremont. Finally, the burden and expense of gathering thousands of HCFA Forms, adequately redacting confidential and information protected by Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and producing this exceedingly large file outweighs any benefit given Defendants' adjudication of the subject claims and payment thereon, although the rate of payment is disputed.

Request No. 4:

Please produce all Health Insurance Claim Forms that concern the claims that Fremont is asserting in this Action.

Response to Request No. 4:

Objection. The request is overly broad, irrelevant and not proportional to the needs of the case considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit as this case concerns a dispute over the rate of payment rather than a coverage determination and, consequently, does not concern the medical treatment provided to particular patients. In particular, the information contained on the HCFA Forms is unrelated to the claims at issue, making such information unimportant to the issues at stake in this action. Furthermore, these HCFA Forms are equally accessible to Defendants and Fremont. Finally, the burden and expense of gathering thousands of HCFA Forms, adequately redacting confidential and information protected by HIPAA and producing this exceedingly large file outweighs any benefit.

Request No. 5:

Please produce all documents showing the partial payments that Fremont has received from Defendants for the claims that Fremont is asserting in this Action.

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

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Response to Request No. 5:

Objection. This request is vague and ambiguous as to the phrase "partial payments." In addition, the request seeks documents not proportional to the needs of the case considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. In particular, the payment records of all of the claims are unimportant to the issues at stake in this action because there is no dispute that the Defendants have paid the subject claims at rates which are less than full payment of the billed charges. Furthermore, these documents are more accessible to Defendants than Fremont. Finally, the burden and expense of gathering all payment records for thousands of claims which are already in the possession of the Defendants outweighs any benefit to having Fremont produce the same.

Subject to and without waiving the foregoing objections, Fremont responds as follows: *See* FESM000011.

Supplement to Response No. 5: Subject to the foregoing objections, *see* FESM00344.

Request No. 6:

Please produce all documents concerning the medical treatment that Fremont allegedly provided to the more than 10,800 patients referenced in paragraph 25 of the Complaint.

Response to Request No. 6:

Objection. The request is overly broad, irrelevant and not proportional to the needs of the case considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit as this case concerns a dispute over the rate of payment rather than a coverage determination and, consequently, does not concern the medical treatment provided to particular patients. In particular, the medical records of the 10,800 patients referenced in paragraph 25 of the Complaint are records unrelated to the dispute at issue, making such information unimportant to the issues at stake in this action. Furthermore, these documents are

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

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accessible to Defendants as the treatment concerns Defendants' Members. Finally, the burden and expense of gathering thousands of medical records, adequately redacting confidential and information protected by HIPAA and producing this exceedingly large file outweighs any benefit.

Subject to and without waiving the foregoing objections, Fremont responds as follows: *See* FESM000011.

Supplement to Response No. 6: Subject to the foregoing objections, *see* FESM00344.

Request No. 7:

Please produce all documents supporting the allegation that "For each of the healthcare claims at issue in this litigation, United HealthCare determined the claim was payable." *See* Complaint at ¶ 27.

Response to Request No. 7:

Objection. This request seeks documents not proportional to the needs of the case considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. In particular, explanation of benefits forms (the "EOBs") (identifying, among other things, the amount and basis for payment) for all of the claims at issue are unimportant to the issues at stake in this action because there is no dispute that the Defendants paid the subject claims at rates which are less than full payment such that Defendants clearly determined that each claim was payable. Furthermore, these documents are more accessible to Defendants than Fremont as Defendants prepared these documents and transmitted them to Fremont. Finally, the burden and expense of gathering all such records for thousands of claims which are already in the possession of the Defendants outweighs any benefit to having Fremont produce the same

Subject to and without waiving the foregoing objections, Fremont responds as follows: *See* FESM000011.

Supplement to Response No. 7: Subject to the foregoing objections, *see* FESM00344.

Request No. 8:

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

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Please produce all documents supporting the allegation that "Fremont has adequately contested the unsatisfactory rate of payment received from the UH Parties in connection with the claims that are subject to this action." *See* Complaint at ¶ 30.

Response to Request No. 8:

Fremont responds as follows: Fremont has adequately contested the unsatisfactory rate of payment received from the UH Parties through numerous oral communications between Fremont representatives and UH Parties representatives which will be elicited at trial. In addition, please *see* FESM000001-8.

Request No. 9:

Please produce all documents supporting the allegation that "the UH Parties have undertaken to pay for such services provided to UH Parties' Patients." *See* Complaint at ¶ 35.

Response to Request No. 9:

Objection. The request is overly broad in that it seeks documents not proportional to the needs of the case considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. In particular, the payment records of all of the claims are unimportant to the issues at stake in this action because there is no dispute that the Defendants have paid the subject claims at rates which are less than full payment. Furthermore, these documents are more accessible to Defendants than Fremont. Finally, the burden and expense of gathering all payment records for thousands of claims which are already in the possession of the Defendants outweighs any benefit to having Fremont produce the same.

Subject to and without waiving the foregoing objections, Fremont responds as follows: *See* FESM000011.

Supplement to Response No. 9: Subject to the foregoing objections, *see* FESM00344.

Request No. 10:

Please produce all "Fremont's bills" that are referenced in paragraph 37 of the Complaint.

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

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Response to Request No. 10:

Objection. The request is overly broad in that it is irrelevant and not proportional to the needs of the case considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. In particular, the information contained on the HCFA Forms, which is what is being referenced in the Complaint as "Fremont's bills" is unrelated to the claims at issue, making such information unimportant to the issues at stake in this action. These forms need not be produced to establish the amount Fremont charged Defendants for its services. Furthermore, these HCFA Forms are equally accessible to Defendants and Fremont. Finally, the burden and expense of gathering thousands of HCFA Forms, adequately redacting confidential and information protected by HIPAA and producing this exceedingly large file outweighs any benefit.

Request No. 11:

Please produce all of the "substantially identical claims also submitted by Fremont" that are referenced in paragraph 38 of the Complaint.

Response to Request No. 11:

Fremont responds as follows: FESM000009-11.

Request No. 12:

Please produce all documents supporting the allegation that "the UH Parties generally pay lower reimbursement rates for services provided to members of their fully insured plans and authorize payment at higher reimbursement rates for services provided to members of self-insured plans or those plans under which they provide administrator services only." *See* Complaint at ¶ 21.

Response to Request No. 12:

Fremont responds as follows: *See* FESM000009-12.

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

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Request No. 13:

Please produce all documents supporting the allegations in paragraph 55 of the Complaint that the UH Parties acted with "malice, oppression and/or fraud."

Response to Request No. 13:

Fremont responds as follows: Much of the evidence to support this statement is derived out of oral statements made by Defendants' representatives in communications with Fremont representatives and Fremont's affiliates' representatives. By way of example, some of these statements are set forth in a complaint filed by Fremont's affiliates in United States District Court, Middle District of Pennsylvania, Case No. 19-cv-01195-SHR, FESM000288. Such statements were made by representatives for Defendants and their affiliates. In addition, many of the fraudulent misrepresentations referenced in the Complaint, can be found at Defendants' and Defendants' affiliates' websites, such as https://www.dataisight.com/patient/default.aspx and UHC.com.

Request No. 14:

Please produce all documents showing that Fremont notified any of the Defendants prior to providing medical services to the Defendants' plan members that Fremont expected to be paid by Defendants for the medical services provided to the plan members.

Response to Request No. 14:

Objection. The request is vague and ambiguous as to the phrase "notified any of the Defendants prior to providing medical services." Subject to and without waiving the foregoing objections, Fremont responds as follows: Pursuant to Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd and NRS 439B.410, Fremont is obligated to provide emergency medical services to any person presenting to an emergency department it staffs and, upon providing such services, Fremont expects and understands, that the Defendants will reimburse Fremont for non-participating claims at rates in accordance with the standards acceptable under Nevada law and in accordance with rates the Defendants pay or have paid for other substantially identical claims also submitted by Fremont to Defendants. *See also* FESM000009-11 and FESM000335-341.

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

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Request No. 15:

Please produce all documents and communications concerning any negotiations between Fremont and any of the Defendants concerning Fremont potentially becoming a participating provider.

Response to Request No. 15:

Objection. The request is vague and ambiguous as to the phrase "potentially becoming a participating provider" and potentially seeks documents protected by the attorney-client privilege and work product doctrine. Subject to and without waiving the foregoing objections, Fremont responds as follows: Numerous communications between representatives for Defendants and representatives for Fremont concerning Fremont's out of network status took place in person. Consequently, these communications will be elicited through testimony at trial. *See* FESM000108-117, FESM000220, FESM000224 and FESM000256. Additional documents responsive to this request will be produced in a rolling production.

Supplement to Response No. 15: **Subject to the foregoing objections, the Health Care Providers further object on the basis that the request provides no timeframe. By way of further response, *see* FESM00356 - FESM01381.**

Request No. 16:

Please produce all documents and communications concerning the "business discussions" referenced in paragraph 26 of the Complaint.

Response to Request No. 16:

Objection. The request potentially seeks documents protected by the attorney-client privilege and work product doctrine. Subject to and without waiving the foregoing objections, Fremont responds as follows: Numerous business discussions between representatives for Defendants and representatives for Fremont took place in person. Consequently, these communications will be elicited through testimony at trial. Documents responsive to this request will be produced in a rolling production.

Supplement to Response No. 16: **Subject to the foregoing objections, the Health Care Providers further respond that Paragraph 26 of the Complaint (Paragraph 65 of the First**

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

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Amended Complaint) describes an internal program designed and implemented by United 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." The nature of these allegations makes it clear that evidence of United's program is information in the care, custody and possession of United and other third parties and not the Health Care Providers. By way of further response, *see* FESM00710-FESM01381. Discovery is ongoing and the Health Care Providers reserve their right to supplement this request as required under the Nevada Rules of Civil Procedure.

Request No. 17:

Please produce all communication between Fremont and Defendants concerning that Healthcare Claims that Fremont is asserting in this Action.

Response to Request No. 17:

Fremont responds as follows: Fremont has discussed the unsatisfactory rate of payment received from the Defendants through numerous oral communications between Fremont's representatives and Defendants' representatives which will be elicited at trial. In addition, please *see* FESM000001-8.

Request No. 18:

Please produce all written agreements that have ever been entered into between Fremont and any of the Defendants.

Response to Request No. 18:

Objection. The request is overly broad in that it is not limited in time or scope, irrelevant and not proportional to the needs of the case considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. In particular, the existence of any prior written agreement, entered into years prior to this litigation may be unrelated to the claims at issue, making such information unimportant to the issues at stake in this action.

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

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Furthermore, these agreements are equally accessible to Defendants and Fremont. Finally, the burden and expense of gathering these agreements outweighs any benefit that would be derived from the same.

Subject to and without waiving the foregoing objections, Fremont responds as follows: FESM000019-107, FESM000118-219, FESM000221-223, FESM000225-255, FESM000257-287.

Request No. 19:

Please produce all documents and communications evidencing that Defendants promised to pay Fremont for the Healthcare Claims that Fremont is asserting in this Action.

Response to Request No. 19:

Objection. The request is vague and ambiguous as to the phrase "promised to pay." Subject to and without waiving the foregoing objections, Fremont responds as follows: Pursuant to Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd and NRS 439B.410, Fremont is obligated to provide emergency medical services to any person presenting to an emergency department it staffs and, upon providing such services, Fremont had an expectation and understanding, that the Defendants would reimburse Fremont for non-participating claims at rates in accordance with the standards acceptable under Nevada law and in accordance with rates the Defendants pay or have paid for other substantially identical claims also submitted by Fremont to Defendants especially because Defendants are required to provide coverage for medically necessary emergency services without any prior authorization requirement. *See e.g.* NRS 695G.170. *See also* FESM000009-10 and FESM000335-341.

Request No. 20:

Please produce all documents and communications evidencing any oral agreement between Fremont and Defendants concerning the Healthcare Claims that Fremont is asserting in this Action.

Response to Request No. 20:

Fremont responds as follows: Pursuant to Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd and NRS 439B.410, Fremont is obligated to provide

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

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emergency medical services to any person presenting to an emergency department it staffs and, upon providing such services, Fremont had an expectation and understanding, that the Defendants would reimburse Fremont for non-participating claims at rates in accordance with the standards acceptable under Nevada law and in accordance with rates the Defendants pay or have paid for other substantially identical claims also submitted by Fremont to Defendants. In addition, based on numerous oral communications, which will be elicited through oral testimony at trial, an implied contract by and between Fremont and Defendants existed which provided that Defendants would pay Fremont for the non-participating claims, at a minimum, based upon the "usual and customary fees in that locality" or the reasonable value of Fremont's professional emergency medicine services. *See also* FESM000009-11 and FESM000335-341.

Request No. 21:

Please produce all communications Fremont has had with Defendants concerning the Healthcare Claims that Fremont is asserting in this Action.

Response to Request No. 21:

Fremont responds as follows: *See* Response to Request No. 17.

Request No. 22:

Please produce all written agreements with any third parties concerning the Healthcare Claims that Fremont is asserting in this Action.

Response to Request No. 22:

Objection. The request is overly broad in that it is not limited in scope, irrelevant and not proportional to the needs of the case considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. In particular, the existence of any prior written agreement entered into with third parties which has no impact on Defendants' obligation to pay the appropriate rate for the Healthcare Claims makes such information unimportant to the issues at stake in this action. Furthermore, the burden and expense of gathering these agreements outweighs any benefit that would be derived from the same.

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

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Subject to and without waiving the foregoing objections, Fremont responds as follows: None.

Discovery is ongoing and Plaintiffs reserve their right to further supplement these responses.

DATED this 1st day of June, 2020.

