

Case Nos. 85525 & 85656

In the Supreme Court of Nevada

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

Appellants,

vs.

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

Respondents.

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Case No. 85525

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

Petitioners,

vs.

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

Respondents,

vs.

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

Real Parties in Interest.

Case No. 85656

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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.

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I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, at Las Vegas, Nevada, addressed as follows:

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1 Nevada, but national market data on an aggregate level and also on
2 a claim-by-claim level.

3 That was never requested in any requests for production
4 that plaintiffs submitted, and it was never briefed by the Court
5 except in a footnote in their Motion to Compel and the Court never
6 granted that.

7 And so we view that as an overreach. And also I think the
8 Court should be aware that if that stays in the order, we've spoken
9 with our client, we believe that would be extremely difficult to
10 produce, likely involve millions and millions of lines of claims data if
11 we're talking about at a national level claim-by-claim data for all 50
12 states. And I think that would also impact our ability to meet the
13 other deadlines that the Court set in the October 22nd status check.
14 So we were very concerned when we saw that in the order.

15 Certainly if the plaintiffs want to bring a Motion to Compel
16 or serve a Request for Production on that specific issue of national
17 claim-by-claim market data, they have the right to do that and we
18 can brief that.

19 But that was never addressed at the hearing. That was
20 never the subject of a Request for Production. All of their requests
21 on Nevada aggregate and claim-by-claim market data, and that's
22 what we've committed to produce as the Court's ordered us to
23 produce. So we would request that that be removed from the order.

24 And then finally, Your Honor, there's a finding in their
25 order that the market data for reimbursements pursuant to Medicare

1 and Medicaid not be included in the market data that United
2 produces. We agree with that finding, but they added a statement in
3 there that says that reimbursements pursuant to Medicare and
4 Medicaid are uniformly lower than commercial rates of
5 reimbursement.

6 There was some discussion between the Court and
7 Ms. Gallagher at the hearing on that topic. But there was never any
8 evidence presented by either side that, just as a general matter,
9 Medicare and Medicaid reimbursement rates are uniformly lower
10 than commercial reimbursement rates. And so we just felt that that
11 should not be in the order, since there was never -- that was never
12 fully briefed. There would need to be significant evidence
13 introduced to come to a finding like that. So we wanted that
14 particular finding removed.

15 We agree that we will not produce the Medicare and
16 Medicaid market data when we produce all of our market data as the
17 Court ordered. We just don't want that statement in there.

18 So those were the primary objections, Your Honor, we
19 had. If you have any questions, I'll be happy to address those.

20 THE COURT: And the response, please.

21 MS. GALLAGHER: Thank you, Your Honor.

22 So with respect to the first point that Mr. Balkenbush
23 raised, which was a three-part production schedule -- that's simply a
24 manufactured timeline from the last hearing.

25 Your Honor did mention last day of October, but then

1 realized that United has promised certain data by October 26th. And
2 so this three-part production schedule is not something that actually
3 happened at the last hearing. We presented United with where we
4 think the Court stated that in the transcript, and I can point
5 Your Honor to page 27.

6 You stated that, quote, October 26, rather than the last day
7 of October, with respect to that reimbursement, and market data.

8 And so I think it is disingenuous to now try and amend the
9 schedule. Your Honor was quite clear that you ordered the schedule
10 set forth in our prior status report to the Court, with the exception of
11 two dates in November. But other than that, everything was on the
12 schedule we presented and the market and reimbursement data by
13 October 26th. It is quite evident to us that United is trying to avoid
14 any additional issues because, as the Court knows, they are having
15 difficulty meeting the Court's schedule. They are currently in
16 violation of prior deadlines that the Court ordered, both in
17 connection with the September 27th order, as well as the ones that
18 we have pending before you in the proposed format.

19 If you'll recall, Your Honor asked for a space for the data
20 matching protocol, but otherwise the rest of that order tracked what
21 was discussed at the status check, Your Honor.

22 So that's with respect to the first point. There is not a
23 three-part schedule. And so we would ask that the Court enter it as
24 we had proposed.

25 With respect to the second point regarding national

1 market data, United is incorrect. We did ask for that. That does fall
2 within several of our requests for production. We briefed it. We
3 discussed it at a hearing. Your Honor overruled specifically the
4 objection because, as we indicated, our first amended complaint
5 does have allegations relating to national market data. And our
6 allegation in connection with the Nevada civil RICO allegations that
7 Data iSight is using terminology of geographic data and saying that
8 it is specific to a geography. But in reality, our allegations are such
9 that it is just national market data.

10 So we placed that at issue. Your Honor did consider it;
11 Your Honor did order it. In fact, the September 27th order that has
12 already been entered reflects the national data. And so what I'm
13 seeing is basically United's attempt for reconsideration of the point
14 through an objection to the form of the content of the order.

15 But with respect to the proposed order stemming from the
16 October 22nd status check, it was already ordered by Your Honor at
17 that point for national level market and reimbursement data.

18 So to now try and strike that language I think is not an
19 accurate reflection of the briefing and the consideration that
20 Your Honor gave to the plaintiff's motion to compel at that point. So
21 we would ask that you decline to adopt United's presentation on that
22 particular point.

23 With respect to the -- the Medicare and Medicaid
24 information that's contained in the proposed order, Your Honor did
25 ask specifically whether or not that data is lower. The consensus is

1 [indiscernible]. I don't hear from Mr. Balkenbush any argument to
2 the contrary that Medicare -- managed Medicare or Medicaid rates
3 would be in excess of commercial pair rates. I think that is telling.

4 With respect to why they are -- and why they're asking for
5 this court to strike that in the proposed order. I think you considered
6 it. It was our understanding that it was part of your decision to
7 exclude that because they were trying to inject data that just is not
8 relevant because it's noncommercial payer. So we think that as
9 proposed it is reflective.

10 Nevertheless, Your Honor will see in there that there is the
11 indication that you said you will not make admissibility
12 determinations at this point in the litigation and that too is reflected
13 in the proposed order. So we feel that it is representative of what
14 the Court considered at that time, and we would ask that the Court
15 enter it as is.

16 And that sort of segues into what has happened with
17 respect to the data collection but before -- or the data matching.

18 But before I go into that, I just want to give Your Honor an
19 opportunity, if you have any questions of me on those points that
20 were raised.

21 THE COURT: I don't. Thank you.

22 MS. GALLAGHER: So if I could take up then what has
23 happened since the October 22nd status check. Your Honor had
24 asked for us to meet and confer the following day, which had already
25 been in process and then report back to the Court the following

1 Monday. So you have the benefit of both of those status reports.

2 The unfortunate part for us is that we went into the
3 October 23rd meet and confer and leaving disappointed. We've
4 had -- as you know, we've had a February 10th, 2020, proposal
5 before United for all of these months with respect to data matching
6 of the at-issue claims.

7 We expected something reasonable in return. And what
8 we got is requested in United's status report that they filed late on
9 Monday.

10 One of the interesting things during the call is that they
11 were very specific with us in terms of what they were permitted to
12 talk about, what they were permitted to answer, and oftentimes
13 weren't able to answer, directly, questions that we raised in that
14 course of discussion.

15 So just giving you a little bit of flavor that continues from
16 our earlier times and hearings and status checks that it's sort of the
17 same obstruction. We're getting the same sort of trying to block our
18 access to legitimate discovery. You're seeing a little bit different of a
19 package because now they're trying to show the Court that they are
20 trying to compel or comply with the Court's orders. But what we're
21 seeing when we sort of peel it back and look at it is exactly the same
22 strategy.

23 And the reason I say that, and I think the best example of
24 what I can show you so that the Court understands, is the proposal
25 that came back to us from United in connection with the data

1 matching. What they've asked for is additional information from the
2 Health Care Providers. We've provided approximately 22 fields of
3 information. They came back and said we need more information.

4 And if you'll recall, the very first time that we had that
5 happen, they didn't know what more they needed. And so what
6 happened at the follow-on meet and confer on the 23rd was they
7 asked us for things like pictures of ID cards, verification of coverage
8 information. And you can see from the status check, they've
9 already -- United has backed off of some of that information, but it
10 seemed more like an exercise in busy work than it did to
11 meaningfully try and identify claims that were at issue and disputed.

12 And so they've laid out their -- I suppose a red line, if you
13 will, to our original proposal. But really it would have been better off
14 as its own separate proposal, because it is so stark and so different
15 in what the end result would need to be, which is looking at what
16 matched, relieving the parties of their respective obligations to
17 produce certain information, having an evidentiary agreement in
18 terms of not [indiscernible] claims [indiscernible] try and comply
19 (indiscernible) some satisfaction (indiscernible) compelling them to
20 produce documents for all of the at-issue claims. You'll see that
21 readily.

22 They also have asked only to have to produce information
23 for one defendant, or at least one -- I guess it's their prerogative. If
24 Your Honor remembers there are eight defendants in this action. So
25 trying to limit claim information to one defendant is certainly a

1 problem, certainly shows the obstructionist type of tactic that they're
2 trying to make.

3 You know, they seemed very optimistic in the status report
4 that they sent forth. But, you know, when you go through it, you see
5 how unilaterally different it is and one-sided it is. There is no
6 plaintiff that would ever agree to something that would cut off
7 information about seven other defendants.

8 United also removed any time frames that we had built in,
9 again, going to the delay that we've seen, the cumulative delay that
10 we see each and every time that there's any activity in this Court.

11 It also offers to further unilaterally narrow defendants'
12 discovery obligations because it wants to basically only have to
13 produce 10 administrative records once the parties agree on 10
14 claims. As Your Honor is familiar with, there are over 20,000 claims
15 at issue here.

16 And so defendant is trying to narrow it to 10 claims that
17 the parties would have to agree on. And again we take issue with
18 this because I don't know what that means, you know, in terms of
19 what would have to happen for there to be an agreement, what
20 additional obstacles may be presented in trying to get to that agreed
21 10-issue claim or 10 claims at issue.

22 And then United again has floated -- this is I think the
23 second time we've seen this -- where all of their obligations under
24 their earlier order that they are obligated to comply with and are
25 currently in default on would be basically fully complied with if they

1 put up a corporate representative to talk about the 10 claims.

2 We've raised this issue before that this is trying to block us
3 from discovery on all the claims that are at issue, and it also omits
4 that reciprocal proposal that, you know, there be some this for that;
5 right? I mean, nobody's going to enter into a one-sided stipulation
6 that cuts off our ability to do any claims -- any claims discovery
7 because it says it's United -- it would relieve United's obligation.

8 We also have open issues about this idea of what claims
9 matching is. We've asked United for a definition of what that is. We
10 have yet -- I believe we have yet to hear about what that means
11 because it really does matter. If there's a slight, you know,
12 transposing of a person's name, but otherwise you can identify the
13 bills and [indiscernible] the fields are matchable, you know, that
14 certainly seems to be an exercise that doesn't need to happen and
15 claims certainly don't need to be excluded for that reason.

16 So we definitely are concerned about it.

17 The other thing that I think is really stark is the attempt to
18 limit the Health Care Providers' damages to June 30th, 2020. These
19 are all issues that, you know, we were presented with orally. We
20 saw it in writing. And it was even more oppressive than what we
21 came away from the October 23rd meet and confer thinking.

22 You know, again, it goes to United trying to meet its
23 obligations under the Court's order. They make it explicit. They
24 want to attach the order. And it just isn't something that the Health
25 Care Providers are interested in.

1 And so the idea that there's further meet and confers that
2 should happen is simply, I think, at this point a futile exercise, given
3 where we've been, given how long it took us to get any response,
4 and then the response that we received is simply not something that
5 the Health Care Providers are interested in further pursuing.

6 And so for that reason, when we submitted our proposed
7 order with the blank that Your Honor had asked for with respect to
8 the data matching, in connection with our status report, we ask that
9 you enter our data matching protocol in full and reject United's -- for
10 those reasons and the idea that they can further block any attempt
11 by the plaintiff to explore and prosecute their claims, Your Honor.
12 Thank you.

13 THE COURT: Thank you.

14 And Mr. Balkenbush.

15 MR. BALKENBUSH: Thank you, Your Honor. There was a
16 lot that was just raised. I'll try to quickly hit all that I need to hit here.

17 But let me start with the issues and the proposed order
18 that plaintiff submitted on the October 22nd status check.

19 This issue of national data. There's a very easy way for
20 this Court to resolve the dispute. The plaintiffs say that they
21 requested this, that it was fully briefed, and that the Court ordered it.
22 We dispute that.

23 If you look at their Motion to Compel on which the order is
24 based, on page 3, the second bullet point lists market and
25 reimbursement data related to out-of-network reimbursement rates

1 and related documents and analyses. And then it lists the requests
2 for production that that is based on. It lists Requests for Production
3 14, 19, 20, 22, 23, 24, 33, 34, 35, 38, and 43. I'm not going to go and
4 read through all of those, but I will just point Your Honor to a few of
5 them.

6 As an example, Request For Production No. 14 that they're
7 relying on for market data, national market data now, that request
8 specifically sought, quote, Produce all documents regarding rates,
9 insurers, and/or payors other than you have paid for emergency
10 services and care in Nevada -- specific to Nevada.

11 If you look at Request For Production No. 19 that they're
12 relying on for this national market data now, it states: All documents
13 regarding the provider charges and/or reimbursement rates that you
14 have paid to participating or nonparticipating providers from
15 July 1st, 2017, to the present in Nevada.

16 If you look at Request For Production No. 20, it says the
17 same thing. It references reimbursement rates for the claims, and
18 CLAIMS is in all caps -- it's refers to the claims that the plaintiffs are
19 asserting here. All of those claims, plaintiffs admit, are for services
20 rendered in Nevada.

21 Request For Production No. 22, that they're also now
22 trying to manufacture and to request for national data, it states:
23 Produce any and all documents and/or communications relating to
24 any analysis of the usual and customary provider charges for similar
25 services in Nevada for emergency medicine services.

1 I won't go through the rest of them, Your Honor. But I
2 encourage the Court to look at every single request for production
3 that they list in their Motion to Compel as supporting their request
4 for national market data now and see if there is a request for national
5 market data in there or if it's specific to Nevada. It's specification to
6 Nevada in every single one. It's simply incorrect. So we request that
7 the Court strike that aspect out of the order.

8 The second issue that I guess I have to address here is
9 there's a lot of statements by opposing counsel there about United
10 failing to comply with the Court's orders, that United's continuing to
11 delay -- continuing to push this narrative that United is just, you
12 know, not participating in discovery.

13 To the extent that there was ever any truth to that
14 argument Your Honor, which we dispute -- let's say there ever was,
15 there clearly no longer is. We submitted a detailed status report late
16 last night detailing all of the productions United has made since the
17 October 8th hearing. And United has met every single deadline set
18 by the Court in its orders.

19 You'll notice that opposing counsel didn't cite to any
20 specific documents we've allegedly failed to produce or categories of
21 documents, and just vaguely alleged that we're not complying with
22 the Court's orders. That's incorrect.

23 And just to give the Court some examples, since
24 October 8th, United has produced over 26,000 pages of documents.
25 The plaintiffs to date in this case, to date, have produced 1,381 pages

1 of documents. That's it. United has produced 26,000 in just the last
2 month and a total of approximately 30,000 over the course of this
3 litigation.

4 The narrative that we're not participating in discovery is
5 simply incorrect now.

6 United has also supplemented its written discovery
7 responses six times since the October 8th hearing, and these
8 supplements were attached in the status report we filed late last
9 night, Your Honor, as well, so you can see those. We have
10 supplemented all of the responses that we were required to
11 supplement by the Court's orders.

12 The allegation that we have not complied with the Court's
13 orders is simply incorrect. Again, I would just encourage the Court
14 to look at the status report we filed last night, look at the
15 supplements, the detail in the documents that have been produced,
16 and ask opposing counsel to point to the specific documents we
17 have not produced. They haven't done it and they can't do it.

18 United has also named at least eight witnesses. That was
19 an issue that plaintiffs had raised previously that we hadn't named
20 enough witnesses in our disclosure. We've named at least eight
21 now. In contrast, the plaintiffs have only named five witnesses total.
22 We've named more witnesses than they have.

23 I think it's also worth noting too, Your Honor, that our
24 status report lays out all the supplemental productions we've done
25 just since October 8th. The last time plaintiffs submitted a

1 supplemental production was June 1st, 2020.

2 Now, we understand that the Court has been critical of
3 United's behavior and some -- at some points in this litigation. And
4 so we've been reticent to start bringing Motions to Compel, because
5 we've been a little concerned that they may be viewed unfavorably
6 until we start showing that we are fully complying with all the
7 Court's orders, that we are actively complying with discovery,
8 producing all of the documents that plaintiffs claim they need to try
9 their case.

10 But we do want to start bringing Motions to Compel,
11 Your Honor. We intend to start doing that. This narrative that
12 plaintiffs are just complying with discovery and United is not is
13 simply incorrect, and our status report last night shows that.

14 I also want to point out in regard to plaintiff's discovery
15 obligations that they stated in their September 28th responses to our
16 requests for production, our second set of requests for production,
17 that they would be producing responsive documents after the
18 October 8th hearing on United's motion to stay. To date, they have
19 still not produced any documents pursuant to what they stated in
20 their September 28th discovery responses.

21 So the narrative they're pushing and to the extent it had
22 any truth, no longer does. If anything, it's been reversed at this
23 point.

24 And then finally, Your Honor, let me talk about this claim
25 protocol, which is what I thought was the main purpose of today's

1 hearing was discussing the competing claim matching protocols.

2 So the issue that we have with plaintiffs' protocol is it
3 proceeds from the assumption that United is able to match all of the
4 claims listed -- all the 20,153 claims listed in plaintiffs' claims
5 spreadsheet; and that once United matches that, United can just look
6 at the claims and determine if there's a discrepancy in the amount
7 billed and the amount paid; and then we can determine what to do
8 about that, if United or the plaintiffs need to produce some
9 documents to figure out what the issue is with that particular claim.

10 The problem is that the assumption that underlies the
11 protocol is incorrect. We have not been able, to date, to match all of
12 the 20,153 claims. And so what we did is in response to their
13 protocol is we asked that they provide us with some additional data
14 points that would allow us to hopefully match the claims that we've
15 been unable to match.

16 And what we asked for was a payor reference number.

17 THE COURT: Did you -- have you asked them with regard
18 to specific things you could match?

19 MR. BALKENBUSH: We have, Your Honor. And we
20 actually sent them -- we sent a notice to the Court late last night too,
21 so you have it. We sent them a claim matching --

22 THE COURT: [Indiscernible] that was filed 8:00. I looked at
23 it this morning before 9:00. It had an appendix with hundreds of
24 pages.

25 MR. BALKENBUSH: And I -- I apologize. I apologize,

1 Your Honor.

2 But my point was just that we've sent them a claims
3 spreadsheet that sets forth the claims that we've been able to match
4 and been unable to match, and it specifically identifies them. And
5 we've asked that they provide a few additional data points that
6 would hopefully allow us to match the remaining claims that we
7 haven't been able to find data for. And so the problem with their
8 protocol is, if we can't find the claims that they're asserting, how do
9 we produce the EOBs and PRAs to determine if there's a discrepancy
10 or not.

11 So our view is that their request that their protocol be
12 entered is really premature, because the first thing we need to do is
13 get a few additional data points from plaintiffs so we can match all
14 the claims and then determine if there are discrepancies between the
15 billed and the allowed amounts.

16 And I mean, it seemed like a pretty simple ask,
17 Your Honor: The payor reference numbers, identification of whether
18 the plaintiffs a PPO or HMO, and then also identification of whether
19 the insured is a secondary or primary. And we never really got a
20 response on that from plaintiffs. Never got a response on if they
21 were willing to, if they were not willing to, what was the reason why
22 they were not willing to. And so I think that is the first step we
23 needed.

24 We need some additional data so we can finish our
25 matching exercise. We have matched a lot of the claims, but not all

1 of them. So I think it's just premature to just enter plaintiffs'
2 protocol.

3 The second issue that we have with the protocol was that
4 there's a -- essentially an evidentiary burden stipulation in there,
5 that, again, I think is premature at this point since we haven't
6 matched all the claims.

7 Their burden stipulation and the protocol states that once
8 a claim is matched and the amount billed and the amount allowed is
9 identical between what United's data shows and what plaintiffs' data
10 shows, that plaintiff is therefore assumed to have provided the
11 service billed in its invoices to United. And United simply can't
12 agree to -- at least at this point -- to an evidentiary stipulation like
13 that.

14 As Your Honor knows from prior hearings, we do contend
15 that there was improper upcoding on some of these submissions.
16 We do contend that we have the right to look beyond the invoice and
17 contest that the service billed was the one actually performed. And
18 so I think going to an evidentiary stipulation and the protocol at this
19 point is just inappropriate.

20 So we would request, Your Honor, we put in our status
21 report some additional ideas we had for how to deal with a claim
22 protocol. And we were hoping to meet and confer with the plaintiffs
23 and, you know, work out any differences.

24 We never really got the opportunity to because they just
25 filed their protocol in their status report and asked that the Court

1 enter it. I think it would be appropriate if the Court sets a deadline
2 this week or early next week for us to at least try one more time to
3 see if we can agree on a claim-matching protocol; see if we can get
4 some more data from plaintiffs to finish the matching exercise. And
5 then if the parties can't agree, we can all file a motion and ask the
6 Court to enter a specific protocol.

7 But it just seems premature at this point since we haven't
8 even completed the matching of all the Plaintiff's 20,000-plus claims.

9 I think that's -- that's all I have, Your Honor. Thank you.

10 THE COURT: Thank you.

11 And Ms. Gallagher, briefly in reply. And then
12 [indiscernible] the argument.

13 MS. GALLAGHER: Okay. Thank you. Thank you,
14 Your Honor. So let me hit the high points.

15 With respect to the national level data, it's clear. It's
16 already in the Court's September 27th order that's referenced in the
17 transcript. There was discussion about it. It goes to our Nevada
18 RICO claims, as well as others. It's relevant to this case. It should
19 have been a 16.1 obligation.

20 But it is included in a number of RFPs -- and I'll list a few
21 here -- regarding RFP 29, 33, 38, 15. So we had a discussion on it. I
22 think it's improper for United to try and reconsider the Court's earlier
23 September 27th order that includes national level data. I think it's an
24 issue that's been decided. I think it's related. And I would ask that
25 Your Honor disregard that edit that they're asking for from this

1 proposed order.

2 With respect to United's document production that they've
3 now touted as being wholesome and fulsome. You know, I hate to
4 say the number of documents have nothing to do with the substance
5 of the documents.

6 What we're seeing are some additional administrative
7 records that United has produced. We see 79 new files; they've only
8 produced 129. That's where the bulk of the production is,
9 Your Honor, because the health plans that they insist on producing
10 are hundreds of pages every time they produce it. So we're not, you
11 know, disregarding their trying to do it to comply with their
12 obligation under the order that already exists, but it is a misnomer to
13 say that it is being complete and they're providing us information
14 that are the subject of the Court's orders.

15 In fact, I can tell you they have not produced any
16 reimbursement data. They've produced a single-page market
17 aggregated data report that has no information in it. It's a PDF with
18 no information for us to be able to see. They produced that. They
19 have produced a sum total of two Data iSight-related documents; a
20 closure report, which provides aggregate information, again in a PDF
21 format with no underlying data. They've produced -- and then the
22 performance report -- my mistake, the closure report, they produced
23 a sum total of one page. We know from agreements that we expect
24 there to be multiple more closure and performance reports. So they
25 are not in compliance with those -- that court order and that timeline,

1 Your Honor.

2 To suggest that they have produced information relating
3 to all negotiations and some of the other supplements they've done,
4 is simply disregarding what the actual substance of those
5 documents are.

6 I can go through more specifically, Your Honor. But we
7 have basically 100 pages of e-mails between United and multiplans.
8 100 pages, Your Honor. This is a 10-year relationship. So the
9 information that United is trying to put together and show they're in
10 compliance is simply in the package. They're trying to push out
11 information and call it something that it's not.

12 They are not giving us the information that we're entitled
13 to. We were entitled to methodology and analysis relating to market
14 data reimbursement. We have not received that yet. So with respect
15 to the proposed order, I can go through the October 21 deadlines.
16 They have not produced the identity of United representatives and
17 other third parties that have information about the allegations in the
18 first amended complaint.

19 To suggest that eight people from defendants is a
20 complete list of who has information is simply not satisfactory,
21 Your Honor.

22 With respect to 1A in the proposed order --

23 THE COURT: You don't need -- please don't repeat
24 yourself. Please -- you don't need to repeat yourself. I listen.

25 MS. GALLAGHER: Thank you, Your Honor.

1 So I just want to make it clear that we will be bringing to
2 the Court's attention the noncompliance of the orders.

3 And to quickly address the -- the issue regarding plaintiffs'
4 outstanding discovery, I can tell you we haven't had a meet and
5 confer. So it's just a lot premature for United to be discussing
6 responses at this point. And I would ask that it have nothing to do --
7 because it doesn't have anything to do with what United has
8 presented to the Court.

9 So with that, if there's any additional open items that
10 Your Honor is interested in having confirmation from plaintiffs, I'm
11 happy to address that.

12 THE COURT: Good enough.

13 So this was a status check. And both of you filed status
14 reports.

15 With regard to the form of the order, I have to go back and
16 look at the transcript.

17 I'm going to put this on the chamber's calendar for
18 Tuesday. I've already sent an e-mail during the hearing to my law
19 clerk to -- to work with me on that, which I hope to do this afternoon.

20 Tomorrow, I've got motions all day, and then a settlement
21 conference, and a trial on Monday. So we'll try to get something to
22 you by Friday with regard to the oral motion to alter amend.

23 With regard to the claim protocol issue, I just don't think
24 it's ripe at this point for me to make any decision. I think it has to
25 be -- I think you have to meet and confer one more time and then tee

1 it up.

2 I would be willing to hear that. And if you need some
3 time, we can sit down and I can give you Monday the 23rd of
4 November or we have to go into the next week.

5 So any comments? And under a minute on each side,
6 before I conclude the hearing.

7 MS. GALLAGHER: Your Honor, with respect to the order
8 motion to alter amend, obviously we object based on what we
9 indicated earlier.

10 With respect to the November 23rd, our concern here is
11 that we do have a December 30th deadline for discovery, fact
12 discovery. We've seen throughout this, every opportunity that
13 United gets to try and add on delay, that's exactly what has
14 happened here.

15 We don't think that they mean to meet and confer in the
16 first place and Your Honor found that. And so then to come to the
17 Court and ask for additional time, we just don't think it's proper.
18 Thank you for that consideration, Your Honor.

19 THE COURT: Mr. Balkenbush or Mr. Roberts?

20 MR. BALKENBUSH: Just very briefly, Your Honor, I
21 believe November 23rd does work for me.

22 Lee, does that work for you as well?

23 MR. ROBERTS: Your Honor, Lee Roberts for defendants. I
24 actually am scheduled to be in Phoenix for mediation on
25 November 23rd and 24th. But if that is the -- I believe that

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1 Mr. Balkenbush can attend that on behalf of the defendants, if the
2 Court would excuse me from attending that hearing.

3 THE COURT: Certainly. So I'm going to suggest that you
4 guys come to the courtroom, if you're willing, or attend by Blue
5 Jeans if you're unwilling, on the 23rd at 1 p.m. And you can do it
6 either way.

7 But this is -- and we can do it on the record or off the
8 record, but I'm going to work through all of these issues with you.

9 And it sounds more and more to me that you might need a
10 special master, so be mindful that that is a possibility. And before --
11 on the Friday before the 23rd, I will need you to agree on an agenda
12 of things we're going to discuss and outline.

13 Any questions?

14 MR. BALKENBUSH: None from defendants. Thank you,
15 Your Honor.

16 MR. ROBERTS: Thank you, Your Honor.

17 MS. GALLAGHER: No, Your Honor. Thank you.

18 THE COURT: All right. See you on the 23rd at 1 o'clock in
19 person or by Blue Jeans, at your discretion.

20 I will go into the courtroom for that. And I need an
21 agenda. If you can't agree on an agenda, do the best you can. And
22 let me know what else is out there.

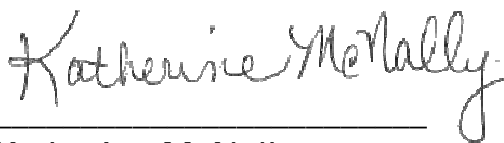
23 Stay safe and stay healthy, everyone, until I see you next.

24 [Proceeding concluded at 11:48 a.m.]

25 * * * * *

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

4 

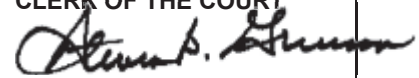
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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

**NOTICE OF ENTRY OF ORDER
SETTING DEFENDANTS'
PRODUCTION & RESPONSE
SCHEDULE RE: ORDER GRANTING
PLAINTIFFS' MOTION TO COMPEL
DEFENDANTS' MOTION TO
COMPEL DEFENDANTS' LIST OF
WITNESSES, PRODUCTION OF
DOCUMENTS AND ANSWERS TO
INTERROGATORIES ON ORDER
SHORTENING TIME**

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1 PLEASE TAKE NOTICE that an Order Setting Defendants' Production & Response
2 Schedule Re: Order Granting Plaintiffs' Motion to Compel Defendants' Motion to Compel
3 Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on
4 Order Shortening Time was entered on November 9, 2020, a copy of which is attached hereto.

5 DATED this 9th day of November, 2020.

6 McDONALD CARANO LLP

7 By: /s/ Kristen T. Gallagher

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 9th day of November, 2020, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER SETTING DEFENDANTS' PRODUCTION & RESPONSE SCHEDULE RE: ORDER GRANTING PLAINTIFFS' MOTION TO COMPEL DEFENDANTS' MOTION TO COMPEL DEFENDANTS' LIST OF WITNESSES, PRODUCTION OF DOCUMENTS AND ANSWERS TO INTERROGATORIES ON ORDER SHORTENING TIME** to be served via this Court's Electronic Filing system in the above-captioned case, upon the following:

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

**ORDER SETTING DEFENDANTS'
PRODUCTION & RESPONSE
SCHEDULE RE: ORDER GRANTING
PLAINTIFFS' MOTION TO COMPEL
DEFENDANTS' LIST OF WITNESSES,
PRODUCTION OF DOCUMENTS AND
ANSWERS TO INTERROGATORIES
ON ORDER SHORTENING TIME**

This matter came before the Court on October 22, 2020 in follow-up to the Court's ruling
at the October 8, 2020 hearing granting the Motion to Compel Defendants' List of Witnesses,

1 Production of Documents and Answers to Interrogatories on Order Shortening Time (the
2 “Motion”) filed by Plaintiffs Fremont Emergency Services (Mandavia), Ltd. (“Fremont”); Team
3 Physicians of Nevada-Mandavia, P.C. (“Team Physicians”); Crum, Stefanko and Jones, Ltd. dba
4 Ruby Crest Emergency Medicine (“Ruby Crest” and collectively the “Health Care Providers”).
5 Kristen T. Gallagher and Amanda M. Perach, McDonald Carano LLP, appeared on behalf of the
6 Health Care Providers. D. Lee Roberts and Brittany M. Llewellyn, Weinberg, Wheeler,
7 Hudgins, Gunn & Dial, LLC, appeared on behalf of defendants UnitedHealth Group, Inc.;
8 UnitedHealthcare Insurance Company; United HealthCare Services, Inc.; UMR, Inc.; Oxford
9 Health Plans, Inc.; Sierra Health and Life Insurance Co., Inc.; Sierra Health-Care Options, Inc.;
10 and Health Plan of Nevada, Inc. (collectively, “United”).

11 The Court, having considered the parties’ respective status reports and the argument of
12 counsel at the hearing on this matter, as well as the Court’s September 28, 2020 Order, its ruling
13 at the October 8, 2020 hearing and good cause appearing therefor, makes the following findings
14 and Order:

15 1. The Court finds that United’s discovery conduct in this action is unacceptable to
16 the Court.

17 2. The Court finds that United has failed to properly meet and confer with regard to
18 the Court’s directive to meet and confer on a claims data matching protocol in connection with
19 the Court’s September 28, 2020 Order Granting, in part, the Health Care Providers’ Motion to
20 Compel United’s Production of Claims File for At-Issue Claims, or in the Alternative, Motion
21 in Limine (“September 28 Order”).

