Case Nos. 85525 & 85656

In the Supreme Court of Nevada

UNITED HEALTHCARE INSURANCE COMPANY; UNITED HEALTH CARE SERVICES, INC.; UMR, INC.; SIERRA HEALTH AND LIFE INSURANCE COMPANY, INC.; and HEALTH PLAN OF NEVADA, INC., Appellants, *vs.* FREMONT EMERGENCY SERVICES (MANDAVIA), LTD.; TEAM PHYSICIANS OF NEVADA-MANDAVIA, P.C.; and CRUM STEFANKO AND JONES, LTD., Respondents.	Case No. 85525
UNITED HEALTHCARE INSURANCE COMPANY; UNITED HEALTH CARE SERVICES, INC.; UMR, INC.; SIERRA HEALTH AND LIFE INSURANCE COMPANY, INC.; and HEALTH PLAN OF NEVADA, INC., Petitioners, *vs.* THE EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, in and for the County of Clark; and the Honorable NANCY L. ALLF, District Judge, Respondents, *vs.* FREMONT EMERGENCY SERVICES (MANDAVIA), LTD.; TEAM PHYSICIANS OF NEVADA-MANDAVIA, P.C.; and CRUM STEFANKO AND JONES, LTD., Real Parties in Interest.	Case No. 85656

APPELLANTS' APPENDIX
VOLUME 22
PAGES 5251–5500

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

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

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

Attorneys for Appellants/Petitioners

CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
18.	Defendants' Opposition to Plaintiffs' Amended Motion to Remand	01/29/20	2	349–485
19.	Reply in Support of Amended Motion to Remand	02/05/20	2 3	486–500 501–518
20.	Order	02/20/20	3	519–524
21.	Order	02/24/20	3	525–542
22.	Notice of Entry of Order Re: Remand	02/27/20	3	543–552
23.	Defendants' Motion to Dismiss	03/12/20	3	553–698
24.	Notice of Intent to Take Default as to: (1) Defendant UnitedHealth Group, Inc. on All Claims; and (2) All Defendants on the First Amended Complaint's Eighth Claim for Relief	03/13/20	3 4	699–750 751
25.	Plaintiffs' Opposition to Defendants' Motion to Dismiss	03/26/20	4	752–783
26.	Appendix of Exhibits in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss	03/26/20	4	784–908
27.	Recorder's Transcript of Proceedings Re: Motions	04/03/20	4	909–918
28.	Defendants' Reply in Support of Motion to Dismiss	05/07/20	4	919–948
29.	Recorder's Transcript of Proceedings Re: Pending Motions	05/14/20	4	949-972
30.	First Amended Complaint	05/15/20	4 5	973–1000 1001–1021
31.	Recorder's Transcript of Hearing All Pending Motions	05/15/20	5	1022–1026
32.	Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint	05/26/20	5	1027–1172

Tab	Document	Date	Vol.	Pages
33.	Defendants' Supplemental Brief in Support of Their Motion to Dismiss Plaintiffs' First Amended Complaint Addressing Plaintiffs' Eighth Claim for Relief	05/26/20	5	1173–1187
34.	Plaintiffs' Opposition to Defendants' Motion to Dismiss First Amended Complaint	05/29/20	5 6	1188–1250 1251–1293
35.	Plaintiffs' Opposition to Defendants' Supplemental Brief in Support of Their Motion to Dismiss Plaintiffs' First Amended Complaint Addressing Plaintiffs' Eighth Claim for Relief	05/29/20	6	1294–1309
36.	Defendants' Reply in Support of Motion to Dismiss Plaintiffs' First Amended Complaint	06/03/20	6	1310–1339
37.	Defendants' Reply in Support of Their Supplemental Brief in Support of Their Motions to Dismiss Plaintiff's First Amended Complaint	06/03/20	6	1340–1349
38.	Transcript of Proceedings, All Pending Motions	06/05/20	6	1350–1384
39.	Transcript of Proceedings, All Pending Motions	06/09/20	6	1385–1471
40.	Notice of Entry of Order Denying Defendants' (1) Motion to Dismiss First Amended Complaint; and (2) Supplemental Brief in Support of Their Motion to Dismiss Plaintiffs' First Amended Complaint Addressing Plaintiffs' Eighth Claim for Relief	06/24/20	6 7	1472–1500 1501–1516
41.	Notice of Entry of Stipulated Confidentiality and Protective Order	06/24/20	7	1517–1540
42.	Defendants' Answer to Plaintiffs' First Amended Complaint	07/08/20	7	1541–1590

Tab	Document	Date	Vol.	Pages
	Or, in The Alternative, Motion in Limine			
54.	Errata to Plaintiffs' Motion to Compel Defendants' List of Witnesses Production of Documents and Answers to Interrogatories	09/28/20	9	2196–2223
55.	Plaintiffs' Opposition to Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiff to Supplement Their NRCP 16.1 Initial Disclosures on an Order Shortening Time	09/29/20	9-10	2224–2292
56.	Defendants' Opposition to Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents, and Answers to Interrogatories on Order Shortening Time	10/06/20	10	2293–2336
57.	Reply in Support of Defendants' Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiff to Supplement Their NRCP 16.1 Initial Disclosures	10/07/20	10	2337–2362
58.	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	10/08/20	10	2363–2446
59.	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	10/22/20	10	2447–2481
60.	Defendants' Objections to Plaintiffs' Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	10/23/20	10 11	2482–2500 2501–2572
61.	Defendants' Objections to Plaintiffs to Plaintiffs' Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	10/26/20	11	2573–2670

Tab	Document	Date	Vol.	Pages
62.	Notice of Entry of Order Denying Defendants' Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiff to Supplement Their NRCP 16.1 Initial Disclosures on Order Shortening Time	10/27/20	11	2671–2683
63.	Notice of Entry of Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	10/27/20	11	2684–2695
64.	Defendants' Objections to Plaintiffs' Order Denying Defendants' Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiffs' to Supplement Their NRCP 16.1 Initial Disclosures on an Order Shortening Time	11/02/20	11	2696–2744
65.	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	11/04/20	11 12	2745–2750 2751–2774
66.	Notice of Entry of 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	11/09/20	12	2775–2785
67.	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	12/23/20	12	2786–2838
68.	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	12/30/20	12	2839–2859
69.	Notice of Entry of Stipulated Electronically Stored Information Protocol Order	01/08/21	12	2860–2874

Tab	Document	Date	Vol.	Pages
70.	Appendix to Defendants' Motion to Compel Plaintiffs' Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/08/21	12 13 14	2875–3000 3001–3250 3251–3397
71.	Defendants' Motion to Compel Plaintiffs' Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/11/21	14	3398–3419
72.	Plaintiffs' Opposition to Motion to Compel Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/12/21	14	3420–3438
73.	Recorder's Partial Transcript of Proceedings Re: Motions (Unsealed Portion Only)	01/13/21	14	3439–3448
74.	Defendants' Reply in Support of Motion to Compel Plaintiffs' Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/19/21	14	3449–3465
75.	Appendix to Defendants' Reply in Support of Motion to Compel Plaintiffs' Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/19/21	14 15	3466–3500 3501–3658
76.	Recorder's Transcript of Proceedings Re: Motions	01/21/21	15	3659–3692
77.	Notice of Entry of Order Granting Defendants' Motion for Appointment of Special Master	02/02/21	15	3693–3702
78.	Notice of Entry of Order Denying Defendants' Motion to Compel Responses to Defendants' First and Second Requests for Production on Order Shortening Time	02/04/21	15	3703–3713
79.	Motion for Reconsideration of Order Denying Defendants' Motion to Compel	02/18/21	15 16	3714–3750 3751–3756

Tab	Document	Date	Vol.	Pages
	Plaintiffs Responses to Defendants' First and Second Requests for Production			
80.	Recorder's Transcript of Proceedings Re: Motions	02/22/21	16	3757–3769
81.	Recorder's Transcript of Proceedings Re: Motions	02/25/21	16	3770–3823
82.	Recorder's Transcript of Hearing Defendants' Motion to Extend All Case Management Deadlines and Continue Trial Setting on Order Shortening Time (Second Request)	03/03/21	16	3824–3832
83.	Plaintiffs' Opposition to Motion for Reconsideration of Order Denying Defendants' Motion to Compel Plaintiffs Responses to Defendants' First and Second Requests for Production	03/04/21	16	3833–3862
84.	Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	03/08/21	16	3863–3883
85.	Errata to Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	03/12/21	16	3884–3886
86.	Notice of Entry of Report and Recommendation #1	03/16/21	16	3887–3894
87.	Reply in Support of Motion for Reconsideration of Order Denying Defendants' Motion to Compel Plaintiffs Responses to Defendants' First and Second Requests for Production	03/16/21	16	3895–3909
88.	Recorder's Transcript of Hearing All Pending Motions	03/18/21	16	3910–3915

Tab	Document	Date	Vol.	Pages
89.	Defendants' Opposition to Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not be Held in Contempt and for Sanctions	03/22/21	16	3916–3966
90.	Recorder's Transcript of Hearing All Pending Motions	03/25/21	16	3967–3970
91.	Notice of Entry of Report and Recommendation #2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order	03/29/21	16	3971–3980
92.	Recorder's Transcript of Hearing Motion to Associate Counsel on OST	04/01/21	16	3981–3986
93.	Recorder's Transcript of Proceedings Re: Motions	04/09/21	16 17	3987–4000 4001–4058
94.	Defendants' Objection to the Special Master's Report and Recommendation No. 2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order	04/12/21	17	4059–4079
95.	Notice of Entry of Report and Recommendation #3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Requests for Production on Order Shortening Time	04/15/21	17	4080–4091
96.	Recorder's Transcript of Hearing All Pending Motions	04/21/21	17	4092–4095
97.	Notice of Entry of Order Denying Motion for Reconsideration of Court's Order Denying Defendants' Motion to Compel Responses to	04/26/21	17	4096–4108