McDONALD CARANO LLP

By: /s/ *Amanda M. Perach*

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

Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 1st day of June, 2020, I caused a true and correct copy of the foregoing **PLAINTIFFS' FIRST SUPPLEMENT TO RESPONSES TO DEFENDANTS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS** to be served to be served via this Court's Electronic Filing system in the above-captioned case, upon the following:

D. Lee Roberts, Jr.
Colby L. Balkenbush
Brittany Llewellyn
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
lroberts@wwhgd.corn
cbalkenbush@wwhgd.corn
bllewellyn@wwhgdcorn

Attorneys for Defendants

/s/ *Marianne Carter*
An employee of McDonald Carano LLP

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

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EXHIBIT 6

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EXHIBIT 6

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

January 23, 2020

VIA ELECTRONIC SERVICE

Kristen T. Gallagher
McDONALD CARANO
2300 W Sahara Ave #1200
Las Vegas, NV 89102

Re: *Fremont Emergency Services, LTD. v UHC, et al.*
Case No.: 2:19-cv-00832-JAD-VCF
Request for Meet and Confer Regarding Fremont's Responses to Defendants' Written Discovery

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Dear Counsel:

This letter addresses the UnitedHealthcare (UHC) Defendants' concerns with Fremont Emergency Services' (Fremont) deficient responses to UHC's written discovery requests, received on July 29, 2019. After you have read UHC's concerns detailed herein, please provide me with your availability to discuss these issues telephonically on or before February 6, 2020. Alternatively, if you believe a written response to these issues would make our eventual meet and confer more productive and narrow the issues, please provide a written response to this letter no later than February 6, 2020.

General Issues

Before addressing specific issues, there a few general issues that warrant mention. A number of Fremont's objections to the requests for production and interrogatories are generalized and, as you know, such general objections are ineffective. Please note that Rules 33(b)(2)(4) and 34(b)(2)(B) provide that objections must be stated with specificity. Boilerplate objections are improper and "tantamount to not making any objection at all." *Kristensen v. Credit Payment Servs., Inc.*, No. 2:12-CV-0528-APG, 2014 WL 6675748, at *4 (D. Nev. Nov. 25, 2014). An objection is boilerplate if it is unexplained or unsupported. *Samsung Elecs. Am. Inc. v. Chung*, 2017 WL 896897, at *9 (N.D. Tex. Mar. 7, 2017); *McLeod, Alexander, Powel & Apffel, P.C. v. Quarles*, 894 F.2d 1482, 1485 (5th Cir. 1990) (holding that simply objecting to requests as "overly broad, burdensome, or oppressive," is inadequate to "voice a successful objection"). We re quest that you supplement your responses by removing these improper boilerplate objections.

As an additional issue, your use of "subject to and without waiving the foregoing objections" creates confusion as to whether any documents or information are being withheld based on the objection. *See Heller v. City of Dallas*, 303 F.R.D. 466, 486-87 (N.D. Tex. 2014) ("Having reflected on it, the Court agrees with judges in this circuit and other jurisdictions that the practice of responding to interrogatories and documents requests 'subject to' and/or 'without waiving' objections is manifestly confusing (at best) and misleading (at worse), and has no basis at all in the Federal Rules of Civil Procedure."). We request that you supplement your responses and clearly state whether any information or documents are being withheld based on your objections.

Finally, a number of Fremont's objections reference an "undue burden" relating to costs that may be incurred in the collection of certain information and documents requested by UHC. An undue burden is "improper unless based on particularized facts." *Caballero v. Bodega Latina Corp*., No. 217CV00236JADVCF, 2017 WL 3174931, at *5 (D. Nev. July 25, 2017); *Cratty v. City of Wyandotte*, 296 F. Supp. 3d 854, 859 (E.D. Mich. 2017) ("A party objecting to a request for production of documents as burdensome must submit affidavits or other evidence to substantiate its objections."). We request that you supplement your responses with a declaration and/or other evidence setting the particularized facts that support your undue burden objection so that we may better assess it.

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Requests for Production of Documents

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Request No. 1:

This request seeks documents pertaining to the Healthcare Claims that Fremont is asserting in this action in an effort to substantiate Plaintiff's claims.

Fremont's response is incomplete. First, Fremont suggests that "[t]his Request seeks information that Defendants have in their own files." However, the onus is not upon UHC to determine the claims that Fremont is asserting; UHC is entitled to this information so that they can conduct discovery accordingly. To the extent that Fremont claims that subpart (k) is not relevant and would impose an undue burden, this boilerplate objection does not suffice to absolve Fremont of its discovery obligations. As Fremont is aware, this litigation is grounded in a "rate of payment" dispute for services provided to UHC members. Thus, the information requested here—a brief and general description of the services provided—is directly relevant to Fremont's claims.

Fremont also contends that the disclosure of this information would impose an undue burden, but has not demonstrated any basis for objecting on this ground. "A party resisting discovery must show how the requested discovery is overly broad, unduly burdensome, or oppressive by submitting affidavits or offering evidence revealing the nature of the burden." *Lopez v. Don Herring Ltd.*, 327 F.R.D. 567, 580 (N.D. Tex. 2018); *see also Merrill v. Waffle House, Inc.*, 227 F.R.D. 475, 477 (N.D. Tex. 2005). Fremont's failure to provide an affidavit or other evidence to support its objection on overbreadth "makes such an unsupported objection nothing more than unsustainable boilerplate." *Heller*, 303 F.R.D. at 490. Accordingly, UHC requests that Fremont provide an estimate of the amount of time it would take to compile the documents at issue in this Request and

the accompanying costs. Also note that "the Court cannot relieve [a party] of its duty to produce . . . documents merely because [a party] has chosen a means to preserve the evidence which makes ultimate production of relevant documents expensive. *AAB Joint Venture v. United States*, 75 Fed. Cl. 432, 440 (2007).

Finally, the reference to FESM000011 is incomplete and insufficient. Fremont states in its response that "the claims at issue continue to accrue and the list being produced is only for claims in which services were provided on or before April 30, 2019." If Fremont is asserting claims for services provided on or after April 30, 2019, UHC is entitled to an updated and current list. At minimum, the spreadsheet should be updated on a quarterly basis.

Request No. 2:

This request seeks all requests for payment sent by Fremont to any of the Defendants for the limited time period of July 1, 2017 to present.

Fremont has not fully responded, instead asserting an objection to the term "requests for payment" as vague and ambiguous. Beyond this boilerplate objection, Fremont fails to state why this term is unclear so to draw an objection on those grounds. This approach is improper, as "[t]he party objecting to discovery as vague or ambiguous has the burden to show such vagueness or ambiguity." *McCoo v. Denny's Inc.*, 192 F.R.D. 675, 694 (D. Kan. 2000). If Fremont believes that this request is vague, it should have explained exactly why the request is vague in its objection. *Heller*, 303 F.R.D. at 492.

Notwithstanding Fremont's boilerplate objection, UHC submits that this request seeks any and all requests for reimbursement related to Fremont's provision of emergency medicine services to UHC members: bills, invoices, statements, etc. Specifically, as alleged in Fremont's Complaint at ¶ 37, Fremont references "bills for the emergency medicine services Fremont has provided and continue to provide to UH Parties' Patients." UHC requests that Fremont produce these documents which Fremont alleges were transmitted to UHC, for the period of July 1, 2017 to present.

Request No. 4:

This request seeks all Health Insurance Claim Forms that concern the claims that Fremont is asserting in this action.

Fremont has failed to respond to this request, instead asserting objections to relevance and proportionality. These documents are directly relevant to this case, and contain information that is critical to UHC being able to defend itself. Although Fremont has submitted a spreadsheet of claims, UHC has the right to verify the data contained in the spreadsheet, including the amounts at issue. Moreover, the claim forms are also at a relevant to, among other things, billing/coding issues that may have impacted how claims were reimbursed.

Fremont also contends that the disclosure of this information would impose a burden or expense that outweighs its benefit, but has not demonstrated any basis for objecting on this ground. "A party

resisting discovery must show how the requested discovery is overly broad, unduly burdensome, or oppressive by submitting affidavits or offering evidence revealing the nature of the burden." *Lopez*, 327 F.R.D. at 580; *see also Merrill*, 227 F.R.D. at 477. Fremont's failure to provide an affidavit or other evidence to support its objection on overbreadth "makes such an unsupported objection nothing more than unsustainable boilerplate." *Heller*, 303 F.R.D. at 490. Accordingly, UHC requests that Fremont provide an estimate of the amount of time and expense it would take to compile the documents at issue in this Request.

Finally, to the extent that Fremont claims that these documents are "equally accessible to Defendants and Fremont," this argument is unavailing. Fremont is in the best position to know what claim forms it contends it submitted and are relevant to the claims it is prosecuting against UHC. Thus, this request is proper.

Request No. 5:

This request seeks documents showing receipt of partial payments for the claims that Fremont is asserting in this action.

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Here again, Fremont lodges boilerplate objections to UHC's request. Specifically, Fremont objects to the use of the term "partial payments" as vague and ambiguous, but fails to state why this term is unclear so to draw an objection on those grounds. This approach is improper, as "[t]he party objecting to discovery as vague or ambiguous has the burden to show such vagueness or ambiguity." *McCoo*, 192 F.R.D. at 694.

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Notwithstanding Fremont's obligation to explain why this is a vague request, UHC clarifies that this request seeks documents that show payments received from UHC to satisfy portions of the claims at issue in this litigation. Although Fremont has submitted a spreadsheet of claims, UHC has the right to verify the data contained in the spreadsheet (i.e. to determine whether Fremont has in fact been paid more on each claim than Fremont asserts).

Fremont also contends that the disclosure of this information would impose a burden or expense that outweighs its benefit, but has not demonstrated any basis for objecting on this ground. Fremont's failure to provide an affidavit or other evidence to support its objection on overbreadth "makes such an unsupported objection nothing more than unsustainable boilerplate." *Heller*, 303 F.R.D. at 490. Accordingly, UHC requests that Fremont provide an estimate of the amount of time and expense it would take to compile the documents at issue in this Request.

Finally, the reference to FESM000011 is incomplete and insufficient. Fremont earlier stated (in response to Request No. 1) that "the claims at issue continue to accrue and the list being produced is only for claims in which services were provided on or before April 30, 2019." If Fremont is asserting claims for services provided on or after April 30, 2019, UHC is entitled to an updated and current list. At minimum, the spreadsheet should be updated on a quarterly basis.

Request No. 6:

This request seeks documents concerning the medical treatment that Fremont allegedly provided to the patients referenced in paragraph 25 of the Complaint.

Fremont has lodged objections to every one of UHC's requests for records underlying the claims at issue in this litigation, instead referencing a spreadsheet generated by Fremont. The information contained in the spreadsheet is compiled by Plaintiff and is otherwise unverified. UHC has the right to independently verify the data contained in the spreadsheet, which includes the right to review the medical records underlying Fremont's requests for payment. Indeed, as Fremont well knows, the medical records are also at a minimum relevant to billing/coding issues (e.g., whether the medical records substantiate the billed services) that may have impacted how claims were reimbursed.

Fremont also contends that the disclosure of this information would impose a burden or expense that outweighs its benefit, but has not demonstrated any basis for objecting on this ground. Accordingly, UHC requests that Fremont provide an estimate of the amount of time and expense it would take to compile the documents at issue in this Request.

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Finally, the reference to FESM000011 is incomplete and insufficient. Fremont earlier stated (in response to Request No. 1) that "the claims at issue continue to accrue and the list being produced is only for claims in which services were provided on or before April 30, 2019." If Fremont is asserting claims for services provided on or after April 30, 2019, UHC is entitled to an updated and current list. At minimum, the spreadsheet should be updated on a quarterly basis.

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Request No. 10:

This request asks that Fremont produce all of its "bills" referenced in paragraph 37 of its Complaint.

Fremont has failed to respond entirely, instead objecting again to relevance and proportionality. UHC responds that the information requested here is directly referenced in Plaintiff's Complaint. Accordingly, these documents are directly relevant to Plaintiff's claims, and contain information that is critical to UHC being able to conduct discovery. Although Fremont has submitted a spreadsheet of claims, UHC has the right to verify the data contained in the spreadsheet, including the amounts at issue. These documents are also at a relevant to, among other things, billing/coding issues that may have impacted how claims were reimbursed.

Fremont also again contends that the disclosure of this information would impose a burden or expense that outweighs its benefit, but has not demonstrated any basis for objecting on this ground. Fremont's failure to provide an affidavit or other evidence to support its objection on overbreadth makes this another unsupported boilerplate objection. Accordingly, UHC requests that Fremont provide an estimate of the amount of time and expense it would take to compile the documents at issue in this Request.

Request No. 14:

This request asks that Fremont produce documents showing that Fremont notified any of the Defendants prior to the provision of medical services to the Defendants' plan members that Fremont expected to be paid by Defendants for the services provided to those plan members.

Fremont begins its response by objecting to the use of the phrase "notified any of the Defendants prior to providing medical services" as vague and ambiguous. Again, Fremont fails to state why this phrase is ambiguous so to draw an objection on those grounds. This approach is improper, as "[t]he party objecting to discovery as vague or ambiguous has the burden to show such vagueness or ambiguity." *McCoo*, 192 F.R.D. at 694. If Fremont believes that this request is vague, it should have explained exactly how this request is vague.

Because of the unintelligible objection here, UHC is unable to determine whether or not Fremont is withholding documents. Rule 34 requires that a party state whether it is withholding responsive documents on the basis of any objection. Fed. R. Civ. P. 34(b)(2)(C). *Futreal v. Ringle*, 2019 WL 137587, at *3 (E.D.N.C. Jan. 8, 2019) ("The use of general objections finds scant support in the Federal Rules, which envision individualized, specific objections to requests for production of documents that inform the requesting party whether any documents have been withheld because of the objection."). UHC requests that Fremont supplement its response to this request by removing all boilerplate objections and specifically stating whether it has other documents responsive to the instant Request.

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Request No. 15:

This request seeks documents and communications concerning negotiations between Fremont and any of the Defendants regarding Fremont potentially becoming a participating provider.

Fremont again begins its response by objecting to the use of the phrase "potentially becoming a participating provider" as vague and ambiguous. Again, Fremont fails to state why this phrase is ambiguous so to draw an objection on those grounds. If Fremont believes that this request is vague, it should have explained exactly how this request is vague.