22 3. Since the September 9, 2020 hearing, United has produced approximately 50
23 records that United describes as the “administrative record” (to which the Health Care Providers
24 object to because this is not an ERISA case). The Court finds that, given the December 31, 2020
25 fact discovery deadline, and the Court’s September 28 Order, United shall produce a minimum
26 of 2,000 claims files per month.

27 4. United shall exclude managed Medicare and Medicaid reimbursement rates from
28 its production of market and reimbursement rates ~~because the rates are lower than commercial~~

~~payer reimbursement rates; therefore, United's attempt to include managed Medicare and Medicaid data is rejected as unrelated to the Health Care Providers' claims.~~ Notwithstanding the foregoing, the Court does not make any admissibility ruling of this data at this stage of the litigation.

5. The Court adopts the production and supplement schedule provided for in the Health Care Providers' Status Report submitted in connection with the October 22, 2020 Status Check except that by ~~November 20, 2020~~ ^{October 26, 2020} (a) United shall produce (i) Nevada aggregate market and reimbursement data and (ii) Nevada ~~and national level~~ claims-by-claims market and reimbursement data; and ^{by November 20, 2020,} (b) United shall supplement Interrogatory No. 8.

Accordingly, good cause appearing, therefor,

ORDER

IT IS HEREBY ORDERED that, in connection with the Court's September 28 Order, United shall produce a minimum of 2,000 claims files per month.

IT IS FURTHER ORDERED that, in connection with the Court's September 28 Order, the parties shall further meet and confer on Friday, October 23, 2020 to identify a claim data matching protocol.

IT IS HEREBY ORDERED that, as previously ordered at the October 8, 2020 hearing, United is compelled to ~~fully and completely~~ supplement its list of witnesses pursuant to NRCF 16.1, provide full and complete supplemental answers to the Health Care Providers' First Set of Interrogatories and responses to their First Set of Requests for Production of Documents and produce documents, as follows and on the following schedule:

1. October 22, 2020:

(a) The identity of United representatives and other third parties that have information about the allegations in the First Amended Complaint (NRCF 16.1);

(b) Methodology and sources of information used to determine amount to pay emergency services and care for out-of-network providers and use of the FAIR Health Database (Interrogatory Nos. 2, 3, 4, 10, 12; RFP Nos. 5, 8, 10, 15, 36, 38);

(c) Market and reimbursement data related to out-of-network (Interrogatory Nos. 12; RFP Nos. 14, 19, 20, 22, 23, 24, 33, 34, 35, 38, 43) and in-network (RFP Nos. 25, 26, 29, 30) reimbursement rates and related documents and analyses;

(d) Documents related to United's decision making and strategy in connection with its out-of-network (RFP Nos. 6, 7, 18, 32) and in-network (RFP Nos. 31) reimbursement rates and implementation thereof; and

(e) Documents and information related to United's relationship with Data iSight and/or other third parties (Interrogatory Nos. 9; RFP Nos. 11, 12 and 21).

2. October 26, 2020:

(a) Aggregated market and reimbursement level data related to out-of-network and in-network reimbursement rates for the Nevada market. Each provider may be identified for purposes of listing the reimbursement levels for each provider. This aggregated market data shall exclude managed Medicare and Medicaid data ~~because it is irrelevant and unrelated to the Health Care Providers' claims.~~

~~**3. October 30, 2020:**~~

(a) Documents regarding negotiations between United and the Health Care Providers' representatives (RFP No. 13, 27, 28);

(b) Documents and communications about the at-issue claims (RFP Nos. 3, 17); and

(c) Rental, wrap, shared savings program or any other agreement that United contends allows it to pay less than full billed charges (Interrogatory Nos. 5, 7; RFP Nos. 9, 16):

3. ~~4.~~ November 6, 2020:

(a) Documents regarding challenges from other out-of-network emergency medicine groups regarding reimbursement rates paid (RFP No. 41);

(b) Documents reflecting United's failure to effectuate a prompt settlement of any of the at-issue claims (RFP No. 42); and

(c) Documents relating to United's affirmative defenses (RFP No. 45).

...

1 4. ~~5.~~ November 20, 2020:

2 (a) The identity of United representatives and other third parties that have
3 information in response to Interrogatory No. 8; and

4 5. October 26, 2020:

5 (b) Claims-by-claims market and reimbursement level data related to out-of-
6 network and in-network reimbursement rates at the Nevada ~~and national level~~; and aggregated
7 market and reimbursement level data related to out-of-network and in-network reimbursement
8 rates at the national level. Both claims-by-claims and aggregated market data shall exclude
9 managed Medicare and Medicaid data.

10 **IT IS FURTHER ORDERED** that in connection with the Court's September 28 Order
11 the parties shall comply with the following claims data matching protocol:

12 1. [to be inserted by the Court pursuant to the Status Reports submitted by the parties
13 on October 26, 2020].

14
15 **IT IS SO ORDERED.**

16 November 9, 2020

17 Dated this 9th day of November, 2020

18 Nancy L Alif

19 F49 637 5613 8F7F
20 Nancy Alif
21 District Court Judge

22 NB

Submitted by:

McDONALD CARANO LLP

By: /s/ Kristen T. Gallagher

Pat Lundvall (NSBN 3761)

Kristen T. Gallagher (NSBN 9561)

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Attorneys for Plaintiffs

1 **CSERV**

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

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

CASE NO: A-19-792978-B

7 vs.

DEPT. NO. Department 27

8
9 United Healthcare Insurance
Company, Defendant(s)

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 11/9/2020

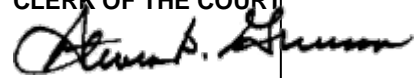
16 Audra Bonney	abonney@wwhgd.com
17 Cindy Bowman	cbowman@wwhgd.com
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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

FREMONT EMERGENCY
SERVICES (MANDAVIA) LTD.,

Plaintiff(s),

vs.

UNITED HEALTHCARE
INSURANCE COMPANY,

Defendant(s).

CASE NO: A-19-792978-B
DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE
WEDNESDAY, DECEMBER 23, 2020

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

APPEARANCES (Attorneys appeared via Blue Jeans):

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

For the Defendant(s): COLBY L. BALKENBUSH, ESQ.
D. LEE ROBERTS, JR., ESQ.
BRITTANY M. LLEWELLYN, ESQ.
NATASHA S. FEDDER, ESQ.

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

1 **LAS VEGAS, NEVADA, WEDNESDAY, DECEMBER 23, 2020**

2 [Proceeding commenced at 9:44 a.m.]

3
4 THE COURT: Do you have any idea how long your
5 arguments will take? You have three fairly lengthy motions this
6 morning and a little bit of housekeeping. Can you keep the total of
7 all three under 20 minutes? Because if not, I'm going to ask you to
8 come back at 11:00 or 12:00, if you're available today.

9 So let's have appearances for Fremont and then United.

10 MS. GALLAGHER: Good morning, Your Honor, Kristen
11 Gallagher, on behalf of the plaintiff -- all plaintiff Health Care
12 Providers.

13 THE COURT: We have some feedback, Ms. Gallagher, so
14 you may need to mute a device.

15 Other appearances, please.

16 MS. LUNDVALL: Good morning, Your Honor. Pat
17 Lundvall, with McDonald Corona, on behalf of Fremont as well.

18 THE COURT: Okay. Is that all of the plaintiffs?

19 And then let's have appearances, please, for the
20 defendant.

21 MR. ROBERTS: Your Honor, I think Ms. Perach was trying
22 to make an appearance, but it's muted.

23 THE COURT: Ms. Perach?

24 MS. PERACH: Thank you, Mr. Roberts.

25 Good morning, Your Honor. Amanda Perach, also

1 appearing on behalf of the Health Care Providers.

2 THE COURT: Thank you.

3 Mr. Roberts, your appearance, please.

4 MR. ROBERTS: Thank you, Your Honor. Lee Roberts,
5 appearing for defendants.

6 THE COURT: And with you?

7 MR. BALKENBUSH: Good morning, Your Honor. Colby
8 Balkenbush, also for the defendants.

9 THE COURT: Thanks.

10 I'm going to ask Ms. Lundvall --

11 MS. FEDDER: Good morning, Your Honor.

12 THE COURT: Okay. Go ahead.

13 MS. FEDDER: Good morning, Your Honor. This is
14 Natasha Fedder, also for the defendants. I'm sorry to interrupt.

15 THE COURT: No problem. Thank you. And just --

16 MS. LLEWELLYN: Good morning, Your Honor. This is
17 also Brittany Llewellyn, on behalf of the defendants.

18 THE COURT: Okay.

19 MR. ROBERTS: And I think that is it, Your Honor.

20 THE COURT: Thank you.

21 All right. So I'm going to ask Ms. Lundvall and
22 Mr. Roberts to say yes or no.

23 Can you argue all of the matters in 20 minutes? Or do you
24 want a later today special setting?

25 MS. LUNDVALL: Later today special setting, Your Honor.

1 I do not believe 20 minutes will suffice it.

2 THE COURT: Thank you.

3 And Mr. Roberts?

4 MR. ROBERTS: I agree, Your Honor.

5 THE COURT: What suits you guys? I have three things at
6 10:30. One is fairly long. I probably could hear you at 11:00 or 11:15,
7 or I can give you a time certain at 11:30 or 12:00.

8 MS. LUNDVALL: 11:15, 11:30, works for us, Your Honor.

9 MR. ROBERTS: Your Honor, that works for the
10 defendants. I believe Mr. Balkenbush and Ms. Llewellyn were going
11 to take the lead on these motions.

12 I have a conflict at noon, but we can move forward with
13 that setting, and if I could be excused. I may be able to join a little
14 bit later, but that would be difficult for me.

15 THE COURT: Okay. So Fremont versus United, at
16 page 11, will be moved to 11:30. And thank you all for your
17 professional courtesy.

18 [Recess taken from 9:47 a.m., until 11:41 a.m.]

19 THE COURT: -- for your professional courtesy.

20 Let's call the case of Fremont versus United. And I'll take
21 appearances from the plaintiff first.

22 MS. GALLAGHER: Good afternoon, Your Honor. Kristen
23 Gallagher, on behalf of the plaintiff Health Care Providers.

24 MS. PERACH: Good afternoon, Your Honor. Amanda
25 Perach, also appearing on behalf of the Health Care Providers.

1 THE COURT: Thank you.

2 Ms. Lundvall, are you there? I think earlier we took
3 appearances from Lundvall, Gallagher, Perach, Roberts,
4 Balkenbush -- I can't read my writing -- and Llewellyn. Let's -- let's
5 go in that order, please.

6 MS. GALLAGHER: So it looks like Ms. Lundvall is on.
7 Perhaps she's either stepped away for a moment or -- but it does
8 look like she is connected.

9 But this is Kristen Gallagher, again, on behalf of the
10 plaintiffs, Your Honor.

11 THE COURT: Thank you.

12 MS. LUNDVALL: Good morning, Your Honor. Pat
13 Lundvall, also on behalf of the plaintiffs.

14 THE COURT: Thank you.

15 MS. LUNDVALL: I accepted your invitation for a relief
16 break.

17 THE COURT: You know, thank you all. This is pandemic
18 law. We're all doing the best we can.

19 So defendants, please. Is Mr. Roberts -- don't forget to
20 unmute yourself, folks.

21 MR. BALKENBUSH: Good afternoon.

22 THE COURT: Mr. Balkenbush.

23 MR. BALKENBUSH: Good afternoon, Your Honor. Colby
24 Balkenbush, for the defendants. I believe Mr. Roberts will be joining
25 as well, but we can go ahead and just take appearances for the rest

1 of counsel for the defendants in the meantime.

2 THE COURT: Thank you. Okay.

3 MS. FEDDER: Good morning -- oh, I'm sorry, go ahead.

4 MS. LLEWELLYN: Go ahead.

5 MR. BALKENBUSH: Natasha Fedder for the defendants,
6 Your Honor.

7 THE COURT: Thank you.

8 MS. LLEWELLYN: And Brittany Llewellyn, also for the
9 defendants, Your Honor.

10 THE COURT: Okay. So let's go ahead and get started. It
11 looks like -- is there a motion to associate that's pending for Blalack?

12 MR. BALKENBUSH: There is, Your Honor. That -- that's
13 correct.

14 THE COURT: Is there going to be any opposition?

15 MS. LUNDVALL: No opposition, Your Honor.

16 THE COURT: All right. So that can be granted.

17 And then also we have the motion next week on the
18 special master at 12:30. I can assure you that I'm not inclined to hear
19 that in any great detail in a rushed manner. So that's just a warning
20 to you guys.

21 And then today we have three things: The defendants'
22 motion for a protective order, to extend discovery deadlines, and to
23 clarify. Let's take them in that order and we'll take them one at a
24 time.

25 MS. LLEWELLYN: And, Your Honor, you said motion to

002791

002791

1 extend discovery would be first?

2 THE COURT: Motion for protective order, motion to
3 extend discovery, and motion to clarify. It's the way they were filed,
4 that's the way I briefed them. It's much easier for me to follow my
5 notes.

6 MS. FEDDER: Thank you for the clarification, Your Honor.
7 This is Natasha Fedder for the defendants. I'll be speaking to the
8 protective order this morning -- the motion for a protective order.

9 So, Your Honor, just briefly by way of background, this
10 dispute involves documents that have been produced to the
11 plaintiffs unredacted and designated AEO, or attorney's eyes only,
12 because they fit within the agreed-to definition that the parties have
13 memorialized in the protective order on file in this case for that
14 designation.

15 I'll describe them in a summarized form in my
16 presentation so as not to reveal anything proprietary on the record,
17 but I understand the documents have been submitted to you for *in*
18 *camera* review. And again --

19 THE COURT: And you all know that I've declined to review
20 anything *in camera*. It's -- *in camera* is -- has the potential to create
21 bias, and I just refuse to do it.

22 Go ahead.

23 MS. FEDDER: Understood. Understood, Your Honor. And
24 thank you.

25 Just by way of background, as you know, plaintiffs'

1 amended complaint challenges reimbursement rates for
2 out-of-network emergency services rendered in the state of Nevada.

3 Our motion to maintain the AEO designations we have
4 asserted seeks to protect out-of-network programs, methodologies,
5 and rate information.

6 United offers out-of-network programs to its clients and
7 their members, as do United's competitors. And United's strategy
8 and implementation of those programs is highly confidential and
9 proprietary.

10 Three categories of the documents at issue reflect United's
11 implementation of its out-of-network programs such that an AEO
12 designation is appropriate.

13 The first category are what we call Data iSight preference
14 sheets. And United -- or, Your Honor, just taking a step back, one of
15 the out-of-network programs that United offers its clients is the
16 outlier cost management or OCM program. United uses an external
17 vendor MultiPlan to support and administrate the OCM program,
18 and that use includes leveraging MultiPlan's proprietary Data iSight
19 pricing tool.

20 United uses these Data iSight preference sheets to
21 communicate to MultiPlan and Data iSight the parameters for the
22 implementation of its particular outlier cost management program.

23 The second and third categories of documents include
24 e-mail communications between MultiPlan and United regarding
25 implementation of the Data iSight tool and directives that United has

1 given MultiPlan in connection with certain provider dispute
2 resolution services that may take place in the event a provider
3 challenges the initial reimbursement rate on a health benefit claim.

4 Plaintiffs' points about publicly available Data iSight
5 information are not persuasive because the AEO designation seeks
6 to protect United's particular implementation of these programs.

7 Moreover, Your Honor --

8 THE COURT: Ms. Fedder, I believe we just lost your audio.
9 Ms. Fedder?

10 So Brynn or Nicole, can you guys tell me if Ms. Fedder is
11 on the phone?

12 FEMALE SPEAKER: I see her name there, but I don't see
13 her here.

14 THE COURT: All right. So will co-counsel notify her that
15 her audio is not working?

16 MR. BALKENBUSH: Yes, Your Honor. I'll do that right
17 now.

18 THE COURT: All right. Thank you.

19 Ms. Fedder, you were --

20 MS. FEDDER: Your Honor, you -- oh, I'm so sorry,
21 Your Honor. Where -- could you please tell me the last piece of the
22 presentation that you heard?

23 THE COURT: Go back two minutes. [Indiscernible] finding
24 you.

25 MS. FEDDER: Understood. I'm sorry about that,

1 Your Honor.

2 Well, I was laying out that United offers out-of-network
3 programs to its clients and their members, as do our competitors.
4 And I was also laying out that United's strategy and implementation
5 of those programs is highly confidential and proprietary.

6 Three categories of the documents at issue reflect United's
7 implementation of its out-of-network programs such that an AEO
8 designation is appropriate.

9 The first category are what we call Data iSight preference
10 sheets. And, Your Honor, just taking a step back -- one of the
11 out-of-network programs that United offers is the outlier cost
12 management program or OCM program. And United uses an
13 external vendor MultiPlan to support that program, including using
14 MultiPlan's proprietary Data iSight pricing tool.

15 And United uses these Data iSight preference sheets to
16 communicate to MultiPlan and Data iSight the parameters for
17 implementation of the OCM program.

18 The second and third categories include e-mail
19 communications between MultiPlan and United regarding
20 implementation of the Data iSight tool, as well as directives that
21 United has given MultiPlan in connection with certain provider
22 dispute resolution services. And these dispute resolution services
23 may come into play in the event a provider challenges the initial
24 reimbursement rate on a health benefit claim.

25 Plaintiffs' points about publicly available Data iSight

1 information are not persuasive because the AEO designation seeks
2 to protect United's particular implementation of these programs.
3 Moreover, Your Honor, the process flows that United produced to
4 plaintiffs reflect information for other out-of-network programs that
5 do not use the Data iSight pricing tool, and would, therefore, not be
6 reflective in the patents that plaintiffs attached to their opposition.

7 And to be clear, it's our position that the -- those patents
8 aside, the pieces of the process flow that pertain to the outlier cost
9 management program are specific to United, to the way that United
10 implements that program, such that this publicly available
11 information is not persuasive or applicable here.

12 The dissemination of United's out-of-network program
13 information, implementation information, and information about its
14 provider dispute resolution services would significantly prejudice
15 and disadvantage United, both with respect to competitors who offer
16 similar out-of-network programs and also when similar provider
17 negotiations arise. And that would directly impact United's position
18 in the competitive market.

19 Turning to the last category of documents, Your Honor, it's
20 really one document, it is an aggregated presentation of market data
21 that reflects what other nonplaintiff providers, in Clark County,
22 Nevada, charge for emergency services. This is competitively
23 sensitive information that plaintiffs could use their advantage both in
24 setting their own charges and in rate negotiations.

25 And here again, plaintiffs' comparison to the publicly

1 available FAIR Health database is unpersuasive. FAIR Health is a
2 public database, whereas this is information that United is privy to
3 for submission of health benefit claims by plaintiffs' competitors.

4 Plaintiffs, in their opposition, seek to downgrade the AEO
5 designation such that they may share United's AEO documents with
6 outside counsel to other litigation and with employees beyond the
7 designated in-house counsel who are not involved with rate
8 negotiations.

9 As a threshold matter, Your Honor, there is no motion
10 before the Court for this type of relief.

11 And separately, this effort only underscores the
12 appropriateness of United's AEO designation for these documents.

13 As the Court is aware, plaintiffs are affiliated with Team
14 Health. And other Team Health affiliated providers have initiated
15 litigation against United in various jurisdictions throughout the
16 country. It appears that plaintiffs are seeking to expand the AEO
17 designation so as to share documents produced in this litigation with
18 outside counsel to those other cases, apparently in an effort to gain
19 an advantage in pending cases as well as in other cases that they
20 may file in the future through the discovery process in this case.

21 Moreover, plaintiffs' effort to expand access to these
22 documents to employees whose day-to-day activities may include
23 negotiations suggest that plaintiffs intend to use these documents to
24 benefit their clients in future rate negotiations.

25 Finally, Your Honor, I would note that both parties are

1 active participants in the healthcare space, such that use of this
2 information to gain a competitive advantage is a live threat to
3 United; and also that plaintiffs have not articulated any way in which
4 United's AEO designation deprives them on the ability to obtain
5 information needed to prepare their case.

6 And again, Your Honor, these are documents that have
7 been produced unredacted to plaintiffs, that they have in their
8 possession.

9 So for all these reasons, we ask that the Court grant our
10 motion for a protective order and sustain our AEO designations.

11 THE COURT: Thank you.

12 The opposition, please.

13 MS. GALLAGHER: Thank you, Your Honor. This is Kristen
14 Gallagher, on behalf of the plaintiffs.

15 So I want to first start with the legal standard by which this
16 motion is guided by, which is, you know, Rule 26, with respect to
17 confidentiality. We're also guided by the protective order.

18 And when we entered into the protective order, you know,
19 we thought that United would take the provisions in a reasonable
20 manner in terms of what AEO material is going to be marked in that
21 regard.

22 As Your Honor knows, AEO makes it difficult for a client to
23 prosecute its case because it is left with the attorneys and certain
24 designated people to be able to see it. And it's really meant to
25 protect the utmost type of confidential sensitive information -- things

1 like the formula for Coke; things like when you have an actual
2 competitor that is, you know, perhaps going to have access to
3 information.

4 But what we're seeing in this set of documents is
5 something that could be, in some instances, maybe not even
6 needing protection at all.

7 But in any event, the Health Care Providers have indicated
8 that they would be willing to see it at one level down to the
9 designation of a confidential status, instead of AEO. And the reason
10 for that is, as we've described in our opposition, that these
11 documents that have been marked AEO do not fall within the
12 strategies or the methodologies that United indicates as much.

13 It was my understanding that Your Honor was going to
14 look at this set of AEO. And I was sort of hopeful that you would be
15 able to then see exactly what we're saying in our opposition, but I
16 understand Your Honor's position with regard to that *in camera*
17 review.

18 So in trying to describe them at a high level and not run
19 afoul of the protective order, I do want to spend a few moments with
20 those documents, because they've been described in sort of three
21 broad categories -- the first being the Data iSight preference sheets.
22 They are a two-page checklist, if you will, Your Honor, basically
23 United's instruction to, okay, for this particular claim, we are this
24 type of -- you know, we're either acting as an administrator or we're
25 acting in another capacity.

1 Here are -- you know, here's the checklist. I mean, it's
2 literally boxes that are being checked. In some instances there's
3 information being provided with regard to number of days. But
4 these are not proprietary in the sense that the information would
5 provide my client any competitive advantage.

6 This is basically a decision tree, if you will. And in the
7 context of how it's used here, would not be something that would be
8 considered AEO material. Again, having that highest level where
9 nobody can see it within the Health Care Providers' organization.

10 And so we think that lowering it will still protect it. It's
11 not -- you know, the protective order indicates that we're not using
12 documents for other, you know, for anything else, with respect to
13 outside of the litigation. And so a confidentiality designation does
14 exactly what United is asking, which is to keep it out of the public
15 domain, keep it away from people who they think may use it to their
16 competitive advantage, while allowing my client to see the
17 allegations that we've made, which is there is a scheme in place
18 regarding reimbursement rates and the setting of arbitrary rates, and
19 it goes to our Nevada RICO claims.

20 And so we think that trying to protect what we've alleged
21 to be a unilateral setting of reimbursement rates, really just furthers
22 the scheme, Your Honor.

23 When you're dealing with a manipulation and something
24 that the Health Care Providers have alleged to be improper, there is
25 nothing proprietary about that. That is improper and gives rise to

1 liability in Nevada for that type of scheme. And so we don't think
2 that it should be protected in the manner meant to basically
3 perpetrate that scheme.

4 And so these -- this checklist does nothing more than just
5 say this is how Data iSight is going to adjudicate a claim and with
6 reference to the patent that is in the public domain.

7 There's certainly no secrets with respect to a decision tree.
8 Now, maybe they call it something different now -- that decision
9 tree. Maybe the patent has been sort of, you know, modified, or
10 they've, you know, taken that particular public piece of it and called it
11 a different label in a decision tree. But certainly it's not secret.

12 And we also know from the provider remittance forms that
13 have been produced is that they count this as a very up front and
14 transparent situation with Data iSight. Anybody can know how they
15 are determining methodology and data.

16 You know, we don't necessarily think that it's accurate, but
17 that is what they are saying on documents.

18 We also had occasion to come across a MultiPlan's
19 earnings call where they talk openly that they discussed the
20 methodology and how they get to where they are with providers.
21 And so any sort of discussion with anybody outside of United
22 certainly destroys any sort of AEO confidentiality that is necessary to
23 protect United in this particular phase.

24 With respect to the MultiPlan e-mails, we've indicated it's
25 about 90 -- 99 pages, a hundred pages of e-mails that seem to be

1 relating to one sort of thread, if you will, about setting a particular
2 benchmark pricing.

3 United indicated in its reply that basically is a top
4 threshold for negotiation. They put that in the public domain, so I
5 feel comfortable talking about it in that -- in those terms. But if you
6 were to have looked at those e-mails, what you would see is a
7 specific direction talking about Team Health, with respect to that top
8 level of reimbursement.

9 Now, that can't be a secret because if Team Health were to
10 call in and challenge that particular claim, and MultiPlan has a
11 direction that they have a top threshold to negotiate on, it's going to
12 take my client a couple of phone calls to figure out what that top
13 threshold is, Your Honor.

14 And so there's nothing secret about this. This is
15 information that they are putting into place and acting on, and
16 obviously when they are putting that information on provider
17 remittance forms and United is putting that as the reimbursement
18 rate, we know obviously they're being directed to implement a lower
19 rate, if they have a top threshold rate.

20 But again, it's not secret. This is not a secret formula or
21 you know, some product. And having that information in the -- well,
22 first, it wouldn't be in the public. But having that information with
23 my client is appropriate, given the allegations that we have with
24 respect to the Nevada RICO claim and what we think to be a scheme
25 that is directed and targeted at Team Health -- which is the Health

1 Care Providers fall within the Team Health umbrella. And so
2 anything that United is doing at a national level is necessarily
3 impacting our clients here in Nevada.

4 And that are -- those are specifically our allegations within
5 the first amended complaint that we think allows us to have these
6 documents, maintain their confidentiality, but allow us to have that
7 discussion with our clients because it falls squarely within those
8 allegations.

9 The last set of documents, which is a single-page PDF is
10 called aggregated market data. We've described, Your Honor, that it
11 does not have any sort of identifying information that anyone can
12 use it for. It's basically by CPT code -- which if you're familiar with
13 emergency services, the most serious person coming in to with
14 life-threatening issues is going to be have a 99285 CPT code perhaps
15 billed if it meets the criteria for that.

16 So they've broken it down by code and provided a median
17 charge. But we have no other information about are these, you
18 know, out-of-network? Are these in-network? What is the range? I
19 mean, a median gives one slice of information.

20 But there would be nothing that we could garner from this
21 that would give my clients a competitive advantage, Your Honor.
22 And so with respect to that third document, we would also ask that
23 the designation be lowered.

24 And that's really what this is about, trying to just -- you
25 know, we understand there is some business information within

1 these documents. And it goes both ways, my client does as well.
2 But there is no reason to cloak things as AEO when they don't meet
3 sort of the high threshold, the high requirements. And they certainly
4 don't go to, you know, a true methodology, a true secret sauce, if
5 you will, in terms of United's business practices.

6 And so from our perspective, we would ask that the Court
7 lower that designation.

8 And then we did provide an alternative for the Court.

9 It isn't quite as Ms. Fedder indicated, that we want folks
10 who are responsible for negotiating rates to have access to rate
11 information. In fact, in the proposed paragraph 12L that we put in
12 our opposition, we've specifically excluded that because we
13 understand reimbursement rates -- you know, we don't want to
14 infringe on that, because we -- the same goes for our client; right?
15 Those are certain reimbursement rates.

16 But if United is going to mark documents like they did in
17 this set with AEO, then there should be an expansion of that
18 definition. And you know, they seem to take issue with it and claim
19 that we are trying to somehow, you know, nefariously talk with other
20 counsel across the country.

21 But Your Honor, Ms. Fedder is national counsel for United
22 and she is in this case and she has access to information about the
23 Health Care Providers in Nevada. It's my understanding she may be
24 involved in other national cases.

25 But when it really comes down to the fact is that we have a

1 Nevada RICO claim that does reach outside of the auspices of
2 Nevada, that we have alleged that there is a pattern and a practice.

3 And so for us to be able to talk with counsel that are
4 prosecuting cases similarly against United, there's nothing wrong
5 with that, Your Honor. We are trying to uncover this scheme that we
6 have information about, and the full depth of it. And we should be
7 able to -- as a team, be able to address those allegations that we
8 have, Your Honor.

9 So I wanted to address that part, that we're -- you know,
10 we're not trying to do anything that United has not already done,
11 and just have the opportunity to prosecute this case with the input of
12 perhaps national counsel, and -- and most importantly our client
13 representatives who live in this space; right? They are experts, if you
14 will, in the healthcare industry and acronyms, and you know, other
15 matters that are replete in all of those documents. They have a
16 much better working knowledge of, Your Honor.

17 And so we would like that opportunity to be able to have a
18 wholesome and complete opportunity to prosecute this case
19 alongside with our client partners. And so we would ask that if you
20 don't de-designate to confidential on this set of documents, that you
21 consider the slight expansion of the AEO designation.

22 Thank you.

23 THE COURT: Thank you.

24 Ms. Fedder, the reply, please.

25 MS. FEDDER: Thank you, Your Honor.

1 I will endeavor to address all of Ms. Gallagher's points.

2 As a threshold matter, I'll say we vehemently disagree
3 with the plaintiffs' characterization of our documents here as
4 evidencing some sort of scheme. Rather, we think that these
5 documents reflect diligence and careful application of our
6 out-of-network programs.

7 That aside, Your Honor, it seems to be plaintiffs' position
8 that their allegations have some sort of impact on whether or not we
9 can designate documents AEO. And that's not the standard, and
10 that's not the case.

11 The parties have agreed in their protective order that
12 documents that contain highly competitive or commercially sensitive
13 proprietary information, including reimbursement rates that
14 providers other than plaintiffs have charged, is appropriately
15 designated AEO, and that is exactly what the material in this -- in this
16 set of documents includes.

17 Ms. Gallagher has spoken to MultiPlan and to Data iSight.
18 And while these documents certainly involve MultiPlan and Data
19 iSight, they don't implicate these public -- these pieces of public
20 information that MultiPlan and Data iSight have put out into a public
21 forum.

22 Rather, these are a reflection of United's own particular
23 implementation of its out-of-network programs. And that
24 out-of-network program methodology and implementation is highly
25 confidential and proprietary.

1 Ms. Gallagher has cherry-picked certain pieces of
2 information from these documents. But when they are considered
3 as a whole, they reflect the out-of-network programs and our
4 methodologies in the way that we operate them. That could
5 certainly harm us if that information were received by our
6 competitors. And it could harm us in negotiations with providers, as
7 I stated in my earlier presentation.

8 Bear with me, Your Honor, I'm just looking through the
9 notes that I took while Ms. Gallagher was speaking.

10 Yes, Your Honor, so I -- that's -- the document -- again, the
11 documents that we are speaking to memorialize United's particular
12 implementation of its out-of-network programs, so the fact that there
13 may be publicly available information about MultiPlan and Data
14 iSight doesn't change the fact that United is a competitor in the
15 healthcare space, and we want to protect our confidential
16 methodologies.

17 It's certainly true, as Ms. Gallagher stated, that there is
18 certain information that we make available to providers through
19 provider remittance advice forms. And the fact of rate payments and
20 information along those lines is distinct from the information that we
21 are talking about in these documents that memorializes our
22 particular implementation of our out-of-network programs.

23 With respect to the market data, as I stated previously, it
24 certainly gives plaintiffs an advantage in rate negotiations to see the
25 rates that other providers are charging. And that median, the

1 median data point that we provide in our aggregated market data
2 analysis does give them that information.

3 Ms. Gallagher made a number of points about the
4 modifications that plaintiffs have proposed to the protective order.
5 We don't view those as being before the Court. And we would say
6 that if the Court is inclined to consider that, we would request an
7 opportunity to brief those issues.