Tab	Document	Date	Vol.	Pages
	Defendants' First and Second Requests for Production			
98.	Defendants' Objection to the Special Master's Report and Recommendation No. 3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Request for Production on Order Shortening Time	04/28/21	17	4109–4123
99.	Defendants' Errata to Their Objection to the Special Master's Report and Recommendation No. 3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Requests for Production	05/03/21	17	4124–4127
100.	Defendants' Objections to Plaintiffs' Proposed Order Granting Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	05/05/21	17	4128–4154
101.	Recorder's Transcript of Hearing Motion for Leave to File Opposition to Defendants' Motion to Compel Responses to Second Set of Requests for Production on Order Shortening Time in Redacted and Partially Sealed Form	05/12/21	17	4155–4156
102.	Notice of Entry of Order of Report and Recommendation #6 Regarding Defendants' Motion to Compel Further Testimony from Deponents Instructed Not to Answer Question	05/26/21	17	4157–4165
103.	Recorder's Transcript of Proceedings Re: Motions	05/28/21	17	4166–4172
104.	Notice of Entry of Report and Recommendation #7 Regarding Defendants'	06/03/21	17	4173–4184

Tab	Document	Date	Vol.	Pages
	Motion to Compel Plaintiffs' Responses to Defendants' Amended Third Set of Requests for Production of Documents			
105.	Recorder's Transcript of Proceedings Re: Motions Hearing	06/03/21	17	4185–4209
106.	Recorder's Transcript of Proceedings Re: Motions Hearing	06/04/21	17	4210–4223
107.	Recorder's Transcript of Hearing Motion for Leave to File Plaintiffs' Response to Defendants' Objection to the Special Master's Report and Recommendation No. 3 Regarding Defendants' Second Set of Request for Production on Order Shortening Time in Redacted and Partially Sealed Form	06/09/21	17	4224–4226
108.	Defendants' Objections to Special Master Report and Recommendation No. 7 Regarding Defendants' Motion to Compel Responses to Defendants' Amended Third Set of Requests for Production of Documents	06/17/21	17	4227–4239
109.	Recorder's Transcript of Proceedings Re: Motions Hearing	06/23/21	17 18	4240–4250 4251–4280
110.	Plaintiffs' Response to Defendants' Objection to Special Master's Report and Recommendation #7 Regarding Defendants' Motion to Compel Responses to Amended Third Set of Request for Production of Documents	06/24/21	18	4281–4312
111.	Notice of Entry Report and Recommendations #9 Regarding Pending Motions	07/01/21	18	4313–4325
112.	United's Reply in Support of Motion to Compel Plaintiffs' Production of Documents	07/12/21	18	4326–4340

Tab	Document	Date	Vol.	Pages
	About Which Plaintiffs' Witnesses Testified on Order Shortening Time			
113.	Recorder's Transcript of Proceedings Re: Motions Hearing	07/29/21	18	4341–4382
114.	Notice of Entry of Order Granting Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	08/03/21	18	4383–4402
115.	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order and Overruling Objection	08/09/21	18	4403–4413
116.	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Requests for Production on Order Shortening Time and Overruling Objection	08/09/21	18	4414–4424
117.	Amended Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order and Overruling Objection	08/09/21	18	4425–4443
118.	Amended Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 3 Regarding Defendants' Second Set of Requests for Production on Order Shortening Time and	08/09/21	18	4444–4464

Tab	Document	Date	Vol.	Pages
	Overruling Objection			
119.	Motion for Order to Show Cause Why Plaintiffs Should Not Be Held in Contempt and Sanctioned for Violating Protective Order	08/10/21	18	4465–4486
120.	Notice of Entry of Report and Recommendation #11 Regarding Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified	08/11/21	18	4487–4497
121.	Recorder's Transcript of Proceedings Re: Motions Hearing (Unsealed Portion Only)	08/17/21	18 19	4498–4500 4501–4527
122.	Plaintiffs' Opposition to United's Motion for Order to Show Cause Why Plaintiffs Should Not Be Held in Contempt and Sanctioned for Allegedly Violating Protective Order	08/24/21	19	4528–4609
123.	Recorder's Transcript of Proceedings Re: Motions Hearing	09/02/21	19	4610–4633
124.	Reply Brief on "Motion for Order to Show Cause Why Plaintiffs Should Not Be Hold in Contempt and Sanctioned for Violating Protective Order"	09/08/21	19	4634–4666
125.	Recorder's Partial Transcript of Proceedings Re: Motions Hearing	09/09/21	19	4667–4680
126.	Recorder's Partial Transcript of Proceedings Re: Motions Hearing (Via Blue Jeans)	09/15/21	19	4681–4708
127.	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 6 Regarding Defendants' Motion to Compel Further Testimony from Deponents Instructed Not to Answer Questions and Overruling Objection	09/16/21	19	4709–4726

Tab	Document	Date	Vol.	Pages
128.	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 7 Regarding Defendants' Motion to Compel Responses to Defendants' Amended Third Set of Request for Production of Documents and Overruling Objection	09/16/21	19	4727–4747
129.	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 9 Regarding Defendants' Renewed Motion to Compel Further Testimony from Deponents Instructed No to Answer and Overruling Objection	09/16/21	19 20	4748–4750 4751–4769
130.	Defendants' Motion for Partial Summary Judgment	09/21/21	20	4770–4804
131.	Defendants' Motion in Limine No. 1: Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Agreements with other Market Players and Related Negotiations	09/21/21	20	4805–4829
132.	Defendants' Motion in Limine No. 2: Motion Offered in the Alternative to MIL No. 1, to Preclude Plaintiffs from Offering Evidence Relating to Defendants' Agreements with Other Market Players and Related Negotiations	09/21/21	20	4830–4852
133.	Motion in Limine No. 4 to Preclude References to Defendants' Decision Making Process and Reasonableness of billed Charges if Motion in Limine No. 3 is Denied	09/21/21	20	4853–4868
134.	Defendants' Motion in Limine No. 10 to Exclude Reference of Defendants' Corporate Structure (Alternative Moton to be Considered Only if court Denies Defendants' Counterpart Motion in Limine No. 9)	09/21/21	20	4869–4885

Tab	Document	Date	Vol.	Pages
135.	Defendants' Motion in Limine No. 13: Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Collection Practices for Healthcare Claims	09/21/21	20	4886–4918
136.	Defendants' Motion in Limine No. 14: Motion Offered in the Alternative to MIL No. 13 to Preclude Plaintiffs from Contesting Defendants' Defenses Relating to Claims that were Subject to Settlement Agreement Between CollectRX and Data iSight; and Defendants' Adoption of Specific Negotiation Thresholds for Reimbursement Claims Appealed or Contested by Plaintiffs	09/21/21	20	4919–4940
137.	Defendants' Motion in Limine No. 24 to Preclude Plaintiffs from Referring to Themselves as Healthcare Professionals	09/21/21	20	4941–4972
138.	Defendants' Motion in Limine No. 7 to Authorize Defendants to Offer Evidence of the Costs of the Services that Plaintiffs Provided	09/22/21	20 21	4973–5000 5001–5030
139.	Defendants' Motion in Limine No. 8, Offered in the Alternative to MIL No. 7, to Preclude Plaintiffs from Offering Evidence as to the Qualitative Value, Relative Value, Societal Value, or Difficulty of the Services they Provided	09/22/21	21	5031–5054
140.	Defendants' Motion in Limine No. 9 to Authorize Defendants to Offer Evidence of Plaintiffs Organizational, Management, and Ownership Structure, Including Flow of Funds Between Related Entities, Operating Companies, Parent Companies, and Subsidiaries	09/22/21	21	5055–5080
141.	Defendants' Opposition to Plaintiffs' Motion	09/29/21	21	5081–5103

Tab	Document	Date	Vol.	Pages
	in Limine No. 1: to Exclude Evidence, Testimony and/or Argument Relating to (1) Increase in Insurance Premiums (2) Increase in Costs and (3) Decrease in Employee Wages/Benefits Arising from Payment of Billed Charges			
142.	Notice of Entry of Order Regarding Defendants' Objection to Special Master's Report and Recommendation No. 11 Regarding Defendants' Motion to Compel Plaintiffs' Production of Documents about which Plaintiffs' Witnesses Testified on Order Shortening Time	09/29/21	21	5104–5114
143.	Plaintiffs' Opposition to Defendants' Motion in Limine Nos. 3, 4, 5, 6 Regarding Billed Charges	09/29/21	21	5115–5154
144.	Plaintiffs' Opposition to Defendants' Motion in Limine No. 24 to Preclude Plaintiffs from Referring to Themselves as Healthcare Professionals	09/29/21	21	5155–5169
145.	Plaintiffs' Motion for Leave to File Second Amended Complaint on Order Shortening Time	10/04/21	21	5170–5201
146.	Transcript of Proceedings Re: Motions (Via Blue Jeans)	10/06/21	21	5202–5234
147.	Notice of Entry of Order Granting Plaintiffs' Motion for Leave to File Second Amended Complaint on Order Shortening Time	10/07/21	21	5235–5245
148.	Second Amended Complaint	10/07/21	21 22	5246–5250 5251–5264
149.	Plaintiffs' Motion in Limine to Exclude Evidence, Testimony and-or Argument Regarding the Fact that Plaintiffs Have	10/08/21	22	5265–5279