Fremont goes on to object on the basis that UHC is seeking documents protected by the attorney-client privilege, but failed to provide a privilege log or any other information that would enable UHC to determine the applicability of the claimed privilege. "The party invoking the attorney-client privilege or work-product doctrine has the burden of establishing the applicability of such privilege or protection." *In re Pfohl Bros. Landfill Litig.*, 175 F.R.D. 13, 20 (W.D.N.Y. 1997). "Mere conclusory or ipse dixit assertions of privilege are insufficient to satisfy this burden." *Id.*

Because of the unintelligible objection here, UHC is unable to determine whether or not Fremont is withholding documents. Rule 34 requires that a party state whether it is withholding responsive documents on the basis of any objection. FED. R. CIV. P. 34(b)(2)(C). *Futreal*, 2019 WL 137587, at *3 ("The use of general objections finds scant support in the Federal Rules, which envision

individualized, specific objections to requests for production of documents that inform the requesting party whether any documents have been withheld because of the objection."). UHC requests that Fremont specifically state whether it has other documents responsive to the instant Request.

Finally, Fremont offers that additional documents responsive to this request will be produced in a rolling production. Fremont's responses were served nearly six months ago in July of 2019, and there have been no supplements to this Response to date. Please advise when UHC can expect to receive additional responsive documents.

Request No. 16:

This request seeks the production of all documents and communications concerning the "business discussions" referenced in paragraph 26 of Fremont's Complaint.

Fremont begins its response by objecting to this Request on the basis that UHC is seeking documents protected by the attorney-client privilege. Fremont has failed to provide a privilege log or any other information that would enable UHC to determine the applicability of the claimed privilege. "The party invoking the attorney-client privilege or work-product doctrine has the burden of establishing the applicability of such privilege or protection." *In re Pfohl Bros. Landfill Litig.*, 175 F.R.D. at 20. "Mere conclusory or ipse dixit assertions of privilege are insufficient to satisfy this burden." *Id.*

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Because of the Fremont's failure to describe its privilege objection here, UHC is unable to determine whether or not Fremont is withholding documents. Rule 34 requires that a party state whether it is withholding responsive documents on the basis of any objection. FED. R. CIV. P. 34(b)(2)(C). *Futreal*, 2019 WL 137587, at *3 ("The use of general objections finds scant support in the Federal Rules, which envision individualized, specific objections to requests for production of documents that inform the requesting party whether any documents have been withheld because of the objection."). UHC requests that Fremont specifically state whether it has other documents responsive to the instant Request.

Finally, Fremont offers that documents responsive to this request will be produced in a rolling production. Fremont's responses were served nearly six months ago in July of 2019, and there have been no supplements to this Response to date. Please advise when UHC can expect to receive additional responsive documents.

Request No. 18:

This request seeks the production of all written agreements that have ever been entered into between Fremont and any of the Defendants.

Fremont objects to this Request, contending that it is overly broad and disproportionate to the needs of this case, but then references a number of documents that are responsive. Because Fremont's objection is coupled with the production of *some* documents, UHC is unable to determine whether

or not Fremont is withholding documents. Rule 34 requires that a party state whether it is withholding responsive documents on the basis of any objection. FED. R. CIV. P. 34(b)(2)(C). *Futreal*, 2019 WL 137587, at *3 ("The use of general objections finds scant support in the Federal Rules, which envision individualized, specific objections to requests for production of documents that inform the requesting party whether any documents have been withheld because of the objection."). UHC requests that Fremont specifically state whether it has other documents responsive to the instant Request, and the basis for withholding any other documents (whether it be related to issues of time and scope, or burden in compiling said documents).

Request No. 19:

This request seeks documents and communications evidencing that Defendants promised to pay Fremont for the Healthcare Claims that Fremont is asserting.

Fremont begins its response by objecting to the use of the phrase "promised to pay" as vague and ambiguous. Again, Fremont fails to state why this phrase is ambiguous so to draw an objection on those grounds.

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Moreover, Although Fremont has objected to vagueness, it goes on to reference a number of documents that are responsive (i.e. essentially admitting that its vagueness objection is boilerplate and without merit). Again, UHC is unable to determine whether or not Fremont is in possession of other responsive documents that it is withholding on the basis of its objection. Rule 34 requires that a party state whether it is withholding responsive documents on the basis of any objection. FED. R. CIV. P. 34(b)(2)(C). UHC requests that Fremont specifically state whether it has other documents responsive to the instant Request.

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Interrogatories

Interrogatory No. 1:

This Interrogatory seeks identification and a description of all of the Healthcare Claims that Fremont contends it is asserting in this action.

In Response, Fremont suggests that "[t]his Interrogatory seeks information that is already in UnitedHealthcare's possession." However, UHC is not the plaintiff in this case, and itself has no independent knowledge as to which specific claims Fremont is asserting in this action. Put another way, the onus is not upon UHC to somehow determine the claims that Fremont is asserting. Fremont makes no effort to describe with any particularity where the information sought by this Interrogatory can be found.

In the event that Fremont is relying upon FESM000011, this does not satisfy the entirety of UHC's request. Namely, FESM000011 does not satisfy subpart (k) of this Interrogatory. As Fremont is aware, this litigation is grounded in a "rate of payment" dispute for services provided to UHC members. Thus, the information requested by subpart (k)—a brief and general description of the services provided—is directly relevant to Fremont's claims.

Finally, Fremont states in its response that "the claims at issue continue to accrue and the list being produced is only for claims in which services were provided on or before April 30, 2019." If Fremont is asserting claims for services provided on or after April 30, 2019, UHC is entitled to an updated and current list. At minimum, the spreadsheet should be updated on a quarterly basis.

Interrogatory No. 4:

This Interrogatory seeks the identification of any individual(s) who made an oral promise or commitment to reimburse Fremont at a particular rate for the Healthcare Claims that Fremont is asserting. The Interrogatory also seeks the name of any individuals to whom any oral promise or commitment was made, and a detailed description of the nature of the oral promise or commitment.

Fremont begins its response by objecting to the use of the phrase "oral promise/commitment" as vague and ambiguous. Again, Fremont fails to state why this phrase is ambiguous so to draw an objection on those grounds. This approach is improper, as "[t]he party objecting to discovery as vague or ambiguous has the burden to show such vagueness or ambiguity." *McCoo*, 192 F.R.D. at 694. If Fremont believes that this request is vague, it should have explained exactly how the request is vague in its objection. UHC nevertheless refers Fremont to ¶ 269 of its First Amended Complaint, which alleges that "[s]ince at least January 2019, the Defendants, have been and continue to be, engaged in preparations and implementation of a scheme to defraud the Health Care Providers by committing a series of unlawful acts designed to obtain a financial benefit by means of false or fraudulent **pretenses, representations, promises or material omissions**." (emphasis added).

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Moreover, although Fremont has objected to vagueness, it goes on to reference a number of documents that are responsive (i.e. essentially admitting that its vagueness objection is boilerplate and without merit). However, Fremont has failed to name any individual(s) who allegedly made any oral promise(s) or commitment(s). If there are no such individuals, UHC requests that Fremont respond accordingly.

Requests for Admissions

Request No. 1:

This Request asks Fremont to "Admit that, for all for of the Healthcare Claims that Fremont is asserting in this Action, Fremont received an assignment of benefits from Defendants' plan members."

Fremont begins its response by objecting to the question as "not relevant to the claims asserted in the Complaint because Fremont does not bring any of its claims on the basis of assignment of benefits." It then goes on to object on the basis that "the request is clearly aimed at trying to support Defendants' argument that complete ERISA preemption exists. . . ."

As an initial matter, this Request is relevant to the claims asserted as it directly involves one of UHC's defenses. In support of this, UHC would point to the fact the Fremont's second objection is

based on the fact that the Request is "aimed at supporting Defendants' argument regarding ERISA preemption." This is not a proper basis for an objection; a party cannot object to a request for admission because the response would lend support to the requesting party's defense.

Additionally, Fremont goes on to object on the basis that "whether a valid and enforceable assignment of benefits exists" calls for a legal conclusion. Responding to this contention, UHC first points out that this Request does not ask if a "valid and enforceable assignment of benefits exists," it only asks if "Fremont received an assignment of benefits from Defendants' plan members." Secondly, UHC has not asked for a legal conclusion here. However, even if it had, requests which involve mixed questions of law and fact are clearly contemplated by Rule 36. *See* FED. R. CIV. P. 36; *Carter v. Pathfinder Energy*, 2010 WL 11530609, at *2 (D. Wyo. Mar. 16, 2010). UHC therefore requests that Fremont admit or deny the instant request as stated.

Request No. 4:

This Request asks Fremont to "Admit that Fremont never notified any of the Defendants orally or in writing prior to providing medical services to the Defendants' plan members that Fremont expected to be paid by Defendants for the medical services provided to the plan members."
Fremont begins its response by objecting to the use of the term "notified" as vague and ambiguous. Again, Fremont fails to state why this term is ambiguous so to draw an objection on those grounds. If Fremont believes that this request is vague, it should have explained exactly what it is vague in its objection.

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Fremont's response goes on to indicate that it admits that "federal and state law requires it to provide emergency services without determining whether coverage exists." However, Fremont does not admit or deny UHC's Request as written. UHC requests that Fremont supplement its response and respond admit or deny.

Request No. 6:

This Request asks Fremont to "Admit that for at least one of the Healthcare Claims that Fremont is asserting in this Action, the plan member that Fremont treated has an employer provided/sponsored health insurance plan."

Here again, Fremont begins its response by objecting to the use of the phrase "employer provided/sponsored health insurance plan" as vague and ambiguous. Fremont fails to state why this phrase is ambiguous so to draw an objection on those grounds. If Fremont believes that this request is vague, it should have explained exactly what it is vague in its objection. Moreover, we find it difficult to imagine that Fremont does not understand what an employer sponsored insurance plan is.

Fremont goes on to object on the basis that "the request is clearly aimed at trying to support Defendants' argument that complete ERISA preemption exists. . . ." There is no basis for this objection under Rule 36; a party cannot object to a request for admission simply because the

response would lend support to the requesting party's defense. Further, to the extent that Fremont contends that this Request seeks a legal conclusion, a review of the Request itself reveals this is not the case. In any case, requests which involve mixed questions of law and fact are clearly contemplated by Rule 36. *See* Fed. R. Civ. P. 36; *Carter v. Pathfinder Energy*, 2010 WL 11530609, at *2 (D. Wyo. Mar. 16, 2010). UHC therefore requests that Fremont admit or deny the instant request as stated.

Finally, to the extent that Fremont offers that "Defendants' counsel . . . stated to Fremont's counsel that Fremont would likely not have this type of information," it is unclear whether Fremont truly does not possess information to enable it to admit or deny the request. If Fremont truly does not possess sufficient information to respond to this Request, "[t]he answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny." Fed. R. Civ. P. 36.

I look forward to discussing these issues with you. Please let me know if you have any questions or if you have any case law you want me to consider prior to our conference. I am hopeful that we can resolve these issues without resorting to court intervention.

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Regards,

WEINBERG WHEELER HUDGINS
GUNN & DIAL LLC

/s/ Colby Balkenbush

Colby L. Balkenbush

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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

WEDNESDAY, SEPTEMBER 9, 2020

RECORDER'S TRANSCRIPT OF PROCEEDINGS
RE: PENDING MOTIONS

APPEARANCES (VIA VIDEO CONFERENCE):

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

For the Defendant(s): D. LEE ROBERTS JR., ESQ.
COLBY L. BALKENBUSH, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

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LAS VEGAS, NEVADA; WEDNESDAY, SEPTEMBER 9, 2020

[Proceedings convened at 10:44 a.m.]

THE COURT: I am sure you will need at least an hour. The Motion to Stay will determine the other two motions. I see that there number of pro hac vice. Are you guys available and willing to come back at 1:30.

MS. LUNDVALL: Yes, Your Honor. On behalf of Fremont, the plaintiffs in this action, we are willing to come back at 1:30.

MR. ROBERTS: Yes, Your Honor. On behalf of the defendants, Lee Roberts, we are willing to come back at 1:30.

THE COURT: I thank you for your professional courtesy. My biggest fear is being a judge is that people don't get their chance to be heard. So thank you very much for being willing to be flexible.

[Recess taken from 10:45 a.m. until 1:29 p.m.]

THE COURT: -- 1:29, but I'm going to assume that Fremont versus United is ready to go. Is the representative for the plaintiff here to -- who can tell me that you're ready.

MS. LUNDVALL: Yes, Your Honor. Pat Lundvall for McDonald Carano, along with Amanda Perach, here on behalf of the plaintiff. And we are ready to go (indiscernible) -- I just want to let you know that Ms. Gallagher, Kristen Gallagher, expresses her regrets for not being able to attend today's hearing.

THE COURT: Thank you.

Is there a representative for the defendant who can tell me

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you're ready to go? Mr. Roberts? Okay.

MR. BALKENBUSH: Colby Balkenbush, Your Honor, for the defendants. I believe Mr. Roberts should be on as well. Let me check on that. He's on. He's on.

THE COURT: Mr. Roberts, you're there?

I don't see him, Mr. Balkenbush.

MR. BALKENBUSH: And I apologize. Let me send him an email real quick. He was just emailing me a second ago so he should be on.

THE COURT: All right. Well, let's wait just a moment until he can join us.

MS. LUNDVALL: We hope the Court got some lunch.

THE COURT: It's been a long day. I had a cookie; does that count?

MS. LUNDVALL: Well, it depends upon in who's world we're talking.

THE COURT: Perhaps, Brynn, you can let us know when Mr. -- oh, I see Mr. Roberts is on the phone.

Mr. Roberts --

MR. ROBERTS: Hi, Your Honor.

THE COURT: Are you there?

MR. ROBERTS: I am. Can you hear me?

THE COURT: I can. Good enough. I didn't want to start without you --

MR. ROBERTS: I appreciate that.

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THE COURT: Okay. So the first motion is your Motion for Stay, and we'll take that first because it'll affect how we proceed. Motion for Stay, please.

MR. ROBERTS: Thank you, Your Honor. Lee Roberts for the defendants with regard to the Motion for Stay.

The brief that we have submitted to the Court does go through the factors that the Court should consider in determining whether to grant a stay. Under Rule 8, the Court needs to consider whether the object of the writ petition would be defeated if the stay was denied; number two, whether the petitioner will suffer irreparable or serious injury if the stay is denied; three, (indiscernible) party of interest will suffer irreparable or serious injury if the stay is granted; and, finally, whether the petitioner is likely to prevail on the merits in the writ petition.