8 But I would say that I have not heard how -- who the
9 plaintiffs would need to provide the information that we have
10 designated AEO to in order to be able to effectively prosecute their
11 case. And there is, you know, there is an opportunity in the
12 protective order for the Court to order other persons to have access
13 to that information. But I'm simply not hearing that from plaintiffs
14 how this information that we've provided, again, unredacted and in
15 full, is not sufficient for their purposes.

16 So, Your Honor, that's -- I think that that addresses the
17 lion's share of Ms. Gallagher's points. But if you have questions, I
18 would be grateful for the opportunity to speak to them.

19 THE COURT: I don't. Thank you.

20 All right. So this is the defendants' motion for protective
21 order with regard to confidentiality designations.

22 I'm going to deny the motion for the reason that I feel like
23 the defendant is sufficiently protected under the protective order.
24 And I don't believe that production of the information would give the
25 plaintiff a competitive advantage. I looked at it from the defense

1 point of view. So much information is already available in the public
2 domain. But I just didn't think that the Data iSight, the MultiPlan
3 e-mails about reimbursement aggregated market data, met the very
4 high threshold of attorney's eyes only.

5 With regard to the request to amend the protective order, I
6 decline to entertain that. The protective order was a contract
7 negotiated by the parties. It's not for me to revise it. If the parties
8 wish to revise it, it's up to you, but it's not my job.

9 So Ms. Gallagher will prepare the order, a simple order.

10 Ms. Fedder, you and your team will have the ability to
11 review and approve the form.

12 I will not accept a competing order. If one hits the in box,
13 it'll be returned.

14 So if you have issues with regard to the language of the
15 order, bring that to my attention through the law clerk. I'll either
16 sign, interlineate, or hold a telephonic. I really prefer not to do a
17 telephonic because it invites re-argument. But -- but if you will
18 please follow that process. I mean, your team knows it.

19 So were there any questions?

20 MS. FEDDER: Yes, Your Honor. If I may -- may defendants
21 have the opportunity to redact from the confidential documents
22 particularly sensitive information?

23 We had proposed that as an alternative in our briefing,
24 and it seems that plaintiff may be amenable to that as well.

25 THE COURT: That's correct. I intended to address that.

1 I'm sorry.

2 Yes. You may produce a log of the redactions. And if we
3 need to fight about it, it'll come up in the ordinary course.

4 MS. FEDDER: Thank you, Your Honor.

5 THE COURT: So that -- Ms. Gallagher, that should be
6 included in the order as well, please.

7 MS. GALLAGHER: Understood, Your Honor. Thank you.

8 THE COURT: Thank you.

9 Now, the next thing I have was the defendant's motion to
10 extend discovery.

11 Let me give you some preliminary thoughts on it. I realize
12 that the time is really compressed in this case, but I also realize that
13 we're in a pandemic and it makes discovery harder.

14 My inclination was to grant this to the March 13th, for the
15 fact witnesses, but to compress all of the other postdiscovery
16 deadlines. We've got a little bit of wiggle room with that July --
17 June 24th status check, which I think we could vacate. My
18 inclination was to require you to do a new discovery plan on a short
19 order. And if you can't, we'll do a telephonic on the discovery plan
20 to give you concrete deadlines.

21 And with that in mind, let me hear from the defendant on
22 the motion.

23 MS. LLEWELLYN: Thank you, Your Honor.

24 And just at the outset, if -- addressing your comment that
25 you were considering granting it with compressed deadlines, what --

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1 what were those deadlines that you had in mind?

2 THE COURT: I didn't. I was going to ask the two parties to
3 confer on that.

4 Again, it's your case and you guys know more about what
5 needs to be done than I do. I really only deal with the disputes that
6 you have at this point.

7 But you have the scheduling and trial order. And I'm
8 trying to pull that up, because when I looked at that scheduling and
9 trial order, it did show me a little wiggle room between May and
10 July. So that's why I felt comfortable granting the extension, so --

11 MS. LLEWELLYN: Thank you.

12 THE COURT: Yeah.

13 MS. LLEWELLYN: I appreciate --

14 THE COURT: I'll listen to you as I look for the scheduling
15 and trial order.

16 MS. LLEWELLYN: Thank you, Your Honor.

17 And I appreciate the Court's inclination on this issue.

18 At the outset, I just -- I guess considering the Court's
19 inclination, I was going to give an overview of the current status of
20 discovery. I'll sort of--

21 THE COURT: That's fine.

22 MS. LLEWELLYN: I'll compress that, given the Court's
23 inclination, but just to address some finer points.

24 As the Court is aware, the parties have stipulated to a
25 75-day extension of the fact discovery deadline to March 15th. And

1 that was ordered last week. And --

2 THE COURT: Oh, you know, okay. And you're asking for
3 August. So I -- not that I'm unaware of that.

4 MS. LLEWELLYN: So -- and what we're specifically asking
5 for, Your Honor, is really something that mirrors the prior scheduling
6 order.

7 The parties had previously agreed to a phased discovery
8 schedule. And really what defendants are seeking is an order that,
9 again, mirrors that original schedule. So I'll get to that in just a
10 moment.

11 But just as was detailed in our motion, the parties have
12 also been working on a claims matching protocol. Defendants
13 undertook the process of identifying claims with the assistance of a
14 consulting expert. We are also nearly complete in negotiations
15 regarding an ESI protocol [indiscernible]. And as we stated in our
16 motion, these agreements are needed to proceed with discovery on
17 both sides.

18 In terms of productions, as of today, defendants have now
19 produced roughly 80,000 pages of documents. Plaintiffs have
20 produced just over 1500 pages of documents. And this is detailed in
21 a chart in defendant's motion that runs through the data filing. And
22 since that day, there have been additional productions from
23 defendants. And over the past few months, those productions
24 reflect defendants' focus on ensuring compliance with this Court's
25 orders -- several remaining discovery responses and producing

1 documents.

2 And we have not been able to dedicate resources until
3 recently to focus on plaintiffs' failings in complying with their own
4 discovery obligations. We have now sent four deficiency letters. We
5 have posted conferences with counsel to address those deficiencies.
6 And we do intend to file our own motions to compel plaintiffs'
7 participation in discovery, if we do not see any movement on their
8 part in the coming days -- and hopefully days -- but coming days and
9 weeks.

10 So plaintiffs, in their opposition, balk at the idea that this
11 case is in its infancy. But the reality is that the parties are still
12 working on those agreements to expedite discovery. Following
13 remand, the parties had their discovery conference in this court, and
14 that was just six months ago. And this request for an extension is
15 the first.

16 And as I stated, Your Honor last week ordered an
17 extension of the fact discovery deadline. And so this request only
18 addresses expert deadlines and deadlines related to trial.

19 So defendants filed this motion on two general bases --
20 the first being that an honest assessment of the state of discovery
21 reveals that we are going to need additional time to complete
22 discovery, which would necessarily affect the trial date; and the
23 second being that in light of the substantial amount of documents of
24 data at issue in this case, the parties had stipulated and agreed to a
25 phased discovery schedule where expert discovery would follow fact

1 discovery.

2 And at present, with the 75-day extension through
3 March 15th of 2021, that sets the initial expert deadline for
4 January 29, 2021, which is roughly a month from now, and just
5 about almost 2 months -- I guess a month and a half prior to the fact
6 discovery deadline.

7 So plaintiffs, themselves, had advocated for a phased
8 discovery schedule before this Court at the June discovery
9 conference, and in February, prior to remand, before the United
10 States magistrate judge. But now, presumably because defendants
11 have produced the data that plaintiffs need, plaintiffs are now
12 abandoning our agreement to a phased discovery schedule.

13 And as I mentioned earlier, we are still waiting on
14 documents and data from plaintiffs, as needed for our own experts.
15 And even if we were able to file motions to compel the production of
16 those documents of data within the next week or so, we surely will
17 not be able to obtain an order from this Court in time to meet that
18 January 29 initial expert deadline.

19 So, Your Honor, on those bases, United would ask that the
20 Court uphold the party's original agreement for a phased discovery
21 schedule and extend the deadlines for discovery as outlined in our
22 motion -- or as you stated at the outset for the parties to meet and
23 confer on a schedule following the fact discovery deadline that is
24 currently set for March 15th.

25 THE COURT: Thank you, Ms. Llewellyn.

1 The opposition, please.

2 MS. GALLAGHER: Thank you, Your Honor.

3 You know, I'm mindful of your inclination, so I'll tailor my
4 response just briefly, if I could.

5 THE COURT: May I have your appearance, please.

6 MS. GALLAGHER: Sure. Kristen Gallagher, on behalf of
7 the plaintiffs, Your Honor.

8 THE COURT: Thank you.

9 MS. GALLAGHER: Thank you.

10 So we have taken a different approach with respect to
11 phasing because of what has happened during this litigation. We've
12 seen a repeated attempt to delay. It's taken us a year to have much
13 of a production of documents -- and you know, I don't want to get
14 too much into the disputes that Your Honor has heard and decided
15 already and ones that may be premature to bring to the Court's
16 attention. However, you know, United does take -- it's sort of like
17 "my hand is caught in the cookie jar, and now I need to show that my
18 sibling did somebody bad too" sort of approach.

19 We're seeing a lot of attempts to try and show that the
20 Health Care Providers aren't meeting obligations. We certainly are.
21 We're in meet-and-confer process. We've actually tried to accelerate
22 it by trying to get away from letter writing and just talking and
23 meeting and conferring.

24 We have, you know, certainly obviously this is our case
25 that we're prosecuting, and we need to produce documents and we

1 intend to do so. But we also take issue with some document
2 requests. And I'm sure at some point Your Honor will hear those
3 specifically, but I just thought it was important to respond to that.

4 And in terms of volume of documents, as I've had
5 occasion to say before, it doesn't always mean that it's substantively
6 responsive. We do know that United has an order that it has to
7 produce administrative records and that truly is the bulk of the
8 documents -- with limited information regarding strategies and that
9 sort of situation. And we can get to that in our next -- in the next
10 motion.

11 But with respect to the discovery extensions, I understand
12 Your Honor is inclined to extend it. We would just ask to protect that
13 trial date. It's really important for the parties to move this case
14 forward, get the right documents being produced without all of these
15 objections as to relevance and things that just aren't appropriate at
16 this point.

17 You know, a lot of what you're seeing are really *motions in*
18 *limine* and objections and obstructions to just getting discovery
19 that's permissible under Rule 26.

20 And so if Your Honor is inclined to extend it, we respect
21 that. We would ask to do -- if you could do your best to protect the
22 current trial setting or perhaps give us a firm setting near there or
23 shortly thereafter, just so that there isn't an opportunity to say that
24 this needs to be kicked out further than it already is.

25 But I agree that there is some ability in that schedule to

1 compress it at the tail end and still effectuate what United is asking
2 for and effectuate what the Health Care Providers are asking for with
3 respect to the trial date.

4 Thank you.

5 THE COURT: So what would -- you know, we had, you
6 know, the staggered discovery deadlines. Why don't -- given that
7 you extended the fact deadline, why don't you guys just propose
8 new orders for me? New deadlines? You really can't get it that
9 close? I mean --

10 MS. GALLAGHER: Well, we just -- we couldn't,
11 Your Honor.

12 Our position was -- you know, and in fact, it's interesting,
13 United didn't indicate in meet-and-confer efforts or in e-mail efforts
14 that they wanted to move the trial date. We suspected as much.
15 You know, we've unfortunately been on the receiving end of this
16 cumulative delay through the course of this case. And so we had,
17 you know, a suspicion that that would be the ultimate goal is to kick
18 everything out.

19 We did indicate staggered at the beginning, and that was,
20 you know, based on the thought that there would be good faith
21 participation in discovery. Those hopes have sort of been bashed,
22 and we didn't want further delay if that discovery schedule was sent
23 out.

24 We do think that there would be an opportunity for the
25 parties to meet still -- the end of January expert deadline. But like I

1 said, with respect to Your Honor and your inclination, and you know,
2 respectful of that and think that there's an opportunity to give both
3 sides what they're looking for here in terms of more time, but in
4 terms of getting this case to trial in a timely manner.

5 THE COURT: How can you do expert designations until
6 the fact witness -- the fact discovery is finished?

7 MS. GALLAGHER: Well, that isn't typical in a --

8 THE COURT: I don't mean in --

9 MS. GALLAGHER: Right. In a typical case, Your Honor,
10 that's how it goes; right? You have your fact -- your experts are
11 done before your end of your discovery.

12 We had proposed the staggered because we anticipated
13 sort of an orderly exchange of documents. And when it didn't go
14 that way, you know, we evaluated that timeline. We think we could
15 meet the deadline and United could as well.

16 But our hearing what Your Honor is saying and
17 understanding your position and being respectful of that, Your
18 Honor.

19 THE COURT: Thank you.

20 Ms. Llewellyn, your reply, please?

21 Ms. Lundvall, do you wish to speak?

22 MS. LUNDVALL: Your Honor, I just have one
23 observation -- or at least one middle ground that may be palatable to
24 United as well as to the Court.

25 In the event that we are able to secure a firm date on the

1 Court's calendar. You know, within, you know, a few months' time
2 frame of what our current stack is.

3 I do believe that we should be able to negotiate an
4 amended scheduling order and compress then the dates that the
5 Court has discussed within that time frame. And that since we are
6 meeting with you next week, it would allow the parties between
7 today and next week then to have that discussion.

8 In the event that we're able to bring an agreement to you,
9 we can do so by the 29th. In the event that we're not, we can bring
10 you any disagreements, and the Court then can finalize any
11 scheduling order then as of -- by December 29th.

12 THE COURT: Thank you.

13 Ms. Llewellyn.

14 MS. LLEWELLYN: Thank you, Your Honor.

15 And just a note -- I'm just looking here at the schedule that
16 we had proposed. Ms. Lundvall just suggested, you know, moving
17 the current trial date to a stack within a few months following the
18 current date, and that is actually what United had proposed. The
19 current trial stack is set on the August 2nd, 2021, stack.

20 We had proposed the November 2021 stack, to the extent
21 that your court could accommodate that. And the deadlines really
22 that we proposed are very modest.

23 In light of that proposal, we had suggested moving the
24 initial expert disclosure to April 14th of 2021, which would be just
25 one month after the fact discovery cutoff; with rebuttal experts to

1 follow on May 15th; and the expert discovery cutoff to the full expert
2 discovery cutoff for July 13th of 2011. That sets dispositive motions
3 for August 14th; status check on September 7th; and calendar call for
4 October 12th.

5 So really, we were very mindful of keeping these dates
6 pretty narrow in light of our proposal and in keeping with the
7 original agreement for a phased discovery schedule. So we are
8 certainly willing and open to meet with the plaintiffs to come up with
9 a schedule.

10 I just, considering Ms. Lundvall's comment that we could
11 work within the parameters of a trial date, you know, a few months
12 out from what is currently set, I think that our proposal is really quite
13 reasonable in light of that.

14 THE COURT: Thank you.

15 So I'm going to make a proposal to you guys. First of all, I
16 don't know if you can even go in August. I mean, I'm hopeful that
17 people who choose to be vaccinated will do so by May or June.
18 We'll be hopefully back in the courtroom in July and August. And
19 your case certainly would take precedence, if it would be ready in
20 August.

21 But given that you've extended the fact deadline, what I'm
22 going to propose is that I draft a proposed scheduling and trial order
23 that takes into account your current fact witness deadline. I would
24 then file it as a proposed. You guys will come back -- you're coming
25 back next week anyway, so we can talk about it then to see if those

1 dates work for you or if you can agree on some adjustment to them.
2 If you can't, I'll make those choices for you.

3 But I would really suggest not the November stack,
4 because November has two holidays, and December is dead. It's
5 really hard to seat a jury on that November stack. I would suggest
6 the October stack.

7 And then I like the idea of depressing deadlines. We did
8 have a little wiggle room with that June status check, which as of
9 right now I'm just going to vacate it because it's not going to be
10 necessary.

11 So that proposal, plaintiff -- or I'm sorry, defendants'
12 motion -- defendant and then the plaintiff. Obviously, it's taking
13 Ms. Lundvall's recommendation.

14 But, Ms. Llewellyn, your response, please?

15 MS. LLEWELLYN: Your Honor, I think that that makes
16 sense. I can appreciate, you know, if we take off that June status
17 check, we could work within the parameters of the October stack.
18 And United would be willing to, you know, see a proposed schedule
19 from the Court. And if there's, you know, any issues, the parties
20 could discuss it at that time.

21 THE COURT: Thank you.

22 And the response, please.

23 MS. LUNDVALL: Thank you, Your Honor. We agree with
24 the suggestion that the Court has made.

25 THE COURT: All right.

1 And let me also caution you that I'm never going to set
2 you just open on a stack. You're going to get dedicated days, based
3 upon how much time we need. I'm never going to leave it to chance.
4 Okay?

5 MS. LUNDVALL: Thank you, Your Honor.

6 THE COURT: All right.

7 Okay. Oh, and so there's no order resulting from that.

8 And we have one last hearing, which is the motion to
9 clarify, which I kind of took as a motion to reconsider, frankly.

10 So the motion to clarify, please.

11 MR. BALKENBUSH: Thank you, Your Honor. Colby
12 Balkenbush for the defendants. I'll be arguing this one.

13 And contrary to plaintiffs' contentions, this is really a very
14 straightforward motion that's just seeking a few discreet
15 clarifications of the Court's prior --

16 THE COURT: And may I ask --

17 MR. BALKENBUSH: -- and prior order of plaintiffs' motion
18 to compel.

19 THE COURT: Mr. Balkenbush, was there any effort made
20 to meet and confer on this?

21 MR. BALKENBUSH: There was not, Your Honor.

22 And frankly, we've been meeting and conferring with
23 plaintiffs on numerous topics, and it's gotten nowhere. And so, you
24 know, we believed that the response would simply be, you know, no,
25 we won the motion. We're not agreeing to any modification of the

1 order, no matter how reasonable it would be; or no matter if, you
2 know, this particular issue was never considered at the hearing. So
3 we thought it would be more efficient to file a motion to clarify and
4 get the issue before the Court.

5 Certainly, I apologize, if Your Honor feels that we should
6 have meet and conferred on this first. But I mean, frankly,
7 everything in this case has come to a point where we're having to
8 bring it before Your Honor to have it resolved.

9 So I mean, there -- it's really just seeking, Your Honor, a
10 few clarifications. These are clarifications aren't designed to hide
11 relevant documents, like the plaintiffs are contending in their
12 opposition. They're designed to avoid United getting bogged down
13 producing documents that are completely irrelevant to the claims
14 that are at issue.

15 These are documents like documents related to services
16 that were provided in Alaska or Hawaii, or documents generated in
17 the year 2000 that are clearly irrelevant when plaintiffs admit that
18 their claims begin in July 1st, 2017. Plaintiffs admit that all of the
19 services that they're seeking additional compensation for conform to
20 Nevada. So why do they need documents related to services
21 provided in Alaska, Hawaii, or the other 49 states?

22 And so we produced all of the documents that we believed
23 the Court's order required. As we were going back through, we
24 noticed there was a few of plaintiff's requests -- and most of them
25 were pretty clear that they spelled out that, you know, these are

1 limited to Nevada, or they're limited to a specific time period, you
2 know, such as July 1st, 2017, to present.

3 But a few of the requests that we detail in our motion --
4 and it's really very few, didn't contain any limitation like that. And so
5 that just raised the concern in our mind, you know, what if there is
6 some document, you know, dated from 1999 or something, and you
7 know, we inadvertently we don't produce it because we assumed it
8 wasn't at issue in the litigation. These are claims from July 1st,
9 2017, to January 31st, 2020. And we didn't want to be accused of,
10 you know, not complying with the Court's order.

11 So I thought it would be appropriate to bring a motion,
12 just bringing this issue before the Court and making sure that we're
13 fully transparent how we're reading the issues in their requests.

14 You know, I'll walk through the -- I guess a specific
15 clarification -- four specific clarifications we're seeking, but --

16 THE COURT: No. It's time period, geographical scope,
17 two new emergency services, and two requests for line data and
18 confidentiality [indiscernible]. You can --

19 I have another hearing at 1 o'clock, so please hit those
20 quick and then move on.

21 MR. BALKENBUSH: Absolutely, Your Honor. I guess just
22 before I go through those quickly, what I wanted to say is there were
23 some accusations made in plaintiffs' opposition that were
24 concerning because the accusations accuse United of failing to
25 comply with the Court's orders. And from our view, what they're

1 designed to do is get this Court to not view the motion to clarify on
2 the merits and look at the four very discreet clarifications we're
3 seeking, but instead get this Court to look at the motion as some
4 kind of delay tactic or obstructionist tactic by United.

5 And if you just look at their accusations, Your Honor, that
6 argument falls apart. And I'll just show you -- point you to two
7 examples --

8 THE COURT: You don't have to go there.

9 I know there's an order to show cause and a
10 countermotion. I don't intend to -- I want to try to resolve this for
11 you today if I can. If I -- I just really wish the that you had made
12 some effort to meet and confer. This is the reason for that rule. So
13 you don't have to address that now, Mr. Balkenbush.

14 Let's get into your four topics.

15 MR. BALKENBUSH: Fair enough, Your Honor.

16 So the first is the time frame clarification per certain
17 requests for production. And we're just requesting that the Court
18 clarify that United is only required to produce responsive documents
19 from July 1st, 2017, to January 31st, 2020. The January 31st, 2020,
20 date seems to be the biggest point of contention between the
21 parties. Plaintiffs inserted the term, quote, unquote, to present in
22 some of their requests.

23 And so our concern is just that how do we ever fully
24 comply if what we're -- you know, that we're constantly generating
25 new documents? You know, how would we ever close discovery?

1 And so we suggested a date of January 31st, 2020, since
2 that is the last date of service in plaintiff's claims spreadsheet. There
3 are no claims asserted after January 31st, 2020.

4 THE COURT: Thank you.

5 MR. BALKENBUSH: And so the second -- I can move
6 quickly, Your Honor -- the second topic is the geographic limitation.
7 This only would apply to two requests. It's requests 12 and 21.
8 We're just asking that those requests be limited to documents
9 related to services provided in Nevada and that we not be required
10 to produce documents from all the other 49 other states.

11 Plaintiffs make an argument that this is designed to hide,
12 you know, potentially relevant documents related to rate
13 manipulation. That this is a national scheme by United, so, you
14 know, we can't just limit it to Nevada.

15 But again, that's why we tailored this request to be very
16 specific to requests 21 and 21. There are other requests for
17 production, such as requests 4, 5, 6, 7, 11, 13, and 15, that would get
18 to the issue that plaintiffs are going after. That is where there are
19 communications related to lowering rates, reducing rates, some kind
20 of scheme. And we haven't asked to reduce the geographic scope of
21 those, Your Honor.

22 We're just asking that for 12 and 21, which involve
23 documents related to services and products provided by Data iSight,
24 that, you know, we not be held to some kind of obligation to produce
25 documents that have -- you know, related to services provided in

1 Alaska, Hawaii, or Illinois, or some other state. And that if we don't
2 produce those, then, you know, suddenly we're facing a sanctions
3 motion from plaintiffs, kind of a gotcha motion, when everyone
4 knows that those kind of documents have nothing to do with this
5 case. All of these claims relate to emergency services provided in
6 Nevada.

7 And -- and that brings me to my -- a third clarification,
8 Your Honor, which is just the not emergency versus emergency
9 services.

10 Throughout their complaint, Your Honor, plaintiffs are
11 very clear that they're only asserting claims related to emergency
12 services. You know, one example is that it's -- in fact, throughout
13 their complaint, Your Honor, they describe themselves as
14 professional emergency medicine services groups.

15 And so it's kind of strange that we get an opposition from
16 them arguing that, no, no, you know, United should have to produce
17 documents not just related to emergency services, but also related to
18 nonemergency services. And none of the claims asserted here relate
19 to, you know, radiology claims that were allegedly underpaid or
20 obstetrics claims that were allegedly underpaid. These are all
21 related to emergency services.

22 And so again we're just trying to do is make sure we
23 immunize ourselves from any allegation of, well, because you didn't
24 produce, you know, some document related to the services Data
25 iSight may provide on hospice care or radiology that you somehow

1 violated the Court's order and now you're going to get sanctioned.
2 So it's a very -- again, it's a very narrow clarification on two requests.

3 And then finally, Your Honor, we just requested that we be
4 permitted to redact the names of nonparty providers and payers
5 from documents that we produce.

6 There was an agreement by plaintiffs, and this was also in
7 the Court's prior order, that we were permitted to redact the names
8 of nonparty providers and payors from the market data that we
9 produced, and we've done that.

10 And so it just makes sense -- we thought that we should
11 be permitted to do that on other documents as well. There's no
12 reason why plaintiffs would need to know the names of the other
13 nonparty providers that were paying for emergency medical
14 services.

15 The only plausible reason would be to gain a competitive
16 advantage against their competitors. That's what we're concerned
17 with.

18 And again, you know, if there is some kind of an issue that
19 needs to be addressed, where there's a particular document that
20 they think they have to know the name for some reason, I mean,
21 then we could address that and maybe come to an agreement to lift
22 the redaction.

23 But -- so those are the four clarifications, Your Honor.
24 Happy to answer any questions about them.

25 THE COURT: Was it -- January 20 or January 31, 2020? I

1 saw different dates in the papers.

2 MR. BALKENBUSH: That -- that's a good catch,
3 Your Honor. So in there, it's January 31st, 2020, is what we
4 proposed. And I think it may have just been a typographical error in
5 the opposition, where they referenced January 20th, 2020.

6 THE COURT: Okay. Thank you.

7 And the opposition, please.

8 MS. GALLAGHER: Yes, thank you, Your Honor. Kristen
9 Gallagher, on behalf of the plaintiffs.

10 So, you know, I think Your Honor is right in the fact that
11 this is a motion for reconsideration. It was also, you know, no meet
12 and confer was done to try and reach an opportunity for a
13 compromise.

14 I think it's dangerous to take a position that the Health
15 Care Providers won't engage in good faith meet and confer efforts
16 from here on out. We certainly view this as trying to skirt the judge's
17 earlier October 27th order; and the follow-on November 9th order
18 that gave the setting of the schedule.

19 But I want to go back to EDCR 2.24 first, because it is
20 untimely, in the sense that they're asking Your Honor to walk back
21 and reconsider both objections they made and objections they never
22 made at the time. So we think this is sort of an improper way to go
23 about getting what they want, which is consistent with what we've
24 seen throughout -- trying to narrow the scope of this case, trying to
25 narrow it to what they would like it to be.

1 We saw this early on when they claimed that this was an
2 ERISA case and they weren't going to provide any information
3 outside of an administrative record. We were able to overcome that
4 through motion practice.

5 What we're seeing in the discovery disputes leading up to
6 the October 27th and November 9th orders was similar conduct in
7 response to the Health Care Providers' discovery requests, trying to
8 narrow them and only point to the administrative records.

9 We finally have some compliance -- again, it's not
10 complete, and we can address those issues in our countermotion on
11 another day.

12 But what we're seeing is, by virtue of this motion, trying to
13 narrow the Health Care Providers' allegations in the first-amended
14 complaint.

15 I think it's so clear with the Data iSight related requests in
16 12 and 21, we were specific. Our allegations are specific that there's
17 a pattern of practice that reaches not only to Nevada, but reaches
18 across the country. And there can be no delineation between
19 emergency services or nonemergency services in that regard,
20 because we know from the documents that United has produced that
21 United treats Team Health as a national single entity and puts their
22 particular reimbursement and other schemes into play across Team
23 Health nationally.

24 And so we expect there to be documents in other
25 geographic regions that will inform our allegations, our Nevada

1 RICO allegations, and we have alleged a pattern of practice. And so
2 the requests, as they're framed, are appropriate and they're relevant
3 to this case.

4 So what we're seeing is wanting to walk that back, trying
5 to get around the judge overruling their objections, and being firm.
6 You know, you were very clear in your order. And what we're seeing
7 by way of this motion seems to be a disregard for that order. You
8 know, certainly Your Honor will be the ultimate decider if that
9 conduct is appropriate here.

10 But with respect to the time limitation periods and trying
11 to put a barrier or an obstacle up to how far we can take our claims,
12 Your Honor, we have indicated that we continue to be damaged.
13 That damage is ongoing. United's scheme continues.

14 And we have intention to update our claims -- at-issue
15 claims spreadsheet with dates of service that go beyond January.
16 We're entitled to do that. There's nothing that would bar us from
17 being able to do that.

18 And so to impose a unilateral deadline of January seeks
19 not only to only focus on our at-issue claims as being the only claims
20 in this case, but is inappropriate given the nature of the allegations.
21 The RICO scheme we have alleged continues and it's ongoing.

22 And so to limit, you know, we're sort of are seeing a
23 conflation of at-issue claims on a spreadsheet and try to use those
24 dates as overlayment on the Nevada RICO claims. And that's just
25 not appropriate. The allegations relating to the scheme that we've

1 alleged continues on. And those allegations form the basis for the
2 relevant discovery that we think that those requests fall within. We
3 think Your Honor agreed with us by virtue of the October 27th order.

4 The next group of categories -- oh, and I do want to touch
5 on the national level, if I could, Your Honor.

6 THE COURT: Sure.

7 MS. GALLAGHER: We understood that you did
8 interlineate some of the orders with respect to national -- certain
9 national level data. But Your Honor was very clear at the
10 October 8th hearing that you overruled any objection to providing
11 national data -- iSight data and information. So I think that's fairly
12 clear. And to come back and now claim that Your Honor wasn't
13 clear, I don't think is an appropriate review in totality of all of those
14 orders.

15 With respect to the blinded data, obviously we have a
16 protection through the protective order in place. There's really no
17 basis to redact information when such type of designation is
18 allowed.

19 Now, if United wanted to provide a confidential version as
20 well, with some redactions -- but I think the biggest concern I have
21 with the allegation is basically it's an admission that they haven't
22 been producing information that has either other payors or other
23 providers listed in there.

24 We see throughout a lot of their document -- or their reply
25 and their moving papers is that they keep refers to an ESI protocol

1 that's being negotiated. I will tell you it may be close; it may not be.

2 The parties have moved forward with those meet and
3 confer efforts, but Your Honor was very clear early on, in connection
4 with United's attempt to do an e-mail protocol, that nothing in terms
5 of United's obligation to produce documents would be stayed or
6 would otherwise be relieved while the parties negotiated an ESI
7 protocol.

8 And so it's concerning -- you know, I think if you read
9 United's motion, it just tells you they're withholding documents. We
10 know they have substantial documents dating back from June that
11 they referenced, and we have not seen the description and the
12 discussion that we expected to see with respect to those.

13 And so we see this as just ignoring the Court's order. It's
14 another attempt to narrow, where there should not be a narrowing.
15 And we would respectfully ask Your Honor to deny the motion in
16 full.

17 THE COURT: Thank you.

18 And Mr. Balkenbush.

19 MR. BALKENBUSH: Thank you, Your Honor.

20 What you didn't hear from Ms. Gallagher a minute ago
21 was any explanation of why documents related to nonemergency
22 services would be relevant to any of their claims. You didn't hear
23 any explanation as to why documents related to Data iSight services
24 or products that may be offered in Hawaii, or some other state than
25 Nevada, would have any relevance to claims that plaintiffs

1 themselves have defined in this their own complaint as only relating
2 to services provided in Nevada.

3 The only thing that you heard is essentially an argument
4 that, well, we've asserted a RICO claim. We survived a motion to
5 dismiss on that, and that, therefore, essentially discovery should be
6 unfettered and there should be no geographical limitations, no time
7 limitations on any of the discovery requests.

8 But that doesn't even make sense, Your Honor, if you look
9 at the plaintiff's other discovery requests. In virtually all of their
10 discovery requests they did put time limitations on, that conformed
11 to the allegations in the complaint. They put time limitations in from
12 July 1st, 2017, to present. They put geographic limitations and
13 limiting those requests to Nevada.

14 But for a few of the requests that we pointed out in our
15 motion, for whatever reason, they didn't -- whether intentionally or
16 inadvertently. And now they're trying to take advantage of the Court
17 granted their motion in full and forced United to do what is
18 essentially an enormous amount of busy work producing documents
19 that both sides know have no relevance to this case.