Tab	Document	Date	Vol.	Pages
	Dismissed Certain Claims and Parties on Order Shortening Time			
150.	Defendants' Answer to Plaintiffs' Second Amended Complaint	10/08/21	22	5280–5287
151.	Defendants' Objections to Plaintiffs' NRCP 16.1(a)(3) Pretrial Disclosures	10/08/21	22	5288–5294
152.	Plaintiffs' Objections to Defendants' Pretrial Disclosures	10/08/21	22	5295–5300
153.	Opposition to Plaintiffs' Motion in Limine to Exclude Evidence, Testimony and/or Argument Regarding the Fact that Plaintiffs have Dismissed Certain Claims and Parties on Order Shortening Time	10/12/21	22	5301–5308
154.	Notice of Entry of Order Denying Defendants' Motion for Order to Show Cause Why Plaintiffs Should not be Held in Contempt for Violating Protective Order	10/14/21	22	5309–5322
155.	Defendants' Opposition to Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment	10/18/21	22	5323–5333
156.	Media Request and Order Allowing Camera Access to Court Proceedings (Legal Newsline)	10/18/21	22	5334–5338
157.	Transcript of Proceedings Re: Motions	10/19/21	22 23	5339–5500 5501–5561
158.	Amended Transcript of Proceedings Re: Motions	10/19/21	23 24	5562–5750 5751–5784
159.	Amended Transcript of Proceedings Re: Motions	10/20/21	24	5785–5907
160.	Transcript of Proceedings Re: Motions	10/22/21	24	5908–6000

Tab	Document	Date	Vol.	Pages
			25	6001–6115
161.	Notice of Entry of Order Denying Defendants' Motion for Partial Summary Judgment	10/25/21	25	6116–6126
162.	Recorder's Transcript of Jury Trial – Day 1	10/25/21	25 26	6127–6250 6251–6279
163.	Recorder's Transcript of Jury Trial – Day 2	10/26/21	26	6280–6485
164.	Joint Pretrial Memorandum Pursuant to EDRC 2.67	10/27/21	26 27	6486–6500 6501–6567
165.	Recorder's Transcript of Jury Trial – Day 3	10/27/21	27 28	6568–6750 6751–6774
166.	Recorder's Transcript of Jury Trial – Day 4	10/28/21	28	6775–6991
167.	Media Request and Order Allowing Camera Access to Court Proceedings (Dolcefino Communications, LLC)	10/28/21	28 28	6992–6997
168.	Media Request and Order Allowing Camera Access to Court Proceedings (Dolcefino Communications, LLC)	10/28/21	28 29	6998–7000 7001–7003
169.	Defendants' Objection to Media Requests	10/28/21	29	7004–7018
170.	Supplement to Defendants' Objection to Media Requests	10/31/21	29	7019–7039
171.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 1 Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Agreements with Other Market Players and Related Negotiations	11/01/21	29	7040–7051
172.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 2: Motion Offered in the Alternative to MIL No. 1, to Preclude Plaintiffs from Offering Evidence	11/01/21	29	7052–7063

Tab	Document	Date	Vol.	Pages
	Relating to Defendants' Agreements with Other Market Players and Related Negotiations			
173.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 3 to Allow Reference to Plaintiffs' Decision Making Processes Regarding Setting Billed Charges	11/01/21	29	7064–7075
174.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 4 to Preclude References to Defendants' Decision Making Processes and Reasonableness of Billed Charges if Motion in Limine No. 3 is Denied	11/01/21	29	7076–7087
175.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 12, Paired with Motion in Limine No. 11, to Preclude Plaintiffs from Discussing Defendants' Approach to Reimbursement	11/01/21	29	7088–7099
176.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 5 Regarding Argument or Evidence that Amounts TeamHealth Plaintiffs Billed for Services are Reasonable [An Alternative Motion to Motion in Limine No. 6]	11/01/21	29	7100–7111
177.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 7 to Authorize Defendants to Offer Evidence of the Costs of the Services that Plaintiffs Provided	11/01/21	29	7112–7123
178.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 8, Offered in the Alternative to MIL No. 7, to Preclude Plaintiffs from Offering Evidence as to the	11/01/21	29	7124–7135

Tab	Document	Date	Vol.	Pages
	Qualitative Value, Relative Value, Societal Value, or Difficulty of the Services they Provided			
179.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 10 to Exclude Evidence of Defendants' Corporate Structure (Alternative Motion to be Considered Only if Court Denies Defendants' Counterpart Motion in Limine No. 9)	11/01/21	29	7136–7147
180.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 11, Paired with Motion in Limine No. 12, to Authorize Defendants to Discuss Plaintiffs' Conduct and Deliberations in Negotiating Reimbursement	11/01/21	29	7148–7159
181.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 13 Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Collection Practices for Healthcare Claims	11/01/21	29	7160–7171
182.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 14: Motion Offered in the Alternative MIL No. 13 to Preclude Plaintiffs from Contesting Defendants' Defenses Relating to Claims that were Subject to a Settlement Agreement Between CollectRx and Data iSight; and Defendants' Adoption of Specific Negotiation Thresholds for Reimbursement Claims Appealed or Contested by Plaintiffs	11/01/21	29	7172–7183
183.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 15 to Preclude Reference and Testimony	11/01/21	29	7184–7195

Tab	Document	Date	Vol.	Pages
	Regarding the TeamHealth Plaintiffs Policy not to Balance Bill			
184.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 18 to Preclude Testimony of Plaintiffs' Non-Retained Expert Joseph Crane, M.D.	11/01/21	29	7196–7207
185.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 20 to Exclude Defendants' Lobbying Efforts	11/01/21	29	7208–7219
186.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 24 to Preclude Plaintiffs from Referring to Themselves as Healthcare Professionals	11/01/21	29	7220–7231
187.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 27 to Preclude Evidence of Complaints Regarding Defendants' Out-Of-Network Rates or Payments	11/01/21	29	7232–7243
188.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 29 to Preclude Evidence Only Relating to Defendants' Evaluation and Development of a Company that Would Offer a Service Similar to Multiplan and Data iSight	11/01/21	29 30	7244–7250 7251–7255
189.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 32 to Exclude Evidence or Argument Relating to Materials, Events, or Conduct that Occurred on or After January 1, 2020	11/01/21	30	7256–7267
190.	Notice of Entry of Order Denying Defendants' Motion in Limine to Preclude Certain Expert Testimony and Fact Witness Testimony by Plaintiffs' Non-Retained	11/01/21	30	7268–7279

Tab	Document	Date	Vol.	Pages
	Expert Robert Frantz, M.D.			
191.	Notice of Entry of Order Denying Defendants' Motion in Limine No. 38 to Exclude Evidence or Argument Relating to Defendants' use of MultiPlan and the Data iSight Service, Including Any Alleged Conspiracy or Fraud Relating to the use of Those Services	11/01/21	30	7280–7291
192.	Notice of Entry of Order Granting Plaintiffs' Motion in Limine to Exclude Evidence, Testimony And-Or Argument Regarding the Fact that Plaintiff have Dismissed Certain Claims	11/01/21	30	7292–7354
193.	Notice of Entry of Order Denying Defendants' Motion to Strike Supplement Report of David Leathers	11/01/21	30	7355–7366
194.	Plaintiffs' Notice of Amended Exhibit List	11/01/21	30	7367–7392
195.	Plaintiffs' Response to Defendants' Objection to Media Requests	11/01/21	30	7393–7403
196.	Recorder's Transcript of Jury Trial – Day 5	11/01/21	30 31	7404–7500 7501–7605
197.	Recorder's Transcript of Jury Trial – Day 6	11/02/21	31 32	7606–7750 7751–7777
198.	Defendants' Deposition Designations and Objections to Plaintiffs' Deposition Counter-Designations	11/03/21	32	7778–7829
199.	Defendants' Objections to Plaintiffs' Proposed Order Granting in Part and Denying in Part Plaintiffs' Motion in Limine to Exclude Evidence Subject to the Court's Discovery Orders	11/03/21	32	7830–7852
200.	Notice of Entry of Order Affirming and	11/03/21	32	7853–7874

Tab	Document	Date	Vol.	Pages
	Adopting Report and Recommendation No. 11 Regarding Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified			
201.	Recorder's Transcript of Jury Trial – Day 7	11/03/21	32 33	7875–8000 8001–8091
202.	Notice of Entry of Order Granting Defendants' Motion in Limine No. 17	11/04/21	33	8092–8103
203.	Notice of Entry of Order Granting Defendants' Motion in Limine No. 25	11/04/21	33	8104–8115
204.	Notice of Entry of Order Granting Defendants' Motion in Limine No. 37	11/04/21	33	8116–8127
205.	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion in Limine No. 9	11/04/21	33	8128–8140
206.	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion in Limine No. 21	11/04/21	33	8141–8153
207.	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion in Limine No. 22	11/04/21	33	8154–8165
208.	Plaintiffs' Notice of Deposition Designations	11/04/21	33 34	8166–8250 8251–8342
209.	1st Amended Jury List	11/08/21	34	8343
210.	Recorder's Transcript of Jury Trial – Day 8	11/08/21	34 35	8344–8500 8501–8514
211.	Recorder's Amended Transcript of Jury Trial – Day 9	11/09/21	35	8515–8723
212.	Recorder's Transcript of Jury Trial – Day 9	11/09/21	35 36	8724–8750 8751–8932
213.	Recorder's Transcript of Jury Trial – Day 10	11/10/21	36	8933–9000

Tab	Document	Date	Vol.	Pages
			37	9001–9152
214.	Defendants' Motion for Leave to File Defendants' Preliminary Motion to Seal Attorneys' Eyes Only Documents Used at Trial Under Seal	11/12/21	37	9153–9161
215.	Notice of Entry of Order Granting in Part and Denying in Part Plaintiffs' Motion in Limine to Exclude Evidence Subject to the Court's Discovery Orders	11/12/21	37	9162–9173
216.	Plaintiffs' Trial Brief Regarding Defendants' Prompt Payment Act Jury Instruction Re: Failure to Exhaust Administrative Remedies	11/12/21	37	9174–9184
217.	Recorder's Transcript of Jury Trial – Day 11	11/12/21	37 38	9185–9250 9251–9416
218.	Plaintiffs' Trial Brief Regarding Specific Price Term	11/14/21	38	9417–9425
219.	2nd Amended Jury List	11/15/21	38	9426
220.	Defendants' Proposed Jury Instructions (Contested)	11/15/21	38	9427–9470
221.	Jointly Submitted Jury Instructions	11/15/21	38	9471–9495
222.	Plaintiffs' Proposed Jury Instructions (Contested)	11/15/21	38 39	9496–9500 9501–9513
223.	Plaintiffs' Trial Brief Regarding Punitive Damages for Unjust Enrichment Claim	11/15/21	39	9514–9521
224.	Recorder's Transcript of Jury Trial – Day 12	11/15/21	39 40	9522–9750 9751–9798
225.	Defendants' Response to TeamHealth Plaintiffs' Trial Brief Regarding Defendants' Prompt Pay Act Jury Instruction Re: Failure to Exhaust Administrative	11/16/21	40	9799–9806