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And, although, the Nevada Supreme Court is not prescribed any particular weight, which must be given to any of these stay factors, it has recognized that certain factors may be especially strong and counterbalance other weak factors. So it's more a totality of the circumstances based on all four of those factors.

I don't have to deal long with the likelihood of prevailing on the writ petition. Obviously, since the -- this Court has made a decision and we're seeking writ on that decision, the Court has already determined that we're not likely to prevail. But I think that there's still a question of how strong that factor is in the Court's mind under the petition that we've alleged. In other words, was this a slam

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dunk or was this a close question which the Court could see leaving room for a good faith disagreement in the possibility that the Court might grant the writ?

And just on these very same issues, we have a very similar dispute that was pending before the District Court of Nevada, the federal court in this case, which resulted in remand. But, essentially, examining the exact same issues and claims, the Court in Arizona found it was appropriate to dismiss. And there is contrary authority that's been cited in both the briefs.

So I think that in looking at this factor, the Court should understand that it is a close question and that despite this Court's findings, there is a reasonable chance that the Nevada Supreme Court might agree with us and grant the writ.

So the question then turns to the other factors. And rather than repeat what's already in our brief, I'd like to sort of focus -- since we did -- the opposition brief was just filed yesterday, and we did not get a chance to file a reply. I thought I would go through some of the case law this morning and try to focus on the arguments that the Court has not yet heard and our reply to the points and authorities raised in the opposition.

The first case I'd like to discuss is *Dignity Health v. 8th Judicial District Court*, which is 465 P.3d 1182. That was cited for the proposition that the Nevada Supreme Court generally will not consider repetitions challenging orders denying Motions to Dismiss.

First of all, this is an unpublished case; so it's -- only can be

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looked to by the Court for it's persuasive authority, if any. And there isn't much information about the underlying case at issue, but we do know the Court was not persuaded that extraordinary and discretionary relief was warranted under the facts of that case.

We know it was a standard medical malpractice case and there were likely no novel issues of law. And while an appeal may be an adequate legal remedy in the legal malpractice case, we don't believe that's true in the matter at hand because we are so early in the litigation, and one of the motions on calendar for today, if the Court denies the stay, is going to be the extremely burdensome and time-consuming discovery which has been served upon the defendants and a Motion to Compel has been filed. And although we haven't filed a Motion to Compel, we do point out in that other briefing that we have sought information regarding all of these claims, and we've sought the clinical record. And the same objection has been made to our discovery, that it's unduly burdensome for them to have to actually produce the clinical records in support of each and every one of the over 22,000 claims which are currently in dispute in this litigation.

Therefore, while the Nevada Supreme Court might generally reject writ petitions -- and we agree with that point that are challenging a Motion to Dismiss -- we think that ERISA questions had previously been considered to be of such important (sic) that the Nevada Supreme Court will consider a writ petition challenging a denial of a Motion to Dismiss on the merits on the grounds of ERISA.

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And we would cite the Court to *W. Cab Company v. The Eighth Judicial District* 390 P.3d 662, page 667, for that point addressing ERISA preemption of minimum wage amendment and noting that the instant petition seeks reversal of the denial of a Motion to Dismiss, quote, Although we typically deny such petitions, considering this petition would serve judicial economy and clarify an important issue of the law.

Therefore, while we understand the general rule, generally about motions to dismiss, in this case we think that ERISA and the fact that this is an important issue of law and it does involve federal preemption, is a petition that the Court would be more likely to accept than the general writ petitions about a typical Motion to Dismiss.

The next case that I would like to address is *Nevada State Board of Nursing v. The Eighth Judicial District Court* 459 P.3d 236. That's a 2020 decision. Once again, it's unpublished and, therefore, not binding precedent. This decision can be distinguished because that case did not involve the exception I just discussed, where the Court has an opportunity to clarify an important question of the law.

In addition, the point that they have made with *Pan v. Eighth Judicial District,* a 2004 case, 88 P.3d 840, which is that a writ relief is not appropriate where a plain, speedy, and adequate remedy at law exists. And we acknowledge there is a lot of language and a lot of decisions saying that the fact that a party has to incur attorney's fees and costs in conducting discovery doesn't mean that a direct appeal is not an adequate and speedy remedy.

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However, in *International Game Tech v. Second Judicial District Court,* a Washoe case, 179 P.3d 556 and 559, the Court found that writ relief was appropriate there, and an appeal is not an adequate and speedy remedy given the early stages of litigation and the policies of judicial administration.

So you can't just say discovery is never an inadequate remedy. The -- because you have to incur those discovery costs. You have to look at how early in the litigation you are, whether that discovery cost would be completely avoided if the writ was granted, and how early are we in the litigation, and how much has already been done. And even though this case has been pending for quite a while, Your Honor, it has started out in federal court, and it came here, and (indiscernible) on motion practice and very little discovery has been done, and it is still at an early stage where this Court can prevent a waste of legal resources and a waste of judicial (indiscernible) in continuing to administer this case, all of which costs would be saved if our writ was granted and the Court found that ERISA preemption is appropriate here.

We've noted, and I think it's worth considering, that the shoe is on the other foot a little bit. And when we were up in federal court, it was the plaintiffs who moved for a stay of discovery on the grounds that the case was likely to be remanded, and the Court should not waste judicial resources by proceeding with the federal case until the Court decided on the Motion to Remand. We think that some of those same factors play in here that they pointed out to the Court

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there, and that over all, this is not a common case where a party seeks a frivolous writ after the denial of a Motion to Dismiss.

ERISA preemption is an area which the Nevada Supreme Court has shown an interest in. This case deals with a point not previously addressed by the Nevada Supreme Court, particular the right of payment versus right of payment exception. And, in fact, we believe that the Court may be motivated -- regardless of whether they side with us or not -- they may be motivated to accept the petition in order to clarify this important point of law under ERISA.

Unless the Court has any further questions, I will end my argument there.

THE COURT: Thank you.

The opposition, please.

MS. LUNDVALL: Thank you, Your Honor. Pat Lundvall from McDonald Carano here on behalf then of the plaintiff.

To begin, I'm glad that the Court has a reputation for reviewing the written papers in making decisions on these motions before, in addition to listening to the oral presentations on the motions, since the oral presentation that was just made by Mr. Roberts does differ, and differs in a significant piece from the written motion that they have brought to the Court. Let me address that to begin with because it does focus upon the totality of the circumstances which I'm glad that Mr. Roberts has led with.

When you look at the totality of the circumstance and you look at their concessions that they made in their motion, United asked

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for a stay of all discovery even though it concedes that even if it is 100 percent successful on the writ petition, that there will be claims that remain. It concedes that there are ERISA claims that will remain and that --

THE COURT: Excuse my interruption. Someone is typing in the background, and if you'll just mute yourself, because it interferes with my ability to listen. Thank you.

Please proceed.

MR. ROBERTS: Your Honor, I apologize, and I'm muted.

THE COURT: Okay. All right, Ms. Lundvall.

MS. LUNDVALL: Thank you, Your Honor.

One of the things I wanted to point out up front is that United is asking for a stay of all discovery, even though it acknowledges if it were 100 percent successful on this writ petition before the Nevada Supreme Court, that there would be claims that remain even after that writ petition. And they concede that there are ERISA claims that would remain as a result of the writ petition and that there would be discovery that would be necessary on those writ -- on those ERISA claims. And at the very minimum, the administrative record then would have to be disclosed, and there'd have to be discovery on those issues.

And when you scour their papers and when you scour the case law -- and I do do a lot of appellate work, and so I'm fairly familiar with this -- they can offer -- and I can't find a single Nevada case that has stayed the proceedings below that when, in fact, that

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what is at issue in a writ is a review on a partial Motion to Dismiss.

And so, in fact, if you take a look that there's even Nevada authority to the contrary that holds that when, in fact, that you're seeking a partial review of a Motion to Dismiss, it's inappropriate for writ review. And if it's inappropriate for writ review, then surely it's inappropriate for a stay of proceedings during that writ review.

The second point that I'd like to make -- and that is that, once again, looking at totality of the circumstances that United is asking for a stay of all discovery even though -- even if it were 100 percent successful on the writ, the only benefit it obtains from a stay is narrowing the scope of discovery. So in other words, all they're trying to do on a writ is to narrow the scope of discovery. And what they're trying to do is to save some time or save some money by asking for a stay, even assuming 100 percent success on the writ, which is what we disagree upon.

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They offer no Nevada Supreme Court authority, once again, on that proposition. And, in fact, they run exact contrary to the holdings in *Hansen* and the exact contrary to the holdings in *Micon*, the two principle Nevada Supreme Court cases that say clearly and unequivocally that saving time or money is not irreparable or substantial harm that should be evaluated in determining whether or not that a stay should issue.

If you look particularly at the *Hansen* case, in *Hansen* it was an issue as to whether or not that there was personal jurisdiction over a defendant. And the district court below had found that there was

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jurisdiction over that defendant, and there was a writ review that was sought then by the defendant before the Nevada Supreme Court. And he had asked for a stay, and his principle argument was there's no reason I should go through the entirety of this case and go through discovery and potentially go through a trial when, in fact, that the Nevada Supreme Court is reviewing this on a writ. And the Nevada Supreme Court denied his request for a stay, stating that, in fact, that cost savings or time savings or trying to save effort in not having to litigate a portion or all of the case, was not a factor to be taken into account then in determining to grant a stay.

The other thing that United is asking -- and when you couple their two arguments together in particular, I think it's important to keep in mind that they acknowledge that there will be ERISA claims that will continue, even if they're 100 percent successful, that there'll have to be discovery on those ERISA claims, and that the administrative record on those ERISA claims will have to be gathered and disclosed as part of discovery. And they take the position, even though we disagree with it, but they take the position that it's going to take up to four years to gather that administrative record and to turn that over as part of discovery.

So when you couple their two arguments together and suggest that, in fact, that we should just stop all discovery and stop all proceedings below while we determine whether or not that the Nevada Supreme Court is, number one, even going to grant review, let alone to make a decision on writ review on this -- what we're

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looking at is a delay of upwards between seven to nine years before, potentially, we can get to trial from when we first filed this case. And there is a number of different cases from our Nevada Supreme Court that states that when there is going to be an undue delay that will result by grant of a stay, then that means that the stay should not be granted below.

In general, when I take a look at these factors in totality, it underscores the fact that the law abhors an absurd position. And when you evaluate the four factors that are supposed to be required to be looked at, then when, in fact, you can see why it is that in this circumstance that a stay should not be granted, as has been requested then by United.

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The first factor, if I can underscore, and that is that the Court should review -- is whether or not that the object of United's writ will be defeated if the stay is denied. And they contend or they argue that the object of their writ review is to determine whether or not that either complete preemption or conflict preemption should apply to preempt then some of these claims and to transmute them into ERISA claims.

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Well, first and foremost, complete preemption is a jurisdictional tool, and they have no opportunity by which then to go back to federal court and to seek that jurisdictional tool or to use that jurisdictional tool so as to get federal court jurisdiction. So that ship has already sailed, and that can't be the object then of a writ petition.

The only thing that's left is conflict preemption, and the

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Court gave them the opportunity for review after factual discovery then in bringing motions for summary judgment at the conclusion then of that discovery. So they have the opportunity to review below and then an opportunity then on appeal to preserve then any of the issues for which that they seek conflict of preemption. So boil it down to its bare essence, a denial of the stay then does not defeat the object of their writ review.

Number two, the Court is supposed to evaluate whether or not that United will suffer irreparable harm if the stay is not granted. The only harm that United offers to the Court -- and I underscore this -- the only harm that they offer to the Court is found at page 13 of their brief, lines 25 to 27, when they speak to the fact of -- and I quote here: The high potential for wasted resources and unnecessary expenses associated with continuing discovery. So in other words, what they're saying is that it's go to go cost us time or money to litigate this case, and we want to save time and money. Both the *Micon* case as well as *Hansen* say saving time and money is not irreparable, it's not even substantial harm under those two cases. So that factor doesn't favor them.

Number three, the Court is supposed to evaluate then whether or not the plaintiffs, the healthcare providers, if they will suffer or potentially suffer significant or irreparable harm by the grant of the stay. And this is one where I think that you need to take this case and look at it in context. United is the largest healthcare provider across the nation and the largest healthcare provider here in

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the state of Nevada. In other words, United's policyholders are the largest group of policyholders that seek medical services on an emergency basis from the plaintiffs. Pursuant to law, both federal law and state law, we are obligated to provide medical services without any opportunity to review or any opportunity to discern if we're going to get paid for the provision of those services.

So in other words, where I'm going with this is that the largest group of individuals, patients, policyholders that walk through the door of emergency rooms that my clients provide services for are United policyholders, and that is the largest group then that for which that United is only paying pennies on the dollar on the invoices and the bill charges that we send them for payment. And they're doing this in an effort to try to coerce and to exert and to try to, in essence, push us into a written agreement for which that pays us below cost of the provision of the services that we provide.

So the longer that this case proceeds, like any other business, the greater the likelihood of our provision then of providing the services for which that we're not getting paid, you end up with a company then that is writing more red ink than it does black ink and that runs the risk then of substantially harming then the healthcare providers and pushing them out of business. United knows this. And as with any injunctive type of relief, when you're threatening the very livelihood and the very existence of an entity, that is the pure definition then of the definition of irreparable harm.

So the longer that United can push us and the longer that

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they can make the provision of these -- this litigation go on, the greater likelihood then that we don't have a viable opportunity or a viable way by which to move forward. They already owe us $20 million and that's counting on a daily basis and that's accumulating then on a daily basis. And so that factor is a significant factor for which that mitigates against the grant of the stay.

The last point that the Court is to analyze then in determining whether or not that a stay should be granted is whether or not that United is likely to prevail in the merits of their writ, a petition that they filed before the Nevada Supreme Court.

When they described the contents of that petition then to you, one of the things that was interesting to me is that they relied upon the same two cases that this Court has already rejected. They relied upon the same cases for which that this Court had found. For example, the *Evans v. Safeco* case -- that it was a Ninth Circuit case for which that -- subsequent Ninth Circuit decisions, subsequent U.S. Supreme Court decisions had indicated that the test and the review then that had originally been offered by *Evans v. Safeco* was not the appropriate test. One by one by one, if you look at the cases that they cited on the likelihood of success then before the Nevada Supreme Court were each one of the points that this Court had already looked at, analyzed, reviewed, and expressly found against them based upon subsequent or more applicable or more analogous case law.