20 And this argument that we're trying to narrow the scope of
21 discovery beyond the confines of their complaint -- we pointed to the
22 allegations in their complaint in our motion, Your Honor. They're
23 the ones who is defined the scope of the litigation. In their
24 complaint, they are very specific. They're only bringing claims for
25 emergency services, and that their claims only relate to services

1 provided in Nevada.

2 They're also specific as to the timeframe in the complaint.
3 We didn't pick the July 1st, 2017, date in our motion out of thin air.
4 That's from their complaint. And the January 31st, 2020, date that
5 we're asking be an end date for some of these requests -- that's not a
6 date we just made up. That's a date that comes from their own
7 claims spreadsheets. It's the final -- it's the latest date of service for
8 claims for reimbursement that they've asserted.

9 So we're not trying to narrow the scope beyond the
10 confines of their complaint. What we're trying to do is ensure that
11 discovery doesn't go completely beyond the bounds of the
12 complaint, and that United isn't forced to begin gathering
13 documents from all these other states and from all the other
14 timeframes -- which is going to make it difficult, Your Honor, to meet
15 other discovery obligations that United is trying to meet, such as
16 producing the 2000 administrative records a month that this Court
17 has ordered us to produce.

18 So all this is is a good faith attempt, Your Honor, to try to
19 hopefully streamline discovery and avoid the production of
20 documents that everyone knows have no relevance to this case.

21 I have nothing else, Your Honor.

22 THE COURT: Thank you.

23 All right. The matter is submitted.

24 This is the defendant's motion to clarify prior orders of the
25 Court.

1 It will be granted in one very small regard and denied in
2 the balance. With regard to the time period, the time period will be
3 specified to end as of January 31, 2020.

4 I was really specific in October with regard to the
5 geographical scope, so I'm denying that motion. But I would
6 suggest that on a rolling basis, Nevada services should be produced
7 first; however, the national requests -- I previously granted that
8 request.

9 Denied with regard to the emergency services.

10 And with regard to the redacted nonparty providers, the
11 suggestion that you could redact with confidentiality, that will be
12 approved by the Court. So you may redact. But I'm not going to say
13 that you may redact for all purposes. And it's still subject to a
14 motion to compel, if there's an issue with regard to the redaction in
15 the confidentiality provisions.

16 Now, with regard to the countermotion for order to show
17 cause, I'm going to deny that at this time. However, I will entertain it
18 in the event that there is not an immediate response to these issues.

19 I do believe that -- and Mr. Balkenbush, I know I spoke
20 harshly with you last fall with regard to what I perceived as an effort
21 to slow discovery by not putting enough resources to be reasonably
22 responsive. But this seems to be a continued pattern from your
23 client with trying to argue matters that have already been decided
24 without meeting and conferring. And I don't point the finger at you
25 in any way. But I don't think your client is realistic with regard to the

1 requirements that I have set for them to produce discovery in this
2 case.

3 So when I say that, you know, I -- this -- those are harsh
4 words, and I realize it. But it just -- you know, this case goes back.
5 But it -- in my notes I have a -- you know, it goes back to April
6 of 2019. And we're still -- I know it was removed and remanded, but
7 we're still rearguing some of the fine points again and again, and in
8 some cases three times.

9 So I hope that my message is clear today.

10 So plaintiff to prepare the order. Defendant will approve
11 the form of the order. And if there are any disputes, I'll reject any
12 competing orders. You can bring those to my attention, but I think
13 the ruling should be very clear today.

14 Are there any questions?

15 MR. BALKENBUSH: No questions from defendants,
16 Your Honor.

17 I guess just one thing I wanted to just comment, I wanted
18 to make, I know that we're not -- you're not entertaining the
19 countermotion today, and I appreciate the Court denying that for the
20 time being.

21 But I guess what I -- and I won't get into it, but we believe
22 that there are material false statements in their counterclaim -- in
23 their countermotion related to allegations about things that United
24 hasn't produced that we have, in fact, produced.

25 There are statements in there that we haven't

1 supplemented certain discovery responses that are just provably
2 false -- that we have supplemented them. And there's been a large
3 production of documents. So maybe plaintiffs have having trouble
4 keeping up with, you know, the number of supplements that we've
5 been submitting, but --

6 THE COURT: Mr. Balkenbush, you can -- let's stop right
7 there. Okay? I don't want to escalate this hearing anymore. I won't
8 allow personal criticism of lawyer to lawyer.

9 So was there any question by the plaintiff?

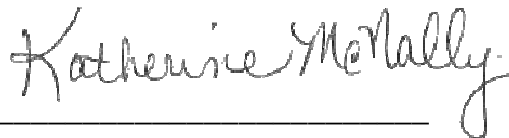
10 MS. LUNDVALL: No, Your Honor. Thank you for your
11 time.

12 THE COURT: So this has been a long morning for me. I'm
13 sure for you guys too. So if I didn't say it, like, 20 times for all of
14 you, I hope you enjoy your holiday, whatever you celebrate. Stay
15 safe and healthy. It looks like I see you next week, so next year --
16 next week I'll wish you a happy New Year.

17 [Proceeding concluded at 12:58 a.m.]

18 * * * * *

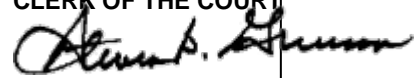
19 ATTEST: I do hereby certify that I have truly and correctly
20 transcribed the audio/video proceedings in the above-entitled case
21 to the best of my ability.

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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, DECEMBER 30, 2020

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

APPEARANCES (Attorneys appeared via Blue Jeans):

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

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

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

1 **LAS VEGAS, NEVADA, WEDNESDAY, DECEMBER 30, 2020**

2 [Proceeding commenced at 11:09 a.m.]

3
4 THE COURT: I need two minutes. So I'm going to just
5 mute myself for two minutes. I'll be right back.

6 [Recess taken from 11:09 a.m., until 11:11 a.m.]

7 THE COURT: Fremont versus United.

8 Let's take appearances, please, starting first with the
9 plaintiff.

10 MS. GALLAGHER: Good morning, Your Honor. Kristen
11 Gallagher, on behalf of the plaintiff Health Care Providers.

12 MS. LUNDVALL: Good morning, Your Honor. Here with
13 Ms. Gallagher, also on behalf of plaintiff Health Care Providers.

14 MS. PERACH: Good morning, Your Honor. Amanda
15 Perach, also on behalf of the Health Care Providers.

16 THE COURT: Thank you.

17 And for the defendants, please.

18 MR. BALKENBUSH: Good morning, Your Honor. Colby
19 Balkenbush for the defendants.

20 And I think Mr. Roberts is trying to make his appearance
21 as well.

22 I think you may be muted, Lee.

23 MR. ROBERTS: Is that better? Lee Roberts for the
24 defendants, Your Honor.

25 THE COURT: That works. It works.

1 MR. ROBERTS: Excellent then.

2 THE COURT: [Indiscernible.]

3 MS. LLEWELLYN: Good morning, Your Honor. Brittany
4 Llewellyn, also on behalf of defendants.

5 THE COURT: Okay. So this was -- we're going to talk
6 about the motion to appoint a special master, and we're also going
7 to talk about [indiscernible].

8 Let me give you guys some feedback before -- you can
9 tailor your arguments to this.

10 You know, I am inclined to appoint a special master. In
11 the case that Judge Denton had, there were 26,000 claims and he
12 appointed one. Here, there are over 22,000.

13 I looked at the process Judge Denton used, which I
14 thought was appropriate. He gave all parties the chance for input,
15 process, and procedure. There were issues with regards to pays, the
16 fee structures, and motion-by-motion basics.

17 But the thing I want to add to that is that you need to
18 estimate the time that you think a special master -- sorry, not a
19 receiver -- a special master would need to devote to this on a
20 somewhat urgent basis.

21 You know, in Judge Denton's case, I saw the time to trial
22 and resolution. And you guys have a longer discovery cutoff than
23 they did. And I've read everything about the number of pages of
24 discovery provided by both sides.

25 The one thing I found impressive that was done in the

1 Denton case was that there was a statistical sampling of discovery,
2 which may assist you guys with your claims-matching protocol, if
3 that's something you want to consider. Because we still have the
4 issue that you guys are negotiating with the matching --
5 claims-matching protocols, and the ESI retrieval.

6 So my inclination is that, you know, you have a deadline
7 to submit candidates. We have a hearing to determine who would
8 be appointed, the scope of the appointment. And I realize with the
9 holiday that may be more difficult, but now that we have a little
10 more time in discovery, that just gives us a little bit more time.

11 So with that in mind, Mr. Balkenbush, your motion,
12 please -- or Mr. Roberts or Ms. Llewellyn.

13 MR. BALKENBUSH: Thank you, Your Honor. And I'll be
14 arguing on behalf of defendants.

15 So I guess let me, I guess, first state that it seems like as,
16 Your Honor mentioned, there's actually quite a bit of agreement
17 between the parties on this issue. You know, both parties agree it
18 would be beneficial to have a special master for all the reasons
19 Your Honor pointed out.

20 You know, initially, in this case, we had disputes that were
21 a little easier to resolve. We had, for example, United might have
22 objected to certain requests for production and just stated, you
23 know, we object on these bases; we're not going to produce
24 documents.

25 Your Honor has heard motions to compel and granted

1 some of those.

2 And now disputes on both sides are moving to a little
3 more of a complex nature; right? So it's not blanket objections.
4 We're not going to produce documents and need the Court to either
5 overrule or sustain those objections. It's, you know, both sides
6 saying we believe we produced responsive documents. You know,
7 please see Bates numbers 1 through 10,000 that we believe are
8 responsive to this category. And then the other side saying, well, no,
9 we don't think that those documents, those, you know, 10,000 or
10 5,000 documents you've cited to are actually responsive.

11 And the only way to really get to the bottom of that is
12 perhaps someone -- give them a binder or binders of documents and
13 have an independent arbiter determine if that production is
14 compliant or not.

15 And we think that that kind of analysis will be very helpful.
16 We're confident in the productions we've made. And we want there
17 to be someone who has sufficient time to conduct that analysis and
18 ferret out the truth. So we think it would be very beneficial to have a
19 master appointed.

20 It seems the only real disagreements are kind of logistical
21 and procedural. You know, plaintiffs raised the issue that they want
22 a process, and Your Honor mentioned that as well. We're amenable
23 to the process Judge Denton used and the process that plaintiffs
24 proposed in their response -- essentially, each side proposes three
25 special master candidates, and then each side will have an

1 opportunity to lodge any objections to those, and then Your Honor
2 would choose among the six candidates and appoint one as a
3 special master. And that's absolutely fine with United.

4 They also raised the issue of fee-splitting, Your Honor.
5 You know, certainly we think something closer to 50/50 would be fair
6 and equitable, but given the benefits that we think that this case
7 would get from having a special master appointed, we are willing to
8 compromise on that issue. So I just don't think it's going to be, you
9 know, something that we can resolve.

10 If Your Honor believes that an allocation different than
11 50/50 would be appropriate, with United paying something more
12 than 50 percent, we're not going to object to that, Your Honor. We'll
13 leave that to your discretion, based on your view of the case and the
14 issues.

15 And then, finally, there's an issue that the other side
16 raised -- their concern about delay, that, you know, this may be sort
17 of a tactic by United to just delay discovery, frustrate discovery.
18 Certainly, we disagree with that.

19 But it seems like that issue could be easily addressed as
20 well, Your Honor, if the Court were to just provide, for example, that
21 any motions to extend -- further extend discovery deadlines or move
22 trial dates, that any reports and recommendations that a special
23 master issued on those issues could just be reviewed *de novo* both
24 for findings of fact and conclusions of law.

25 You know, typically, the reports and recommendations

1 would be reviewed under a clearly erroneous standard for factual
2 findings. But, you know, we'd be amenable to just making a *de novo*
3 review or our -- or any factual findings related to extensions of
4 discovery deadlines. I would think that maybe would address the
5 concern plaintiffs have about, you know, United just immediately
6 filing some kind of motion to extend discovery right when a special
7 master is appointed.

8 So I really think the logistical and procedural issues, we're
9 amenable to compromise, Your Honor. I think we can resolve those.

10 And yeah, I guess just reiterating the points Your Honor
11 made, I think it would be very beneficial to have a special master
12 here, you know. In addition to the production issues and trying to
13 determine whether each parties' productions are compliant, You
14 know, we're going to have, I think, continuing disputes over
15 attorney's eyes only designations and confidentiality designations of
16 the protective order that's in place. Your Honor already heard one of
17 those and ruled on it, but I think there will be more.

18 And those are disputes that don't typically come up in, you
19 know, normal commercial litigation cases where there's not
20 extremely sensitive information at issue, but here there are -- you
21 know, there's extensive documents that have been produced that do
22 contain information that United -- and I think that the plaintiffs also
23 believe is protected, and you know, should be subject to protection
24 from public disclosure. And so I think that would be helpful as well.

25 And then kind of the logistical procedural issues that are

1 out there -- the claim-matching protocol, the ESI protocol that we're
2 still negotiating with plaintiffs -- I think a special master would be
3 helpful there too. You know, it would be someone that we can get
4 on -- if there's some issues or we're just struggling to make
5 headway, and we can get on the phone with them very quickly, have
6 them weigh in and see if they can get it resolved.

7 And then also, you know, we're going to be having
8 depositions come up here. And I think, you know, for any disputes
9 that arise during depositions, certainly, I mean, Your Honor is
10 available for phone calls, and we've done that before during
11 depositions if there's some dispute, but, you know, having, I think, a
12 special master or probably having a greater availability to, you know,
13 weigh in and rule on any in-deposition disputes that may arise and
14 probably fairly easy to get a phone call set up with them. So I think
15 for all of those reasons, we think it makes sense.

16 And again, I guess I just want to emphasize, as far as the
17 procedural logistical issues that plaintiffs have raised, we're very
18 open to compromise, on those, Your Honor, and would accept, you
19 know, any input or ruling Your Honor has on those.

20 Thank you.

21 THE COURT: Thank you.

22 And the opposition's response, please.

23 MS. GALLAGHER: Thank you, Your Honor. This is Kristen
24 Gallagher, on behalf of the plaintiff Health Care Providers.

25 You know, United in its motion and in its oral presentation

1 has indicated that the Health Care Providers are amenable and
2 openly agreeable to the appointment of a special master. I know
3 Your Honor has read our papers, our opposition papers.

4 And I don't want to belabor the point, however, our
5 position is that, you know, the reason we're in this position at this
6 point is because United has not taken its discovery obligations
7 seriously. Your Honor is well aware of that history. I don't want to
8 belabor those points, but I think if you look even to your recent
9 orders of October 27th and November 9th, you know, Your Honor
10 has had occasion to admonish United's discovery conduct in this
11 case.

12 What I'm hearing from United's counsel's presentation
13 today is more of that concerning -- talking about asking a special
14 master to determine if it's compliant with orders of this Court. To
15 me that just signals more of the same. I don't think that conduct that
16 is not acceptable to the Court should then be rewarded with the
17 appointment of a special master, that essentially comes on the heels
18 of the Court's admonishment.

19 It seems as though United is looking for a fresh set of
20 eyes, trying to change the narrative of this case, that it has created
21 by failing to follow just discovery obligations, and then even more
22 so, following -- failing to follow the guidance and the directives and
23 the orders of this Court. Even as the Court last week had occasion to
24 remind United of that, it comes back to the Court and tries to
25 relitigate issues two and three times without meeting and conferring.

1 So from our perspective, the Health Care Providers'
2 perspective, that type of conduct should not be rewarded by then
3 imposing additional costs on the Health Care Providers by having to
4 retain a special master.

5 I think it's important to go back to the standard, which is
6 the guidepost by which a special master is appointed, and that is in
7 Rule 53. Specifically there are three bases that the Court can appoint
8 a special master, two of which don't apply to this case.

9 The third one is to address any pretrial matters that can't
10 be effectively and timely addressed by the Court. You know,
11 respectfully, Your Honor, your court and you and your staff have
12 done an excellent job in responding quickly and effectively to, you
13 know, what has been created -- discovery disputes created by
14 United.

15 And so I don't have any reason to believe that that would
16 be different, that the Court would not be able to continue to maintain
17 that.

18 What United has referred to are potential motions to
19 compel in the future. Again, it is a little bit premature. But with
20 respect to that rule, I think it's important to note that there isn't a
21 situation that the Court hasn't been able to effectively address the
22 issues that are raised by the parties.

23 I do want to point, just briefly -- I know Your Honor looked
24 at Judge Denton's scheduling and appointment of a special master
25 and you made reference to a statistical sampling discovery. My

1 recollection is --

2 THE COURT: Which actually, I noticed you were the
3 lawyer in that case, for the other side, though.

4 MS. GALLAGHER: That's correct, Your Honor. For the
5 plaintiffs.

6 So with respect to the statistical sampling, that actually
7 ended up being, -denying parties similar to sort of some of the
8 things we've seen in this case. They were trying to limit discovery
9 and shift burdens with respect to evidentiary purposes. And so my
10 recollection is that motion was not granted. And statistical sampling
11 was not appropriate in that case, for the specific reasons, you know,
12 to that case, and what it was being tried to be used for by the
13 defendants.

14 We've seen similar activity by United in terms of trying to
15 block and obstruct the Health Care Providers' access to discovery.
16 And so to then shift that history to a special master at this point in
17 the case, when it's not in its infancy, right, we've sort of had an
18 opportunity to come to the Court and seek redress because United
19 hasn't wanted to play by the recognized rules.

20 And so we just -- you know, I understand Your Honor's
21 perspective and your indication at the outset of the hearing where
22 you may be inclined, but just wanted to, you know, let you know that
23 we don't agree -- although we did give, you know, information in our
24 opposition related to if the Court is inclined to appoint a special
25 master. I just want to make it clear we did not agree with United and

1 do not agree with the appointment of a special master.

2 I think it's interesting with respect to the fee-splitting. We
3 obviously would very much like to have it mostly on United because
4 we think in the event the Court finds that it can't effectively handle
5 what United continues to put forward in terms of failing to respond
6 to their discovery, then we think a 75/25 split is appropriate.

7 This is more of what we consider to be the same pressure,
8 the leverage relating to failing to pay the Health Care Providers the
9 appropriate reimbursement rate, and then further trying to extend
10 this out and make it more expensive than it needs to be.

11 I'm happy to answer any questions that Your Honor had.

12 But one last point I wanted to make is that we just would
13 want to make sure Your Honor retains any authority or jurisdiction
14 over the trial date. We would certainly not want a special master to,
15 now that we have a firm setting in October, have any impact on that
16 scheduling.

17 Whether or not there's any room for interim changes on
18 the order that you just issued, I propose remains to be seen. But we
19 certainly want to be as protective as we can, if trial -- jury trials will
20 be continuing in October as we're currently set. We just think that
21 this is essentially the judge shopping, trying to get around from
22 Your Honor and the pressure that you have indicated that is on
23 United with a fresh set of eyes that may not appreciate how many
24 efforts and how long it's taken the Health Care Providers to get
25 United to this point in this litigation.

1 Thank you, Your Honor.

2 MS. LUNDVALL: Your Honor, this is Pat Lundvall.

3 I just wanted to clarify on one point that the defendants
4 made. In the case before Judge Denton, we represented the Health
5 Care Providers, Ms. Gallagher and I did, adverse to another
6 insurance carrier, similar to United. And so our positions have been
7 consistent between the two matters. There's no -- you know, we're
8 not trying to work both sides of that aisle.

9 THE COURT: I understand. I understand. I saw her name
10 come up and I decided to go back and look again. I was just looking
11 for direction because Judge Denton is a very valued colleague.

12 So what I'm hearing, then, Ms. Gallagher is that you're not
13 thrilled with the idea of a special master. But a special master
14 shouldn't be ruling on whether or not the defendant's compliance --
15 in compliance with current court orders and shouldn't address
16 discovery deadlines. Does that pretty much sum up your argument?

17 MS. GALLAGHER: Well, I suppose that's a good summary
18 of that argument. And I think it would be imperative for any special
19 master to have, you know, the background with respect to the case.
20 You know, like Your Honor has indicated, United tries to continually
21 walk back or reconsider various orders of the court, various
22 decisions that Your Honor has made.

23 And so it would be important for any special master to
24 understand the confines of what you have already ordered, so as not
25 to -- for the Health Care Providers to lose time to reeducate and to

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1 enforce orders that have already been in place by virtue of, you
2 know, trying to ignore or reconsider those, Your Honor.

3 THE COURT: Good enough.

4 All right. Thank you.

5 And then, Mr. Balkenbush, your reply.

6 And I will note for the record that ERISA did not come up
7 in the last hearing.

8 MR. BALKENBUSH: Thank you, Your Honor. And I'll try to
9 be as brief as I can.

10 The first point Ms. Gallagher raised was this issue of an
11 allegation of continuing noncompliance by United with its discovery
12 obligations and with the orders of this Court. And I think what's --
13 obviously we disagree with that, Your Honor. We think we are fully
14 compliant and are happy to have that vetted.

15 But to me, that allegation, it actually supports the
16 appointment of a special master, rather than undermines it. Because
17 if United is indeed a noncompliant, you know, if it's saying that, look,
18 see Bates Nos. 1 through 5,000, those are responsive to this request
19 for production, plaintiffs -- and those documents are, in fact, not
20 responsive; you know, United's hiding, putting a needle in a
21 haystack -- kind of what the plaintiffs are arguing, the special master
22 is going to figure that out.

23 That's the purpose of a special master is that he or she is
24 going to be able to look through those documents. And if United is
25 noncompliant is going to be able to find that and make a

1 recommendation to the Court that United be sanctioned. Or
2 conversely, if the special master looks and finds that, no, these
3 documents are responsive and that plaintiff's allegations that United
4 is not complying, well, they may have been true perhaps in the past,
5 are no longer true, then that's going to be found out.

6 And so to me the allegation about continuing
7 noncompliance, which we completely disagrees with, Your Honor,
8 but even assuming it was true, it actually supports the appointment
9 of a special master here. And then I guess, just to reiterate, you
10 know, with the case they have before Judge Denton that
11 Ms. Gallagher and Lundvall handled -- you know, it was 9 --
12 approximately 9,000 claims there versus 22,000 plus claims
13 [indiscernible], almost --

14 THE COURT: You said that -- hang on.

15 MR. BALKENBUSH: Yeah.

16 THE COURT: I saw in the paper that it was over 26,000,
17 and [indiscernible] was appointed. So there's some dispute in my
18 mind about the number. I'm not sure it's [indiscernible].

19 MR. BALKENBUSH: Understood, Your Honor. And fair
20 enough, I was going off -- I believe it was from the -- may have been
21 from the complaint. And that may have changed later in that
22 litigation.

23 But -- and I guess, you know, just as far as, you know, the
24 trial date -- Ms. Gallagher raised that. You know, we certainly have
25 no objection to the Court retaining, you know, jurisdiction over

1 deciding that. I think the Court would have to weigh in on that
2 anyway, regardless of any recommendation by a special master.

3 The -- the judge shopping allegation that they raised, I
4 guess just to be -- ensure that the Court is aware of the background
5 on this motion. So this actually came up -- we got the idea of this at
6 the November 4th status check that this Court held. At that status
7 check there were accusations from both sides. We accused plaintiffs
8 of not complying with their discovery obligations; they accused
9 United of not complying. And that fact check, the Court raised the
10 idea of potentially appointing a special master.

11 And then we were scheduled to discuss that issue, among
12 others, with the Court at a November 23rd status check. And the
13 Court had stated that, you know, we were going to walk in
14 [indiscernible] agenda, and we were going to walk through these
15 issues one by one and try to determine, you know, who was
16 compliant and who was not complaint, and also discuss the issue of
17 appointing a special master.

18 You know, ultimately that November 23rd status check
19 was vacated by Your Honor. And so we never got an opportunity to
20 discuss it, and so we wanted to just tee up the issue with this
21 motion.

22 So it's not judge shopping, Your Honor. This was filed
23 after Your Honor's comments at the November 4th status check.
24 And we agree with plaintiffs that, you know, Your Honor has been --
25 you know, very effective at adjudicating the discovery disputes to

1 date, and there's no dissatisfaction with that on our side.

2 It's just that I think previously, like I had mentioned, the
3 disputes had been blanket objections by parties and the Court
4 overruling or sustaining those, and now the disputes are moving to
5 parties saying that they have complied, citing to Bates numbered
6 documents, and then disputes over whether those documents are
7 indeed responsive or not.

8 So for all those reasons, Your Honor, we believe it would
9 be appropriate to appoint a special master.

10 THE COURT: Thank you, both.

11 The motion for a special master asked for specific areas of
12 coming motions to compel, numbers of deposition, confidential
13 designations, and written discovery issues, which I think would be
14 appropriate to be done to a limited extent by a special master.

15 I do not believe that a special master should be able to
16 rule on whether or not either party is compliant with any order of
17 this Court. A special master should not be allowed to alter existing
18 deadlines.

19 I am going to set a quick turnaround on this. I'm going to
20 ask that you provide your candidates to us by January 8, 2021, by
21 5 p.m.

22 I am going to suggest that the defendant should bear
23 75 percent of the cost, subject to reallocation at a later time.

24 The proposed special master candidates need to have the
25 fee arrangements outlined, as the plaintiff did with retired Judge

1 Peggy Leen. The most important thing to me, though, is that
2 whoever is chosen for this limited job needs to have the time to
3 devote to it and needs to have the background.

4 So you -- all of you need to process and talk to these
5 candidates. If there's a possibility of coming to a consensus, great.
6 If not, I'll make the choice based upon who has the time to devote
7 and the background.

8 The last thing that I'm going to suggest is that I get access
9 to the special master at my request or at the request of the special
10 master. I do that with receivers all the time. Receivers get snags;
11 special masters get snags. They must be able to reach out to me
12 and talk on the phone. I talk to them. And then the law clerk and I
13 talk to them together, always to a minute order outlining what was
14 discussed so that it's not an *ex parte* contact. It is a contact with
15 disclosure.

16 Now, I want to come back on January 13th, a special
17 setting at 1 p.m., to determine two things: One, a special master will
18 be convened; and No. 2, the two of you will need to hash out an
19 order that is as agreed as possible as to form, and I'll review it and
20 be prepared.

21 I need to give you guys some background on that
22 November 23rd hearing that I had scheduled. I wanted to manage
23 your discovery. But when I got your status reports, it was
24 impossible to even get you guys on the same page enough to talk
25 about anything. And so I vacated it, frankly, out of frustration,

1 because everything in those status reports was an effort to reargue
2 things that had already been determined. So I didn't think that
3 would be productive. So -- and that's my explanation on that.

4 But on the 13th, you have the dedicated session to hash
5 out those issues remaining with regard to the order of appointing a
6 special master. And we will do that that day.

7 The last thing is -- was there input on that before we talk
8 about the proposed scheduling trial order?

9 MS. GALLAGHER: No, Your Honor. Nothing from
10 plaintiffs.

11 MR. BALKENBUSH: Nothing from defendants,
12 Your Honor. We're amenable to all the conditions that Your Honor
13 just mentioned.

14 THE COURT: Good enough.

15 All right. Now, let's talk about the proposed scheduling
16 trial order. I took your 3/15 discovery deadline, just altered it a little
17 bit. The JEA and I worked on it together and gave you a date certain,
18 starting October 4th.

19 I must tell you we have another trial set that day, but I just
20 approved a good faith settlement from the largest defendant in an
21 undisclosed amount, so I do not believe that will go. That's out
22 there.

23 But I feel like I need to keep everybody's feet to the fire
24 here. So plaintiff and then defendant, issues with regard to that
25 proposed scheduling and trial order?

1 MS. GALLAGHER: Your Honor, this is Kristen Gallagher
2 on behalf of the plaintiffs. We don't have any issues with the
3 proposed trial setting order. Thank you.

4 THE COURT: Thank you.

5 Defendant?

6 MS. LLEWELLYN: Thank you, Your Honor. We don't have
7 any issues with the proposed order.

8 THE COURT: Okay. So that I will go ahead and reenter
9 that as the scheduling trial order, rather than as just proposed.

10 And Nicole, will you please coordinate with the JEA to
11 make sure that it gets done today?

12 THE CLERK: Yes, of course.

13 THE COURT: Thank you.

14 All right, you guys. Anything else today?

15 If you have problems getting those names by the 8th, let
16 us know. But I have a feeling that, given the quality of the lawyering,
17 you guys are already going to know who your possible candidates
18 are, and you've already considered that, since the motion was filed
19 in November.

20 MR. ROBERTS: Yes, Your Honor. And I think the only
21 thing we need to do is just make sure that we do vet their available
22 time. I don't believe we've done that. And we will take the Court's
23 suggestion and make sure that whoever we recommend is going to
24 have time available to devote the attention needed to this case
25 without delay --

1 Sorry, Pat. Go ahead.

2 THE COURT: Anything --

3 MS. LUNDVALL: Happy New Year, Your Honor.

4 THE COURT: Okay. So until I see you guys in a couple of
5 weeks, stay safe and healthy, and Happy New Year to everyone.

6 MS. GALLAGHER: Thank you. Happy New Year,
7 Your Honor.

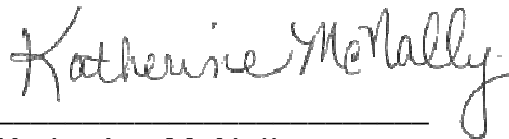
8 MR. BALKENBUSH: Thank you, Your Honor.

9 MR. ROBERTS: Thank you, Your Honor.

10 [Proceeding concluded at 11:39 a.m.]

11 * * * * *

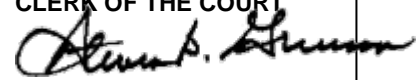
12 ATTEST: I do hereby certify that I have truly and correctly
13 transcribed the audio/video proceedings in the above-entitled case
14 to the best of my ability.

15 

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

**NOTICE OF ENTRY OF STIPULATED
ELECTRONICALLY STORED
INFORMATION PROTOCOL
ORDER**

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McDONALD CARANO

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1 PLEASE TAKE NOTICE that a Stipulated Electronically Stored Information Protocol
2 Order was entered on January 8, 2021, a copy of which is attached hereto.

3 DATED this 8th day of January, 2021.

4 McDONALD CARANO LLP

5 By: /s/ Kristen T. Gallagher

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 8th day of January, 2021, I caused a true and correct copy of the foregoing **NOTICE OF STIPULATED ELECTRONICALLY STORED INFORMATION PROTOCOL ORDER** to be served via this Court's Electronic Filing system in the above-captioned case, upon the following:

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

**STIPULATED ELECTRONICALLY
STORED INFORMATION PROTOCOL
ORDER**

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

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United HealthCare Services, Inc.; UMR, Inc.; Oxford Health Plans, Inc.¹; Sierra Health and Life Insurance Company, Inc.; Sierra Health-Care Options, Inc. and Health Plan of Nevada, Inc. (collectively, “Defendants”) referred to individually as a “Party” or collectively as the “Parties,” stipulate and agree as follows:

1. **Purpose.** The procedures and protocols outlined herein govern the production of electronically stored information and other Documents during the above-captioned case (“ESI Protocol”). The production of ESI (as defined below) and other Documents under this protocol shall also be subject to the provision(s) of any order(s) concerning confidentiality and/or privilege. By agreeing to this ESI Protocol, the parties do not waive any objections to the authenticity or admissibility of produced ESI and other Documents, and the parties reserve all applicable objections under the Nevada Rules of Civil Procedure.

2. **Definitions.** In addition to the terms defined throughout this ESI Protocol, the below terms shall be given the following meaning:

- a. “Action” shall mean this dispute between the Parties, Case No. A-19-792978-B.
- b. “Court” refers to the Eighth Judicial District Court, Clark County, Nevada presiding over this Action.
- c. “Document” is defined to be synonymous in meaning and equal in scope the usage of this term in NRCP 34(a), as follows: “documents or electronically stored information — including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations — stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form.” The term “Document” shall include Electronic Documents and ESI as defined herein.
- d. “ESI” means and refers to information created, manipulated, communicated, stored (on-site and/or off-site), and best utilized in electronic, digital, and/or native form, including, without limitation, the following: e-mail; word-processing documents; spreadsheets; presentation documents; graphics; animations; images; audio, video, and audiovisual recordings; voicemail; text messages; and the like (including attachments to any of the foregoing). stored on databases, networks, computers, computer systems, servers, archives, backup or data recovery systems, removable media, the internet, handheld wireless devices, smart phones, and/or other storage media, requiring the use of computer hardware and software.