Tab	Document	Date	Vol.	Pages
	Remedies			
226.	General Defense Verdict	11/16/21	40	9807–9809
227.	Plaintiffs' Proposed Verdict Form	11/16/21	40	9810–9819
228.	Recorder's Transcript of Jury Trial – Day 13	11/16/21	40 41	9820–10,000 10,001–10,115
229.	Reply in Support of Trial Brief Regarding Evidence and Argument Relating to Out-Of-State Harms to Non-Parties	11/16/21	41	10,116–10,152
230.	Response to Plaintiffs' Trial Brief Regarding Specific Price Term	11/16/21	41	10,153–10,169
231.	Special Verdict Form	11/16/21	41	10,169–10,197
232.	Trial Brief Regarding Jury Instructions on Formation of an Implied-In-Fact Contract	11/16/21	41	10,198–10,231
233.	Trial Brief Regarding Jury Instructions on Unjust Enrichment	11/16/21	41	10,232–10,248
234.	3rd Amended Jury List	11/17/21	41	10,249
235.	Defendants' Motion for Judgment as a Matter of Law	11/17/21	41 42	10,250 10,251–10,307
236.	Plaintiffs' Supplemental Jury Instruction (Contested)	11/17/21	42	10,308–10,313
237.	Recorder's Transcript of Jury Trial – Day 14	11/17/21	42 43	10,314–10,500 10,501–10,617
238.	Errata to Source on Defense Contested Jury Instructions	11/18/21	43	10,618–10,623
239.	Recorder's Transcript of Jury Trial – Day 15	11/18/21	43 44	10,624–10,750 10,751–10,946
240.	Defendants' Supplemental Proposed Jury Instructions (Contested)	11/19/21	44	10,947–10,952

Tab	Document	Date	Vol.	Pages
241.	Errata	11/19/21	44	10,953
242.	Notice of Entry of Order Granting Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment	11/19/21	44	10,954–10,963
243.	Plaintiffs' Proposed Special Verdict Form	11/19/21	44	10,964–10,973
244.	Recorder's Transcript of Jury Trial – Day 16	11/19/21	44 45	10,974–11,000 11,001–11,241
245.	Response to Plaintiffs' Trial Brief Regarding Punitive Damages for Unjust Enrichment Claim	11/19/21	45 46	11,242–11,250 11,251–11,254
246.	Plaintiffs' Second Supplemental Jury Instructions (Contested)	11/20/21	46	11,255–11,261
247.	Defendants' Supplemental Proposed Jury Instruction	11/21/21	46	11,262–11,266
248.	Plaintiffs' Third Supplemental Jury Instructions (Contested)	11/21/21	46	11,267–11,272
249.	Recorder's Transcript of Jury Trial – Day 17	11/22/21	46 47	11,273–11,500 11.501–11,593
250.	Plaintiffs' Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time	11/22/21	47	11,594–11,608
251.	Defendants' Opposition to Plaintiffs' Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time	11/22/21	47	11,609–11,631
252.	4th Amended Jury List	11/23/21	47	11,632
253.	Recorder's Transcript of Jury Trial – Day 18	11/23/21	47 48	11,633–11,750 11,751–11,907

Tab	Document	Date	Vol.	Pages
254.	Recorder's Transcript of Jury Trial – Day 19	11/24/21	48	11,908–11,956
255.	Jury Instructions	11/29/21	48	11,957–11,999
256.	Recorder's Transcript of Jury Trial – Day 20	11/29/21	48 49	12,000 12,001–12,034
257.	Special Verdict Form	11/29/21	49	12,035–12,046
258.	Verdict(s) Submitted to Jury but Returned Unsigned	11/29/21	49	12,047–12,048
259.	Defendants' Proposed Second Phase Jury Instructions	12/05/21	49	12,049–12,063
260.	Plaintiffs' Proposed Second Phase Jury Instructions and Verdict Form	12/06/21	49	12,064–12,072
261.	Plaintiffs' Supplement to Proposed Second Phase Jury Instructions	12/06/21	49	12,072–12,077
262.	Recorder's Transcript of Jury Trial – Day 21	12/06/21	49	12,078–,12,135
263.	Defendants' Proposed Second Phase Jury Instructions-Supplement	12/07/21	49	12,136–12,142
264.	Jury Instructions Phase Two	12/07/21	49	12,143–12,149
265.	Special Verdict Form	12/07/21	49	12,150–12,152
266.	Recorder's Transcript of Jury Trial – Day 22	12/07/21	49 50	12,153–12,250 12,251–12,293
267.	Motion to Seal Defendants' Motion to Seal Certain Confidential Trial Exhibits	12/15/21	50	12,294–12,302
268.	Motion to Seal Defendants' Supplement to Motion to Seal Certain Confidential Trial Exhibits	12/15/21	50	12,303–12,311
269.	Notice of Entry of Order Granting Defendants' Motion for Leave to File Defendants' Preliminary Motion to Seal Attorneys' Eyes Only Documents Used at	12/27/21	50	12,312–12,322

Tab	Document	Date	Vol.	Pages
	Trial Under Seal			
270.	Plaintiffs' Opposition to United's Motion to Seal	12/29/21	50	12,323–12,341
271.	Defendants' Motion to Apply the Statutory Cap on Punitive Damages	12/30/21	50	12,342–12,363
272.	Appendix of Exhibits to Defendants' Motion to Apply the Statutory Cap on Punitive Damage	12/30/21	50 51	12,364–12,500 12,501–12,706
273.	Defendants' Objection to Plaintiffs' Proposed Order Denying Defendants' Motion for Judgment as a Matter of Law	01/04/22	51	12,707–12,717
274.	Notice of Entry of Order Denying Defendants' Motion for Judgement as a Matter of Law	01/06/22	51	12,718–12,738
275.	Motion to Seal Defendants' Reply in Support of Motion to Seal Certain Confidential Trial Exhibits	01/10/22	51	12,739–12,747
276.	Motion to Seal Defendants' Second Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits	01/10/22	51 52	12,748–12,750 12,751–12,756
277.	Defendants' Motion to Seal Courtroom During January 12, 2022 Hearing on Defendants' Motion to Seal Certain Confidential Trial Exhibits on Order Shortening Time	01/11/22	52	12,757–12,768
278.	Plaintiffs' Opposition to Defendants' Motion to Seal Courtroom During January 12, 2022 Hearing	01/12/22	52	12,769–12,772
279.	Plaintiffs' Opposition to Defendants' Motion to Apply Statutory Cap on Punitive Damages and Plaintiffs' Cross Motion for	01/20/22	52	12,773–12,790

Tab	Document	Date	Vol.	Pages
	Entry of Judgment			
280.	Appendix in Support of Plaintiffs' Opposition to Defendants' Motion to Apply Statutory Cap on Punitive Damages and Plaintiffs' Cross Motion for Entry of Judgment	01/20/22	52	12,791–12,968
281.	Notice of Entry of Order Granting Plaintiffs' Proposed Schedule for Submission of Final Redactions	01/31/22	52	12,969–12,979
282.	Notice of Entry of Stipulation and Order Regarding Schedule for Submission of Redactions	02/08/22	52	12,980–12,996
283.	Defendants' Opposition to Plaintiffs' Cross-Motion for Entry of Judgment	02/10/22	52 53	12,997–13,000 13,001–13,004
284.	Defendant' Reply in Support of Their Motion to Apply the Statutory Cap on Punitive Damages	02/10/22	53	13,005–13,028
285.	Notice of Entry of Order Shortening Time for Hearing Re: Plaintiffs' Motion to Unlock Certain Admitted Trial Exhibits	02/14/22	53	13,029–13,046
286.	Defendants' Response to Plaintiffs' Motion to Unlock Certain Admitted Trial Exhibits on Order Shortening Time	02/15/22	53	13,047–13,053
287.	Plaintiffs' Reply in Support of Cross Motion for Entry of Judgment	02/15/22	53	13,054–13,062
288.	Defendants' Index of Trial Exhibit Redactions in Dispute	02/16/22	53	13,063–13,073
289.	Notice of Entry of Stipulation and Order Regarding Certain Admitted Trial Exhibits	02/17/22	53	13,074–13,097
290.	Transcript of Proceedings Re: Motions Hearing	02/17/22	53	13,098–13,160

Tab	Document	Date	Vol.	Pages
291.	Objection to Plaintiffs' Proposed Judgment and Order Denying Motion to Apply Statutory Cap on Punitive Damages	03/04/22	53	13,161–13,167
292.	Notice of Entry of Judgment	03/09/22	53	13,168–13,178
293.	Notice of Entry of Order Denying Defendants' Motion to Apply Statutory Cap on Punitive Damages	03/09/22	53	13,179–13,197
294.	Health Care Providers' Verified Memorandum of Cost	03/14/22	53	13,198–13,208
295.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 1	03/14/22	53 54	13,209–13,250 13.251–13,464
296.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 2	03/14/22	54 55	13,465–13,500 13,501–13,719
297.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 3	03/14/22	55 56	13,720–13,750 13,751–13,976
298.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 4	03/14/22	56 57	13,977–14,000 14,001–14,186
299.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 5	03/14/22	57 58	14,187–14,250 14,251–14,421
300.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 6	03/14/22	58 59	14,422–14,500 14,501–14,673
301.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 7	03/14/22	59 60	14,674–14,750 14,751–14,920
302.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of	03/14/22	60 61	14,921–15,000 15,001–15,174