And therefore, when you look at then at bottom, even ignoring the totality of the circumstances here, but if you look at at

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bottom, none of the four factors favors granting them a stay, not one. And so you can't even weigh or apply some type of a weight then to even one of those single factors so as to consider granting them a stay. And so we would ask the Court then to deny their request for a stay of proceedings and to allow this case then to continue a pace then as we have already laid out.

Thank you, Your Honor.

THE COURT: Thank you.

And the reply, please.

MR. ROBERTS: Thank you, Your Honor.

First, I'd like to start out in saying that I believe our arguments were successfully stated in my presentation to the Court. Ms. Lundvall was correct as there was some inconsistency in our briefing, and I can explain that with some assumptions that, perhaps, we were making.

The -- it is true that if our writ was granted and the complaint was dismissed based on ERISA conflict preemption, it is true that they would still have ERISA claims. However, the Court can review the complaint and see they had not brought ERISA claims. So therefore, the entire complaint would be dismissed, and it would be dismissed because there aren't any ERISA claims pled.

Now, based on the case law we cited to the Court, it would be appropriate for the dismissal to be without prejudice, and we acknowledge that they could bring a new complaint for -- under ERISA, which would not be dismissed. But this action would be

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gone. They would have to plead a new ERISA complaint which has not been pled. And we don't know that they would do that, because it may be they had not pled ERISA because they know they'd be entitled to no additional money under the actual terms of the plans at issue.

In addition, our initial review has shown that only about 500 claims, we've determined, were actually appealed. Therefore, rather than dealing with over 22,000 claims, as we have discovery now pending on -- if this was re-pled in a new action under ERISA, the argument would be that they failed to exhaust administrative remedies in all but about 500 of those claims. And those 500 claims, which were appealed under the terms of the plans, would be able to proceed under ERISA, but it would be a vastly different lawsuit with a vastly different burden upon United in responding.

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The -- we acknowledge the case they cite, which talks about the fact that discovery costs are not generally considered as irreparable harm, but, you know, I've mentioned before *International Game Technology v. Second Judicial District,* a 2008 Supreme Court case, where in that case the Court specifically found that an appeal was not an adequate and speedy remedy given the early stages of litigation and the policies of judicial administration. So it isn't a black-and-white issue. And if the case is early enough and discovery is extensive enough, then those factors can weigh in favor of the stay and if favor of the Court accepting a writ.

In our opposition to the Motion to Compel, which the Court

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has probably read, we have included a declaration of Sandra Way, which generally goes through and says at two hours of claim, 22,000 claims would take four people earning $60,000 a year, five years to pull. That's $1.2 million in discovery costs which is going to have to be borne by somebody if the Court compels that discovery. This is not a typical case, and sound judicial economy weighs in favor of the Court staying the action in order to give the Supreme Court a chance to review our writ on ERISA preemption.

Thank you, Your Honor.

THE COURT: Thank you.

This is the Defendant's Motion for Stay due to a writ that was filed on about August 25th of this year. Motion will be denied for the following reasons: First, the case goes back to April 15 of 2019. You have a discovery cutoff of December 31 of this year, and I find that the objects of the appeal would not be defeated in -- by me not granting this motion. With all due respect to the defendants, I do think that there is a likelihood of success on the matter even being considered by the Nevada Supreme Court. I find that irreparable harm in this case would weigh in favor of the plaintiff and not the defendant.

Now, the Court's deny it; however, let me also say that, Mr. Roberts, if there is briefing requests, I would reconsider this. If the Supreme Court requests briefing on the issue, I'd consider a brief stay for that purpose. So --

MR. ROBERTS: Thank you, Your Honor. I understand.

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THE COURT: So, Plaintiff, prepare the order. Mr. Roberts and his team will look at it, approve the form of it, and then it will be submitted, denying the stay. Of course, you still have your ability to seek a stay from the higher court.

The second question I have was the Plaintiff's Motion to Compel the Production of Claims Files or in the alternative Motion in Limine. Please proceed on that.

MS. LUNDVALL: Thank you, Your Honor. Once again, Pat Lundvall from McDonald Carano on behalf of the healthcare providers.

This is a motion that underscores the sword versus shield protections, the sword versus shield analogy that our Nevada Supreme Court has upheld since 1995 when it issued the decision in the *Wardlow v. Second Judicial District* case. In other words, a party, during the course of discovery, cannot say, no, no, no, no, you can't have a discovery because of one reason or another. In that case it was a principle of trying to apply privilege to certain documents, but then at the time of trial that they tried to defend using the same information or the same arguments that that discovery would have revealed and that discovery would have allowed them to explore the parameters of.

It's a simple basic proposition that -- I think that many of us learned as kids. And that is for every right that we have or every right that we enjoy, that there's an obligation that goes along with that. It's the same principle that we tried to teach our own children. You don't

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make your bed; you don't get to go outside and play.

And in this particular circumstance, what we're trying to do is to apply standard, basic Nevada Supreme Court authority that's been the law since at least 1995 and probably long before that, and also seeks to underscore basic principles that not only that each of us probably learned as children, but that we also tried to teach our own kids.

Let me give you the context then for this because at every turn during the discovery process, United has taken the position that they don't have to give us anything but the administrative record because these claims that we are bringing are nothing but ERISA claims. And they have mounted that refrain and beat that like it's a drum. These are ERISA claims; all you get is the administrative record. All right. (Indiscernible) All right. Give us the administrative record at least (indiscernible). Oh, can't do that, it's too hard. It's an undue burden. We can't give that to you. It's going to take us too long to do that. It's going to take four years for us to give you the administrative record for the claims that you have brought or the claims that are at issue in this case.

And so, therefore, they have objected to giving us at administrative record, citing undue burden. So it's a classic situation wherein they say, All right, these are ERISA claims. They acknowledge the minimal discovery obligation that they have is the production of the administrative record. But when we ask for the administrative record, they say, We don't have to give it to you

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because it's an undue burden. (Indiscernible) this case.

And part of the reason that they claim that it's an undue burden is because of the number of claims that are at issue in this case. And they point to the fact that there have been spreadsheets that have been offered then, by the plaintiff that detail in great -- and identify in great detail the claims for which that they have underpaid, and that they have (indiscernible) to an excess of 15,000 and have now risen to an excess of 20,000.

And so the question becomes, Why are there so many claims? Well, they are because United created a problem beginning in 2018, when they tried to coerce us into taking a written agreement that would have transmuted then our prior business relationship with them and that would have discounted them any payment to us by 50 percent. And they said, If you don't like that, then what we're going to do, is we're going to start underpaying your claims. And we're going to start at a 33 percent level by underpaying. We'll then move to a 50 percent level by underpaying them, and then we'll move even farther than that as time goes on. And that's exactly what they did.

And because they are the largest policy writer -- the largest underwriter then of health care here within the state of Nevada, the number of claims, the number of folks that come across the doorstep into our emergency room seeking emergency treatment for which that we are obligated to provide them services by law, those claims then are high in number. And so to the extent that you step back and

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you look at this from the 30,000-foot level, and what do you have? You have United creating a problem by taking the position that we're going to use our financial might and our financial worth to try to push you around, and if you don't like it, then we're going to push even harder. And because of the numerosity of these claims, then we're going to go create a problem for you. And that's what they have done.

And then when we litigate, they point to the very problem that they created and said, Oh, by the way, I don't have to do any discovery. I don't have to give you that administrative record. Why? Because it's too hard. It's too much work. It's too much effort. It's going to go take us too long by which to accomplish that.

And so you sit back and you think about it -- what a swell kind of tool that one can employ if you were a litigant. First, you create a problem and then you use the very problem that you created in an effort to try to avoid a discovery obligations. And then you want to go to trial, but to be able to use that very administrative record, to claim or to try to defend then against the claims that have been brought against us.

And so what we did is we sat back and we thought about this. And it's like, wait a minute, you can't have it both ways. You can't use the argument of undue burden and not having to comply then with your discovery obligations in the production then of these administrative records at the very, very minimum. And then to be able to go to trial and to be able to use that same record then in an

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effort to try to defend then against the claims.

And so what we've done then, is we tried to put them to the choice, either produce the claims to us or be foreclosed at the time of trial then from using any of the evidence then from these claims in order to defend then against the claims that we have asserted then against United.

So where we're going to in this particular circumstance, in this particular case, is that we ask for the production of the administrative record. They said, We don't have to give you that administrative record because it is that undue burden. Ignore the fact that we haven't met the standards for demonstrating that it's an undue burden or that you can likely get that same information then from other sources. But we're just going to claim undue burden and not give it to you.

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And so we're asking for this, basically, either/or relief. Either require them to give us the administrative record at the very minimum and to do so within the time frame because this goes back now -- it dates back to a request for production that we served back in December -- December 8th of 2019, and that they have refused then by which to give us; or if they don't want to give us the administrative record, then to foreclose them from being able to use it at the time of trial. And we've identified the scope of that relief, it's found in our motion, and I can direct you specifically to where in the motion that that is laid out. But that's the choice that we would ask the Court then to put United to because they can't have it both ways.

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And with that, Your Honor, we would submit.

THE COURT: Just got a couple of questions. When you said retrieve, review, produce, what do you anticipate there in claims files?

MS. LUNDVALL: Their claims files have been identified. I think they describe them -- let me find my notes, specifically, because they describe their claims file in pretty broad terms. And I believe it was that page -- oh, I'm not finding this quickly, but I believe it was at page 13 of the brief that identifies what their claims file would be.

But the claims file is identified within the motion as to at minimum what the contents are, and they're kind of your classic claims file information that you would find in your standard insurance file. One would expect then to find the claim itself, the reasons for the payment on the claim because these claims have already been adjudicated then as payable by United. But they are to be paid and that they are -- should be paid. They have just simply underpaid them. There also should be an identification as to why they were underpaid and the amount by which that they were underpaid. And there's a series of documents that would be found within those claims files, and that is what we had requested.

THE COURT: Good enough. Next question: I assume it's all electronic?

MS. LUNDVALL: We assume that it's electronic too, and I will tell the Court that the last time -- not against United, but in the context of another case, we learned that the electronic files and the electronic compilation of these files is very sophisticated by the

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insurance companies and almost everything, unless there's some type of special rules that have been applied by these insurance companies, is all electronic adjudication that they -- they've got programs that have been written for the adjudication of these files.

If there's something separate and there's some special programming that they have strictly for team health files, then there may be some type of a manual file that would need to be looked at. But that manual file would only apply to special rules, which we think may be occurring in this case. But if, as they suggested, there's no special rules that are being applied then to team health then it should be all electronic.

THE COURT: And they would have to redact if I grant your motion?

MS. LUNDVALL: No, Your Honor. We have a protective order already in place that provides the HIPAA protections that would afford that. All they have to do is to be able to designate those as HIPAA protected. Moreover --

THE COURT: Last question is they say that -- they said that --

No, you go ahead, please.

MS. LUNDVALL: Just to clarify on the HIPAA protection, any of the health insurance or the health information then that would be found in these files would have been supplied then by the plaintiffs, healthcare providers themselves, who equally have a HIPAA obligation concerning maintaining the confidentiality of that

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information. And that's why the HIPAA issues do not need to be specially accounted for or a special redaction then for that issue.

THE COURT: My last question is: They say in their opposition that you already have EOBs, appeal stocks, and the administrative record.

MS. LUNDVALL: And we had offered, Your Honor, to them to be able to remove those or to remove that information. The EOBs in particular and -- let me -- there were two pieces that we had offered them to say that we -- they did not need to provide. The two pieces that we had offered that they did not need to provide because -- that we were already in receipt of is the EOBs, the member explanation of benefits, and then the provider remittance advices, or was referred to as PRAs. And so those were the two that, in fact, we had offered and they had rejected that offer then from us.

THE COURT: Thank you.

And I'm ready to hear the opposition, please, Mr. Roberts.

MR. ROBERTS: Thank you, Your Honor.

I'd like to start out by pointing out that there is not a sufficient record before this Court where you could base your decision on the Motion to Compel on an argument that United is trying to put these providers out of business and that if somehow United is able to continue with this litigation, that it's going to drive these providers -- that they don't have the money, that they're going to be run into the ground. A footnote, page 8, we noted the TeamHealth Holdings is a subsidiary of Blackstone, which has

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$360 billion under management. This is not a case of a big insurance company against a little doctor who can't fight. They have brought litigation affirmatively all over the country. They have been very aggressive. They are in no danger of going out of business, Your Honor. The --

THE COURT: You know, I'm not going to consider that anyway, Mr. Roberts, on either side -- your size -- you know, there's an equal protection clause. Everybody starts out equal.

MR. ROBERTS: Thank you, Your Honor. I'll move on then.

I would like to say however, you know, as Ms. Lundvall talked about some of the things you learned as a kid is, you know, that what's good for the goose is good for the gander and that obligations run both ways. And in this case, as we point out on page 2, we have served discovery to ask for all documents in their possession regarding the claims they are asserting and, in particular, production of all the clinical and cost records underlying each one of the claims. Which is perfectly relevant because they have claim in quantum meruit that is preceding.

They objected to that on the grounds that the burden and expense of gathering thousands of medical records adequately redacting confidential and information protected by HIPAA and producing this exceedingly large file, outweighs any benefit. In other words, they are a company that doesn't have to prove their case and produce all of the records to support their case, but United somehow has to comply with an impossible time frame to produce their

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administrative records.

Ultimately, we've got no dispute with one thing that was argued by Plaintiffs. And that is that if United doesn't produce documents including administrative records pursuant to 16.1, they obviously can't use at trial, information which wasn't produced pursuant to 16.1. So we don't dispute that. And, in fact, as stated in our brief, we're currently diligently working to produce first, the 500 claims that were actually appealed under the administrative procedures.

And we're prepared to start rolling productions of those documents within 30 days; and although, we don't have a good handle on the additional claims which took us from 15- to 22,000 claims, we believe we'll be able to get that full production of appealed claims, which is only about 500 or so claims done completely by January 8th. And, certainly, we ought to be entitled that time to produce those records in a reasonable timeframe, given the burdens of research necessary for us to look for, download, review, and produce these extensive files.