¹ Defendants contend Oxford Health Plans LLC (incorrectly named as “Oxford Health Plans, Inc.”)

- e. "Exact Duplicate" means a bit-for-bit identity of the Document content with exact Hash Value matches.
- f. "Extracted Text" means the full text that is extracted electronically from Native electronic files and includes all header, footer and Document body information.
- g. "Hash Value" is a unique numerical identifier that can be assigned to a file, a group of files, or a portion of a file, based on a standard mathematical algorithm applied to the characteristics of the data set. The most commonly used algorithms, known as MD5 and SHA, will generate numerical values so distinctive that the chance that any two data sets will have the same Hash Value, no matter how similar they appear, is less than one in one billion.
- h. "Load Files" mean electronic files provided with a production set of documents and images used to load that production set into a Receiving Party's document review platform and correlate its data within that platform.
- i. "Metadata" means: (i) information embedded in or associated with a Native file that is not ordinarily viewable or printable from the application that generated, edited, or modified such Native file, which describes the characteristics, origins, usage, and/or validity of the electronic file; (ii) information generated automatically by the operation of a computer or other information technology system when a native file is created, modified, transmitted, deleted, or otherwise manipulated by a user of such system; (iii) information, such as Bates numbers, created during the course of processing documents or ESI for production; and (iv) information collected during the course of collecting documents or ESI, such as the custodian data source from which it was collected. Nothing in this ESI Protocol shall require any party to manually populate the value for any metadata field where such data is not contained in the original file. The parties may modify filenames to protect patient/member/non-party provider identity, and where documents have been generated outside of the ordinary course of business.
- j. "Native" or "Native Format" means and refers to the format of ESI in which it was generated and/or as used by the Producing Party in the usual course of its business and in its regularly conducted activities. For example, the Native format of an Excel workbook is a .xls or .xlsx file.
- k. "Optical Character Recognition" or "OCR" means the optical character recognition technology used to read the text within electronic images of paper Documents and create a file containing a visible, searchable text format of such Documents.
- l. "Producing Party" refers to the party which is producing Documents and/or ESI under this ESI Protocol.

3. **Modification.** Any practice and/or procedure set forth herein may be modified by written agreement of the Parties. If the Parties cannot resolve their disagreements regarding such modifications, the Parties shall submit their competing proposals to the Court, which may modify

1 this ESI Protocol for good cause shown.

2 4. **Cost Shifting.** As a general matter, the costs of production pursuant to this ESI
3 Protocol shall be borne by the Producing Party. Nothing stated in this protocol, however, shall be
4 deemed to limit any party from seeking relief from the Court, by way of motion or otherwise, for
5 cost-shifting or cost-sharing.

6 5. **Identification of Custodial Email.** Within seven (7) business days of entry of this
7 Order, the Parties agree to provide to all other Parties a list of (i) custodians whose email is
8 reasonably believed to contain relevant ESI for collection, review and production, and (ii) search
9 parameters, *i.e.*, time frame, method of searching etc. ("ESI Identification"). To minimize the
10 expense, the Parties should attempt to limit the scope of the electronic search (*e.g.*, time frames,
11 fields, document types). Any Party who objects to another Party's ESI Identification must do so
12 within fourteen (14) business days of receipt of the Producing Party's ESI Identification. The
13 Parties agree to meet and confer to resolve all objections. If the Parties cannot resolve their
14 disagreements, the Parties shall submit their ESI Identification and corresponding objections to
15 the Court for determination of the appropriate ESI Identification.

16 6. **Sources of ESI.** Within fourteen (14) business days of entry of this Order, the
17 Parties agree to provide to all other Parties a list of the locations in which all unique and
18 discoverable ESI is believed to be contained.

19 7. **Production Media.** Documents shall be produced on external hard drives, DVD-
20 ROMs, Internet-accessible secure data hosting or FTP sites (by promptly notifying the receiving
21 party how to access the production) and/or other electronic media ("Production Media").

22 a. Each piece of Production Media shall identify the following:

23 i. The Producing Party's name;

24 ii. The production date; and

25 iii. The Bates Number range of the materials contained on the
26 Production Media.

27 8. **De-Duplication.**

28 a. To the extent Exact Duplicates reside within a Party's ESI data set, each
Party will undertake best efforts to de-duplicate responsive ESI (based on

MD5 or SHA-1 Hash Values at the document level) on a global scale.

- b. Where any such documents have attachments, Hash Values must be identical for both the parent document and attachment.
- c. No Party shall identify and/or eliminate duplicates by manual review of some method other than by use of the technical comparison using MD5 or SHA-1 has values outlined above.
- d. A party may also de-duplicate “near-duplicate” email threads as follows:
 - i. In an email thread, only the final-in-time document need be produced, so long as all previous emails in the thread are contained within the final message; however,
 - ii. Where a prior email contains an attachment, that email and attachment shall not be removed as a “near-duplicate”: such email families must be produced separate from the final-in-time document.

9. **Format for Production.** The parties shall produce their ESI as either PDF or TIFF files, with searchable OCR or Extracted Text files as appropriate, and deliver them with Concordance and Opticon load files.

The Production must contain all requisite information and Metadata, except as provided in Paragraph 9(i) below.

- a. Each Party will use its best efforts to filter out common system files and application executable files by using a commercially reasonable identification process, such as using the then-current deNIST provided by the National Institute of Standards and Technology.
- b. For emails with attachments, the Hash Value is generated based on the parent/child document grouping. Parent/child relationships (the association between an attachment and its parent Document) shall be preserved to the extent possible. Attachments are to be produced contemporaneously and sequentially immediately after the parent Document.
- c. If ESI has hidden text (e.g., track changes, hidden columns, comments, notes, markups, etc.) associated with it, the Parties shall produce the ESI in a form showing such hidden text to the extent reasonably practicable. If producing hidden text is not reasonably practicable, the Parties shall meet and confer regarding possible alternatives.
- d. For ESI, each of the Metadata and coding fields set forth in the ESI table below that can be extracted shall be produced for that Document.
- e. The Parties are not obligated to manually populate any of the fields identified in this paragraph if such fields cannot reasonably be extracted

from a document, with the exception of the following:

- i. Document Number Begin (Prod_BegDoc);
 - ii. Document Number End (Prod_EndDoc);
 - iii. Family Begin Number (Prod_BegAttach);
 - iv. Family End Number (Prod_EndAttach); and
- f. The parties will make reasonable efforts to ensure that Metadata fields automatically extracted from the documents are accurate (meaning, the metadata is associated with the file)
- g. **Native Files:** The Parties agree that spreadsheets(e.g., .xls, .xlsx), drawings (e.g., .dwg, .dxf, .tbp, and .ifc), schedule files (e.g., .xer, prx), modeling files, Microsoft Access or other databases and multimedia audio/visual files such as voice and video recordings (e.g., .wav, .mpeg, and.avi) shall be produced in Native Format as those Documents are held in the ordinary course of the Producing Party's business. The Parties shall provide placeholder documents and load files containing the metadata for such documents. To the extent such files are attached to an email, the placeholder document and metadata will be produced sequentially, consistent with the treatment of any other email families. If such a Native file contains privileged information (e.g., Microsoft Excel file), it may be redacted in Native Format by appropriate means, or it may be redacted after being converted to a PDF image format, provided that an unredacted version must be maintained by the party producing such document.
- h. If Native Files contain privileged information and cannot be redacted or produced in a PDF image format, such documents will be logged on a Privilege Log that complies with NRCP 26.
- i. Each production of ESI shall include an Opticon Image Load File containing the following comma-delimited fields: beginning Bates Number, Volume, Image File Path, Document Break, Page Count.
- j. Each production shall include a Concordance metadata file containing the following delimited fields:

Field Name	Description
Author	Author of non-email file
To	Email [TO] (Names and Email Addresses); Separated by ";" (Semi-colon ASCII 59)
From	Email [FROM] (Names and Email Addresses)

BCC	Email [BCC] (Names and Email Addresses); Separated by ";;" (Semi-colon ASCII 59)
CC	Email [CC] (Names and Email Addresses); Separated by ";;" (Semi-colon ASCII 59)
Subject/Title	Combined field of a Document's Title property and an email's subject.
Sent Date/Sent Time	MM/DD/YYYY (Do not use "00" or "0000") and the time portion of the Sent date of an email.
Custodian	Custodian name provided by client or from collection
Prod_BegDoc	Beginning Bates number.
Prod_EndDoc	Ending Bates number.
Prod_BegAttach	For attachments or other child documents, the beginning Bates number for the entire family.
Prod_EndAttach	For attachments or other child documents, the ending Bates number for the entire family.
Parent ID	Used to relate child documents to parent.
Confidentiality	Indicates confidentiality designation under protective order, if applicable.
File Extension	File Extension
Hash Value	File Hash
File Last Modified Date	MM/DD/YYYY (Do not use "00" or "0000")
File Name	Original file name of Native Document, except as modified to protect patient/member/non-party provider identity.
Path	Original path for Documents (if this information has been captured) and full folder path where email was found reflecting the location of the container file (if found in such) and the foldering information on the email system or in the container file (if this information has been captured)

Date Created	Date Document was created in the following format MM/dd/yyyy *Parties acknowledge that the Date Created field may not actually reflect the date and time the file was created, due to the ease of change to that field and the technical definition of the field (e.g., the created date and time reflects the date and time when the file was created in that particular location on the computer or on the other storage device location)
Time Created	The time the Document was created in the following format: HH:mm. This Metadata can also be included within the "Date Created" field. *Parties acknowledge that the Time Created field may not actually reflect the date and time the file was created, due to the ease of change to that field and the technical definition of the field (e.g., the created date and time reflects the date and time when the file was created in that particular location on the computer or on the other storage device location)
Last Modified Time	Time the Document was last modified in the following format: HH:mm. This Metadata can also be included within the "File Last Modified Date" field.
Native File Path	Path or hyperlink to Documents being produced in Native file format
Text Path	Relative path to Extracted Text or OCR for the Document. Full text should be excluded from the Load Files and provided in a separate text file.
Page Count	Number of pages for the Document

10. **Authentication.** In the interest of efficiency and to the extent possible, the Parties agree to enter into a stipulation regarding the authenticity of produced ESI.

11. **Encrypted or Password-Protected Files.** A Producing Party shall make reasonable efforts to remove any encryption or password protection prior to production. If the producing party cannot do so, it shall provide the requesting party any available encryption keys or passwords needed to access produced ESI.

12. ESI that contains privileged information or attorney-work product shall be immediately returned or destroyed if the documents appear on their face to have been inadvertently produced or if there is notice of the inadvertent production. The return or destruction

of such privileged information shall be confirmed via email to the Party that made the inadvertent production.

13. **Cooperation and Transparency.** Parties shall cooperate to identify and facilitate access to the contents of encrypted, corrupted or difficult-to-access files produced. Parties should work cooperatively to fashion reasonable, precise, and cost-effective search strategies, and to agree upon and implement appropriate measures for quality assurance and quality control. Parties are encouraged to bring technically-adept personnel together to resolve e-discovery issues.

14. **Privileged Documents.** Documents and ESI containing privileged information shall be treated as follows:

- a. Privileged email messages may be withheld from production, provided each privileged email is identified on a Privilege Log that complies with NRCP 26. Attachments to privileged email messages do not need to be identified on the Privilege Log separately from, or in addition to, the privileged email. The Privilege Log shall identify the sender, all recipients, sent date, subject, and privilege asserted for each message. Each privileged email shall be assigned a bates-label for organization and referencing.
- b. Privileged, non-email documents may be withheld from production, provided each document is identified on the above-described Privilege Log. For privileged, non-email documents, the Privilege Log shall identify the author, all recipients, document date, and privilege asserted for each document, along with a general description of each document. Each withheld document shall be assigned a unique bates-label for organization and referencing. When possible, non-email documents containing privileged information may be produced in image format (e.g., .pdf) with privileged information redacted.
- c. With respect to privileged or attorney work product information generated after the filing of the complaint in this Action, Parties are not required to include any such information in the Privilege Log.
- d. Each Party reserves the right to challenge any other Party's privilege designations and/or withholding of documents. In the event of a dispute regarding privilege designations and/or withholding of documents, the parties shall meet and confer before submitting the dispute to the Court for determination.

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- e. The parties agree to be bound by the clawback provisions set forth in ¶ 18 of the stipulated Confidentiality and Protective Order in the event that ESI containing privileged information is inadvertently disclosed.

DATED this 7th day of January, 2021.

McDONALD CARANO LLP

WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC

By: /s/ Amanda M. Perach

By: /s/ Brittany M. Llewellyn

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Attorneys for Plaintiffs

Attorneys for Defendants

ORDER

IT IS SO ORDERED.

Dated this 8th day of January, 2021

Nancy L Alf

Submitted by:

0A8 603 C4A8 C254
Nancy Alf
District Court Judge

McDONALD CARANO LLP

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Attorneys for Plaintiffs

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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

CASE NO: A-19-792978-B

8 vs.

DEPT. NO. Department 27

9 United Healthcare Insurance
10 Company, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

Service Date: 1/8/2021

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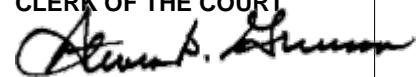
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11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

21 Plaintiffs,

22 vs.

23 UNITEDHEALTH GROUP, INC., UNITED
24 HEALTHCARE INSURANCE COMPANY, a
25 Connecticut corporation; UNITED HEALTH
26 CARE SERVICES INC. dba
27 UNITEDHEALTHCARE, a Minnesota
28 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

**APPENDIX TO DEFENDANTS' MOTION
TO COMPEL PLAINTIFFS' RESPONSES
TO DEFENDANTS' FIRST AND SECOND
REQUESTS FOR PRODUCTION ON
ORDER SHORTENING TIME**

002875

WEINBERG WHEELER
HUDGINS GUNN & DIAL



002875

Defendants UnitedHealthcare Insurance Company (“UHIC”), United HealthCare Services, Inc. (“UHS”), UMR, Inc. (“UMR”), Oxford Health Plans LLC (incorrectly named as “Oxford Health Plans, Inc.”), Sierra Health and Life Insurance Co., Inc. (“SHL”), Sierra Health-Care Options, Inc. (“SHO”), and Health Plan of Nevada, Inc. (“HPN”) (collectively, “Defendants”), by and through their attorneys of record, WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC and O’MELVENY & MYERS LLP, hereby submit this Appendix of Exhibits in Support of Defendants’ Motion To Compel Plaintiffs’ Responses To Defendants’ First And Second Requests For Production On Order Shortening Time.

Exhibit	Description
1.	Defendants’ First Set of Request for Production of Documents to Fremont, served 06/28/2019
2.	Fremont Emergency Services (Mandavia), Ltd.’s Responses to Defendants’ First Set of Request for Production of Documents to Fremont, served 7/29/2019
3.	Letter dated 01/23/2020 regarding deficiencies in discovery responses
4.	Plaintiffs’ First Supplement to Responses to Defendants’ First Set of Requests for Production of Documents to Fremont, 06/01/2020
5.	Defendants’ Second Set of Request for Production of Documents to Plaintiffs, served 08/12/2020
6.	Plaintiffs’ Responses to Defendants’ Second Set of Request for Production of Documents (PII Redacted), served 09/28/2020
7.	Letter dated 10/23/2020 regarding deficiencies in discovery responses
8.	Letter dated 11/17/2020 regarding deficiencies in discovery responses
9.	Letter dated 12/04/2020 regarding deficiencies in discovery responses
10.	Plaintiffs’ Opposition to Motion to Extend Discovery Deadlines and Continue Trial Setting on Order Shortening Time, filed 12/21/2020
11.	Email between counsel dated 12/30/2020 parties at an impasse
12.	Complaint filed in <i>Celtic Insurance Co. v. Team Health Holdings, Inc. et. Al</i> (E.D. Tenn. 2020)
13.	Fremont Emergency Services (Mandavia), Ltd’s First Set of Request for Production to Defendants, served 12/19/2019
14.	Defendants’ Thirteenth Supplemental Responses to Fremont Emergency Services



1	(Mandavia), Ltd's First Set of Request for Production to Defendants, served 11/20/2020
2	15. Complaint filed in <i>Gulf to Bay Anesthesia Associates, LLC v. Unitedhealthcare of Florida, Inc. et al.</i> No. 17-CA-011207 (2017)
3	16. Order Denying Defendants' Motion to Compel Discovery Regarding Plaintiff's Internal Cost Structure filed in <i>Gulf to Bay</i> 12/1/2020
4	17. Order on Defendants' First Motion to Compel, <i>Florida Emergency Physicians v. Sunshine State Health Plan</i> CACE19-013026 (07) (Fla. Cir.Ct., 12/21/2020)
5	18. Answer to First Amended Complaint filed 07/08/2020
6	19. Article: <i>Surprise! Out-of-Network billing for Emergency Care in the United States</i> , December 2018
7	20. Article: <i>How Rich Investors, Not Doctors, Profit from Making Up ER Bills</i> , June 2020
8	21. Health Care Providers' Second supplement to NRCP 16.1 Initial Disclosures, served 06/01/2020
9	22. <i>United States v. TeamHealth Holdings</i> , 2:16-cv-00432-JRG, Doc. 33, First Amended Complaint filed 11/12/2018

Dated this 8th day of January, 2021.

/s/ Brittany M. Llewellyn

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Attorneys for Defendants



CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of January, 2021, a true and correct copy of the foregoing **APPENDIX TO DEFENDANTS' MOTION TO COMPEL PLAINTIFFS' RESPONSES TO DEFENDANTS' FIRST AND SECOND REQUESTS FOR PRODUCTION 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:

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An employee of WEINBERG, WHEELER, HUDGINS
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EXHIBIT 1

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002879

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

Sierra Health and Life Insurance Co., Inc.,

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

12 *Health Plan of Nevada, Inc.*

13
14 **UNITED STATES DISTRICT COURT**

15 **DISTRICT OF NEVADA**

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

18 Plaintiff,

19 vs.

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

27 Defendants.
28

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

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

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.

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



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

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

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

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

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

16 INSTRUCTIONS

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

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





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

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

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

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

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

23 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

11 16. Please produce all documents and communications concerning the “business
12 discussions” referenced in paragraph 26 of the Complaint.

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

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

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

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

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

24 ///

25 ///

26 ///

27 ///

28 ///



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

3 DATED this 28th day of June, 2019.

4
5 

6 D. Lee Roberts, Jr., Esq.
7 Colby L. Balkenbush, Esq.
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10 *Attorneys for Defendants UnitedHealthcare*
11 *Insurance Company, United HealthCare Services,*
12 *Inc., UMR, Inc., Oxford Health Plans, Inc.,*
13 *Sierra Health and Life Insurance Co., Inc.,*
14 *Sierra Health-Care Options, Inc., and*
15 *Health Plan of Nevada, Inc.*

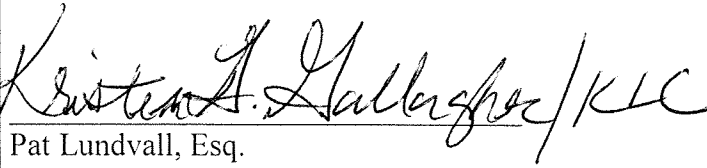
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WEINBERG WHEELER
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RECEIPT OF COPY

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



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EXHIBIT 2

002888

002888

EXHIBIT 2

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

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

**FREMONT EMERGENCY SERVICES
 (MANDAVIA), LTD.'S RESPONSES TO
 DEFENDANTS' FIRST SET OF
 REQUESTS FOR PRODUCTION OF
 DOCUMENTS TO FREMONT**

Fremont Emergency Services (Mandavia), Ltd. ("Fremont") hereby responds to
 defendants United 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") First Set of Requests for Production of
 Documents served to Fremont's counsel pursuant to FRCP 34.

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 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.

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 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.

1 **Request No. 4:**

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

4 **Response to Request No. 4:**

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

17 **Request No. 5:**

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

20 **Response to Request No. 5:**

21 Objection. This request is vague and ambiguous as to the phrase "partial payments." In
22 addition, the request seeks documents not proportional to the needs of the case considering the
23 importance of the issues at stake in the action, the amount in controversy, the parties' relative
24 access to relevant information, the parties' resources, the importance of the discovery in resolving
25 the issues, and whether the burden or expense of the proposed discovery outweighs its likely
26 benefit. In particular, the payment records of all of the claims are unimportant to the issues at
27 stake in this action because there is no dispute that the Defendants have paid the subject claims at
28 rates which are less than full payment of the billed charges. Furthermore, these documents are

1 more accessible to Defendants than Fremont. Finally, the burden and expense of gathering all
2 payment records for thousands of claims which are already in the possession of the Defendants
3 outweighs any benefit to having Fremont produce the same.

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

6 **Request No. 6:**

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

9 **Response to Request No. 6:**

10 Objection. The request is overly broad, irrelevant and not proportional to the needs of the
11 case considering the importance of the issues at stake in the action, the amount in controversy, the
12 parties' relative access to relevant information, the parties' resources, the importance of the
13 discovery in resolving the issues, and whether the burden or expense of the proposed discovery
14 outweighs its likely benefit as this case concerns a dispute over the rate of payment rather than a
15 coverage determination and, consequently, does not concern the medical treatment provided to
16 particular patients. In particular, the medical records of the 10,800 patients referenced in
17 paragraph 25 of the Complaint are records unrelated to the dispute at issue, making such
18 information unimportant to the issues at stake in this action. Furthermore, these documents are
19 accessible to Defendants as the treatment concerns Defendants' Members. Finally, the burden
20 and expense of gathering thousands of medical records, adequately redacting confidential and
21 information protected by HIPAA and producing this exceedingly large file outweighs any benefit.

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

24 **Request No. 7:**

25 Please produce all documents supporting the allegation that "For each of the healthcare
26 claims at issue in this litigation, United HealthCare determined the claim was payable." See
27 Complaint at ¶ 27.
28

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.

Request No. 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 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.

Request No. 10:

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

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.

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.

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.

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.

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. 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 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'

1 obligation to pay the appropriate rate for the Healthcare Claims makes such information
 2 unimportant to the issues at stake in this action. Furthermore, the burden and expense of gathering
 3 these agreements outweighs any benefit that would be derived from the same.

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

6 DATED this 29th day of July, 2019.

7 McDONALD CARANO LLP

8
 9 By: /s/ Kristen T. Gallagher

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 11 Kristen T. Gallagher (NSBN 9561)
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002901

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 29th day of July, 2019, I caused a true and correct copy of the foregoing **FREMONT EMERGENCY SERVICES (MANDAVIA), LTD.'S RESPONSES TO DEFENDANTS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS** to be served via U.S. Mail, postage prepaid upon the following:

D. Lee Roberts, Jr., Esq.
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/s/ Karen Surowiec
An employee of McDonald Carano LLP



EXHIBIT 3

002904

002904

EXHIBIT 3



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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

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 are 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 request that you supplement your responses by removing these improper boilerplate objections.



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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.

Requests for Production of Documents

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



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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



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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.

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.

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.



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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.

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. 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.



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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.

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



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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.*

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



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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.

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.

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.



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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).

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



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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.

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



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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.

Regards,

WEINBERG WHEELER HUDGINS
GUNN & DIAL LLC

/s/ Colby Balkenbush

Colby L. Balkenbush

EXHIBIT 4

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EXHIBIT 4

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Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

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

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.

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

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

9 **Request No. 4:**

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

12 **Response to Request No. 4:**

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

25 **Request No. 5:**

26 Please produce all documents showing the partial payments that Fremont has received
27 from Defendants for the claims that Fremont is asserting in this Action.
28

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

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:

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.

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.

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.

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

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.

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

4 Subject to and without waiving the foregoing objections, Fremont responds as follows:
5 FESM000019-107, FESM000118-219, FESM000221-223, FESM000225-255, FESM000257-
6 287.

7 **Request No. 19:**

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

10 **Response to Request No. 19:**

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

22 **Request No. 20:**

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

26 **Response to Request No. 20:**

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

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

11 **Request No. 21:**

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

14 **Response to Request No. 21:**

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

16 **Request No. 22:**

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

19 **Response to Request No. 22:**

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

1 Subject to and without waiving the foregoing objections, Fremont responds as follows:

2 None.

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

5 DATED this 1st day of June, 2020.

6 McDONALD CARANO LLP

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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:

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EXHIBIT 5

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EXHIBIT 5

RQST

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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 SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS TO PLAINTIFFS**

Defendants UnitedHealth Group, Inc., UnitedHealthcare Insurance Company ("UHC"),
United HealthCare Services, Inc., UMR, Inc., Oxford Health Plans LLC (incorrectly named as



Oxford Health Plans, Inc.), Sierra Health and Life Insurance Co., Inc., Sierra Health-Care Options, Inc., and Health Plan of Nevada, Inc. (collectively, "Defendants"), request that Plaintiffs Fremont Emergency Services (Mandavia), Ltd., Team Physicians of Nevada-Mandavia, P.C., and Crum, Stefanko and Jones Ltd. dba Ruby Crest Emergency Medicine 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 Nevada Rule of Civil Procedure 34. In responding to these requests, adhere to the following definitions and instructions.

DEFINITIONS

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

1. "Document" means the original or any copy thereof and any non-identical copy, whether different from the original because of notations made on or attached to such copy, or otherwise, of any written (including handwritten, printed, mimeographed, lithographed, duplicated, typed, or graphic, photographic, or electronic) matter of any kind or nature, and shall include, without limiting the generality of the foregoing, all letters, telegrams, correspondence, contracts, agreements, notes, reports, memoranda, mechanical or electronic sound recordings or transcripts thereof, memoranda of telephone or personal conversations or of meetings, conferences, minutes, board of directors' minutes, studies, reports, analyses, interoffice communications, books of account, ledgers, work sheets, vouchers, receipts, canceled checks, money orders, invoices, purchase orders, and bills of any nature whatsoever.

2. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise) through written, verbal, audio, electronic, or other means.

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

4. "Plaintiffs," "you," and "your" refer to Plaintiff Fremont Emergency Services (Mandavia), Ltd., Team Physicians of Nevada-Mandavia, P.C., Crum, Stefanko and Jones Ltd.



1 dba Ruby Crest Emergency Medicine and their past or present officers, directors, employees,
2 corporate parents, subsidiaries, successors, predecessors, affiliates, agents, subcontractors and
3 any other persons or entities who obtained or maintained information on its or their behalf.

4 5. "Action" refers to the above-captioned litigation pending in the Eighth Judicial
5 District Court, Case No.: A-19-792978.

6 6. "Defendants" refers to UnitedHealth Group, Inc., UnitedHealthcare Insurance
7 Company ("UHIC"), United HealthCare Services, Inc. ("UHS"), UMR, Inc. ("UMR"), Oxford
8 Health Plans, Inc. ("Oxford"), Sierra Health and Life Insurance Co., Inc. ("SHL"), Sierra Health-
9 Care Options, Inc. ("SHO"), and Health Plan of Nevada, Inc. ("HPN").

10 7. "Health Care Providers" has the same meaning as the term "Health Care
11 Providers" on page 1 of your First Amended Complaint.

12 8. The term "members" means patients, individuals, and/or any health plan
13 beneficiaries who received medical services.

14 9. "Treat" or "Treatment" means emergency medicine services provided to patients
15 covered under the health plans underwritten, operated, and/or administered by Defendants from
16 July 2017 to present.

17 10. "Claims" means any and all claims for any and all services that Plaintiffs contend
18 Defendants failed to correctly pay or reimburse and/or that Plaintiffs claim Defendants underpaid
19 since on or about July 1, 2017. The definition of Claims also includes, but is not limited to, the
20 claims and emergency medicine services identified in paragraphs 25 through 26 of your First
21 Amended Complaint.

22 11. The term "CPT Code" means Current Procedural Terminology Code.

23 12. The term "Team Health" or "TeamHealth" means "Team Health Holdings, Inc.",
24 including any of its agents, contractors, subcontractors, employees, assigns, delegates,
25 subordinates, affiliates and any corporation, partnership, private equity firm, or other legal entity
26 directly or indirectly owned or controlled by, or which directly or indirectly owns or controls
27 Team Health.
28



1 13. The term “market survey” means the survey, research and analysis of the market
2 for emergency medical services and/or procedures in the Nevada health care market.

3 14. The term, “regulator” means a person or body that supervises the healthcare,
4 insurance, and/or medical billing markets and/or industries.

5 15. The term “Balance Billing” means billing a patient for the difference between
6 the billed amount for the service and the amount paid by an insurer or administrator in
7 administering the patient’s health benefits plan.

8 16. The term “supporting” means reflecting, mentioning, referring to, evidencing,
9 consisting of, constituting, comprising, creating, containing, embodying, concerning,
10 supporting, refuting, modifying, contradicting, criticizing, discussing, describing, recording,
11 reporting, reflecting, pertaining to, prepared in connection with, and/or arising from.

12 17. The terms “relating to,” “relate,” and “relating” mean reflecting, mentioning,
13 referring to, evidencing, consisting of, constituting, comprising, creating, containing,
14 embodying, concerning, supporting, refuting, modifying, contradicting, criticizing, discussing,
15 describing, recording, reporting, reflecting, pertaining to, prepared in connection with, and/or
16 arising from.

17 18. The term “Charge Description Master” means and refers to the list of all billable
18 services and items to a patient or a patient’s health insurance provider, which captures the cost
19 of each procedure, service, supply, prescription drug, diagnostic test, and other medical
20 services, as well as any fees associated with services, such as equipment fees and room charges.

21 19. “First Amended Complaint” means and refers to your First Amended Complaint
22 filed on or about May 15, 2020 in the above-captioned litigation.

23 20. “Base Units” means the numerical value that has been attached to a CPT code
24 for medical services and/or procedures.

25 21. “Time Units” means timed CPT codes that have associated time listed in their
26 descriptors and are determined by using the total time in minutes actually spending performing
27 a medical service and/or procedure.
28



22. "Modifying Units" mean and refer to modifiers which modify a service/procedure under certain circumstances for appropriate reimbursement, and/or provide information to a Payer regarding the type of medical procedure/service performed, why that procedure/service was necessary, where the service/procedure was performed on the body, and related information.

23. "Conversion Factor" means and refers to a multiplier for converting a quantity expressed in one set of units into an equivalent expressed in another.

24. "Emergency medical services" means any outpatient services for an emergency medical condition, including a severe medical condition that comes on suddenly, needs immediate medical care, or leads a person with average knowledge of health and medicine to believe that, without immediate medical care, it could result in danger to life or health, loss of a bodily function, or loss of function to a body part or organ.

25. The term "administrative remedies" means any non-judicial appeals or review process to challenge a determination, including but not limited to informal or formal administrative appeal processes.

26. "Managed Medicare" and "Managed Medicaid" refer to plans that provide coverage, health benefits and additional services that fill the gaps in Medicare coverage.

27. The term "Commercial Payer" means any entity which arranges for payment or reimbursement of expenses for medical services, including but not limited to commercial healthcare payers.

28. The terms "Payer" and "Payers" include but are not limited to government payers, commercial payers, managed care organizations, private payers, and/or individual payers.

29. The time frame at issue for each request, unless otherwise specified in a request, is from July 2017 to present.

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,



1 or control of your counsel, agents, or representatives, or which can be obtained through
2 reasonably diligent efforts.

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

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

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

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

25 6. If, in responding to these requests, you assert a privilege to any particular request,
26 provide a privilege log, which identifies the nature of the claimed privilege and, at a minimum,
27 includes enough information so that the propounding party and the Court can make an informed
28 decision whether the matter is indeed privileged.



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

5 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

6 23. Please produce all documents supporting your contention that “[t]he Defendants
7 committed the following crimes of racketeering activity: . . . NRS 207.360(36) (involuntary
8 servitude)” as you allege in ¶ 264 of your First Amended Complaint.

9 24. Please produce all documents supporting your contention that “[t]he Defendants
10 committed the following crimes of racketeering activity: . . . NRS 207.360(35) (any violation of
11 NRS 205.377)” as you allege in ¶ 264 of your First Amended Complaint.