Tab	Document	Date	Vol.	Pages
	Cost Volume 8			
303.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 9	03/14/22	61 62	15,175–15,250 15,251–15,373
304.	Defendants' Motion to Retax Costs	03/21/22	62	15,374–15,388
305.	Health Care Providers' Motion for Attorneys' Fees	03/30/22	62	15,389–15,397
306.	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 1	03/30/22	62 63	15,398–15,500 15,501–15,619
307.	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 2	03/30/22	63 64	15,620–15,750 15,751–15,821
308.	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 3	03/30/22	64 65	15,822–16,000 16,001–16,053
309.	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 4	03/30/22	65	16,054–16,232
310.	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 5	03/30/22	65 66	16,233–16,250 16,251–16,361
311.	Defendants Rule 62(b) Motion for Stay Pending Resolution of Post-Trial Motions on Order Shortening Time	04/05/22	66	16,362–16,381
312.	Defendants' Motion for Remittitur and to Alter or Amend the Judgment	04/06/22	66	16,382–16,399
313.	Defendants' Renewed Motion for Judgment as a Matter of Law	04/06/22	66	16,400–16,448
314.	Motion for New Trial	04/06/22	66 67	16,449–16,500 16,501–16,677

Tab	Document	Date	Vol.	Pages
315.	Notice of Appeal	04/06/22	67	16,678–16,694
316.	Case Appeal Statement	04/06/22	67 68	16,695–16,750 16,751–16,825
317.	Plaintiffs' Opposition to Defendants' Rule 62(b) Motion for Stay	04/07/22	68	16,826–16,831
318.	Reply on "Defendants' Rule 62(b) Motion for Stay Pending Resolution of Post-Trial Motions" (*on Order Shortening Time*)	04/07/22	68	16,832–16,836
319.	Transcript of Proceedings Re: Motions Hearing	04/07/22	68	16,837–16,855
320.	Opposition to Defendants' Motion to Retax Costs	04/13/22	68	16,856–16,864
321.	Appendix in Support of Opposition to Defendants' Motion to Retax Costs	04/13/22	68 69	16,865–17,000 17,001–17,035
322.	Defendants' Opposition to Plaintiffs' Motion for Attorneys' Fees	04/20/22	69	17,036–17,101
323.	Transcript of Proceedings Re: Motions Hearing	04/21/22	69	17,102–17,113
324.	Notice of Posting *Supersedeas* Bond	04/29/22	69	17,114–17,121
325.	Defendants' Reply in Support of Motion to Retax Costs	05/04/22	69	17,122–17,150
326.	Health Care Providers' Reply in Support of Motion for Attorneys' Fees	05/04/22	69	17,151–17,164
327.	Plaintiffs' Opposition to Defendants' Motion for Remittitur and to Alter or Amend the Judgment	05/04/22	69	17,165–17,178
328.	Plaintiffs' Opposition to Defendants' Motion for New Trial	05/04/22	69 70	17,179–17,250 17,251–17,335
329.	Plaintiffs' Opposition to Defendants' Renewed Motion for Judgment as a Matter	05/05/22	70	17,336–17,373

Tab	Document	Date	Vol.	Pages
	of Law			
330.	Reply in Support of Defendants' Motion for Remittitur and to Alter or Amend the Judgment	06/22/22	70	17,374–17,385
331.	Reply in Support of Defendants' Renewed Motion for Judgment as a Matter of Law	06/22/22	70	17,386–17,411
332.	Reply in Support of Motion for New Trial	06/22/22	70	17,412–17,469
333.	Notice of Supplemental Attorneys Fees Incurred After Submission of Health Care Providers' Motion for Attorneys Fees	06/24/22	70 71	17,470–17,500 17,501–17,578
334.	Defendants' Response to Improper Supplement Entitled "Notice of Supplemental Attorney Fees Incurred After Submission of Health Care Providers' Motion for Attorneys Fees"	06/28/22	71	17,579–17,593
335.	Notice of Entry of Order Granting Plaintiffs' Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time	06/29/22	71	17,594–17,609
336.	Transcript of Proceedings Re: Motions Hearing	06/29/22	71	17,610–17,681
337.	Order Amending Oral Ruling Granting Defendants' Motion to Retax	07/01/22	71	17,682–17,688
338.	Notice of Entry of Order Denying Defendants' Motion for Remittitur and to Alter or Amend the Judgment	07/19/22	71	17,689–17,699
339.	Defendants' Objection to Plaintiffs' Proposed Order Approving Plaintiffs' Motion for Attorneys' Fees	07/26/22	71	17,700–17,706
340.	Notice of Entry of Order Approving Plaintiffs' Motion for Attorney's Fees	08/02/22	71	17,707–17,725

Tab	Document	Date	Vol.	Pages
341.	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion to Retax Costs	08/02/22	71	17,726–17,739
342.	Amended Case Appeal Statement	08/15/22	71 72	17,740–17,750 17,751–17,803
343.	Amended Notice of Appeal	08/15/22	72	17,804–17,934
344.	Reply in Support of Supplemental Attorney's Fees Request	08/22/22	72	17,935–17,940
345.	Objection to Plaintiffs' Proposed Orders Denying Renewed Motion for Judgment as a Matter of Law and Motion for New Trial	09/13/22	72	17,941–17,950
346.	Recorder's Transcript of Hearing Re: Hearing	09/22/22	72	17,951–17,972
347.	Limited Objection to "Order Unsealing Trial Transcripts and Restoring Public Access to Docket"	10/06/22	72	17,973–17,978
348.	Defendants' Motion to Redact Portions of Trial Transcript	10/06/22	72	17,979–17,989
349.	Plaintiffs' Opposition to Defendants' Motion to Redact Portions of Trial Transcript	10/07/22	72	17,990–17,993
350.	Transcript of Proceedings re Status Check	10/10/22	72 73	17,994–18,000 18,001–18,004
351.	Notice of Entry of Order Approving Supplemental Attorney's Fee Award	10/12/22	73	18,005–18,015
352.	Notice of Entry of Order Denying Defendants' Motion for New Trial	10/12/22	73	18,016–18,086
353.	Notice of Entry of Order Denying Defendants' Renewed Motion for Judgment as a Matter of Law	10/12/22	73	18,087–18,114
354.	Notice of Entry of Order Unsealing Trial Transcripts and Restoring Public Access to	10/12/22	73	18,115–18,125

Tab	Document	Date	Vol.	Pages
	Docket			
355.	Notice of Appeal	10/12/22	73 74	18,126–18,250 18,251–18,467
356.	Case Appeal Statement	10/12/22	74 75	18,468–18,500 18,501–18,598
357.	Notice of Entry of Order Denying "Motion to Redact Portions of Trial Transcript"	10/13/22	75	18,599–18,608
358.	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits	10/18/22	75 76	18,609–18,750 18,751–18,755
359.	Recorder's Transcript of Hearing Status Check	10/20/22	76	18,756–18,758
360.	Notice of Entry of Stipulation and Order Regarding Expiration of Temporary Stay for Sealed Redacted Transcripts	10/25/22	76	18,759–18,769
361.	Notice of Filing of Writ Petition	11/17/22	76	18,770–18855
362.	Trial Exhibit D5502		76 77	18,856–19,000 19,001–19,143
491.	Appendix of Exhibits in Support of Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	03/08/21	145 146	35,813–36,062 36,063–36,085
492.	Transcript Re: Proposed Jury Instructions	11/21/21	146	36,086–36,250

Filed Under Seal

Tab	Document	Date	Vol.	Pages
363.	Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	09/28/20	78	19,144–19,156

364.	Plaintiffs' Reply in Support of Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	04/01/21	78	19,157–19,176
365.	Appendix of Exhibits in Support of Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	04/01/21	78	19,177–19,388
366.	Plaintiffs' Response to Defendants Objection to the Special Master's Report and Recommendation No. 2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order	04/19/21	78 79	19,389–19,393 19,394–19,532
367.	Plaintiffs' Response to Defendants' Objection to the Special Master's Report and Recommendation No. 3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Request for Production on Order Shortening Time	05/05/21	79	19,533–19,581
368.	Appendix to Defendants' Motion to Supplement the Record Supporting Objections to Reports and Recommendations #2 & #3 on Order Shortening Time	05/21/21	79 80 81	19,582–19,643 19,644–19,893 19,894–20,065
369.	Plaintiffs' Opposition to Defendants' Motion to Supplement the Record Supporting Objections to Reports and Recommendations #2 and #3 on Order Shortening Time	06/01/21	81 82	20,066–20,143 20,144–20,151
370.	Defendants' Objection to the Special Master's Report and Recommendation No. 5 Regarding Defendants' Motion for Protective Order Regarding Confidentiality	06/01/21	82	20,152–20,211

	Designations (Filed April 15, 2021)			
371.	Plaintiffs' Response to Defendants' Objection to Report and Recommendation #6 Regarding Defendants' Motion to Compel Further Testimony from Deponents Instructed Not to Answer Questions	06/16/21	82	20,212–20,265
372.	United's Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified on Order Shortening Time	06/24/21	82	20,266–20,290
373.	Appendix to Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified on Order Shortening Time	06/24/21	82 83 84	20,291–20,393 20,394–20,643 20,644–20,698
374.	Plaintiffs' Opposition to Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified on Order Shortening Time	07/06/21	84	20,699–20,742
375.	Defendants' Motion for Leave to File Defendants' Objection to the Special Master's Report and Recommendation No. 9 Regarding Defendants' Renewed Motion to Compel Further Testimony from Deponents Instructed not to Answer Under Seal	07/15/21	84	20,743–20,750
376.	Plaintiffs' Response to Defendants' Objection to Special Master Report and Recommendation No. 9 Regarding Defendants' Renewed Motion to Compel Further Testimony from Deponents Instructed not to Answer Questions	07/22/21	84	20,751–20,863
377.	Objection to R&R #11 Regarding United's Motion to Compel Documents About Which Plaintiffs' Witnesses Testified	08/25/21	84 85	20,864–20,893 20,894–20,898