Again, if we don't -- anything we don't produce, it's obviously going to be excluded. But there's no basis to compel us to either produce things, which are impossible to produce within 14 days, or face a sanction of exclusion or an admission that their spreadsheets are correct.

Even if United did not produce any administrative records, which is not going to happen, it doesn't relieve plaintiffs of their

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burden of proof. And even if we produce no contrary evidence, the jury would be entitled to believe that they had not established that the reasonable value of their claims exceeded what United paid.

And there's a difference between United saying we're only going to pay the reasonable value of the claim and then disputing that versus whether they're ever going to be able to prove that United intentionally underpaid claims in the sense that United paid less than they knew was due.

It's not coincidental that there's a class action pending against these providers now, claiming that they vastly overcharged their patients for the cost of medical services, and they're one of the highest charging providers. Simply because they say this is how much we're owed in a bill, does not mean they've met their burden of proof, that that's the amount owed in a bill. That is the question for trial.

So ultimately, Judge, what we would ask for is if the Court is going to compel the production of all the administrative records, we receive an adequate time to do that, and that when we bring the appropriate motion, that TeamHealth be similarly compelled to produce all of their clinical and cost records supporting each and every claim.

Alternatively, as we intimated in our brief, this is not a problem that's unique to this case, and there are things that Courts and parties have done in order to try to relieve some of the necessary burden from producing every single one of the claims. I know that

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Plaintiffs don't want to agree to a scientific sampling, but that was done, for example, in the CityCenter project with Judge Gonzales, where you had thousands and thousands of rooms with similar defects, and they did some sort of sampling there. United also generally opposes sampling because it's not appropriate for many cases.

But certainly between this great firm we've got on the other side and the firm we have on this side, we could come up with some way that both sides could get some relief on what they claim would be an unduly burdensome production while still getting to adequately try their case on the merits. If the parties can't do that, then the Court needs to consider, under the new amendments to the rules, not just the relevance of the documents but the extensive burden and hardship. And if either side insists on the production of 100 percent of these documents, then we think it's appropriate for the Court to consider some cost-shifting measures, where the party demanding the documents is bearing the burden of the unreasonable cost of production. And we also need to talk about some more realistic discovery timeframes, which would give both sides the time they need to produce the extensive discovery, which is currently been demanded on each side.

Thank you, Your Honor.

THE COURT: Does that conclude your argument? So, Mr. Roberts, you've been aware of a lawsuit probably since April of 2019. When did the effort start for the retrieval of review and

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production of these claims files?

MR. ROBERTS: Mr. Balkenbush has been working with the client on these since this was filed. I can allow him to address that with leave of Court.

THE COURT: Because the request was made last December?

MR. BALKENBUSH: That's correct, Your Honor, and United's response to the request -- we objected. We made the exact same objection that we're making today and presenting to the Court. The attached -- the undue burden declaration of Sandra Way that we discussed extensively in our brief, and we stood on that objection that it was unduly burdensome, given the expense to produce administrative records for all 22,000 claims at issue.

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And, essentially, what happened is, for whatever reason, the plaintiffs decided to not see this issue out until now with a Motion to Compel. But our objection -- they have had our undue burden objection and undue burden declaration since 30 to 40 -- whenever the deadline was for our response -- it was 30 to 45 days after their request was served on us.

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THE COURT: Okay. And I need an explanation of why, if I grant the motion, you wouldn't be able to produce anything on a rolling basis for 30 days more.

MR. ROBERTS: Your Honor, we probably could begin producing on a rolling basis within 14 days. I think 30 days was our goal to have all of the administrative records produced of the claims

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which had been appealed based on our records. But we could begin rolling productions earlier than that, especially if the Court were to order us to immediately begin producing administrative records and files other than those which had their administrative appellate rights exhausted.

THE COURT: Okay. And my next question is kind of compound, but I assume you have decided that you think the appeals are the most important. Are there general categories then of -- because there are so many analytic companies out there now who are doing this -- using artificial intelligence -- that I don't know why it would take so much effort on behalf of the defendant to compile this information.

MR. ROBERTS: And, Your Honor, that effort --

THE COURT: Is it something you (indiscernible) Mr. Roberts?

MR. ROBERTS: That effort is something which we've asked the same question and which has -- you know, is extensively explained in the process and the four or five different searches that have to be done. I will say that based on the affidavit and the estimates, for example, if the plaintiffs agreed to withdraw the request for the EOBs and the provider explanation benefits, I think that would almost cut this in half, reduce it at least 45 minutes, maybe more, because that would eliminate --

THE COURT: Mr. -- Hang on.

MR. ROBERTS: -- separate system. But --

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THE COURT: Ms. Lundvall -- Hang on. Ms. Lundvall already said she agreed that they have the EOBs and the remittance advices.

MR. ROBERTS: Right. So that takes us from five years to two and a half years, so we're making progress. But --

THE COURT: No, that's -- I don't think you understand. That's not going to be good enough. It really isn't. And I'm going to both sides do discovery.

I know I cut you off.

MR. ROBERTS: And, Your Honor, simply because of the confidential nature of the health records, United typically does these without the use of third party vendors. And we've indicated that we could assign four employees in that department full time to pulling nothing but the records being asked for in this case. And we're prepared to do that, but more than that would simply impose an undue burden on United. That would be our contention here, Your Honor.

THE COURT: Okay. Did you have anything further?

MR. ROBERTS: The only thing I would just add is, I believe, we started pulling administrative records, at least in the claims which were appealed, as soon as the Court denied the Motion to Dismiss, and we've been working on that.

And that -- the reason that we have contended that those are probably the most important is because, according to our client, the claims that are appealed are much more likely to have correspondence indicating some narrative as to the issues in dispute

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and the reasons why the claims were denied or were paid in the way that they were.

If a claim was simply submitted and an EOB was issued for less than the amount of the claim and it was never appealed, then the file would be much less likely to contain correspondence or other relevant information that would add to the EOBs and provider explanation of benefits, which the plaintiffs already possess.

THE COURT: Thank you.

And the reply, please.

MS. LUNDVALL: A couple comments in response to the presentation done by Mr. Balkenbush and Mr. Roberts.

Number one is that you ask Mr. Balkenbush when the process then began for gathering then these administrative records for each of the claims. And quite candidly, you didn't get a response from him. You kind of got a response from Mr. Roberts. And Mr. Roberts contended that while we started on that process, limited to the appeals after you denied the Motion to Dismiss.

And so recognize that earlier they told you that there's only about 500 that they contend are subject to appeal. And so, therefore, that all they want to do is to give us 500 administrative records from over 20,000 claims that are at issue in this case. And they want another 30 days by which to do that with no explanation and no offer or no suggestion as to when the balance or the rest of these may occur. There's point number one.

Point number two is this: We have offered, on three

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separate occasions, various proposals or trying to bridge the gap between the tap dance that we get as to why they can't give us this information. We tried to suggest that they give us their own spreadsheets. We've tried to suggest that they do a comparison of the spreadsheets. We've tried to suggest that, in fact, they give us their own spreadsheets, and we will compare them against ours to determine which of the claims for which that there may be a discrepancy then into the amount that may be owed.

Each and every one of the proposals that we have put on the table in an effort to try to streamline resolution of this dispute has been rejected out of hand. And what they've done is they try to stand entirely upon this declaration of Ms. Way.

When you look at the declaration of Ms. Way, he doesn't even contend that she has tried to pull a single claim that is at issue in this case, not one. When we asked during our meet and confers as to whether or not the she had, it was acknowledged that she had not. So they don't even know, based upon the claims in the information that we have already supplied to them, which is vast and extensive -- we included that was within our motion as to how much information that we have actually supplied to them for each one of the claims that is at issue so that it narrowly defies then whatever search that they need to do from an electronic basis and each and every time that it has been rejected.

Our proposal to them as to why that they may not have to hinder the -- the EOBs, the employer Explanation of Benefits and the

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Provider Review Admittance -- was in the event that they did not contend that there was some type of a discrepancy between their records and our records, that, in fact, that they did not need to provide those. But if they did contend that, they would need to provide that information.

Moreover, the PR -- the Provider Review Admittances, those would also identify whether or not that Data iSight had actually adjudicated those claims. And Data iSight is the third party for which, that we contend, has been involved in trying to do the whitewash, so to speak, of why it is that we are being underpaid on these claims that have been submitted and the methodology in the review that has been provided. And so having an understanding as to which of these claims have been reviewed by Data iSight is an important piece to us.

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When what our offer was, is that simply in an effort that if they want to remove those issues from discrepancy, then don't turn over those to us. But if they do wish to dispute then the differential then that is owed by them, then they would have to turn that over.

So, in sum, the one last point, though, that I want to make, though, in reply is this, Your Honor. Back in February of 2020, they had asked us for what were all the clinical records that underlie -- or the medical records that underlie -- each one of those claims. And we had identified that they have absolutely no relevance to this dispute for the simple fact that United had already adjudged these claims as payable. They had already gone through their review of those clinical records, had already identified them as payable, and had already sent

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us something for which that claim was payable, thereby making all of those clinical records irrelevant.

We realized that issue with them all the way back in February and stated that objection. And it wasn't until their opposition then to this motion, did they even raise the issue with us. It has not been the subject of a meet and confer. And when, in fact, that they bring a Motion to Compel on this particular point, we're happy to respond and to give, in full, the explanation to the Court as to why that we think that, number one, they're irrelevant and do not need to be produced.

But it is not a defense to any party's discovery obligation to say, Well, you haven't done what you're supposed to do, so I shouldn't have to do what I'm supposed to do. And to the extent that that's what they're contending by trying to advance this particular argument, we suggest that it's a red herring, number one. But, number two, we welcome the opportunity then to first have a meet and confer with them on this particular point; but also if they -- if that meet and confer then doesn't resolve any of the dispute then concerning our discovery obligations, to bring those to the Court then for review.

But, in sum, we go back to the basic premise and that is this: They acknowledge that these administrative records are their bare bones discovery obligation. We've asked for those, and we've asked for those since December 9th of 2019. And we haven't gotten any of those. And so to the extent that we ask the Court order them to have

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them produced and to have those produced then within 14 days, notice of entry of an order. And if, in fact, that they are not going to produce these records, then they should be foreclosed from being able to rely upon them or the content of them in defending against the claims then in this case.

And with that we would submit, Your Honor.

THE COURT: Thank you. So define, again, for me the bare bones? Because they're focused on appeals, and then you mentioned discrepancies and the Data iSight review claims. So what is the bare bones?

MS. LUNDVALL: On page 5 of their opposition, they identify the administrative record consists of five categories of documents. That's their own identification.

And first and foremost, Your Honor, since I'm not a United representative and I'm not a United attorney, I have to, at least at this stage, rely upon what their description is of their own administrative record. And so it's those five categories of documents that we are asking for, for each of the claims that are at issue.

If they do not dispute the discrepancy that we've identified between the Explanation of Benefits and the Provider Remittance Advices statements, then they don't need to produce those. But if they do dispute those, then they must be produced. So all five categories would need to be a part of their production to us. That is what we're asking for.

THE COURT: And where does that Data iSight review come

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MS. LUNDVALL: The Data iSight review comes inin what is referred to by the parties as the Provider Remittance Advices, the PRAs.

THE COURT: I see. Okay.

MS. LUNDVALL: That's what -- where we understand the Data iSight review would be revealed in those documents. At least that's our current understanding based upon the information that we have.

THE COURT: All right. So Mr. Roberts or Mr. Balkenbush, (indiscernible) extensive questioning. I'm going to give you a chance to respond if you'd like to.

MR. ROBERTS: I would, Your Honor. I just heard something a little different than we don't have to produce the EOBs and the provider Explanation of Benefits, A and B category documents on page 5. Instead, it's we only have to produce them if we disagree with their number on their spreadsheets. I think we've established that they were given these documents. They have to be in their possession. They have to have already pulled them to create the spreadsheet.

Rather than put United through spending hundreds of thousands of dollars to try to pull the same document they already have, there should be no order compelling us to produce documents we already have. Rather, we should be able to serve discovery on them to get documents that have already been pulled and that the

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cost of pulling those documents was substantially easier and less burdensome for them due to the way provider records are kept as opposed to insurer records.

THE COURT: Thank you.

And, Ms. Lundvall, it's your motion. You get the last word.

MS. LUNDVALL: Thank you, Your Honor.

What Mr. Roberts articulates and underscores is the fact that, once again, that they want to dispute or to contend that there is a discrepancy in the amount owed, but they don't want to offer the documents that they have by which to prove that. So it goes back to the basic premise of our motion. In the event that you wish to advance a defense, then you got to produce the documents that provide that defense or else that you should be foreclosed then from offering a defense. Plain, pure, and simple.

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THE COURT: Okay. Thank you both.

This is the Plaintiff's Motion to Compel Production of Files to Require Retrieval, Review, and Production. It ends up -- it turns out that it will be granted. The categories on page 5 of the opposition with regard to administrative records, the defendant to provide, based upon those five categories, (indiscernible) only have to provide if there's a discrepancy between the EOB and the admittance. And we'll have a -- the Plaintiff will prepare the order.

But let me also reiterate to you guys -- I'm not going to consider the Motion in Limine at this point because it seems more right to me, after we do the production, to consider negative

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inferences for things that aren't produced, rather than considering Motions in Limine at this point. I don't want to -- that part of the motion is denied without prejudice.

So the motion is to be granted then with regard to the five categories on page 5 of the opposition with the exception of discrepancies between the EOB and the remittance.

We'll do a status check in about three weeks to see how the defendant's coming along on that.

MR. ROBERTS: For clarification, Your Honor, are you ordering us to produce all five categories for all 22,000 claims within fourteen days as requested or just to begin those rolling productions and make our best efforts moving forward?

THE COURT: The Motion to Compel is granted with a status check on your performance in three weeks. And in three weeks you should be able to tell me exactly what you're going to be able to do and when.

MR. ROBERTS: Thank you, Your Honor.

THE COURT: All right. Nicole, may I have a three-week status?

THE CLERKk: That date will be September 30th at 9:30.

THE COURT: September 30 at 9:30. If you think you guys are going to need longer than a stacked calendar, we can give you a special setting. Do you think you will need a special setting? Because I hate to chop up these hearings like I had to do today.