12 25. Please produce all documents supporting your contention that “[t]he Defendants
13 committed the following crimes of racketeering activity: NRS 207.360(28) (obtaining possession
14 of money or property valued at \$650 or more)” as you allege in ¶ 264 of your First Amended
15 Complaint.

16 26. Please produce all documents supporting your contention that “[t]he Defendants,
17 on more than two occasions, have schemed with Data iSight to artificially and, without
18 foundation, substantially decrease non-participating provider reimbursement rates” as you allege
19 in ¶ 269 of your First Amended Complaint.

20 27. Please produce all documents supporting your contention that “[a]s a direct and
21 proximate result of Defendants’ violations of NRS 207.360(28), (35) and (36), the Health Care
22 Providers have sustained a reasonably foreseeable injury in their business or property by a
23 pattern of racketeering activity” as you allege in ¶ 272 of your First Amended Complaint.

24 28. Please produce all documents supporting your contention that “[a]s a direct and
25 proximate result of Defendants’ violations of NRS 207.360(28), (35) and (36), the Health Care
26 Providers have...suffer[ed] substantial financial losses” as you allege in ¶ 272 of your First
27 Amended Complaint.

28 29. Please produce all documents supporting your contention that “[e]ach Defendant



1 . . . knows and willingly participates in the scheme to defraud the Health Care Providers” as you
2 allege in ¶ 271 of your First Amended Complaint.

3 30. Please produce the “Letter of Concern” referenced in ¶ 108 of your First
4 Amended Complaint.

5 31. Please produce all documents supporting your contention that Dan Rosenthal and
6 Dan Schumacher made the statements described in ¶¶ 93, 96–98, and 104–105, of your First
7 Amended Complaint.

8 32. Please produce the “written proposal” referenced in ¶ 106 of the First Amended
9 Complaint.

10 33. Please produce all documents demonstrating or confirming that the phone
11 conversations with Data iSight representatives described in ¶¶ 136–140 of your First Amended
12 Complaint occurred.

13 34. Please produce all documents supporting the “examples” given in ¶¶ 166–172 of
14 your First Amended Complaint.

15 35. Please produce all documents supporting your contention that the email and
16 phone call by Data iSight described in ¶ 179 of your First Amended Complaint occurred.

17 36. Please produce all documents supporting your contention that the phone call
18 described in ¶ 180 of your First Amended Complaint occurred.

19 37. Please produce all documents supporting the “examples” given in ¶ 184 of your
20 First Amended Complaint.

21 38. Please produce all documents supporting the “examples” given in ¶ 57 of your
22 First Amended Complaint.

23 39. Please produce all documents supporting the allegations in ¶¶ 71–74 of your First
24 Amended Complaint.

25 40. Please produce all documents supporting the allegations in ¶ 75 of your First
26 Amended Complaint.

27 41. Please produce all documents supporting the “examples” given in ¶¶ 84–87 of
28 your First Amended Complaint.



42. Please produce all documents supporting the allegations in ¶ 109 of your First Amended Complaint that the Defendants “threatened [to] globally terminate[] all existing in-network contracts with medical providers that are part of the TeamHealth organization.”

43. Please produce all documents supporting the allegation in ¶ 109 of the First Amended Complaint that, on or about July 9, 2019, Defendants “globally terminated all existing in-network contracts with medical providers that are part of the TeamHealth organization.”

44. Please produce all documents identified in your responses to Defendants’ Second Set of Interrogatories.

45. Please produce all documents reflecting any of your discussions, deliberations and/or decisions regarding setting, adjusting, and/or maintaining the rates, and each and every component thereof, for each CPT code charged in the Claims. For purposes of this request, the components should include Base Units, Time Units, Modifying Units, and Conversion Factors.

46. Please produce all documents reflecting your decisions to set, adjust (or keep constant) the rates charged, and each and every component thereof, for any of the CPT codes related to the Claims. For purposes of this request, the components should include Base Units, Time Units, Modifying Units, and Conversion Factors.

47. Please produce all documents reflecting any “charge masters” that were used by you that represent your full billed charges for any of the CPT codes related to the Claims from July 1, 2017 to the present.

48. Please produce all documents which you considered from external sources when setting, adjusting (or keeping constant), the rates charged for any of the CPT codes related to the Claims. For purposes of this request, the components should include Base Units, Time Units, Modifying Units, and Conversion Factors from July 1, 2017 to the present.

49. Please produce all documents, including but not limited to reports, analysis, presentations, or studies from any business consulting company you retained which addresses the rates which you have charged or should charge for any of the CPT codes related to the Claims from July 1, 2017 to the present.

50. Please produce all market surveys from any source which you considered at any



1 point when setting, adjusting (or keeping constant) the rates you charged for any of the CPT
2 codes reflect in the Claims from July 1, 2017 to the present.

3 51. Please produce all reports from any business consulting company, retained by
4 you, which addresses the typical rates at which you received payment, or should have expected
5 as payment, from any Payer for any of the CPT codes reflected in the Claims from July 1, 2017
6 to the present.

7 52. Please produce all market surveys, from any source, which you considered at
8 any point when determining the rates you expected as payment from any out-of-network Payer
9 with whom you do not have a participation agreement for any of the CPT codes reflected in the
10 Claims from July 1, 2017 to the present.

11 53. Please produce all documents related to any internal "expected payment" amounts
12 or rates you established for any Payer, including the minimum thresholds for automatic appeals
13 and other administrative remedies from July 1, 2017 to the present.

14 54. Please produce all documents identifying each and every Payer with whom you
15 have or had a contract to provide emergency medical services from July 1, 2017 to present.

16 55. Please produce all contracts which you have or had with any Payer that reflects
17 any amounts you were willing to accept as payment for any medical-related services that you
18 provided from July 1, 2017 to present.

19 56. Please produce all documents relating to any complaints by your patients
20 regarding any amounts charged, including but not limited to any patient Balance Billing for
21 services you provided from July 1, 2017 to present, including but not limited to informal and
22 formal complaints and/or challenges.

23 57. Please produce all documents reflecting complaints by administrators or
24 employees of hospitals or other facilities/organizations providing emergency medical services
25 concerning the amounts charged by you for emergency medical services you provided from
26 July 1, 2017 to present, including but not limited to informal and formal complaints and/or
27 challenges.
28



1 58. Please produce all documents relating to inquiries and/or investigations by
2 regulators in the State of Nevada concerning the rates charged by you for emergency medical
3 services from July 1, 2017 to present.

4 59. Please produce all documents related to inquiries and/or investigations by any
5 agency or sub-agency of the government of the United States concerning the rates charged by
6 you for emergency medical services from July 1, 2017 to present.

7 60. Please produce all documents which identify the members of any groups,
8 committees, or entities, with responsibility for setting, adjusting or maintaining the rates you
9 charge for emergency medical services, including your billing committee(s), if any, from July
10 1, 2017 to present.

11 61. Please produce all documents reflecting your corporate structure for each year
12 from July 1, 2017 to the present.

13 62. Please produce all documents reflecting your billing practices and procedures
14 from July 1, 2017 to present including, but not limited to:

- 15 a) Your decision to appeal (or to not appeal) any payment received from
16 any Payer;
- 17 b) The calculation of any amounts you may hold as an uncollected balance
18 on any payment received;
- 19 c) Your decision to pursue (or not to pursue) out-of-pocket payment
20 collections from patients.

21 63. Please produce all documents reflecting your practices and procedures
22 regarding the use of Base Units when billing from July 1, 2017 to present.

23 64. Please produce all documents reflecting your practices and procedures
24 regarding the use of Time Units when billing from July 1, 2017 to present.

25 65. Please produce all documents reflecting your practices and procedures
26 regarding the use of Modifying Units when billing from July 1, 2017 to present.

27 66. Please produce all documents reflecting your practices and procedures
28 regarding the use of Conversion Factors from July 1, 2017 to present.

67. Please produce all documents which reflect your cost to perform each service as



1 represented by the CPT codes charged in the Claims, including but not limited to:

- 2 a) Any filed cost report documentation or supporting analyses;
- 3 b) Any internal or external cost-to-charge calculations performed by you;
- 4 and
- 5 c) Any external cost-to-charge calculations performed as to Plaintiffs.

6 68. Please produce all documents which reflect or discuss the extent to which the

7 rates you charge for emergency medical services, from July 1, 2017 to present, capture or

8 reflect your actual cost of doing business.

9 69. Please produce all any and all articles of incorporation, amendments and

10 governing documents for each of the Plaintiffs in effect at any time from July 1, 2017 to

11 present.

12 70. Please produce all copies of the minutes of any meetings of Plaintiffs' board of

13 directors or other governing body from July 1, 2017 to present which relate to:

- 14 a) The amounts which you charged for emergency medical services;
- 15 b) The rate of payment which Plaintiffs receive from Payers.

16 71. Please produce all copies of the minutes of any meetings of any groups,

17 committees and/or entities, with responsibility for setting, adjusting, or maintain the rates which

18 Plaintiffs charge for emergency medical services from July 1, 2017 to present.

19 72. Please produce all copies of any contracts you entered into with any business,

20 management, or other consulting firms relative to the setting, adjusting, or maintaining of the

21 rates that you charge for emergency medical services at any time from July 1, 2017 to present.

22 73. Please produce all copies of any internal audits of your billing practices from

23 July 1, 2017 to present.

24 74. Please produce all copies of any external audits of your billing practices from

25 July 1, 2017 to present.

26 75. Please produce all documents relating to internal or external audits of your

27 billing practices from July 1, 2017 to present.

28



1 76. Please produce copies of any contracts that you entered into with a third party to
2 conduct external audits of your billing practices from July 1, 2017 to present.

3 77. Please produce all documents demonstrating that Defendants have paid you at
4 rates less than those you allege you are entitled to receive with respect to the Claims.

5 78. Please produce all documents demonstrating that Defendants paid less than
6 what you allege to be the fair value for your services at issue in your First Amended
7 Complaint.

8 79. Please produce all documents demonstrating that your charges for the Claims are
9 the usual and customary provider charges for similar services in the Nevada market.

10 80. Please produce all documents supporting the medical necessity of the services at
11 issue with respect to the Claims that you contend were performed on an emergency basis in the
12 First Amended Complaint.

13 81. Please produce all documents that demonstrate the rate of reimbursement that
14 you contend Defendants should have paid with respect to each of the Claims.

15 82. Please produce all documents related to or demonstrating any appeals
16 submitted to Defendants by you, your patient(s), or anyone else with respect to the Claims.

17 83. Please produce all documents and/or data you referred to, reviewed,
18 considered, or relied upon in any way, at any time, to determine the amount to bill on each
19 Claim, or for the types of services at issue in the Claims since July 1, 2017.

20 84. Please produce all your policies and/or procedures, in effect at any time since
21 July 1, 2017, for writing-off or excusing payments for any emergency medical services
22 rendered.

23 85. Please produce all your policies and/or procedures, in effect at any time since
24 July 1, 2017, relative to the billing of self-pay and/or uninsured patients including but not
25 limiting to any policies for offering and/or accepting less than full billed charges.

26 86. Please produce all documents and communications of any type related to any
27 cost to charge analysis performed on any emergency medical service you offer patients from
28 July 1, 2017 to present.



1 87. For each Commercial Payer (not including Defendants) with whom you have
2 or had an in-network contractual relationship during the period July 1, 2017 to present, all
3 documents showing, on an annual basis:

- 4 a) The identity of the Payer;
- 5 b) The total number of emergency-related services provided to members of
6 each Payer;
- 7 c) The total charges you billed to each Payer;
- 8 d) The total amount allowed by each Payer;
- 9 e) The total amount paid by each Payer;
- 10 f) The total out-of-pocket patient responsibility related to each Payer's
11 claims;
- 12 g) The total amount you collected from the Payer's members; and
- 13 h) The average percentage of your billed charges that you received from each
14 Payer.

15 88. For each Commercial Payer (other than Defendants) with whom you do not have
16 or did not have an in-network contractual relationship during the period July 1, 2017 to present,
17 all documents showing, on an annual basis:

- 18 a) The identity of the Payer;
- 19 b) The total number of emergency-related services provided to members of
20 each Payer;
- 21 c) The total charges you billed to each Payer;
- 22 d) The total amount allowed by each Payer;
- 23 e) The total amount paid by each Payer;
- 24 f) The total out-of-pocket patient responsibility related to each Payer's
25 claims;
- 26 g) The total amount you collected from the Payer's members; and
- 27 h) The average percentage of your billed charges that you received from each
28 Payer.

29 89. For all emergency medical services you provided to patients covered by
30 Medicare/Medicaid from July 1, 2017 to present, all documents showing, on an annual basis:



- a) The identity of the Payer – Medicare or Medicaid;
- b) The total number of emergency medical services provided to members of each Payer;
- c) The total charges you billed to each Payer;
- d) The total amount allowed by each Payer;
- e) The total amount paid by each Payer;
- f) The total out-of-pocket patient responsibility related to each Payer's claims;
- g) The total amount you collected from the Payer's members; and
- h) The average percentage of your billed charges that you received from each Payer.

90. For all emergency medical services you provided to patients covered by Managed Medicare/Managed Medicaid from July 1, 2017 to present, all documents showing, on an annual basis:

- a) The identity of the Payer – Managed Medicare or Managed Medicaid;
- b) The total number of emergency medical services provided to members of each Payer;
- c) The total charges you billed to each Payer;
- d) The total amount allowed by each Payer;
- e) The total amount paid by each Payer;
- f) The total out-of-pocket patient responsibility related to each Payer's claims;
- g) The total amount you collected from the Payer's members; and
- h) The average percentage of your billed charges that you received from each Payer.

91. For all emergency medical services you provided to self-pay/uninsured patients, from July 1, 2017 to present, all documents showing, on an annual basis:

- a) The total number of emergency medical services provided to self-pay/uninsured patients;
- b) The total charges you billed to self-pay/uninsured patients;
- c) The total amount allowed by self-pay/uninsured patients;
- d) The total amount paid by self-pay/uninsured patients;



1 e) The total out-of-pocket patient responsibility related to self-pay/uninsured
2 patient's claims;

3 f) The total amount you collected from self-pay/uninsured patients; and

4 g) The average percentage of your billed charges that you received from
5 self-pay/uninsured patients.

6 92. Documents showing each and every cost incurred by you in offering emergency
7 services to patients from July 1, 2017 to present.

8 93. Documents showing each and every cost incurred by you in offering the types of
9 services reflected in the Claims from July 1, 2017 to present.

10 94. A copy of any cost report(s) presented by you to any federal or state agency since
11 July 1, 2017 to present.

12 95. Documents which show the relationship between Plaintiffs and Team Health
13 from July 1, 2017 to present, including but not limited to documents showing the services
14 provided to you by Team Health, any compensation Team Health received in connection with
15 those services (including remuneration flowing between you and Team Health or collected
16 reimbursement that Team Health keeps), and documents showing any Team Health ownership
17 and/or control over you.

18 96. All documents which identify the Claims you has asserted against Defendants in
19 the First Amended Complaint including, but not limited to:

20 a) The claim numbers assigned by Defendants with respect to each claim
21 submitted by you;

22 b) Patient first name, last name and middle name and/or initials;

23 c) Defendants' member and/or subscriber identification number;

24 d) Billed charges and/or total amount billed on the Claim;

25 e) Provider name; and

26 f) Provider Tax I.D. number.

27 97. Provider Tax I.D. number for all documents related to your determination and/or
28 calculation of the billed charges for the Claims asserted in the First Amended Complaint.



1 98. All documents comparing your billed charges for emergency medical services to
2 the reimbursement amounts set by the Centers for Medicare and Medicaid Services for
3 reimbursement of such services for every year since July 1, 2017.

4 99. All documents relating to the comparison of your billed charges for emergency
5 medical services to the reimbursement rates you have agreed to accept by contract from Payers
6 other than Defendants from July 1, 2017 to present.

7 100. All documents relating to payments that you have received from any source with
8 respect to the Claims asserted in the First Amended Complaint, including, but not limited to,
9 payments received from patients, Defendants and/or other Payers (such as government payers,
10 commercial payers, managed care organizations, and Medicare Advantage plans).

11 101. All documents that you provided to your patients relating to patient financial
12 responsibility for out-of-network emergency medical services for all of the Claims.

13 102. All documents that you provided to any of your patients from July 1, 2017 to
14 present related to patient financial responsibility for out-of-network emergency medical
15 services.

16 103. All documents that you provided to your patients related to actual or potential
17 responsibility to pay you the difference between your billed charges for emergency medical
18 services and the amounts reimbursed by Defendants related to the Claims.

19 104. All documents that you provided to your patients related to actual or potential
20 responsibility to pay you the difference between your billed charges for emergency medical
21 services and the amounts reimbursed by Commercial Payers from July 1, 2017 to present.

22 105. All assignment of benefits forms relating to the Claims asserted in your First
23 Amended Complaint.

24 106. All documents which reflect any and all internal analysis that you performed, or
25 which were performed on your behalf, regarding payment rates typically exchanged in the
26 Nevada market, from July 1, 2017.

27 107. All documents, including but not limited to contracts, showing services which
28 any vendors provided you related to billing or submitting claims, reimbursement, collections,



1 determination of the value of services, the setting of Charge Description Master pricing and/or
2 billed charges from July 1, 2017 to present.

3 108. All contracts, arrangements and/or agreements between you and Team Health,
4 Inc., that were in force anytime July 1, 2017 to the present which relate to:

- 5 a) Reimbursements for emergency medical claims;
- 6 b) Pricing for emergency medical claims;
- 7 c) The Claims in dispute in this lawsuit;
- 8 d) Defendants.

9 109. All contracts and/or agreements between you and any reimbursement claims
10 specialists or other business entity that were in force anytime from July 1, 2017 to the present
11 which relate to:

- 12 a) Reimbursement for emergency medical claims;
- 13 b) Pricing for emergency medical claims;
- 14 c) The Claims in dispute in this lawsuit; and
- 15 d) Defendants.

16 110. All documents reflecting communications between you and Team Health
17 regarding reimbursement for emergency medical claims from July 1, 2017 to the present.

18 111. All documents reflecting communications between you and any reimbursement
19 claims specialists or other business entity regarding reimbursement for emergency medical
20 claims from July 1, 2017 to the present.

21 112. All documents reflecting communications between you and Team Health
22 regarding pricing for emergency medical claims from July 1, 2017 to the present.

23 113. All documents reflecting communications between you and any reimbursement
24 claims specialist or other business entity regarding pricing for emergency medical claims from
25 July 1, 2017 to the present.

26 114. All documents reflecting communications between you and Team Health
27 regarding any of the Claims from July 1, 2017 to the present.
28



115. All documents reflecting communications between you and any reimbursement claims specialist or other business entity regarding any of the Claims from July 1, 2017 to the present.

116. All documents reflecting communications between you and Team Health regarding the Claims from July 1, 2017 to the present.

117. All documents reflecting communications between you and any reimbursement claims specialist or other business entity regarding Defendants from July 1, 2017 to the present.

118. All documents, including but not limited to contracts, showing services which Team Health provided to you related to billing or submitting claims, reimbursement, collections, determination of the value of services, the setting of Charge Description Master pricing and/or billed charges from July 1, 2017 to the present.

119. All documents, including but not limited to contracts, showing services which any reimbursement claims specialist or other business entity provided to you related to billing or submitting claims, reimbursement, collections, determination of the value of services, the setting of Charge Description Master pricing and/or billed charges from July 1, 2017 to the present.

120. All documents from Team Health, which provide instructions, directives or guidance for maximizing reimbursements for out-of-network claims from July 1, 2017 to the present.

121. All documents from any business entity which provides instructions, directives, or guidance for maximizing reimbursements for out-of-network claims from July 1, 2017 to the present.

122. All documents reflecting communications between you and Team Health, from July 1, 2017 to the present, regarding instructions, directives or guidance which relate to:

- a) Reimbursement for emergency medical claims;
- b) Pricing for emergency medical claims;
- c) The Claims in dispute in this lawsuit; and
- d) Defendants.



1 123. All documents reflecting communications between any you and any business
2 entity, from July 1, 2017 to the present, regarding instructions, directives or guidance which
3 relate to:

- 4 a) Reimbursement for emergency medical claims;
- 5 b) Pricing for emergency medical claims;
- 6 c) The Claims in dispute in this lawsuit; and
- 7 d) Defendants.

8
9 124. All documents concerning compensation, incentives, or remuneration of any sort
10 paid to/credited to you—or anyone with a direct or indirect ownership or control of you,
11 including joint ventures—by hospitals/facilities or their affiliated entities, including joint
12 ventures, where the emergency medical services in question were rendered, whether on a per
13 claim basis, in the aggregate, or by any other means.

14 125. All documents concerning compensation, incentives, or remuneration of any sort
15 paid by/credited by you—or on your behalf by anyone—to hospitals/facilities or their affiliated
16 entities, including joint ventures, where the emergency medical services in question were
17 rendered, whether on a per claim basis, in the aggregate, or by any other means.

18 126. All documents relating to presentations and/or proposals you have made to the
19 facilities where services in question were rendered regarding your emergency medical services.

20 127. Any and all documents regarding incentive based compensation provided directly
21 or indirectly to physicians or other medical professionals rendering the emergency medical
22 services that form the basis of this litigation.

23 128. All documents demonstrating whether the physicians or other medical
24 professionals that delivered any of the services at issue in this litigation had input into the
25 amount that was charged or the amount that was collected since July 1, 2017 to the present.

26 129. All documents reflecting whether TeamHealth had any input into the amount that
27 was charged or the amount that was collected for any of the services at issue in this litigation
28 since July 1, 2017 to the present.



1 131. All documents reflecting any direct involvement or instruction from Team Health
2 to you regarding the setting of charges, or entering into or negotiating contracts with hospitals or
3 insurers, including rate negotiation.

4 132. All documents demonstrating the individuals or entities with ownership, control,
5 or governance of Plaintiffs, including shareholders, owners, officers, board members, etc.

6 133. All documents sufficient to demonstrate whether any individuals at Team Health
7 have acquired the right to own, operate, or manage the Plaintiff entities.

8 134. All documents reflecting the full and complete financial relationship between You
9 and Team Health.

10 135. All documents sufficient to identify all physicians who, since July 1, 2017 to the
11 present, rendered care relating to the Claims, and whether those physicians are employed—and if
12 so, by whom—or are 1099 independent contractors—and if so, with whom they contract.

13 136. The contracts or employment agreements you have or had with the physicians
14 identified in response to Request 135.

15 137. All contracts and/or agreements between you and any hospital or facility that were
16 in effect between July 1, 2017 to the present where the emergency medical services relating to
17 the Claims were provided.

18 138. All documents sufficient to identify any patient financial responsibility forms,
19 including other types of intake documents creating contracts between provider/patient to cover
20 costs/expenses not covered by any health plans insured or administered by Defendants that you
21 provided to patients since July 1, 2017 to the present.

22 139. All documents demonstrating any instances of Balance Billing by you or
23 suggestions or assertions that you may engage in Balance Billing as it relates to health plans
24 insured or administered by Defendants for the services for which you seek payment in this
25 litigation.

26 140. All contracts and other documents relating to your relationship with, and services
27 provided by, any third-party vendor that you used for billing, collection, or revenue-cycle
28 management services from July 1, 2017 to the present.



1 141. All contracts for all leased or rental networks in which you participated from July
2 1, 2017 to the present.

3 142. All documents regarding TeamHealth's current employee health plan, including
4 the benefit level, reimbursement methodology, and plan language applicable to claims for
5 reimbursement for out-of-network services received by plan participants.

6 143. All data showing the allowed amounts for claims for reimbursement for out-of-
7 network emergency medical services rendered by participants of TeamHealth employee benefit
8 plan at any time since July 1, 2017.

9 144. All documents regarding TeamHealth's prior, United Healthcare administered
10 plan, including the benefit level, reimbursement methodology, and plan language applicable to
11 claims for reimbursement for out-of-network services received by plan participants.

12 145. All data showing the allowed amounts for claims for reimbursement for out-of-
13 network emergency medical services rendered by participants of the plan identified in response
14 to Request 143.

15 146. All documents relating to your entitlement to render services in the facilities at
16 which treatment for the Claims was rendered, including but not limited to licensure, privileges,
17 and credentialing.

18 147. All documents you intend to rely upon in this litigation, including documents that
19 you intend to use to support your claimed damages.

20 148. All documents comparing your billed charges to the billed charges of other
21 emergency medical providers in Nevada from July 1, 2017 to present.

22 149. All documents referring or relating to the practice of Balance Billing as a tool or
23 source of leverage to pursue higher payments from insurers or third party claims administrators
24 for out-of-network services.

25 150. All documents demonstrating the extent to which United authorized, pre-
26 authorized and/or approved the services you rendered with respect to the Claims.

27 151. If you contend that any document or agreement entitles you to payment of full
28 billed charges for any of the claims at issue in this litigation, or is otherwise relevant to the



1 amounts paid for any of the claims, please produce each such document and specify the
2 portion(s) thereof that you contend entitle you to a payment of the full billed charges from
3 United.

4 152. All documents related to any shared savings program or network savings program
5 or agreement (i.e. through Multiplan or similar programs) you participated in or entered into with
6 respect to the Claims.

7 153. All documents demonstrating the direct benefit(s) you allege United received
8 from your provision of services with respect to the Claims at issue.

9 154. All documents reflecting or discussing the methodology you used to calculate or
10 determine rates charged for medical services in Nevada, including, but not limited to, any
11 documents and/or communications you used or created in the process of calculating and/or
12 determining the prevailing charges, the reasonable and customary charges, the usual and
13 customary charges, the average area charges, the reasonable value, and/or the fair market value
14 for medical services in the geographic area, from July 1, 2017 to present.

15 155. All documents and information needed to understand any data produced in
16 response to this or prior Requests for Production including, but not limited to, data dictionaries
17 and legends for any coded fields and detailed descriptions of parameters and filters used to
18 generate data from July 1, 2017 to the present.

19 DATED this 12th day of August, 2020.

21 /s/ Brittany M. Llewellyn

22 D. Lee Roberts, Jr., Esq.

23 Colby L. Balkenbush, Esq.

24 Brittany M. Llewellyn, Esq.

25 WEINBERG, WHEELER, HUDGINS,

26 GUNN & DIAL, LLC

27 6385 South Rainbow Blvd., Suite 400

28 Las Vegas, Nevada 89118

Telephone: (702) 938-3838

Attorneys for Defendants



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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of August, 2020, a true and correct copy of the foregoing **DEFENDANTS' SECOND 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:

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/s/ Cynthia S. Bowman

An employee of WEINBERG, WHEELER, HUDGINS
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EXHIBIT 6

002957

002957

EXHIBIT 6

1 **RSPN**

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7 *Attorneys for Plaintiffs*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 **FREMONT EMERGENCY SERVICES**
 11 **(MANDAVIA), LTD., a Nevada professional**
 12 **corporation; TEAM PHYSICIANS OF**
 13 **NEVADA-MANDAVIA, P.C., a Nevada**
 14 **professional corporation; CRUM,**
 15 **STEFANKO AND JONES, LTD. dba RUBY**
 16 **CREST EMERGENCY MEDICINE, a**
 17 **Nevada professional corporation,**

18 **Plaintiffs,**

19 **vs.**

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

Defendants.

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

**PLAINTIFFS' RESPONSES TO
 DEFENDANTS' SECOND SET OF
 REQUESTS FOR PRODUCTION OF
 DOCUMENTS**

**CONTAINS CONFIDENTIAL
 INFORMATION & PROTECTED
 HEALTH INFORMATION**

Plaintiffs Fremont Emergency Services (Mandavia), Ltd. ("Fremont"); Team Physicians of Nevada-Mandavia, P.C. ("Team Physicians"); Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine ("Ruby Crest" and collectively the "Health Care Providers") hereby respond

1 to defendants UnitedHealth Group, UnitedHealthcare Insurance Company; United HealthCare
2 Services, Inc.; UMR, Inc.; Oxford Health Plans, Inc.; Sierra Health and Life Insurance Co., Inc.;
3 Sierra Health-Care Options, Inc.; and Health Plan of Nevada, Inc. (collectively "United" or
4 "Defendants") Second Set of Requests for Production of Documents served to Plaintiffs' counsel
5 pursuant to NRCP 34.

6 REQUESTS FOR PRODUCTION OF DOCUMENTS

7 23. Please produce all documents supporting your contention that "[t]he Defendants
8 committed the following crimes of racketeering activity: . . . NRS 207.360(36) (involuntary
9 servitude)" as you allege in ¶ 264 of your First Amended Complaint.

10 RESPONSE:

11 Objection. This request is overly broad and unduly burdensome to the extent it requests
12 "all" documents supporting the Health Care Providers' contention that "[t]he Defendants
13 committed the following crimes of racketeering activity: . . . NRS 207.360(36) (involuntary
14 servitude)" and is not proportional to the needs of the case considering the importance of the
15 issues at stake in the action, the amount in controversy, the parties' relative access to relevant
16 information, the parties' resources, the importance of the discovery in resolving the issues, and
17 whether the burden or expense of the proposed discovery outweighs its likely benefit; and seeks
18 information already in United's possession. In addition, United has refused to produce documents
19 and participate in discovery. Subject to and without waiving the foregoing objections, *see* FESM
20 00344; FESM00335-341; Letter of Concern *see also* United's case management information
21 systems that house and retain all of the at-issue claims data that has been submitted by the Health
22 Care Providers, as well as United's electronically stored information yet to be produced. Non-
23 privileged responsive documents will be produced by the Health Care Providers following the
24 Court's adjudication of United's Renewed Motion to Stay Proceedings Pending Resolution of
25 Writ Petition on Order Shortening Time. Finally, testimony will be elicited at trial to further
26 support this claim.

24. Please produce all documents supporting your contention that "[t]he Defendants committed the following crimes of racketeering activity: . . . NRS 207.360(35) (any violation of NRS 205.377)" as you allege in ¶ 264 of your First Amended Complaint.

RESPONSE:

Objection. This request is overly broad and unduly burdensome to the extent it requests "all" documents supporting the Health Care Providers' contention that "Defendants committed the following crimes of racketeering activity: . . . NRS 207.360(35) (any violation of NRS 205.377)" and is 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; and seeks information already in United's possession. In addition, United has refused to produce documents and participate in discovery. Subject to and without waiving the foregoing objections, *see* FESM 00344; FESM00335-341; *see also* United's case management information systems that house and retain all of the at-issue claims data that has been submitted by the Health Care Providers, as well as United's electronically stored information yet to be produced. Non-privileged responsive documents will be produced by the Health Care Providers following the Court's adjudication of United's Renewed Motion to Stay Proceedings Pending Resolution of Writ Petition on Order Shortening Time.

25. Please produce all documents supporting your contention that "[t]he Defendants committed the following crimes of racketeering activity: NRS 207.360(28) (obtaining possession of money or property valued at \$650 or more)" as you allege in ¶ 264 of your First Amended Complaint.

RESPONSE:

Objection. This request is overly broad and unduly burdensome to the extent it requests "all" documents supporting the Health Care Providers' contention that "Defendants committed the following crimes of racketeering activity: NRS 207.360(28) (obtaining possession of money or property valued at \$650 or more)" and is not proportional to the needs of the case considering

1 the importance of the issues at stake in the action, the amount in controversy, the parties' relative
 2 access to relevant information, the parties' resources, the importance of the discovery in resolving
 3 the issues, and whether the burden or expense of the proposed discovery outweighs its likely
 4 benefit; and seeks information already in United's possession. By way of further objection, United
 5 has refused to produce documents and participate in discovery. Subject to and without waiving
 6 the foregoing objections, *see* FESM 00344; FESM00335-341; *see also* United's case management
 7 information systems that house and retain all of the at-issue claims data that has been submitted
 8 by the Health Care Providers, as well as United's electronically stored information yet to be
 9 produced. Non-privileged responsive documents will be produced by the Health Care Providers
 10 following the Court's adjudication of United's Renewed Motion to Stay Proceedings Pending
 11 Resolution of Writ Petition on Order Shortening Time.

12 26. Please produce all documents supporting your contention that "[t]he Defendants,
 13 on more than two occasions, have schemed with Data iSight to artificially and, without foundation,
 14 substantially decrease non-participating provider reimbursement rates" as you allege in ¶ 269 of
 15 your First Amended Complaint.