378.	Plaintiffs' Motion in Limine to Exclude Evidence Subject to the Court's Discovery Orders	09/21/21	85	20,899–20,916
379.	Appendix of Exhibits in Support of Plaintiffs' Motion in Limine to Exclude Evidence Subject to the Court's Discovery Orders	09/21/21	85	20,917–21,076
380.	Plaintiffs' Motion in Limine to Exclude Evidence, Testimony and/or Argument Relating to (1) Increase in Insurance Premiums (2) Increase in Costs and (3) Decrease in Employee Wages/Benefits Arising from Payment of Billed Charges	09/21/21	85	21,077–21,089
381.	Appendix of Exhibits in Support of Plaintiffs' Motion in Limine to Exclude Evidence, Testimony and/or Argument Relating to (1) Increase in Insurance Premiums (2) Increase in Costs and (3) Decrease in Employee Wages/Benefits Arising from Payment of Billed Charges	09/21/21	85 86	21,090–21,143 21,144–21,259
382.	Motion in Limine No. 3 to Allow References to Plaintiffs' Decision Making Process Regarding Settling Billing Charges	09/21/21	86	21,260–21,313
383.	Defendants' Motion in Limine No. 5 Regarding Arguments or Evidence that Amounts TeamHealth Plaintiffs billed for Serves are Reasonable [an Alternative to Motion in Limine No. 6]	09/21/21	86	21,314–21,343
384.	Defendants' Motion in Limine No. 6 Regarding Argument or Evidence That Amounts Teamhealth Plaintiffs Billed for Services are Reasonable	09/21/21	86	21,344–21,368
385.	Appendix to Defendants' Motion in Limine No. 13 (Volume 1 of 6)	09/21/21	86 87	21,369–21,393 21,394–21,484

386.	Appendix to Defendants' Motion in Limine No. 13 (Volume 2 of 6)	09/21/21	87	21,485–21,614
387.	Appendix to Defendants' Motion in Limine No. 13 (Volume 3 of 6)	09/21/21	87 88	21,615–21,643 21,644–21,744
388.	Appendix to Defendants' Motion in Limine No. 13 (Volume 4 of 6)	09/21/21	88	21,745–21,874
389.	Appendix to Defendants' Motion in Limine No. 13 (Volume 5 of 6)	09/21/21	88 89	21,875–21,893 21,894–22,004
390.	Appendix to Defendants' Motion in Limine No. 13 (Volume 6 of 6)	09/21/21	89	22,005–22,035
391.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 1 of 8	09/21/21	89 90	22,036–22,143 22,144–22,176
392.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 2 of 8	09/21/21	90	22,177–22,309
393.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 3 of 8	09/22/21	90 91	22,310–22,393 22,394–22,442
394.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 4 of 8	09/22/21	91	22,443–22,575
395.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 5 of 8	09/22/21	91	22,576–22,609
396.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 6 of 8	09/22/21	91 92 93	22,610–22,643 22,644–22,893 22,894–23,037
397.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 7a of 8	09/22/21	93 94	23,038–23,143 23,144–23,174
398.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 7b of 8	09/22/21	94	23,175–23,260
399.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 8a of 8	09/22/21	94 95	23,261–23,393 23,394–23,535
400.	Appendix to Defendants' Motion for Partial Summary Judgment Volume 8b of 8	09/22/21	95 96	23,536–23,643 23,634–23,801
401.	Defendants' Motion in Limine No. 11 Paired	09/22/21	96	23,802–23,823

	with Motion in Limine No. 12 to Authorize Defendants to Discuss Plaintiffs' Conduct and deliberations in Negotiating Reimbursement			
402.	Errata to Defendants' Motion in Limine No. 11	09/22/21	96	23,824–23,859
403.	Defendants' Motion in Limine No. 12 Paired with Motion in Limine No. 11 to Preclude Plaintiffs from Discussing Defendants' Approach to Reimbursement	09/22/21	96	23,860–23,879
404.	Errata to Defendants' Motion in Limine No. 12	09/22/21	96 97	23,880–23,893 23,894–23,897
405.	Appendix to Defendants' Exhibits to Motions in Limine: 1, 9, 15, 18, 19, 22, 24, 26, 29, 30, 33, 37 (Volume 1)	09/22/21	97	23,898–24,080
406.	Appendix to Defendants' Exhibits to Motions in Limine: 1, 9, 15, 18, 19, 22, 24, 26, 29, 30, 33, 37 (Volume 2)	09/22/21	97 98	24,081–24,143 24,144–24,310
407.	Appendix to Defendants' Exhibits to Motions in Limine: 1, 9, 15, 18, 19, 22, 24, 26, 29, 30, 33, 37 (Volume 3)	09/22/21	98 99 100	24,311–24,393 24,394–24,643 24,644–24,673
408.	Appendix to Defendants' Exhibits to Motions in Limine: 1, 9, 15, 18, 19, 22, 24, 26, 29, 30, 33, 37 (Volume 4)	09/22/21	100 101 102	24,674–24,893 24,894–25,143 25,144–25,204
409.	Appendix to Defendants' Motion in Limine No. 14 – Volume 1 of 6	09/22/21	102	25,205–25,226
410.	Appendix to Defendants' Motion in Limine No. 14 – Volume 2 of 6	09/22/21	102	25,227–25,364
411.	Appendix to Defendants' Motion in Limine No. 14 – Volume 3 of 6	09/22/21	102 103	25,365–25,393 25,394–25,494
412.	Appendix to Defendants' Motion in Limine No. 14 – Volume 4 of 6	09/22/21	103	25,495–25,624
413.	Appendix to Defendants' Motion in Limine	09/22/21	103	25,625–25,643

	No. 14 – Volume 5 of 6		104	25,644–25,754
414.	Appendix to Defendants' Motion in Limine No. 14 – Volume 6 of 6	09/22/21	104	25,755–25,785
415.	Plaintiffs' Combined Opposition to Defendants Motions in Limine 1, 7, 9, 11 & 13	09/29/21	104	25,786–25,850
416.	Plaintiffs' Combined Opposition to Defendants' Motions in Limine No. 2, 8, 10, 12 & 14	09/29/21	104	25,851–25,868
417.	Defendants' Opposition to Plaintiffs' Motion in Limine No. 3: To Exclude Evidence Subject to the Court's Discovery Orders	09/29/21	104 105	25,869–25,893 25,894–25,901
418.	Appendix to Defendants' Opposition to Plaintiffs' Motion in Limine No. 3: To Exclude Evidence Subject to the Court's Discovery Orders - Volume 1	09/29/21	105 106	25,902–26,143 26,144–26,216
419.	Appendix to Defendants' Opposition to Plaintiffs' Motion in Limine No. 3: To Exclude Evidence Subject to the Court's Discovery Orders - Volume 2	09/29/21	106 107	26,217–26,393 26,394–26,497
420.	Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment	10/05/21	107	26,498–26,605
421.	Defendants' Reply in Support of Motion for Partial Summary Judgment	10/11/21	107 108	26,606–26,643 26,644–26,663
422.	Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment	10/17/21	108	26,664–26,673
423.	Appendix of Exhibits in Support of Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for	10/17/21	108 109	26,674–26,893 26,894–26,930

	Partial Summary Judgment			
424.	Response to Sur-Reply Arguments in Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment	10/21/21	109	26,931–26,952
425.	Trial Brief Regarding Evidence and Argument Relating to Out-of-State Harms to Non-Parties	10/31/21	109	26,953–26,964
426.	Plaintiffs' Response to Defendants' Trial Brief Regarding Evidence and Argument Relating to Out-of-State Harms to Non-Parties	11/08/21	109	26,965–26,997
427.	Excerpts of Recorder's Transcript of Jury Trial – Day 9	11/09/21	109	26,998–27003
428.	Preliminary Motion to Seal Attorneys' Eyes Documents Used at Trial	11/11/21	109	27,004–27,055
429.	Appendix of Selected Exhibits to Trial Briefs	11/16/21	109	27,056–27,092
430.	Excerpts of Recorder's Transcript of Jury Trial – Day 13	11/16/21	109	27,093–27,099
431.	Defendants' Omnibus Offer of Proof	11/22/21	109 110	27,100–27,143 27,144–27,287
432.	Motion to Seal Certain Confidential Trial Exhibits	12/05/21	110	27,288–27,382
433.	Supplement to Defendants' Motion to Seal Certain Confidential Trial Exhibits	12/08/21	110 111	27,383–27,393 27,394–27,400
434.	Motion to Seal Certain Confidential Trial Exhibits	12/13/21	111	27,401–27,495
435.	Defendant's Omnibus Offer of Proof for Second Phase of Trial	12/14/21	111	27,496–27,505

436.	Appendix of Exhibits to Defendants' Omnibus Offer of Proof for Second Phase of Trial – Volume 1	12/14/21	111 112	27,506–27,643 27,644–27,767
437.	Appendix of Exhibits to Defendants' Omnibus Offer of Proof for Second Phase of Trial – Volume 2	12/14/21	112 113	27,768–27,893 27,894–27,981
438.	Appendix of Exhibits to Defendants' Omnibus Offer of Proof for Second Phase of Trial – Volume 3	12/14/21	113 114	27,982–28,143 28,144–28,188
439.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 1 of 18	12/24/21	114	28,189–28,290
440.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 2 of 18	12/24/21	114 115	28,291–28,393 28,394–28,484
441.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 3 of 18	12/24/21	115 116	28,485–28,643 28,644–28,742
442.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 4 of 18	12/24/21	116 117	28,743–28,893 28,894–28,938
443.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 5 of 18	12/24/21	117	28,939–29,084
444.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 6 of 18	12/24/21	117 118	29,085–29,143 29,144–29,219
445.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 7 of 18	12/24/21	118	29,220–29,384
446.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 8 of 18	12/24/21	118 119	29,385–29,393 29,394–29,527