MS. LUNDVALL: I hope, Your Honor, that we're going to

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come to a status conference, and Mr. Roberts will be able to report that we have them all.

THE COURT: Good enough. If you find that you need more time --

Go ahead, please.

MR. ROBERTS: Your Honor, to the extent the Court is going to want some time to discuss everything that we've done and the progress we've made and get into the specifics of what we're doing, it may take a half an hour or more. And I would not be opposed to a 1:30 setting, but I don't think it's going to be nearly as long as our last two hearings before you have been.

THE COURT: All right. Any objection to a 1:30 hearing on that date?

MS. LUNDVALL: No, Your Honor. I'm reading between the lines, here.

THE COURT: Okay. So we will reconvene on this September 30th at 1:30.

And we still have one more motion to resolve today, which was the Defendant's Motion for Product Order -- a Protective Order (indiscernible) filed on the 13th of August with regard to e-discovery and (indiscernible) custodians.

And so let me hear from you, Mr. Roberts.

MR. ROBERTS: Actually, Your Honor, I'm going to defer to one of my colleagues to argue this, thinking you may have heard enough from me already.

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Is that going to be you or (indiscernible) Colby?

MR. BALKENBUSH: That will be.

THE COURT: And I never tire of this, you guys, so don't ever worry about that.

All right. So, Mr. Balkenbush, go ahead, please.

MR. BALKENBUSH: Thank you, Your Honor.

So this is a motion that we've brought to accomplish two purposes: One is to deal with what we view as a number of very broad discovery requests seeking internal United emails from the plaintiffs. And, two, is to head off numerous additional discovery disputes that we see coming down the road in regard to the issue of both side's productions of their internal emails related to the claims at issue.

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So what we've proposed is essentially a two-step process. One, the parties identify the custodians that they want emails from, from the other side. And then, two, that each party identify the search terms and the dates or date ranges that they'd like those search terms applied to for each of the custodians at issue.

And we believe this is appropriate, Your Honor, again, like I said, for a couple reasons. If you look at some of the examples of the Plaintiff's Request for Production that we've cited to and that we've also attached as Exhibit 3 on our motion -- or I'll just refer to a couple of them.

One is Request for Production 26. This is a request that asks for United to produce any and all documents and/or communications

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regarding the provider charges and/or reimbursement rates that other insurers and/or payors have paid for emergency medicine services in Nevada to either or both participating or nonparticipating providers from January 1, 2016, to the present, including documents and/or communications containing any such data or information produced in a blind or redacted form and/or aggregated or summarized form.

And so this is seeking, for example, Your Honor, not only communications between the parties, but this seeks communications between other payors and other out-of-network providers other than the plaintiffs.

And so in response to this, we objected it was overbroad and vague. And instead of just standing on our objection, and our objection to other requests they have sent to us, we proposed this protocol where it said, Look, identify what custodians of United you want emails from, identify the search terms that you'd applied to their inboxes, and we'll run those. And we'd like to do the same for Fremont as well, propose the custodians we want emails from and the search terms. And they've just completely objected.

And the basis for the objection, as best we can tell, is just an argument that, Well, this motion and the email protocol is simply a delay tactic, that this isn't brought in good faith, that we're just trying to buy more time and delay production of emails.

But if you actually look at the protocol we proposed, attached as Exhibit 1 of our motion, it has dates in it that show this is not a delay tactic. We had proposed in that protocol that both parties

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name the custodians that they would like emails from by July 24th, that the parties exchange search terms by August 14th, that any and all objections, whether it be the custodians or to search terms, be submitted no later than August 28th, and that both parties produce emails by November 15th, 2020, of this year.

So if you just look at the dates that we proposed in the protocol, it shows that this isn't a delay tactic. It's an attempt to streamline discovery and avoid numerous motions and disputes over what custodians our party pulled emails from and what search terms the party used and applied to that custodian's email inbox.

Now, I think that we spent a little time in our motion, I'll spend a little time now -- I think it's important (indiscernible) protocols like this are not unusual or unheard of. They're very common in complex commercial litigation like we have here. We cite extensively to The Sedona Conference Principles in our motion. And what those principles say is that it's a best practice for parties to agree on an ESI protocol for production of emails and other electronic information, especially in complex litigation where numerous claims are at issue.

And these principles that are set forth in The Sedona Conference -- these are principles that are relied upon by the Federal Rule Subcommittee when it was modifying the federal rules and coming up with guidelines for the production of electronically stored information. So these are highly respected by both the federal bar and in state courts around the country. And the protocol that we've

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proposed is consistent with those principles and with federal case law interpreting those principles and putting them in place.

We cite to a couple cases in our motion where courts have ordered the parties to meet and confer and agree on an ESI protocol and essentially threatened to enter one if the parties would not agree on custodians and search terms and date ranges, especially when there's a large amount of information at issue. And those were the *Romero v. Allstate Insurance* case, a 2010 case out of the Eastern District of Pennsylvania and a *John B. v. Goetz*, a 2010 case out of the Middle District of Tennessee Federal Court. All of those cases discuss The Sedona Conference Principles and that protocols like the one we've proposed are appropriate.

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We also attached some sample protocols as an exhibit to motion from the Northern District of California and the Southern District of New York. Both districts that are familiar with complex commercial litigation involving thousands and thousands of claims that we have here. And, again, the protocol that we've proposed is consistent with the model protocols that are put forward in those courts.

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Now, another objection that the plaintiffs have raised is -- there's been some specific objections to the protocol. So, you know, one objection is, Well, you know, we've only -- United's only asked for five custodians and that's unfairly limited. There should be more custodians (indiscernible) emails (indiscernible). Well, we based that proposal based on -- not to (indiscernible) limited and make it

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one-sided -- but based on the number of witnesses that the plaintiffs have identified in their disclosers.

They've identified five in health witnesses in their disclosers and United has identified four. And so rather than go four, which would have been one-sided on our side, we went with -- we went with five so they could name an additional United custodian if they -- if we named someone else on disclosers in the future or if they have someone else in mind. And if the Court believes that more than five custodians is appropriate, then the Court would be free to order the parties to collect emails from more than five custodians.

So the plaintiffs have just simply refused to negotiate on this issue. United is not necessarily opposed to agreeing to a higher number of custodians if there's a basis for that. Five was just what we based on, based on their disclosers.

They've also objected, just generally, to the use of search terms and gathering emails and electronic documents. But, again, if you look at The Sedona Conference Principles, it lists the use of key words and search terms as a best practice in gathering emails and other electronic documents. So that's consistent with what Courts around the country have found to be appropriate.

And, also, when you consider how broad some of these Requests for Production are that they've served, it's the plaintiffs who are in the best position to tell us exactly what they're looking for and narrow the scope of these requests, which is exactly what this protocol does. It says, Look, if you want communications with --

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between United and other out-of-network providers other than the plaintiffs regarding rates of reimbursement and claims that have been challenged, then name the other out-of-network providers that these -- you believe there'd be emails between United -- between them and United. Name the, you know, specific types of claim challenges -- give us some key words we can use to search our emails to find what you want.

And their response has just been essentially, Well, it's your burden, you should go find this. And our objection is just, we don't know where to look. We need clarification, and that's why we've proposed this protocol.

And the last issue they raise is the privilege that they object to some of the provisions regarding -- each side producing a privilege log of electronically stored information as part of the protocol. And they argue that in the protocol that's currently written, there would be some kind of presumption that anything put in a privilege log is privilege. If you look at the protocol, Your Honor, that's not what it says.

What it says is that -- simply that the parties are entitled to do searches using the names of attorneys and that they should gather the emails from those searches that hit on emails where attorney's names are in them, and produce a log of all those emails to the other side, and that log is supposed to include certain metadata that's going to allow each side to assess whether or not this information is likely privilege or not privilege. And then the other side can request

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additional information if they believe that, you know, improper privilege claim has been made on a particular email or document. So it's not inconsistent with Rule 26 and the requirements that are set forth there for claims privilege over electronic emails.

And, I guess, just in closing, Your Honor, I think it's just important to consider what the impact will be if the Court denies this motion. So if the Court denies this motion, both sides are still going to do the same thing. They're going to identify custodians that they think would have responsive emails, they're going to pull emails from those custodian's inboxes, and then due to the number of emails at issue, both sides are going to just select their own search terms and apply those to those inboxes.

The emails are going to be produced, and then, inevitably, both sides are going to challenge the other with the search terms the other side chose. They're going to say that, you know, United chose search terms that were unduly restrictive or didn't use search terms that it should have used. And, frankly, we're going to say the same thing probably about their production, if they choose search terms. We're going to argue that they probably didn't pull them from the custodians they should have and that they should've used other search terms that we would've requested if we had the opportunity.

And so this Court's going to be faced with multiple motions challenging each side's production of emails. And what we've proposed is a way to avoid all that. Each side proposes search terms and custodians that they want to the other side and that way

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everything is transparent. And if there does need to be motion work, it can be taken care of up front in the very near future rather than down the line after the parties review, you know, rolling production of emails and decide that they don't think the other side's production was sufficient.

Thank you, Your Honor.

THE COURT: Thank you.

And the opposition, please.

MS. LUNDVALL: Yes, Your Honor.

Number one, I think I'd like to express my thanks to the Court for granting our Motion for Order Shortening Time to have this resolved -- this issue resolved as quickly as possible.

I think it's important to point out the context in which that this email protocol -- and I underscore email protocol -- because this is not an ESI protocol. You know, all The Sedona Conferences, they deal with ESI protocols and things of that nature. But the protocol that is being propounded by United is limited to email.

And this all started when we served our request for production, once again, back in December of 2019, and there was a dispute over two specific responses to requests for production, RFP 13 and RFP 27. Both of those RFPs are set forth in our opposition paper.

RFP 13 says, Give us the email communication from specific individuals that I -- that were involved in a specific meeting with the healthcare provider representatives in December of 2017. We

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identified, with specificity, who at United was involved in this meeting. They would have been the very obvious custodians plus any folks that would have been up their chain of command or down their chain of command. And they objected to that.

And, similarly, we had asked them, under our Request for Production 27, to give us any of the email communications that went between the internal email communications and back and forth between United and Fremont -- that discussed then any of the requests then by the plaintiffs or out-of-network provider costs as of July of 2017. So two very specific dates. (Indiscernible) to that as well.

Now, beginning -- because this issue has been the subject of three separate meet and confers then between Ms. Gallagher and Ms. Perach, as well as Mr. Balkenbush at minimum on behalf of United. And there have been varying proposals, but one point that was fairly well made, though, by Mr. Balkenbush, is that they had already gathered responsive documents to those two requests and that there were about a hundred thousands emails that were at issue.

And at first, they said, yeah, they were reviewing those to determine which of them were going to be responsive to our request. Then they backtracked on that, and they started suggesting that, maybe they don't have to give it all to us, and maybe then we should come up with this email protocol instead. And they suggested that they were not going to turn over any these emails that were already in counsel's possession for which they had already done their own

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searches, for which they had already gathered as being responsive to these requests until the parties agreed upon this email protocol. And if the parties couldn't agree upon this email protocol, until the Court had the opportunity for adjudication.

So that's how this dispute then came to the Court. Not because there were these broadened discussions about there was going to be a lot of email out there -- no, it was two very specific, very narrow requests for which they had already pulled the documents. And so let's take a look at them and at what their protocol offers and what, in fact, then that why it is that we have objection to their protocol.

First, what they're suggesting to the Court is this: That they shouldn't have to provide responses to our RFPs, particularly 13 and 27 at all; only that they should have to comply with this email protocol instead. And they cite then the two rules that allow them to make this request to the Court. So first and foremost, you go to the rules to see whether or not that they've made the appropriate showing to get the relief that they are asking for from the Court.

The first rule that they cite to is NRCP 26(b)(2)(C)(i). And they argue to you that you must limit their obligations to produce discovery if, in fact, that the responses can be obtained from some other source that is more convenient, less burdensome, or less expensive. That's what 26(b)(2)(C)(i) requires.

So did they make such a showing? No, they didn't even try. Moreover, they couldn't because what we're looking for is the

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internal emails. What was the chatter back and forth among the United executives, the United representatives that were involved in this very narrow meeting on these very narrow issues? That was what we were interested in. There's no alternative source other than United that has this information.

So if, in fact, they have responsive emails -- which we know that they do because they've already identified that they've already gathered them, but they haven't given us a single one of them, then they can't point to any alternative source then for these internal emails. So they can't rely upon that rule then as a foundation for their requests that the Court must order the parties then to engage in this email protocol.

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Number two is that they cite to Rule 26 (b)(2)(B), saying that they should be permitted a protective order because of some type of undue burden or cost. Both their motion as well as their reply is entirely silent on the issue of emails and any undue burden or cost for the review of the emails that are already in possession of counsel. They're entirely silent on that particular point. So in other words, they -- for the very two rules that they cite, they haven't made either one of the showings necessary to invoke the protection of those rules. And quite candidly, that should be the end of hunt.

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But let me point, though, to the issues that we (indiscernible) with their email protocol. And one of the points that I want to try to underscore once again is -- this is an ESI protocol that The Sedona Conferences -- that frequently look at. This is an email

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protocol and an email protocol only. (Indiscernible) the number of custodians that are found within this and who chooses those custodians.

So what they're suggesting to us is that that are nine different defendants and you only get to choose five custodians. And we're not going to tell you who the folks are that were involved in this internal chatter back and forth on these meetings that we have when we were trying to pressure then the healthcare providers into accepting these written contracts then that demanded a discount then on what they were billing. And for which at this very meeting when asked why it is that they were basically turning the economic screws then to the healthcare providers, the response was Because we can.

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But what we're trying to do is to figure out who and what they said as a result, either going into that meeting or as a result of it. And what were the other internal emails by which that they had exchanged back and forth among themselves when other conversations were being held as of July of 2017 concerning any of the relationship then between United and the healthcare providers.