16 **RESPONSE:**

17 Objection. This request is overly broad and unduly burdensome to the extent it requests
 18 "all" documents supporting the Health Care Providers' contention that "Defendants, on more than
 19 two occasions, have schemed with Data iSight to artificially and, without foundation, substantially
 20 decrease non-participating provider reimbursement rates" and is not proportional to the needs of
 21 the case considering the importance of the issues at stake in the action, the amount in controversy,
 22 the parties' relative access to relevant information, the parties' resources, the importance of the
 23 discovery in resolving the issues, and whether the burden or expense of the proposed discovery
 24 outweighs its likely benefit; and seeks information already in United's possession. By way of
 25 further objection, United has refused to produce documents and participate in discovery. Subject
 26 to and without waiving the foregoing objections, *see* FESM 00344; FESM00335-341; *see also*
 27 United's case management information systems that house and retain all of the at-issue claims
 28 data that has been submitted by the Health Care Providers, as well as United's electronically stored

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information yet to be produced. Non-privileged responsive documents will be produced by the Health Care Providers following the Court's adjudication of United's Renewed Motion to Stay Proceedings Pending Resolution of Writ Petition on Order Shortening Time.

27. Please produce all documents supporting your contention that "[a]s a direct and proximate result of Defendants' violations of NRS 207.360(28), (35) and (36), the Health Care Providers have sustained a reasonably foreseeable injury in their business or property by a pattern of racketeering activity" as you allege in ¶ 272 of your First Amended Complaint.

RESPONSE:

Objection. This request is overly broad and unduly burdensome to the extent it requests "all" documents supporting the Health Care Providers' contention "[a]s a direct and proximate result of Defendants' violations of NRS 207.360(28), (35) and (36), the Health Care Providers have sustained a reasonably foreseeable injury in their business or property by a pattern of racketeering activity" and is 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; and seeks information already in United's possession. By way of further objection, United has refused to produce documents and participate in discovery. In addition, to the extent this request seeks an expert opinion concerning the scope of damages sustained by the Health Care Providers, this request is premature as the deadline to exchange expert reports has not yet been set. Subject to and without waiving the foregoing objections, see FESM 00344. Non-privileged responsive documents will be produced by the Health Care Providers following the Court's adjudication of United's Renewed Motion to Stay Proceedings Pending Resolution of Writ Petition on Order Shortening Time.

28. Please produce all documents supporting your contention that "[a]s a direct and proximate result of Defendants' violations of NRS 207.360(28), (35) and (36), the Health Care Providers have...suffer[ed] substantial financial losses" as you allege in ¶ 272 of your First Amended Complaint.

RESPONSE:

Objection. This request is overly broad and unduly burdensome to the extent it requests "all" documents supporting the Health Care Providers' contention "[a]s a direct and proximate result of Defendants' violations of NRS 207.360(28), (35) and (36), the Health Care Providers have...suffer[ed] substantial financial losses" and is 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; and seeks information already in United's possession. By way of further objection, United has refused to produce documents and participate in discovery. In addition, to the extent this request seeks an expert opinion concerning the scope of damages sustained by the Health Care Providers, this request is premature as the deadline to exchange expert reports has not yet been set. Subject to and without waiving the foregoing objections, see FESM 00344, Non-privileged responsive documents will be produced by the Health Care Providers following the Court's adjudication of United's Renewed Motion to Stay Proceedings Pending Resolution of Writ Petition on Order Shortening Time.

29. Please produce all documents supporting your contention that "[e]ach Defendant...knows and willingly participates in the scheme to defraud the Health Care Providers" as you allege in ¶ 271 of your First Amended Complaint.

RESPONSE:

Objection. This request is overly broad and unduly burdensome to the extent it requests "all" documents supporting the Health Care Providers' contention that "[e]ach Defendant . . . knows and willingly participates in the scheme to defraud the Health Care Providers" and is 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; and seeks information already in United's possession. By way of further objection, United has refused to produce documents and

1 participate in discovery. Subject to and without waiving the foregoing objections, *see* FESM
 2 00344; *see also* United's case management information systems that house and retain all of the
 3 at-issue claims data that has been submitted by the Health Care Providers, as well as United's
 4 electronically stored information yet to be produced. In addition to the foregoing, the Health Care
 5 Providers intend to elicit testimony from their representatives and United's representatives to
 6 demonstrate that each of the defendants knowingly and willingly participated in the scheme. Non-
 7 privileged responsive documents will be produced by the Health Care Providers following the
 8 Court's adjudication of United's Renewed Motion to Stay Proceedings Pending Resolution of
 9 Writ Petition on Order Shortening Time.

10 30. Please produce the "Letter of Concern" referenced in ¶ 108 of your First Amended
 11 Complaint.

12 **RESPONSE:**

13 Objection. United has refused to produce documents and participate in discovery. Subject
 14 to and without waiving the foregoing objections, the Health Care Providers respond as follows:
 15 Non-privileged responsive documents will be produced by the Health Care Providers following
 16 the Court's adjudication of United's Renewed Motion to Stay Proceedings Pending Resolution of
 17 Writ Petition on Order Shortening Time.

18 31. Please produce all documents supporting your contention that Dan Rosenthal and
 19 Dan Schumacher made the statements described in ¶¶ 93, 96-98, and 104-105, of your First
 20 Amended Complaint.

21 **RESPONSE:**

22 Objection. This request is overly broad and unduly burdensome to the extent it requests
 23 "all" documents supporting the Health Care Providers' contention that Dan Rosenthal and Dan
 24 Schumacher made the statements described in ¶¶ 93, 96-98, and 104-105 of the First Amended
 25 Complaint and is not proportional to the needs of the case considering the importance of the issues
 26 at stake in the action, the amount in controversy, the parties' relative access to relevant
 27 information, the parties' resources, the importance of the discovery in resolving the issues, and
 28 whether the burden or expense of the proposed discovery outweighs its likely benefit; and seeks

1 information already in United's possession. By way of further objection, United has refused to
2 produce documents and participate in discovery. In addition, as seen in the express allegations of
3 the complaint, these statements were verbal and, consequently, the testimony of the Health Care
4 Providers' representatives will be used to support this contention. Subject to and without waiving
5 the foregoing objections, the Health Care Providers respond as follows: Non-privileged responsive
6 documents will be produced by the Health Care Providers following the Court's adjudication of
7 United's Renewed Motion to Stay Proceedings Pending Resolution of Writ Petition on Order
8 Shortening Time.

9 32. Please produce the "written proposal" referenced in ¶ 106 of the First Amended
10 Complaint.

11 **RESPONSE:**

12 Objection. This request seeks information already in United's possession. By way of
13 further objection, United has refused to produce documents and participate in discovery. Subject
14 to and without waiving the foregoing objections, the Health Care Providers respond as follows:
15 Non-privileged responsive documents will be produced by the Health Care Providers following
16 the Court's adjudication of United's Renewed Motion to Stay Proceedings Pending Resolution of
17 Writ Petition on Order Shortening Time.

18 33. Please produce all documents demonstrating or confirming that the phone
19 conversations with Data iSight representatives described in ¶¶ 136-140 of your First Amended
20 Complaint occurred.

21 **RESPONSE:**

22 Objection. This request seeks information already in United's possession and is vague and
23 ambiguous with respect to the phrase "demonstrating or confirming that the phone conversations
24 with Data iSight representatives described in ¶¶ 136-140 of your First Amended Complaint
25 occurred." Additionally, the request potentially seeks documents protected by the attorney-client
26 privilege and work product doctrine. By way of further objection, United has refused to produce
27 documents and participate in discovery. Subject to and without waiving the foregoing objections,
28 the Health Care Providers respond as follows: Non-privileged responsive documents, if any, will

1 be produced by the Health Care Providers following the Court's adjudication of United's Renewed
 2 Motion to Stay Proceedings Pending Resolution of Writ Petition on Order Shortening Time. In
 3 addition, the Health Care Providers may elicit the testimony of Kimberly (Last Name Unknown)
 4 from Data iSight and the Team Physicians' representative to further demonstrate that the phone
 5 conversation described in ¶¶ 136–140 of the First Amended Complaint occurred.

6 34. Please produce all documents supporting the "examples" given in ¶¶ 166–172 of
 7 your First Amended Complaint.

8 **RESPONSE:**

9 Objection. To the extent that the request seeks "all" documents, the request is overly broad
 10 and not proportional to the needs of the case considering the importance of the issues at stake in
 11 the action, the amount in controversy, the parties' relative access to relevant information, the
 12 parties' resources, the importance of the discovery in resolving the issues, and whether the burden
 13 or expense of the proposed discovery outweighs its likely benefit. Additionally, the request
 14 potentially seeks documents protected by the attorney-client privilege and work product doctrine.
 15 Subject to and without waiving the foregoing objections, the Health Care Providers respond as
 16 follows: Non-privileged responsive documents will be produced by the Health Care Providers
 17 following the Court's adjudication of United's Renewed Motion to Stay Proceedings Pending
 18 Resolution of Writ Petition on Order Shortening Time.

19 35. Please produce all documents supporting your contention that the email and phone
 20 call by Data iSight described in ¶ 179 of your First Amended Complaint occurred.

21 **RESPONSE:**

22 Objection. This request is overly broad in that it seeks "all documents" related to third-
 23 party Data iSight's adjudication of a particular United Member's claim. Subject to and without
 24 waiving the foregoing objections, the Health Care Providers respond as follows: Non-privileged
 25 responsive documents will be produced by the Health Care Providers following the Court's
 26 adjudication of United's Renewed Motion to Stay Proceedings Pending Resolution of Writ
 27 Petition on Order Shortening Time.
 28

1 36. Please produce all documents supporting your contention that the phone call
2 described in ¶ 180 of your First Amended Complaint occurred.

3 **RESPONSE:**

4 Objection. This request potentially seeks documents protected by the attorney-client
5 privilege and work product doctrine. Subject to and without waiving the foregoing objections, the
6 Health Care Providers respond as follows: Much of the evidence to support this statement is
7 derived out of oral statements because the allegations concern reference to a telephone call. Non-
8 privileged responsive documents will be produced by the Health Care Providers following the
9 Court's adjudication of United's Renewed Motion to Stay Proceedings Pending Resolution of
10 Writ Petition on Order Shortening Time.

11 37. Please produce all documents supporting the "examples" given in ¶ 184 of your
12 First Amended Complaint.

13 **RESPONSE:**

14 Objection. This request is overly broad and unduly burdensome to the extent it requests
15 "all" documents relating to the United Member examples provided and is not proportional to the
16 needs of the case considering the importance of the issues at stake in the action, the amount in
17 controversy, the parties' relative access to relevant information, the parties' resources, the
18 importance of the discovery in resolving the issues, and whether the burden or expense of the
19 proposed discovery outweighs its likely benefit; and violates Nevada law by its request for
20 information already in United's possession. *See e.g.* NRS 683A.0879, 689A.410, 689B.255,
21 689C.485, 695C.185, NAC 686A.675. By way of further objection, United has refused to produce
22 documents and participate in discovery. Subject to and without waiving the foregoing objections,
23 *see* FES_00001; *see also* United's case management information systems that house and retain all
24 of the at-issue claims data that has been submitted by the Health Care Providers, as well as
25 United's electronically stored information yet to be produced. Non-privileged responsive
26 information will be produced by the Health Care Providers following the Court's adjudication of
27 United's Renewed Motion to Stay Proceedings Pending Resolution of Writ Petition on Order
28 Shortening Time.

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1 Subject to and without waiving the foregoing objections, *see* FESM00344 and specifically
2 the following Members:

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12 38. Please produce all documents supporting the “examples” given in ¶ 57 of your First
13 Amended Complaint.

14 **RESPONSE:**

15 Objection. This request is overly broad and unduly burdensome to the extent it requests
16 “all” documents relating to the United Member examples provided and is not proportional to the
17 needs of the case considering the importance of the issues at stake in the action, the amount in
18 controversy, the parties’ relative access to relevant information, the parties’ resources, the
19 importance of the discovery in resolving the issues, and whether the burden or expense of the
20 proposed discovery outweighs its likely benefit. In addition, the request violates Nevada law by
21 its request for information already in United’s possession. *See e.g.* NRS 683A.0879, 689A.410,
22 689B.255, 689C.485, 695C.185, NAC 686A.675. By way of further objection, United has refused
23 to produce documents and participate in discovery. Subject to and without waiving the foregoing
24 objections, *see* FES_00001; *see also* United’s case management information systems that house
25 and retain all of the at-issue claims data that has been submitted by the Health Care Providers, as
26 well as United’s electronically stored information yet to be produced. In addition, *see* FESM00344
27 and specifically the following Members:
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MCDONALD  **CARANO**

2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
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39. Please produce all documents supporting the allegations in ¶¶ 71–74 of your First Amended Complaint.

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RESPONSE:

Objection. The allegations in Paragraph 71-74 concern allegations about United's conduct; therefore, the Health Care Providers are only privy to publicly available information. By way of further response/objection, United admitted certain allegations contained in Paragraph 71, 73 and 74; therefore, the Health Care Providers are not obligated to produce further responsive documents.

40. Please produce all documents supporting the allegations in ¶ 75 of your First Amended Complaint.

RESPONSE:

Objection. This request seeks information that is in United's possession and available through public records. Subject to and without waiving the foregoing objections, *see, e.g.* <https://www.lexisnexis.com/legalnewsroom/insurance/b/medicalinsurance/posts/final-approval-granted-in-350-million-settlement-with-united-in-reimbursement-dispute>; https://searchltf.ama-assn.org/undefined/documentDownload?uri=/unstructured/binary/case/Case-Summary_American-Med-Assoc-v-United%2520HealthCare.pdf.

41. Please produce all documents supporting the "examples" given in ¶¶ 84-87 of your First Amended Complaint.

RESPONSE:

Objection. This request is overly broad and unduly burdensome to the extent it requests "all" documents relating to the United Member examples provided and is 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 addition, the request violates Nevada law by its request for information already in United's possession. *See e.g.* NRS 683A.0879, 689A.410, 689B.255, 689C.485, 695C.185, NAC 686A.675. By way of further objection, United has refused to produce documents and participate in discovery. Subject to and without waiving the foregoing objections, *see* FES_00001; *see also* United's case management information systems that house

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1 and retain all of the at-issue claims data that has been submitted by the Health Care Providers, as
2 well as United's electronically stored information yet to be produced. Subject to and without
3 waiving the foregoing objections, *see* FESM00344 and specifically the following Members:

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15 42. Please produce all documents supporting the allegations in ¶ 109 of your First
16 Amended Complaint that the Defendants "threatened [to] globally terminate[] all existing in-
17 network contracts with medical providers that are part of the TeamHealth organization."

18 **RESPONSE:**

19 Objection. The request potentially seeks documents protected by the attorney-client
20 privilege and work product doctrine. Subject to and without waiving the foregoing objections, the
21 Health Care Providers respond as follows: Numerous business discussions between
22 representatives for Defendants and representatives for Fremont took place in person and
23 telephonically. and violates Nevada law by its request for information already in United's
24 possession. *See e.g.* NRS 683A.0879, 689A.410, 689B.255, 689C.485, 695C.185, NAC
25 686A.675. By way of further objection, United has refused to produce documents and participate
26 in discovery. Consequently, these communications will be elicited through testimony at trial. *See*
27 *also* FESM00345-355 (letters terminating national contracts); *see also* United's electronically
28 stored information yet to be produced.

43. Please produce all documents supporting the allegation in ¶ 109 of the First Amended Complaint that, on or about July 9, 2019, Defendants "globally terminated all existing in-network contracts with medical providers that are part of the TeamHealth organization."

RESPONSE:

See response to Request No. 42.

44. Please produce all documents identified in your responses to Defendants' Second Set of Interrogatories.

RESPONSE:

Non-privileged responsive documents will be produced by the Health Care Providers following the Court's adjudication of United's Renewed Motion to Stay Proceedings Pending Resolution of Writ Petition on Order Shortening Time; *see also* United's case management information systems that house and retain all of the at-issue claims data that has been submitted by the Health Care Providers; *see also* United's electronically stored information yet to be produced; *see also* the pleadings and papers on file in the litigation.

45. Please produce all documents reflecting any of your discussions, deliberations and/or decisions regarding setting, adjusting, and/or maintaining the rates, and each and every component thereof, for each CPT code charged in the Claims. For purposes of this request, the components should include Base Units, Time Units, Modifying Units, and Conversion Factors.

RESPONSE:

Objection. The Request is vague and ambiguous as to the terms "Base Units" "Time Units" "Modifying Units" and "Conversion Factors"; appears to be from a different litigation involving anesthesia CPT coding which also makes the request with respect to "components" not relevant and proportional to the needs of the case as these terms have no import as to the Health Care Providers' allegations of underpayment, breach of an implied-in-fact contract, and civil racketeering, among other claims, nor does it have any bearing on or relationship to any of United's affirmative defenses; is a request designed to unreasonably further delay these proceedings; and is designed for an improper purpose to annoy, embarrass and oppress. By way of further objection, United already adjudicated the claims submitted by the Health Care

1 Providers; therefore, this case does not concern or relate to CPT coding. For these reasons, the
2 Health Care Providers decline to respond to the request as it relates to components of discussions,
3 deliberations and/or decisions regarding setting, adjusting, and/or maintaining the rates.

4 Subject to and without waiving the foregoing objections, the Health Care Providers
5 respond as follows: Non-privileged responsive documents, if any, will be produced by the Health
6 Care Providers following the Court's adjudication of United's Renewed Motion to Stay
7 Proceedings Pending Resolution of Writ Petition on Order Shortening Time.

8 46. Please produce all documents reflecting your decisions to set, adjust (or keep
9 constant) the rates charged, and each and every component thereof, for any of the CPT codes
10 related to the Claims. For purposes of this request, the components should include Base Units,
11 Time Units, Modifying Units, and Conversion Factors.

12 **RESPONSE:**

13 Objection. The Request is vague and ambiguous as to the terms "Base Units" "Time Units"
14 "Modifying Units" and "Conversion Factors"; appears to be from a different litigation involving
15 anesthesia CPT coding which also makes the request with respect to "components" not relevant
16 and proportional to the needs of the case as these terms have no import as to the Health Care
17 Providers' allegations of underpayment, breach of an implied-in-fact contract, and civil
18 racketeering, among other claims, nor does it have any bearing on or relationship to any of
19 United's affirmative defenses; is a request designed to unreasonably further delay these
20 proceedings; and is designed for an improper purpose to annoy, embarrass and oppress. By way
21 of further objection, United already adjudicated the claims submitted by the Health Care
22 Providers; therefore, this case does not concern or relate to CPT coding. For these reasons, the
23 Health Care Providers decline to respond to the request as it relates to components of decisions to
24 set, adjust (or keep constant) the rates charged.

25 Subject to and without waiving the foregoing objections, the Health Care Providers
26 respond as follows: Non-privileged responsive documents will be produced by the Health Care
27 Providers following the Court's adjudication of United's Renewed Motion to Stay Proceedings
28 Pending Resolution of Writ Petition on Order Shortening Time.

1 47. Please produce all documents reflecting any "charge masters" that were used by
2 you that represent your full billed charges for any of the CPT codes related to the Claims from
3 July 1, 2017 to the present.

4 **RESPONSE:**

5 Objection. This request is vague and ambiguous as to the term "charge masters" given that
6 it is quoted but does not provide the location from where it is quoted. In addition, the request is
7 ambiguous with respect to the language "CPT codes related to the Claims". CPT codes related to
8 Claims could, by definition of "relate" include numerous CPT codes which have no relationship
9 to the dispute at issue. To the extent this request seeks "charge masters" for all CPT codes that
10 could have some connection to the claims at issue in this litigation, the Health Care Providers
11 decline to produce such documents. By way of further objection, United has refused to produce
12 documents and participate in discovery. Subject to and without waiving the foregoing objections,
13 the Health Care Providers respond as follows: Non-privileged responsive documents will be
14 produced by the Health Care Providers following the Court's adjudication of United's Renewed
15 Motion to Stay Proceedings Pending Resolution of Writ Petition on Order Shortening Time.

16 48. Please produce all documents which you considered from external sources when
17 setting, adjusting (or keeping constant), the rates charged for any of the CPT codes related to the
18 Claims. For purposes of this request, the components should include Base Units, Time Units,
19 Modifying Units, and Conversion Factors from July 1, 2017 to the present.

20 **RESPONSE:**

21 Objection. The Request is vague and ambiguous as to the terms "Base Units" "Time Units"
22 "Modifying Units" and "Conversion Factors"; appears to be from a different litigation involving
23 anesthesia CPT coding which also makes the request with respect to "components" not relevant
24 and proportional to the needs of the case as these terms have no import as to the Health Care
25 Providers' allegations of underpayment, breach of an implied-in-fact contract, and civil
26 racketeering, among other claims, nor does it have any bearing on or relationship to any of
27 United's affirmative defenses; is a request designed to unreasonably further delay these
28 proceedings; and is designed for an improper purpose to annoy, embarrass and oppress. By way

1 of further objection, United already adjudicated the claims submitted by the Health Care
 2 Providers; therefore, this case does not concern or relate to CPT coding. In addition, the reference
 3 to "components should include" is vague and ambiguous because there is no prior reference to
 4 components and it is unclear to what "components" this request is referring. For these reasons,
 5 the Health Care Providers decline to respond to the request as it relates to "components" from
 6 external sources. In addition, this request is vague and ambiguous with respect to the use of the
 7 term "external sources" and "CPT codes related to the Claims". CPT codes related to Claims
 8 could, by definition of "relate to" include numerous CPT codes which have no relationship to the
 9 dispute at issue. To the extent this request seeks documents relating to external sources from where
 10 rates are derived for all CPT codes that could have some connection to the claims at issue in this
 11 litigation, the Health Care Providers decline to produce such documents.

12 Subject to and without waiving the foregoing objections, the Health Care Providers
 13 respond as follows: non-privilege responsive Non-privileged responsive documents, if any, will
 14 be produced by the Health Care Providers following the Court's adjudication of United's Renewed
 15 Motion to Stay Proceedings Pending Resolution of Writ Petition on Order Shortening Time.

16 49. Please produce all documents, including but not limited to reports, analysis,
 17 presentations, or studies from any business consulting company you retained which addresses the
 18 rates which you have charged or should charge for any of the CPT codes related to the Claims
 19 from July 1, 2017 to the present.

20 **RESPONSE:**

21 Objection. United already adjudicated the claims submitted by the Health Care Providers;
 22 therefore, this case does not concern or relate to CPT coding. In addition, this request is vague
 23 and ambiguous with respect to the use of the phrase "CPT codes related to the Claims". CPT
 24 codes related to Claims could, by definition of "relate" include numerous CPT codes which have
 25 no relationship to the dispute at issue. To the extent this request seeks documents relating to all
 26 CPT codes that could have some connection to the claims at issue in this litigation, the Health
 27 Care Providers decline to produce such documents.
 28

1 Subject to and without waiving the foregoing objections, the Health Care Providers
2 respond as follows: Non-privileged responsive documents, if any, will be produced by the Health
3 Care Providers following the Court's adjudication of United's Renewed Motion to Stay
4 Proceedings Pending Resolution of Writ Petition on Order Shortening Time.

5 50. Please produce all market surveys from any source which you considered at any
6 point when setting, adjusting (or keeping constant) the rates you charged for any of the CPT codes
7 reflect in the Claims from July 1, 2017 to the present.

8 **RESPONSE:**

9 Objection. United already adjudicated the claims submitted by the Health Care Providers;
10 therefore, this case does not concern or relate to CPT coding. In addition, this request is vague,
11 ambiguous and unintelligible with respect to the use of the phrase "CPT codes reflect in the
12 Claims". To the extent this request seeks market surveys considered when setting, adjusting (or
13 keeping constant) the rates charged for the CPT codes at issue in the Claim and subject to and
14 without waiving the foregoing objections, the Health Care Providers respond as follows:
15 Fairhealth.org.

16 51. Please produce all reports from any business consulting company, retained by you,
17 which addresses the typical rates at which you received payment, or should have expected as
18 payment, from any Payer for any of the CPT codes reflected in the Claims from July 1, 2017 to
19 the present.

20 **RESPONSE:**

21 Objection. United already adjudicated the claims submitted by the Health Care Providers;
22 therefore, this case does not concern or relate to CPT coding. Therefore, the request is irrelevant
23 and not proportional to the needs of the case considering the importance of the issues at stake in
24 the action, the amount in controversy, the parties' relative access to relevant information, the
25 parties' resources, the importance of the discovery in resolving the issues, and whether the burden
26 or expense of the proposed discovery outweighs its likely benefit. In addition, this request is vague
27 and ambiguous with respect to the use of the phrase "CPT codes reflected in the Claims". By way
28 of further objection, this request is vague and ambiguous with respect to the phrase "typical rates

1 at which you received payment, or should have expected as payment.” Subject to and without
 2 waiving the foregoing objections, the Health Care Providers respond as follows: Non-privileged
 3 responsive documents, if any, will be produced by the Health Care Providers following the Court’s
 4 adjudication of United’s Renewed Motion to Stay Proceedings Pending Resolution of Writ
 5 Petition on Order Shortening Time.

6 52. Please produce all market surveys, from any source, which you considered at any
 7 point when determining the rates you expected as payment from any out-of-network Payer with
 8 whom you do not have a participation agreement for any of the CPT codes reflected in the Claims
 9 from July 1, 2017 to the present.

10 **RESPONSE:**

11 Objection. United already adjudicated the claims submitted by the Health Care Providers;
 12 therefore, this case does not concern or relate to CPT coding. Therefore, the request is irrelevant
 13 and not proportional to the needs of the case considering the importance of the issues at stake in
 14 the action, the amount in controversy, the parties’ relative access to relevant information, the
 15 parties’ resources, the importance of the discovery in resolving the issues, and whether the burden
 16 or expense of the proposed discovery outweighs its likely benefit. In addition, this request is vague
 17 and ambiguous with respect to the use of the phrase “CPT codes reflected in the Claims”. This
 18 request is also vague and ambiguous with respect to the phrased “rates you expected as payment”
 19 and “participation agreement.” Subject to and without waiving the foregoing objections, the
 20 Health Care Providers respond as follows: Fairhealth.org.

21 53. Please produce all documents related to any internal “expected payment” amounts
 22 or rates you established for any Payer, including the minimum thresholds for automatic appeals
 23 and other administrative remedies from July 1, 2017 to the present.

24 **RESPONSE:**

25 Objection. United already adjudicated the claims submitted by the Health Care Providers;
 26 therefore, this case does not concern or relate to CPT coding. Therefore, the request is irrelevant
 27 and not proportional to the needs of the case considering the importance of the issues at stake in
 28 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. This request is also vague and ambiguous with respect to the quoted language "expected payment" because there is no indication from where that language was derived. By way of further objection, this request appears to be aimed at discovering information under Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1132(a)(1)(B) and to treat this case as an ERISA case despite the Court's June 24, 2020 Order rejecting that argument. Exhaustion through an administrative appeal is a function only applicable in terms of an ERISA claim. By way of further objection, this request is overly broad and unduly burdensome in that it seeks "all" documents on rates established for any Payer. Subject to and without waiving the foregoing objections, the Health Care Providers respond as follows: Non-privileged responsive documents will be produced by the Health Care Providers following the Court's adjudication of United's Renewed Motion to Stay Proceedings Pending Resolution of Writ Petition on Order Shortening Time.

54. Please produce all documents identifying each and every Payer with whom you have or had a contract to provide emergency medical services from July 1, 2017 to present.

RESPONSE:

Objection. This 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. This case concerns payments owed to the Health Care Providers by an out of network provider. Subject to and without waiving the foregoing objections, the Health Care Providers respond as follows: Non-privileged responsive documents will be produced by the Health Care Providers following the Court's adjudication of United's Renewed Motion to Stay Proceedings Pending Resolution of Writ Petition on Order Shortening Time.

55. Please produce all contracts which you have or had with any Payer that reflects any amounts you were willing to accept as payment for any medical-related services that you provided from July 1, 2017 to present.

RESPONSE:

Objection. This request is overly broad, unduly burdensome, 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. This case concerns payments owed to the Health Care Providers by an out of network provider for emergency medicine services; yet this request seeks all contracts with in-network providers for any medical-related services. Subject to and without waiving the foregoing objections, the Health Care Providers respond as follows: Non-privileged responsive documents will be produced by the Health Care Providers following the Court's adjudication of United's Renewed Motion to Stay Proceedings Pending Resolution of Writ Petition on Order Shortening Time.

56. Please produce all documents relating to any complaints by your patients regarding any amounts charged, including but not limited to any patient Balance Billing for services you provided from July 1, 2017 to present, including but not limited to informal and formal complaints and/or challenges.

RESPONSE:

Objection. The request 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 existence of any complaint by a patient has no impact on Defendants' obligation to pay the appropriate rate for the Healthcare Claims and makes such information unimportant to the issues at stake in this action, nor does the existence inform any of United's affirmative defenses. Furthermore, the burden and expense of gathering these outweighs any benefit that would be derived from the same; and this is a request designed to unreasonably further delay these proceedings Subject to and without waiving the foregoing objections, the Health Care Providers respond as follows: Non-privileged responsive documents, if any, will be

1 produced by the Health Care Providers following the Court's adjudication of United's Renewed
2 Motion to Stay Proceedings Pending Resolution of Writ Petition on Order Shortening Time.

3 57. Please produce all documents reflecting complaints by administrators or
4 employees of hospitals or other facilities/organizations providing emergency medical services
5 concerning the amounts charged by you for emergency medical services you provided from July
6 1, 2017 to present, including but not limited to informal and formal complaints and/or challenges.

7 **RESPONSE:**

8 Objection. The request is irrelevant and not proportional to the needs of the case
9 considering the importance of the issues at stake in the action, the amount in controversy, the
10 parties' relative access to relevant information, the parties' resources, the importance of the
11 discovery in resolving the issues, and whether the burden or expense of the proposed discovery
12 outweighs its likely benefit. In particular, the existence of any complaint concerning amount
13 charged has no impact on Defendants' obligation to pay the appropriate rate for the Healthcare
14 Claims and makes such information unimportant to the issues at stake in this action, nor does the
15 existence inform any of United's affirmative defenses. Furthermore, the burden and expense of
16 gathering these outweighs any benefit that would be derived from the same; and is a request
17 designed to unreasonably further delay these proceedings. Subject to and without waiving the
18 foregoing objections, the Health Care Providers respond as follows: Non-privileged responsive
19 documents, if any, will be produced by the Health Care Providers following the Court's
20 adjudication of United's Renewed Motion to Stay Proceedings Pending Resolution of Writ
21 Petition on Order Shortening Time.

22 58. Please produce all documents relating to inquiries and/or investigations by
23 regulators in the State of Nevada concerning the rates charged by you for emergency medical
24 services from July 1, 2017 to present.

25 **RESPONSE:**

26 Objection. This request is vague and ambiguous as to the term "regulators"; potentially
27 seeks documents protected by the attorney-client privilege and work product doctrine and/or are
28 otherwise confidential; seeks information that is not proportional to the needs of the case as an

1 “inquiry” or “investigation” has no import to whether the Health Care Providers’ billed reasonable
 2 charges for the at-issue claims; has no bearing on or relationship to any of United’s affirmative
 3 defenses; is a request designed to unreasonably further delay these proceedings; and is designed
 4 for an improper purpose to annoy, embarrass and oppress. Subject to and without waiving the
 5 foregoing objections, the Health Care Providers respond that the Health Care Providers have not
 6 been subject to any consent decree or other order in Nevada concerning the rates charged for
 7 emergency medical services between July 1, 2017. As a result, the Health Care Providers submit
 8 there are no responsive documents to this request.

9 59. Please produce all documents related to inquiries and/or investigations by any
 10 agency or sub-agency of the government of the United States concerning the rates charged by you
 11 for emergency medical services from July 1, 2017 to present.