447.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 9 of 18	12/24/21	119 120	29,528–29,643 29,644–29,727
448.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 10 of 18	12/24/21	120 121	29,728–29,893 29,894–29,907
449.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 11 of 18	12/24/21	121	29,908–30,051
450.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 12 of 18	12/24/21	121 122	30,052–30,143 30,144–30,297
451.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 13 of 18	12/24/21	122 123	30,298–30,393 30,394–30,516
452.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 14 of 18	12/24/21	123 124	30,517–30,643 30,644–30,677
453.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 15 of 18	12/24/21	124	30,678–30,835
454.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 16 of 18	12/24/21	124 125	30,836–30,893 30,894–30,952
455.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 17 of 18	12/24/21	125	30,953–31,122
456.	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 18 of 18	12/24/21	125 126	30,123–31,143 31,144–31,258
457.	Defendants' Reply in Support of Motion to Seal Certain Confidential Trial Exhibits	01/05/22	126	31,259–31,308
458.	Second Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial	01/05/22	126	31,309–31,393

	Exhibits		127	31,394–31,500
459.	Transcript of Proceedings Re: Motions	01/12/22	127	31,501–31,596
460.	Transcript of Proceedings Re: Motions	01/20/22	127 128	31,597–31,643 31,644–31,650
461.	Transcript of Proceedings Re: Motions	01/27/22	128	31,651–31,661
462.	Defendants' Index of Trial Exhibit Redactions in Dispute	02/10/22	128	31,662–31,672
463.	Transcript of Proceedings Re: Motions Hearing	02/10/22	128	31,673–31,793
464.	Transcript of Proceedings Re: Motions Hearing	02/16/22	128	31,794–31,887
465.	Joint Status Report and Table Identifying the Redactions to Trial Exhibits That Remain in Dispute	03/04/22	128 129	31,888–31,893 31,894–31,922
466.	Transcript of Proceedings re Hearing Regarding Unsealing Record	10/05/22	129	31,923–31,943
467.	Transcript of Proceedings re Status Check	10/06/22	129	31,944–31,953
468.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 1)	10/07/22	129 130	31,954–32,143 32,144–32,207
469.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 2)	10/07/22	130 131	32,208–32,393 32,394–32,476
470.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 3)	10/07/22	131 132	32,477–32,643 32,644–32,751
471.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume	10/07/22	132 133	32,752–32,893 32,894–33,016

	4)			
472.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 5)	10/07/22	133 134	33,017–33,143 33,144–33,301
473.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 6)	10/07/22	134 135	33,302–33,393 33,394–33,529
474.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 7)	10/07/22	135 136	33,530–33,643 33,644–33,840
475.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 8)	10/07/22	136 137	33,841–33,893 33,894–34,109
476.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 9)	10/07/22	137 138	34,110–34,143 34,144–34,377
477.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 10)	10/07/22	138 139 140	34,378–34,393 34,394–34,643 34,644–34,668
478.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 11)	10/07/22	140 141	34,669–34,893 34,894–34,907
479.	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 12)	10/07/22	141 142	34,908–35,143 35,144–35,162
480.	Appendix B to Order Granting in Part and	10/07/22	142	35,163–35,242

	Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 13)			
481.	Exhibits P473_NEW, 4002, 4003, 4005, 4006, 4166, 4168, 4455, 4457, 4774, and 5322 to "Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits" (Tabs 98, 106, 107, 108, 109, 111, 112, 113, 114, 118, and 119)	10/07/22	142	35,243–35,247
482.	Transcript of Status Check	10/10/22	142	35,248–35,258
483.	Recorder's Transcript of Hearing re Hearing	10/13/22	142	35,259–35,263
484.	Trial Exhibit D5499		142 143	35,264–35,393 35,394–35,445
485.	Trial Exhibit D5506		143	35,446
486.	Appendix of Exhibits in Support of Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	09/28/20	143	35,447–35,634
487.	Defendants' Motion to Supplement Record Supporting Objections to Reports and Recommendations #2 & #3 on Order Shortening Time	05/24/21	143 144	35,635–35,643 35,644–35,648
488.	Motion in Limine No. 3 to Allow References to Plaintiffs; Decision Making Processes Regarding Setting Billed Charges	09/21/21	144	35,649–35,702
489.	Appendix to Defendants' Opposition to Plaintiffs' Motion in Limine No. 3: to Exclude Evidence Subject to the Court's Discovery Orders (Exhibit 43)	09/29/21	144	35,703–35,713
490.	Notice of Filing of Expert Report of Bruce Deal, Revised on November 14, 2021	04/18/23	144	35,714–35,812

ALPHABETICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
468	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 1) (Filed Under Seal)	10/07/22	129 130	31,954–32,143 32,144–32,207
469	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 2) (Filed Under Seal)	10/07/22	130 131	32,208–32,393 32,394–32,476
470	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 3) (Filed Under Seal)	10/07/22	131 132	32,477–32,643 32,644–32,751
471	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 4) (Filed Under Seal)	10/07/22	132 133	32,752–32,893 32,894–33,016
472	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 5) (Filed Under Seal)	10/07/22	133 134	33,017–33,143 33,144–33,301
473	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 6) (Filed Under Seal)	10/07/22	134 135	33,302–33,393 33,394–33,529
474	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 7) (Filed Under Seal)	10/07/22	135 136	33,530–33,643 33,644–33,840
475	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 8) (Filed Under Seal)	10/07/22	136 137	33,841–33,893 33,894–34,109
476	Appendix B to Order Granting in Part and	10/07/22	137	34,110–34,143

Tab	Document	Date	Vol.	Pages
	Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 9) (Filed Under Seal)		138	34,144–34,377
477	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 10) (Filed Under Seal)	10/07/22	138 139 140	34,378–34,393 34,394–34,643 34,644–34,668
478	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 11) (Filed Under Seal)	10/07/22	140 141	34,669–34,893 34,894–34,907
479	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 12) (Filed Under Seal)	10/07/22	141 142	34,908–35,143 35,144–35,162
480	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 13) (Filed Under Seal)	10/07/22	142	35,163–35,242
321	Appendix in Support of Opposition to Defendants' Motion to Retax Costs	04/13/22	68 69	16,865–17,000 17,001–17,035
280	Appendix in Support of Plaintiffs' Opposition to Defendants' Motion to Apply Statutory Cap on Punitive Damages and Plaintiffs' Cross Motion for Entry of Judgment	01/20/22	52	12,791–12,968
306	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 1	03/30/22	62 63	15,398–15,500 15,501–15,619
307	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 2	03/30/22	63 64	15,620–15,750 15,751–15,821
308	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees	03/30/22	64 65	15,822–16,000 16,001–16,053

Tab	Document	Date	Vol.	Pages
	Volume 3			
309	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 4	03/30/22	65	16,054–16,232
310	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 5	03/30/22	65 66	16,233–16,250 16,251–16,361
295	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 1	03/14/22	53 54	13,209–13,250 13.251–13,464
296	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 2	03/14/22	54 55	13,465–13,500 13,501–13,719
297	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 3	03/14/22	55 56	13,720–13,750 13,751–13,976
298	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 4	03/14/22	56 57	13,977–14,000 14,001–14,186
299	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 5	03/14/22	57 58	14,187–14,250 14,251–14,421
300	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 6	03/14/22	58 59	14,422–14,500 14,501–14,673
301	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 7	03/14/22	59 60	14,674–14,750 14,751–14,920
302	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 8	03/14/22	60 61	14,921–15,000 15,001–15,174
303	Appendix of Exhibits in Support of Health	03/14/22	61	15,175–15,250

Tab	Document	Date	Vol.	Pages
	Care Providers' Verified Memorandum of Cost Volume 9		62	15,251–15,373
486	Appendix of Exhibits in Support of Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time (Filed Under Seal)	09/28/20	143	35,447–35,634
423	Appendix of Exhibits in Support of Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment (Filed Under Seal)	10/17/21	108 109	26,674–26,893 26,894–26,930
379	Appendix of Exhibits in Support of Plaintiffs' Motion in Limine to Exclude Evidence Subject to the Court's Discovery Orders (Filed Under Seal)	09/21/21	85	20,917–21,076
381	Appendix of Exhibits in Support of Plaintiffs' Motion in Limine to Exclude Evidence, Testimony and/or Argument Relating to (1) Increase in Insurance Premiums (2) Increase in Costs and (3) Decrease in Employee Wages/Benefits Arising from Payment of Billed Charges (Filed Under Seal)	09/21/21	85 86	21,090–21,143 21,144–21,259
26	Appendix of Exhibits in Support of Plaintiffs' Opposition to Defendants' Motion to Dismiss	03/26/20	4	784–908
491	Appendix of Exhibits in Support of Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	03/08/21	145 146	35,813–36,062 36,063–36,085
365	Appendix of Exhibits in Support of Plaintiffs' Renewed Motion for Order to	04/01/21	78	19,177–19,388