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But what they want to do, though, is to say, In addition, to you only get five, we're not going to tell you what was involved in these conversations. We asked interrogatories or them to identify who the folks that were involved in setting the rates of payment, who were the folks that were involved in making determinations about Data iSight and which of these claim were going to be adjudicated by Data iSight versus, you know, internally then within United. They

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say, we're not going to tell you that. They won't identify the folks that realistically that we could say that may be a custodian. What the (indiscernible) want us to do is they want to gather, they built this wall by refusing to answer any of our interrogatories around the identity of the health care representatives. And what they're asking us to do is basically to shoot an arrow over that wall and hope it's going to go land on somebody that may have many some relevant information. And then what they're saying is they're -- we're only going to give you five arrows in your quiver by which to do that. And if you land on the right people, great; if you don't, too bad so sad. And we, United, have no obligation to look for those emails. Even though that they're already in the possession of counsel at this point in time.

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The next thing is, is that they want the search term protocol then not to be a function -- that they want us to come up with the search terms for which that they're obligated then by which to run. Even though we don't know what it is or the language that they've used or the terms they used or the programs that they labelled or identification of these programs -- nothing of that nature. We're still shooting in the dark as to internally what kind of a project that they utilized, and what they labelled the project, and what the results of this particular project may have been.

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But I think one thing is important to recognize and that is United's wandered down this path before. As we set out in our First Amended Complaint, this isn't the first time that United has been

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tagged with intentionally underbilling healthcare providers. They were investigated by the Attorney General in the state of New York, and they were also subject to a class action claim for which resulted in, like, $450 million of settlement claims. And don't you think that they may have learned a few things as to what terms to include and what terms not to include so as to ensure that whatever internal emails they may not (indiscernible). So from this perspective, what they're trying to do is once again make us guess at what terms they may have used to define these programs.

The last issue for which that we had major issue with the proposed protocol was this: If they contend that there should be a presumptive privilege to the entire family of emails for which that an attorney may have touched. So in other words if you got a long string of emails but the last person on that string that touched it -- that is an attorney, then the entire string is presumptively privileged.

And, second, what they want to do so to say that, Oh, by the way, we're not going to give you a privilege log, we're going to give you a summary privilege log. We're going to summarize the privilege, but we're not going to give you all of the terms that your (indiscernible) would require. So what they're trying to do is to say, All right, when it comes to attorney privilege, we're not going to give you enough of the tools for which that you can look at and evaluate whether or not our application of the privilege has been properly done or not. And, moreover, we're not going to even give it to you until 90 days after we give you the documents. Well, guess what?

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We're not going to give you the documents until at best, 45 days before the disclose of discovery, and we're not going to give you the log until 90 days thereafter. So that means that that discovery is already closed, and, therefore, we can't go back then and to try to capture any of these documents to use during depositions.

So what they've done is to try to create a situation and try to offer a proposal that, in grand terms, sounds reasonable because they sometimes refer to it as an ESI protocol and not limited to an email protocol. But what they've done is they've put tasks into that protocol to shift the burden of their production to us to shoot in the dark and hope that we hit something before they have to produce it to us. Rather than for us to give a narrow request like we did in our request for production 13 and 27 and for them to give us the documents that are responsive to one thousand three hundred twenty-seven.

So, therefore, Your Honor, we would ask the Court then to -- not to embrace the protocol that they have proffered to the Court. Number one, they haven't made a showing for it. Number two, the protocol itself then, which is all of their discovery obligations, then to the healthcare providers. So we would ask the Court then to deny their motion. Thank you.

THE COURT: Thank you.

And the reply, please.

MR. BALKENBUSH: Thank you, Your Honor.

There are a few things that I want to respond to that

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Ms. Lundvall just raised. The first is -- let's just address Request for Production 13 and 27. This argument that United have a hundred thousand responsive emails that are just holding back, that are ready to be produced and that we're just using this to delay that.

There's, I think, a little bit of misconception about the difference between emails that have been sent by a particular custodian and emails that are responsive to a discovery request. So if United pulls emails from a particular custodian for a particular date range, and (indiscernible) -- let's say it's 10,000 emails for that date range -- all of those 10,000 emails from that custodian are not responsive to the plaintiff's discovery request. The custodian sends emails about all kinds of things that have no relation to the claims at issue in this suit. And so there's two ways to produce responsive emails from a custodian's inbox like that. We can apply our own search terms to it and produce -- using the terms we appropriate. Or they can give us the search terms they believe are appropriate, and we avoid the dispute down the road where they take issue with those terms we choose.

So we're not holding back, you know, hundreds of thousands of responsive emails. What we're trying to do is, before we apply our own search terms and make a production, see if we can work out an agreement that will avoid disputes down the road. So I just wanted to make that clear to the Court -- that we're not just sitting on emails ready to produce that we know are responsive.

And, second, I wanted to raise the -- she mentioned that this

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idea that we're -- this is all about United wanting to delay and not produce emails, but I think -- before this hearing, I spent some time -- because I wanted to make sure before I made this statement, that it's accurate -- but the healthcare providers in this case have themselves not produced a single internal email. None.

So if -- I mean, the idea that this is all about United is just inaccurate. And if the motion is denied and the protocol is not entered, certainly this Court can expect a Motion to Compel from United trying to force the providers to produce their own internal email correspondence. So, surely, internal emails have not been produced for either side.

So we have an interest in this protocol, not just in avoiding disputes on our own production, but in ensuring that the healthcare providers make an adequate production themselves and themselves are not choosing search terms and custodians that are going to unfairly shield their information that we believe we're entitled to, to prove that the bill charges were excessive and inflated and that the amounts paid by United were appropriate.

Second, Ms. Lundvall raised the issue of Rule 26 and, in particular, argued at length that United has not made a showing that the information -- these emails are not reasonably accessible. But if the Court will look at Rule 26, you'll notice the section that she didn't reference was Rule 26(c)(1)(C), which states that the Court may enter a protective order and that -- and list reasons one may issue. One is that an order may issued prescribing a discovery method other than

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the one selected by the parties seeking discovery.

So Rule 26(c) expressly gives this Court the authority -- and The Sedona Principles that I mentioned earlier support this -- it gives the Court the authority to modify how discovery is conducted in this case and to ensure that it's done in a fair and transparent and streamlined manner. So Rule 26 absolutely provides authority for this Court to enter the protocol that we've proposed.

Next -- and Ms. Lundvall made the argument that what this is, is it's not an ESI protocol. And, I think -- although she didn't state this -- I think where this argument is coming from, Your Honor, is if you look at their briefing, they never address our extensive argument discussion of The Sedona Principles. And they know that if you look at The Sedona Principles and the cases interpreting those, that those principles strongly support entering the protocol we've proposed, or at least one similar to it, maybe with some minor modifications if there's some excuse about custodians or timelines and when things should be produced.

And so to get around The Sedona Principles and the case law supporting those, they tried to argue that this is not an ESI protocol. ESI is electronically stored information. Emails are ESI. So this is an ESI protocol. It clearly falls under The Sedona Principles and they support it being entered.

And then, you know, a couple other points -- Ms. Lundvall brought up this issue of, you know, prior lawsuits against United, investigations by attorney generals and saying beside the fact that --

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THE COURT: I thought that was in the complaint, but I'm not considering that today.

MR. BALKENBUSH: Fair enough, Your Honor. The only point I wanted to make is that obviously we dispute all that, but let's -- even assuming that United is such a bad actor, they should want to select the search terms we're using. If we're such a bad actor, they should want to be the ones to, you know, selecting the custodians and search terms. And we want to be the ones selecting the search terms and custodians that they used. So both parties have very strong views of this case and each other's roles. And that's why we think having the parties selected search terms and custodians that they want from the other side, makes sense.

And then, I guess, just finally, Your Honor, this issue of the privilege log -- presumptive privilege that Ms. Lundvall raised -- you know, and the timeline for that -- we put a timeline in there for production of the privilege log. We're fine with shortening that, and we would have been happy to shorten that if the plaintiffs had negotiated the protocol with us. They just refused to engage at all on it. They refused to talk -- you know -- say, Well, what about 30 days or 15 days or 20 days? They just didn't engage so we put in there what we thought was appropriate. But if the Court believes a shortened time for production of the privilege log for ESI is appropriate, we would be fine with that.

That's all I have, Your Honor, thank you.

THE COURT: Thank you, both.

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This is the Defendant's Motion for Protective Order with regard to e-discovery and to compel a protocol for the retrieval and production of email. Motion's going to be denied for the following reasons:

First, what I find is that it is the defendant's effort to avoid a Motion to Compel on those discovery requests one thousand three hundred seventeen. It really just is an email protocol and not an ESI protocol. It's -- it would unreasonably hamper the Plaintiff from obtaining information with regard to identity of custodians and information that, I believe, will be discoverable. But -- so I'm going to deny the motion, but I am going to order both parties to meet and confer with regard to a more comprehensive electronic discovery protocol and to report back at our continued hearing on the 30th.

It's not fair for the Plaintiff to determine those search terms and custodians before it has complete access to determine how to prioritize (indiscernible). The Plaintiff has the burden of proof here, and so I find that this was simply an effort to -- an unreasonable push to cutting off the Plaintiff from doing a meaningful discovery.

So, Ms. Lundvall, prepare the order. Mr. Balkenbush, I assume you wish to approve the form with that before it's submitted?

MR. BALKENBUSH: Yes, thank you, Your Honor.

MS. LUNDVALL: Thank you, Your Honor.

THE COURT: And you're both willing to negotiate in good faith with regard to a comprehensive ESI protocol?

MS. LUNDVALL: We are, Your Honor. But what I wanted to

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try --

THE COURT: (Indiscernible).

MS. LUNDVALL: -- to confer is that the parties, both sides, still have a duty and an obligation to move forward with their discovery obligations, and they can't just sit back on their hands then and wait until there's been some type of a protocol that's been negotiated before having to tender then their responsive documents.

THE COURT: That is correct, Ms. Lundvall.

MS. LUNDVALL: Thank you, Your Honor.

THE COURT: And I do -- and then if you guys have Motions to Compel on either side, because I heard it from both sides, I would consider those also on the 30th.

MS. LUNDVALL: Thank you, Your Honor.

THE COURT: We might as well just tackle this.

MS. LUNDVALL: We appreciate that very much, Your Honor.

THE COURT: All right. So does -- do either of you have any questions or anything further to say before we adjourn for today? No?

MS. LUNDVALL: Not today, Your Honor.

THE COURT: Until I see you next, everybody stay safe and stay healthy.

MR. ROBERTS: Not from United. Thank you for all your time, Your Honor. We appreciate your indulgence and how much time you give us.

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MS. LUNDVALL: Thank you very much.

MR. BALKENBUSH: Thank you, Your Honor.

[Proceedings adjourned at 3:26 p.m.]

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

Shannon Day
Independent Transcriber

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D. Lee Roberts, Jr., Esq.
Nevada Bar No. 8877
lroberts@wwhgd.com
Colby L. Balkenbush, Esq.
Nevada Bar No. 13066
cbalkenbush@wwhgd.com
Brittany M. Llewellyn, Esq.
Nevada Bar No. 13527
bllewellyn@wwhgd.com
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Attorneys for Defendants

ENTERED kl

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

Defendants.

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

HEARING REQUESTED

DEFENDANTS' MOTION TO COMPEL PRODUCTION OF CLINICAL DOCUMENTS FOR THE AT-ISSUE CLAIMS AND DEFENSES AND TO COMPEL PLAINTIFFS TO SUPPLEMENT THEIR NRCP 16.1 INITIAL DISCLOSURES ON AN ORDER SHORTENING TIME

Defendants UnitedHealth Group, Inc.; UnitedHealthcare Insurance Company; United HealthCare Services, Inc.; UMR, Inc.; Oxford Health Plans LLC (incorrectly named as "Oxford Health Plans, Inc."); Sierra Health and Life Insurance Company, Inc.; Sierra Health-Care Options, Inc. and Health Plan of Nevada, Inc. (collectively, "United" or "Defendants"), hereby move to compel Plaintiffs' responses to certain of Defendants' document requests and to compel Plaintiffs to supplement their NRCP 16.1 Initial Disclosures. As explained in the following Memorandum of Points and Authorities, the Declaration of Colby L. Balkenbush, the exhibits attached thereto, the pleadings and papers on file herein, and any argument presented at the time of hearing on this matter, this motion should be granted.

Dated this 18th day of September, 2020.

/s/ Colby L. Balkenbush

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Brittany M. Llewellyn, Esq.
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Attorneys for Defendants

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DECLARATION OF COLBY L. BALKENBUSH, ESQ. IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL

1. I am an attorney licensed to practice law in the State of Nevada, an attorney at Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, counsel for Defendants in the above-captioned matter.

2. This Declaration is submitted in support of Defendants' Motion to Compel Production of Clinical Records for At-Issue Claims and Defenses and to Compel Plaintiffs to Supplement Their NRCP 16.1 Initial Disclosures. I have personal knowledge of the matters set forth herein and, unless otherwise stated, am competent to testify to the same if called upon to do so.

3. On June 28, 2019, Defendants served their first set of written discovery on Plaintiffs, inclusive of Requests for Production of Documents. **Exhibit 1.**

4. On July 29, 2019, Fremont responded to Defendants' First Set of Requests for Production of Documents. **Exhibit 2.**

5. In response to Defendants' Request for Production No. 6 ("Request No. 6") seeking discovery of Clinical Records,[1] Plaintiffs produced only an Excel spreadsheet stamped FESM000344 (the "Claims Spreadsheet") and a litany of boilerplate objections. **Exhibit 2.** The Claims Spreadsheet, however, merely summarizes the claims Plaintiffs contend are at issue and includes very basic data points, such as (1) the amount billed by Plaintiffs, (2) the amount of plan benefits paid, (3) the patient name, (4) the date of service, and (5) CPT codes[2] to describe the type of services Plaintiffs allegedly rendered to participants of Defendant-administered health plans.

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[1] As used in this Motion, the term "Clinical Records" is intended to be consistent with the definition of "health care records" in NRS 629.021 to mean Plaintiffs' provider or facility records, including, but not limited to, medical charts, patient medical history, patient files, medical records, providers' notes, treatment plans, assessments, diagnoses, pharmacy and medication records, testing and laboratory records and results, radiology images and reports, and providers' orders, and records of all procedures, treatments, and services rendered related to a specific claim. This definition also encompasses electronic medical and health records.

[2] The Current Procedural Terminology ("CPT") code set is a medical code set maintained by the American Medical Association through the CPT Editorial Panel.

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