12 **RESPONSE:**

13 Objection. This request is vague and ambiguous as to the terms “agency” or “sub-agency
 14 of the government of the United States”; potentially seeks documents protected by the attorney-
 15 client privilege and work product doctrine and/or are otherwise confidential; seeks information
 16 that is not proportional to the needs of the case as an “inquiry” or “investigation” has no import to
 17 whether the Health Care Providers’ billed reasonable charges for the at-issue claims; has no
 18 bearing on or relationship to any of United’s affirmative defenses; is a request designed to
 19 unreasonably further delay these proceedings; and is designed for an improper purpose to annoy,
 20 embarrass and oppress. Subject to and without waiving the foregoing objections, the Health Care
 21 Providers respond that the Health Care Providers have not been subject to any consent decree or
 22 other order concerning the rates charged for emergency medical services between July 1, 2017.
 23 As a result, the Health Care Providers submit there are no responsive documents to this request.

24 60. Please produce all documents which identify the members of any groups,
 25 committees, or entities, with responsibility for setting, adjusting or maintaining the rates you
 26 charge for emergency medical services, including your billing committee(s), if any, from July 1,
 27 2017 to present.

RESPONSE:

Objection. This request is vague and ambiguous with respect to the term "billing committee(s)." Subject to and without waiving the foregoing objections, the Health Care Providers respond as follows: Non-privileged responsive documents, if any, will be produced by the Health Care Providers following the Court's adjudication of United's Renewed Motion to Stay Proceedings Pending Resolution of Writ Petition on Order Shortening Time.

61. Please produce all documents reflecting your corporate structure for each year from July 1, 2017 to the present.

RESPONSE:

Objection. This request is vague and ambiguous as to the terms "reflecting your corporate structure"; potentially seeks documents protected by the attorney-client privilege and work product doctrine and/or are otherwise confidential; seeks information that is not relevant and proportional to the needs of the case as the Health Care Providers' structure has no import as to the Health Care Providers' allegations of underpayment, breach of an implied-in-fact contract, and civil racketeering, among other claims, nor does it have any bearing on or relationship to any of United's affirmative defenses; is a request designed to unreasonably further delay these proceedings; and is designed for an improper purpose to annoy, embarrass and oppress. For these reasons, the Health Care Providers decline to respond to the request as currently framed.

62. Please produce all documents reflecting your billing practices and procedures from July 1, 2017 to present including, but not limited to:

- a) Your decision to appeal (or to not appeal) any payment received from any Payer;
- b) The calculation of any amounts you may hold as an uncollected balance on any payment received;
- c) Your decision to pursue (or not to pursue) out-of-pocket payment collections from patients.

RESPONSE:

Objection. The request is vague and ambiguous as to the terms "appeal," "uncollected balance on any payment received" and "out-of-pocket payment collections"; seeks information

1 that is not relevant and proportional to the needs of the case as the Health Care Providers' billing
 2 practices, if any, identified above have no import as to the Health Care Providers' allegations of
 3 underpayment, breach of an implied-in-fact contract, and civil racketeering, among other claims,
 4 nor does it have any bearing on or relationship to any of United's affirmative defenses because
 5 the request seeks information about billing practices related to "any payment received from any
 6 Payer"; is a request designed to unreasonably further delay these proceedings; is designed for an
 7 improper purpose to annoy, embarrass and oppress; is not limited to the claims at issue in this
 8 case; is overly broad and unduly burdensome in that it seeks "all" documents in connection with
 9 "any payment received from any Payer." By way of further objection, whether the Health Care
 10 Providers appealed, "hold as an uncollected balance on any payment received" or balance bill will
 11 not support or refute any of their claims or United's affirmative defenses. For these reasons, the
 12 Health Care Providers decline to respond to the request.

13 63. Please produce all documents reflecting your practices and procedures regarding
 14 the use of Base Units when billing from July 1, 2017 to present.

15 **RESPONSE:**

16 Objection. The Request is vague and ambiguous as to the term "Base Units"; appears to
 17 be from a different litigation involving anesthesia CPT coding which also makes it not relevant
 18 and proportional to the needs of the case as a "Base Units" has no import as to the Health Care
 19 Providers' allegations of underpayment, breach of an implied-in-fact contract, and civil
 20 racketeering, among other claims, nor does it have any bearing on or relationship to any of
 21 United's affirmative defenses; is a request designed to unreasonably further delay these
 22 proceedings; and is designed for an improper purpose to annoy, embarrass and oppress. By way
 23 of further objection, specifically, a "Base Unit" is an anesthesia-related indicator and United
 24 already adjudicated the claims submitted by the Health Care Providers; therefore, this case does
 25 not concern or related to CPT coding. For these reasons, the Health Care Providers decline to
 26 respond to the request.

27 64. Please produce all documents reflecting your practices and procedures regarding
 28 the use of Time Units when billing from July 1, 2017 to present.

RESPONSE:

Objection. The Request is vague and ambiguous as to the term "Time Units"; appears to be from a different litigation involving anesthesia CPT coding which also makes it not relevant and proportional to the needs of the case as a "Time Units" has no import as to the Health Care Providers' allegations of underpayment, breach of an implied-in-fact contract, and civil racketeering, among other claims, nor does it have any bearing on or relationship to any of United's affirmative defenses; is a request designed to unreasonably further delay these proceedings; and is designed for an improper purpose to annoy, embarrass and oppress. By way of further objection, specifically, a "Time Unit" is an anesthesia-related indicator and United already adjudicated the claims submitted by the Health Care Providers; therefore, this case does not concern or related to CPT coding. For these reasons, the Health Care Providers decline to respond to the request.

65. Please produce all documents reflecting your practices and procedures regarding the use of Modifying Units when billing from July 1, 2017 to present.

RESPONSE:

Objection. The Request is vague and ambiguous as to the term "Modifying Units"; seeks information not relevant and proportional to the needs of the case as "Modifying Units" relates to CPT coding which has no import as to the Health Care Providers' allegations of underpayment, breach of an implied-in-fact contract, and civil racketeering, among other claims; is a request designed to unreasonably further delay these proceedings; and is designed for an improper purpose to annoy, embarrass and oppress. By way of further objection, specifically, a "Modifying Unit" is used in connection with an assigned CPT code and United already adjudicated the claims submitted by the Health Care Providers, deeming them payable; therefore, this case does not concern or related to CPT coding. Further, United is precluded from retracting its earlier approval of the submitted at-issue claims. *See e.g.* NRS 683A.0879, 689A.410, 689B.255, 689C.485, 695C.185, NAC 686A.675. For these reasons, the Health Care Providers decline to respond to the request.

1 66. Please produce all documents reflecting your practices and procedures regarding
2 the use of Conversion Factors from July 1, 2017 to present.

3 **RESPONSE:**

4 Objection. The Request is vague and ambiguous as to the term "Conversion Factors";
5 appears to be from a different litigation involving anesthesia CPT coding which also makes it not
6 relevant and proportional to the needs of the case as a "Conversion Factors" has no import as to
7 the Health Care Providers' allegations of underpayment, breach of an implied-in-fact contract,
8 and civil racketeering, among other claims, nor does it have any bearing on or relationship to any
9 of United's affirmative defenses; is a request designed to unreasonably further delay these
10 proceedings; and is designed for an improper purpose to annoy, embarrass and oppress. By way
11 of further objection, specifically, a "Conversion Factor" is an anesthesia-related indicator and
12 United already adjudicated the claims submitted by the Health Care Providers; therefore, this case
13 does not concern or related to CPT coding. For these reasons, the Health Care Providers decline
14 to respond to the request.

15 67. Please produce all documents which reflect your cost to perform each service as
16 represented by the CPT codes charged in the Claims, including but not limited to:

- 17 a) Any filed cost report documentation or supporting analyses;
- 18 b) Any internal or external cost-to-charge calculations performed by you; and
- 19 c) Any external cost-to-charge calculations performed as to Plaintiffs.

20 **RESPONSE:**

21 Objection. This request is vague and ambiguous as to the phrase "cost to perform each
22 service as represented by the CPT codes"; potentially seeks documents protected by the attorney-
23 client privilege and work product doctrine and/or are otherwise confidential; seeks information
24 that is not relevant and proportional to the needs of the case as the Health Care Providers' costs
25 have no import as to the Health Care Providers' allegations of underpayment, breach of an
26 implied-in-fact contract, and civil racketeering, among other claims, nor does it have any bearing
27 on or relationship to any of United's affirmative defenses; is a request designed to unreasonably
28

1 further delay these proceedings; and is designed for an improper purpose to annoy, embarrass and
2 oppress. For these reasons, the Health Care Providers decline to respond.

3 68. Please produce all documents which reflect or discuss the extent to which the rates
4 you charge for emergency medical services, from July 1, 2017 to present, capture or reflect your
5 actual cost of doing business.

6 **RESPONSE:**

7 Objection. This request is vague and ambiguous as to the phrase "actual cost of doing
8 business"; potentially seeks documents protected by the attorney-client privilege and work
9 product doctrine and/or are otherwise confidential; seeks information that is not relevant and
10 proportional to the needs of the case as the Health Care Providers' costs have no import as to the
11 Health Care Providers' allegations of underpayment, breach of an implied-in-fact contract, and
12 civil racketeering, among other claims, nor does it have any bearing on or relationship to any of
13 United's affirmative defenses; is a request designed to unreasonably further delay these
14 proceedings; and is designed for an improper purpose to annoy, embarrass and oppress. For these
15 reasons, the Health Care Providers decline to respond.

16 69. Please produce all any and all articles of incorporation, amendments and governing
17 documents for each of the Plaintiffs in effect at any time from July 1, 2017 to present.

18 **RESPONSE:**

19 Objection. This request seeks documents that are confidential; seeks information that is
20 not proportional to the needs of the case as the Health Care Providers' corporate documents has
21 no import as to the Health Care Providers' allegations of underpayment, breach of an implied-in-
22 fact contract, and civil racketeering, among other claims, nor does it have any bearing on or
23 relationship to any of United's affirmative defenses; is a request designed to unreasonably further
24 delay these proceedings; and is designed for an improper purpose to annoy, embarrass and
25 oppress. For these reasons, the Health Care Providers decline to respond to the request as currently
26 framed.

27 70. Please produce all copies of the minutes of any meetings of Plaintiffs' board of
28 directors or other governing body from July 1, 2017 to present which relate to:

- 1 a) The amounts which you charged for emergency medical services;
- 2 b) The rate of payment which Plaintiffs receive from Payers.

RESPONSE:

3

4 Objection. This request is vague and ambiguous as to the term "other governing body";

5 potentially seeks documents protected by the attorney-client privilege and work product doctrine

6 and/or are otherwise confidential. Subject to and without waiving the foregoing objections, there

7 are no responsive documents.

8 71. Please produce all copies of the minutes of any meetings of any groups, committees

9 and/or entities, with responsibility for setting, adjusting, or maintain the rates which Plaintiffs

10 charge for emergency medical services from July 1, 2017 to present.

RESPONSE:

11

12 Objection. This request is vague and ambiguous as to the term "or maintain the rates";

13 potentially seeks documents protected by the attorney-client privilege and work product doctrine

14 and/or are otherwise confidential. Subject to and without waiving the foregoing objections, the

15 Health Care Providers respond as follows: Non-privileged responsive documents, if any, will be

16 produced by the Health Care Providers following the Court's adjudication of United's Renewed

17 Motion to Stay Proceedings Pending Resolution of Writ Petition on Order Shortening Time

18 72. Please produce all copies of any contracts you entered into with any business,

19 management, or other consulting firms relative to the setting, adjusting, or maintaining of the rates

20 that you charge for emergency medical services at any time from July 1, 2017 to present.

RESPONSE:

21

22 The Health Care Providers respond as follows: Non-privileged responsive documents, if

23 any, will be produced by the Health Care Providers following the Court's adjudication of United's

24 Renewed Motion to Stay Proceedings Pending Resolution of Writ Petition on Order Shortening

25 Time

26 73. Please produce all copies of any internal audits of your billing practices from July

27 1, 2017 to present.

28

RESPONSE:

Objection. This request is vague and ambiguous as to the term "internal audit" and "billing practices"; potentially seeks documents protected by the attorney-client privilege and work product doctrine and/or are otherwise confidential; seeks information that is not relevant and proportional to the needs of the case as any internal audit has no import as to the Health Care Providers' allegations of underpayment, breach of an implied-in-fact contract, and civil racketeering, among other claims, nor does it have any bearing on or relationship to any of United's affirmative defenses; is a request designed to unreasonably further delay these proceedings; and is designed for an improper purpose to annoy, embarrass and oppress. For these reasons, the Health Care Providers decline to respond.

74. Please produce all copies of any external audits of your billing practices from July 1, 2017 to present.

RESPONSE:

Objection. This request is vague and ambiguous as to the term "external audit" and "billing practices"; potentially seeks documents protected by the attorney-client privilege and work product doctrine and/or are otherwise confidential; seeks information that is not relevant and proportional to the needs of the case as any internal audit has no import as to the Health Care Providers' allegations of underpayment, breach of an implied-in-fact contract, and civil racketeering, among other claims, nor does it have any bearing on or relationship to any of United's affirmative defenses; is a request designed to unreasonably further delay these proceedings; and is designed for an improper purpose to annoy, embarrass and oppress. For these reasons, the Health Care Providers decline to respond.

75. Please produce all documents relating to internal or external audits of your billing practices from July 1, 2017 to present.

RESPONSE:

Objection. This request is duplicative (RFP Nos. 73-74). *See also* Response to RFPs No. 73-74.

1 76. Please produce copies of any contracts that you entered into with a third party to
2 conduct external audits of your billing practices from July 1, 2017 to present.

3 **RESPONSE:**

4 Objection. This request is duplicative (RFP Nos. 73-75). *See also* Response to RFPs No.
5 73-74.

6 77. Please produce all documents demonstrating that Defendants have paid you at rates
7 less than those you allege you are entitled to receive with respect to the Claims.

8 **RESPONSE:**

9 Objection. This request is overly broad and unduly burdensome to the extent it requests
10 "all" documents demonstrating underpayment and is not proportional to the needs of the case
11 considering the importance of the issues at stake in the action, the amount in controversy, the
12 parties' relative access to relevant information, the parties' resources, the importance of the
13 discovery in resolving the issues, and whether the burden or expense of the proposed discovery
14 outweighs its likely benefit; and seeks information already in United's possession. In addition,
15 United has refused to produce documents and participate in discovery. Subject to and without
16 waiving the foregoing objections, the Health Care Providers respond as follows: *see* FESM 00344;
17 *see also* United's case management information systems that house and retain all of the at-issue
18 claims data that has been submitted by the Health Care Providers, as well as United's
19 electronically stored information yet to be produced. Non-privileged responsive documents will
20 be produced by the Health Care Providers following the Court's adjudication of United's Renewed
21 Motion to Stay Proceedings Pending Resolution of Writ Petition on Order Shortening Time.

22 78. Please produce all documents demonstrating that Defendants paid less than what
23 you allege to be the fair value for your services at issue in your First Amended Complaint.

24 **RESPONSE:**

25 Objection. This request is overly broad and unduly burdensome to the extent it requests
26 "all" documents demonstrating underpayment and is not proportional to the needs of the case
27 considering the importance of the issues at stake in the action, the amount in controversy, the
28 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; and seeks information already in United's possession. In addition, United has refused to produce documents and participate in discovery. Subject to and without waiving the foregoing objections, *see* FESM 00344; *see also* United's case management information systems that house and retain all of the at-issue claims data that has been submitted by the Health Care Providers, as well as United's electronically stored information yet to be produced. Non-privileged responsive documents will be produced by the Health Care Providers following the Court's adjudication of United's Renewed Motion to Stay Proceedings Pending Resolution of Writ Petition on Order Shortening Time.

79. Please produce all documents demonstrating that your charges for the Claims are the usual and customary provider charges for similar services in the Nevada market.

RESPONSE:

Objection. This request is 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; and seeks information already in United's possession. To the extent this request seeks an expert opinion concerning whether the charges represent usual and customary provider charges, this request is premature as the deadline to exchange expert reports has not yet been set. In addition, United has refused to produce documents and participate in discovery. Subject to and without waiving the foregoing objections, *see* Fairhealth.org. Non-privileged responsive documents will be produced by the Health Care Providers following the Court's adjudication of United's Renewed Motion to Stay Proceedings Pending Resolution of Writ Petition on Order Shortening Time.

80. Please produce all documents supporting the medical necessity of the services at issue with respect to the Claims that you contend were performed on an emergency basis in the First Amended Complaint.

RESPONSE:

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 necessity of treatment provided to particular patients. In particular, the records showing medical necessity for all patients involved in the at issue claims are records unrelated to the dispute at issue, making such information unimportant to the issues at stake in this action. Furthermore, these documents are accessible to Defendants as the treatment concerns Defendants' Members. Finally, the burden and expense of gathering thousands of medical records, and producing this exceedingly large file outweighs any benefit. In addition, this request seeks irrelevant information because any attempt to object to the coding previously designated by the Health Care Providers violates Nevada law. See e.g. NRS 683A.0879, 689A.410, 689B.255, 689C.485, 695C.185, NAC 686A.675. Subject to and without waiving the foregoing objections, the Health Care Providers decline to respond to the request.

81. Please produce all documents that demonstrate the rate of reimbursement that you contend Defendants should have paid with respect to each of the Claims.

RESPONSE:

Objection. The request is vague and ambiguous with respect to the phrase "demonstrate the rate of reimbursement." To the extent the request seeks documents identifying the rate of reimbursement that should have been paid with respect to each of the Claims and subject to and without waiving the foregoing objections, the Health Care Providers respond as follows: Non-privileged responsive documents will be produced by the Health Care Providers following the Court's adjudication of United's Renewed Motion to Stay Proceedings Pending Resolution of Writ Petition on Order Shortening Time.

82. Please produce all documents related to or demonstrating any appeals submitted to Defendants by you, your patient(s), or anyone else with respect to the Claims.

RESPONSE:

Objection. The request is vague and ambiguous as to the terms "appeal," seeks information that is not relevant and proportional to the needs of the case as the instance of an appeal, if any, has no import as to the Health Care Providers' allegations of underpayment, breach of an implied-in-fact contract, and civil racketeering, among other claims, nor does it have any bearing on or relationship to any of United's affirmative defenses; is a request designed to unreasonably further delay these proceedings; is designed for an improper purpose to annoy, embarrass and oppress; seeks information equally in the possession of United which its counsel indicated at a September 9, 2020 hearing that United has allegedly identified; seeks information from "patient(s), or anyone else" which would not be in the possession or knowledge of the Health Care Providers; is overly broad and unduly burdensome in that it seeks "all" documents in connection with "any appeals"; and violates Nevada law by its request for information already in United's possession. *See e.g.* NRS 683A.0879, 689A.410, 689B.255, 689C.485, 695C.185, NAC 686A.675. By way of further objection, whether the Health Care Providers appealed, will not support or refute any of their claims or United's affirmative defenses. Subject to and without waiving the foregoing objections, *see, e.g.* FESM00001-4.

83. Please produce all documents and/or data you referred to, reviewed, considered, or relied upon in any way, at any time, to determine the amount to bill on each Claim, or for the types of services at issue in the Claims since July 1, 2017.

RESPONSE:

Objection. The request is vague, ambiguous and unintelligible. Subject to and without waiving the foregoing objections, and to the extent that this request seeks documents and/or data referred to, reviewed, considered, or relied to determine the amount to bill on each Claim, the Health Care Providers respond as follows: Non-privileged responsive documents will be produced by the Health Care Providers following the Court's adjudication of United's Renewed Motion to Stay Proceedings Pending Resolution of Writ Petition on Order Shortening Time.

1 84. Please produce all your policies and/or procedures, in effect at any time since July
2 1, 2017, for writing-off or excusing payments for any emergency medical services rendered.

3 **RESPONSE:**

4 Objection. This request is overly broad as it is not narrowly tailored to the Claims at issue
5 in this litigation and seeks irrelevant information. Further, this request is not proportional to the
6 needs of the case considering the importance of the issues at stake in the action, the amount in
7 controversy, the parties' relative access to relevant information, the parties' resources, the
8 importance of the discovery in resolving the issues, and whether the burden or expense of the
9 proposed discovery outweighs its likely benefit. Subject to and without waiving the foregoing
10 objections, the Health Care Providers respond as follows: Non-privileged responsive documents
11 will be produced by the Health Care Providers following the Court's adjudication of United's
12 Renewed Motion to Stay Proceedings Pending Resolution of Writ Petition on Order Shortening
13 Time.

14 85. Please produce all your policies and/or procedures, in effect at any time since July
15 1, 2017, relative to the billing of self-pay and/or uninsured patients including but not limiting to
16 any policies for offering and/or accepting less than full billed charges.

17 **RESPONSE:**

18 Objection. The request is vague and ambiguous as to the term "self-pay" "uninsured
19 patients"; seeks information that is not relevant and proportional to the needs of the case as the
20 Health Care Providers' billing practices relative to patients without insurance or who choose to
21 self-pay, if any, as identified above have no import as to the Health Care Providers' allegations of
22 underpayment, breach of an implied-in-fact contract, and civil racketeering, among other claims,
23 nor does it have any bearing on or relationship to any of United's affirmative defenses because
24 the request seeks information about billing practices unrelated to any at-issue claim; is a request
25 designed to unreasonably further delay these proceedings; is designed for an improper purpose to
26 annoy, embarrass and oppress; is not limited to the claims at issue in this case; is overly broad and
27 unduly burdensome in that it seeks "all" documents." By way of further objection, regardless of
28 whether the Health Care Providers have any policy "for offering and/or accepting less than full

1 billed charges" from "self-pay" or "uninsured" individuals, will not support or refute any of their
2 claims or United's affirmative defenses. Subject to and without waiving the foregoing objections,
3 the Health Care Providers decline to respond to the request.

4 86. Please produce all documents and communications of any type related to any cost
5 to charge analysis performed on any emergency medical service you offer patients from July 1,
6 2017 to present.

7 **RESPONSE:**

8 Objection. This request is vague and ambiguous as to the phrase "any cost to charge";
9 potentially seeks documents protected by the attorney-client privilege and work product doctrine
10 and/or are otherwise confidential; seeks information that is not relevant and proportional to the
11 needs of the case as the Health Care Providers' costs have no import as to the Health Care
12 Providers' allegations of underpayment, breach of an implied-in-fact contract, and civil
13 racketeering, among other claims, nor does it have any bearing on or relationship to any of
14 United's affirmative defenses; is a request designed to unreasonably further delay these
15 proceedings; and is designed for an improper purpose to annoy, embarrass and oppress. For these
16 reasons, the Health Care Providers decline to respond.

17 87. For each Commercial Payer (not including Defendants) with whom you have or
18 had an in-network contractual relationship during the period July 1, 2017 to present, all documents
19 showing, on an annual basis:

- 20 a) The identity of the Payer;
- 21 b) The total number of emergency-related services provided to members of
22 each Payer;
- 23 c) The total charges you billed to each Payer;
- 24 d) The total amount allowed by each Payer;
- 25 e) The total amount paid by each Payer;
- 26 f) The total out-of-pocket patient responsibility related to each Payer's
27 claims;
- 28 g) The total amount you collected from the Payer's members; and

- h) The average percentage of your billed charges that you received from each Payer.

RESPONSE:

Objection. The request seeks information that is not relevant and proportional to the needs of the case as information concerning payment of in-network claims has no import as to the Health Care Providers' allegations of underpayment, breach of an implied-in-fact contract, and civil racketeering, among other claims, nor does it have any bearing on or relationship to any of United's affirmative defenses. In addition, this request seeks documents not in the Health Care Providers' possession because the particularities of this request would require the Health Care Providers to create a document containing the requested information. In addition, the request seeks confidential, proprietary information by virtue of seeking the identity of each Payer along with the remaining information sought by this request. Subject to and without waiving the foregoing objections, the Health Care Providers respond as follows: Non-privileged responsive documents will be produced by the Health Care Providers following the Court's adjudication of United's Renewed Motion to Stay Proceedings Pending Resolution of Writ Petition on Order Shortening Time.

88. For each Commercial Payer (other than Defendants) with whom you do not have or did not have an in-network contractual relationship during the period July 1, 2017 to present, all documents showing, on an annual basis:

- a) The identity of the Payer;
- b) The total number of emergency-related services provided to members of each Payer;
- c) The total charges you billed to each Payer;
- d) The total amount allowed by each Payer;
- e) The total amount paid by each Payer;
- f) The total out-of-pocket patient responsibility related to each Payer's claims;
- g) The total amount you collected from the Payer's members; and

- h) The average percentage of your billed charges that you received from each Payer.

RESPONSE:

Objection. The request seeks documents not in the Health Care Providers' possession because the particularities of this request would require the Health Care Providers to create a document containing the requested information. In addition, the request seeks confidential, proprietary information by virtue of seeking the identity of each Payer along with the remaining information sought by this request. Subject to and without waiving the foregoing objections, the Health Care Providers respond as follows: Non-privileged responsive documents will be produced by the Health Care Providers following the Court's adjudication of United's Renewed Motion to Stay Proceedings Pending Resolution of Writ Petition on Order Shortening Time.

89. For all emergency medical services you provided to patients covered by Medicare/Medicaid from July 1, 2017 to present, all documents showing, on an annual basis:

- a) The identity of the Payer;
- b) The total number of emergency-related services provided to members of each Payer;
- c) The total charges you billed to each Payer;
- d) The total amount allowed by each Payer;
- e) The total amount paid by each Payer;
- f) The total out-of-pocket patient responsibility related to each Payer's claims;
- g) The total amount you collected from the Payer's members; and
- h) The average percentage of your billed charges that you received from each Payer.

RESPONSE:

Objection. The request seeks information that is not relevant and proportional to the needs of the case as information concerning payment of by Medicare/Medicaid claims has no import as to the Health Care Providers' allegations of underpayment, breach of an implied-in-fact contract, and civil racketeering, among other claims, nor does it have any bearing on or relationship to any

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of United's affirmative defenses. In addition, this request seeks documents not in the Health Care Providers' possession because the particularities of this request would require the Health Care Providers to create a document containing the requested information. By way of further objection, the request seeks confidential, proprietary information by virtue of seeking the identity of each Payer along with the remaining information sought by this request and the request is designed for an improper purpose to annoy, embarrass and oppress. Subject to and without waiving the foregoing objections, the Health Care Providers decline to respond to this request.

90. For all emergency medical services you provided to patients covered by Managed Medicare/Managed Medicaid from July 1, 2017 to present, all documents showing, on an annual basis:

- a) The identity of the Payer;
- b) The total number of emergency-related services provided to members of each Payer;
- c) The total charges you billed to each Payer;
- d) The total amount allowed by each Payer;
- e) The total amount paid by each Payer;
- f) The total out-of-pocket patient responsibility related to each Payer's claims;
- g) The total amount you collected from the Payer's members; and
- h) The average percentage of your billed charges that you received from each Payer.

RESPONSE:

Objection. The request seeks information that is not relevant and proportional to the needs of the case as information concerning payment of by Managed Medicare/Managed Medicaid claims has no import as to the Health Care Providers' allegations of underpayment, breach of an implied-in-fact contract, and civil racketeering, among other claims, nor does it have any bearing on or relationship to any of United's affirmative defenses. In addition, this request seeks documents not in the Health Care Providers' possession because the particularities of this request would require the Health Care Providers to create a document containing the requested

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information. By way of further objection, the request seeks confidential, proprietary information by virtue of seeking the identity of each Payer along with the remaining information sought by this request and the request is designed for an improper purpose to annoy, embarrass and oppress. Subject to and without waiving the foregoing objections, the Health Care Providers decline to respond to this request.

91. For all emergency medical services you provided to self-pay/uninsured patients, from July 1, 2017 to present, all documents showing, on an annual basis:

- a) The total number of emergency medical services provided to self-pay/uninsured patients;
- b) The total charges you billed to self-pay/uninsured patients;
- c) The total amount allowed by self-pay/uninsured patients;
- d) The total amount paid by self-pay/uninsured patients;
- e) The total out-of-pocket patient responsibility related to self-pay/uninsured patient's claims;
- f) The total amount you collected from self-pay/uninsured patients; and
- g) The average percentage of your billed charges that you received from self-pay/uninsured patients.

RESPONSE:

Objection. The request is vague and ambiguous as to the terms "self-pay" "uninsured patients" and seeks information that is not relevant and proportional to the needs of the case as information concerning payment of by "self-pay/uninsured patient" claims has no import as to the Health Care Providers' allegations of underpayment, breach of an implied-in-fact contract, and civil racketeering, among other claims, nor does it have any bearing on or relationship to any of United's affirmative defenses. In addition, this request seeks documents not in the Health Care Providers' possession because the particularities of this request would require the Health Care Providers to create a document containing the requested information. By way of further objection, the request is designed for an improper purpose to annoy, embarrass and oppress. Subject to and without waiving the foregoing objections, the Health Care Providers decline to respond to this request.

1 92. Documents showing each and every cost incurred by you in offering emergency
2 services to patients from July 1, 2017 to present.

3 **RESPONSE:**

4 Objection. This request is vague and ambiguous as to the phrase "cost"; potentially seeks
5 documents protected by the attorney-client privilege and work product doctrine and/or are
6 otherwise confidential; seeks information that is not relevant and proportional to the needs of the
7 case as the Health Care Providers' costs have no import as to the Health Care Providers'
8 allegations of underpayment, breach of an implied-in-fact contract, and civil racketeering, among
9 other claims, nor does it have any bearing on or relationship to any of United's affirmative
10 defenses; is a request designed to unreasonably further delay these proceedings; and is designed
11 for an improper purpose to annoy, embarrass and oppress. For these reasons, the Health Care
12 Providers decline to respond.

13 93. Documents showing each and every cost incurred by you in offering the types of
14 services reflected in the Claims from July 1, 2017 to present.

15 **RESPONSE:**

16 Objection. This request is duplicative (RFP Nos. 67-68, 86, 92) vague and ambiguous as
17 to the phrase "cost incurred...in offering the types of services"; potentially seeks documents
18 protected by the attorney-client privilege and work product doctrine and/or are otherwise
19 confidential; seeks information that is not relevant and proportional to the needs of the case as the
20 Health Care Providers' costs have no import as to the Health Care Providers' allegations of
21 underpayment, breach of an implied-in-fact contract, and civil racketeering, among other claims,
22 nor does it have any bearing on or relationship to any of United's affirmative defenses; is a request
23 designed to unreasonably further delay these proceedings; and is designed for an improper purpose
24 to annoy, embarrass and oppress. For these reasons, the Health Care Providers decline to respond.

25 94. A copy of any cost report(s) presented by you to any federal or state agency since
26 July 1, 2017 to present.
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MCDONALD CARANO

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PHONE 702.873.4100 • FAX 702.873.9966

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RESPONSE:

Objection. This request is vague and ambiguous as to the phrase "cost reports"; potentially seeks documents protected by the attorney-client privilege and work product doctrine and/or are otherwise confidential; seeks information that is not relevant and proportional to the needs of the case as the Health Care Providers' costs have no import as to the Health Care Providers' allegations of underpayment, breach of an implied-in-fact contract, and civil racketeering, among other claims, nor does it have any bearing on or relationship to any of United's affirmative defenses; is a request designed to unreasonably further delay these proceedings; and is designed for an improper purpose to annoy, embarrass and oppress. For these reasons, the Health Care Providers decline to respond.

95. Documents which show the relationship between Plaintiffs and Team Health from July 1, 2017 to present, including but not limited to documents showing the services provided to you by Team Health, any compensation Team Health received in connection with those services (including remuneration flowing between you and Team Health or collected reimbursement that Team Health keeps), and documents showing any Team Health ownership and/or control over you.

RESPONSE:

Objection. This request seeks documents that are confidential; seeks information that is not proportional to the needs of the case as any arrangement between the Health Care Providers' and Team Health have no import as to the Health Care Providers' allegations of underpayment, breach of an implied-in-fact contract, and civil racketeering, among other claims, nor does it have any bearing on or relationship to any of United's affirmative defenses; is a request designed to unreasonably further delay these proceedings; and is designed for an improper purpose to annoy, embarrass and oppress. For these reasons, the Health Care Providers decline to respond to the request as currently framed.

96. All documents which identify the Claims you has asserted against Defendants in the First Amended Complaint including, but not limited to:

- a) The claim numbers assigned by Defendants with respect to each claim