Tab	Document	Date	Vol.	Pages
	Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions (Filed Under Seal)			
272	Appendix of Exhibits to Defendants' Motion to Apply the Statutory Cap on Punitive Damage	12/30/21	50 51	12,364–12,500 12,501–12,706
436	Appendix of Exhibits to Defendants' Omnibus Offer of Proof for Second Phase of Trial – Volume 1 (Filed Under Seal)	12/14/21	111 112	27,506–27,643 27,644–27,767
437	Appendix of Exhibits to Defendants' Omnibus Offer of Proof for Second Phase of Trial – Volume 2 (Filed Under Seal)	12/14/21	112 113	27,768–27,893 27,894–27,981
438	Appendix of Exhibits to Defendants' Omnibus Offer of Proof for Second Phase of Trial – Volume 3 (Filed Under Seal)	12/14/21	113 114	27,982–28,143 28,144–28,188
429	Appendix of Selected Exhibits to Trial Briefs (Filed Under Seal)	11/16/21	109	27,056–27,092
405	Appendix to Defendants' Exhibits to Motions in Limine: 1, 9, 15, 18, 19, 22, 24, 26, 29, 30, 33, 37 (Volume 1) (Filed Under Seal)	09/22/21	97	23,898–24,080
406	Appendix to Defendants' Exhibits to Motions in Limine: 1, 9, 15, 18, 19, 22, 24, 26, 29, 30, 33, 37 (Volume 2) (Filed Under Seal)	09/22/21	97 98	24,081–24,143 24,144–24,310
407	Appendix to Defendants' Exhibits to Motions in Limine: 1, 9, 15, 18, 19, 22, 24, 26, 29, 30, 33, 37 (Volume 3) (Filed Under Seal)	09/22/21	98 99 100	24,311–24,393 24,394–24,643 24,644–24,673
408	Appendix to Defendants' Exhibits to Motions in Limine: 1, 9, 15, 18, 19, 22, 24, 26, 29, 30, 33, 37 (Volume 4) (Filed Under Seal)	09/22/21	100 101 102	24,674–24,893 24,894–25,143 25,144–25,204
391	Appendix to Defendants' Motion for Partial Summary Judgment Volume 1 of 8 (Filed Under Seal)	09/21/21	89 90	22,036–22,143 22,144–22,176

Tab	Document	Date	Vol.	Pages
392	Appendix to Defendants' Motion for Partial Summary Judgment Volume 2 of 8 (Filed Under Seal)	09/21/21	90	22,177–22,309
393	Appendix to Defendants' Motion for Partial Summary Judgment Volume 3 of 8 (Filed Under Seal)	09/22/21	90 91	22,310–22,393 22,394–22,442
394	Appendix to Defendants' Motion for Partial Summary Judgment Volume 4 of 8 (Filed Under Seal)	09/22/21	91	22,443–22,575
395	Appendix to Defendants' Motion for Partial Summary Judgment Volume 5 of 8 (Filed Under Seal)	09/22/21	91	22,576–22,609
396	Appendix to Defendants' Motion for Partial Summary Judgment Volume 6 of 8 (Filed Under Seal)	09/22/21	91 92 93	22,610–22,643 22,644–22,893 22,894–23,037
397	Appendix to Defendants' Motion for Partial Summary Judgment Volume 7a of 8 (Filed Under Seal)	09/22/21	93 94	23,038–23,143 23,144–23,174
398	Appendix to Defendants' Motion for Partial Summary Judgment Volume 7b of 8 (Filed Under Seal)	09/22/21	94	23,175–23,260
399	Appendix to Defendants' Motion for Partial Summary Judgment Volume 8a of 8 (Filed Under Seal)	09/22/21	94 95	23,261–23,393 23,394–23,535
400	Appendix to Defendants' Motion for Partial Summary Judgment Volume 8b of 8 (Filed Under Seal)	09/22/21	95 96	23,536–23,643 23,634–23,801
385	Appendix to Defendants' Motion in Limine No. 13 (Volume 1 of 6) (Filed Under Seal)	09/21/21	86 87	21,369–21,393 21,394–21,484
386	Appendix to Defendants' Motion in Limine No. 13 (Volume 2 of 6) (Filed Under Seal)	09/21/21	87	21,485–21,614
387	Appendix to Defendants' Motion in Limine	09/21/21	87	21,615–21,643

Tab	Document	Date	Vol.	Pages
	No. 13 (Volume 3 of 6) (Filed Under Seal)		88	21,644–21,744
388	Appendix to Defendants' Motion in Limine No. 13 (Volume 4 of 6) (Filed Under Seal)	09/21/21	88	21,745–21,874
389	Appendix to Defendants' Motion in Limine No. 13 (Volume 5 of 6) (Filed Under Seal)	09/21/21	88 89	21,875–21,893 21,894–22,004
390	Appendix to Defendants' Motion in Limine No. 13 (Volume 6 of 6) (Filed Under Seal)	09/21/21	89	22,005–22,035
409	Appendix to Defendants' Motion in Limine No. 14 – Volume 1 of 6 (Filed Under Seal)	09/22/21	102	25,205–25,226
410	Appendix to Defendants' Motion in Limine No. 14 – Volume 2 of 6 (Filed Under Seal)	09/22/21	102	25,227–25,364
411	Appendix to Defendants' Motion in Limine No. 14 – Volume 3 of 6 (Filed Under Seal)	09/22/21	102 103	25,365–25,393 25,394–25,494
412	Appendix to Defendants' Motion in Limine No. 14 – Volume 4 of 6 (Filed Under Seal)	09/22/21	103	25,495–25,624
413	Appendix to Defendants' Motion in Limine No. 14 – Volume 5 of 6 (Filed Under Seal)	09/22/21	103 104	25,625–25,643 25,644–25,754
414	Appendix to Defendants' Motion in Limine No. 14 – Volume 6 of 6 (Filed Under Seal)	09/22/21	104	25,755–25,785
373	Appendix to Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified on Order Shortening Time (Filed Under Seal)	06/24/21	82 83 84	20,291–20,393 20,394–20,643 20,644–20,698
70	Appendix to Defendants' Motion to Compel Plaintiffs' Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/08/21	12 13 14	2875–3000 3001–3250 3251–3397
368	Appendix to Defendants' Motion to Supplement the Record Supporting Objections to Reports and Recommendations #2 & #3 on Order Shortening Time (Filed	05/21/21	79 80 81	19,582–19,643 19,644–19,893 19,894–20,065

Tab	Document	Date	Vol.	Pages
	Under Seal)			
418	Appendix to Defendants' Opposition to Plaintiffs' Motion in Limine No. 3: To Exclude Evidence Subject to the Court's Discovery Orders - Volume 1 (Filed Under Seal)	09/29/21	105 106	25,902–26,143 26,144–26,216
419	Appendix to Defendants' Opposition to Plaintiffs' Motion in Limine No. 3: To Exclude Evidence Subject to the Court's Discovery Orders - Volume 2 (Filed Under Seal)	09/29/21	106 107	26,217–26,393 26,394–26,497
489	Appendix to Defendants' Opposition to Plaintiffs' Motion in Limine No. 3: to Exclude Evidence Subject to the Court's Discovery Orders (Exhibit 43) (Filed Under Seal)	09/29/21	144	35,703–35,713
75	Appendix to Defendants' Reply in Support of Motion to Compel Plaintiffs' Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/19/21	14 15	3466–3500 3501–3658
316	Case Appeal Statement	04/06/22	67 68	16,695–16,750 16,751–16,825
356	Case Appeal Statement	10/12/22	74 75	18,468–18,500 18,501–18,598
16	Civil Order to Statistically Close Case	12/10/19	2	309
1	Complaint (Business Court)	04/15/19	1	1–17
284	Defendant' Reply in Support of Their Motion to Apply the Statutory Cap on Punitive Damages	02/10/22	53	13,005–13,028
435	Defendant's Omnibus Offer of Proof for Second Phase of Trial (Filed Under Seal)	12/14/21	111	27,496–27,505

Tab	Document	Date	Vol.	Pages
	Trial Under Seal			
130	Defendants' Motion for Partial Summary Judgment	09/21/21	20	4770–4804
312	Defendants' Motion for Remittitur and to Alter or Amend the Judgment	04/06/22	66	16,382–16,399
131	Defendants' Motion in Limine No. 1: Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Agreements with other Market Players and Related Negotiations	09/21/21	20	4805–4829
134	Defendants' Motion in Limine No. 10 to Exclude Reference of Defendants' Corporate Structure (Alternative Moton to be Considered Only if court Denies Defendants' Counterpart Motion in Limine No. 9)	09/21/21	20	4869–4885
401	Defendants' Motion in Limine No. 11 Paired with Motion in Limine No. 12 to Authorize Defendants to Discuss Plaintiffs' Conduct and deliberations in Negotiating Reimbursement (Filed Under Seal)	09/22/21	96	23,802–23,823
403	Defendants' Motion in Limine No. 12 Paired with Motion in Limine No. 11 to Preclude Plaintiffs from Discussing Defendants' Approach to Reimbursement (Filed Under Seal)	09/22/21	96	23,860–23,879
135	Defendants' Motion in Limine No. 13: Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Collection Practices for Healthcare Claims	09/21/21	20	4886–4918
136	Defendants' Motion in Limine No. 14: Motion Offered in the Alternative to MIL No. 13 to Preclude Plaintiffs from Contesting Defendants' Defenses Relating to Claims that were Subject to Settlement Agreement	09/21/21	20	4919–4940

Tab	Document	Date	Vol.	Pages
	Between CollectRX and Data iSight; and Defendants' Adoption of Specific Negotiation Thresholds for Reimbursement Claims Appealed or Contested by Plaintiffs			
132	Defendants' Motion in Limine No. 2: Motion Offered in the Alternative to MIL No. 1, to Preclude Plaintiffs from Offering Evidence Relating to Defendants' Agreements with Other Market Players and Related Negotiations	09/21/21	20	4830–4852
137	Defendants' Motion in Limine No. 24 to Preclude Plaintiffs from Referring to Themselves as Healthcare Professionals	09/21/21	20	4941–4972
383	Defendants' Motion in Limine No. 5 Regarding Arguments or Evidence that Amounts TeamHealth Plaintiffs billed for Serves are Reasonable [an Alternative to Motion in Limine No. 6] (Filed Under Seal)	09/21/21	86	21,314–21,343
384	Defendants' Motion in Limine No. 6 Regarding Argument or Evidence That Amounts Teamhealth Plaintiffs Billed for Services are Reasonable (Filed Under Seal)	09/21/21	86	21,344–21,368
138	Defendants' Motion in Limine No. 7 to Authorize Defendants to Offer Evidence of the Costs of the Services that Plaintiffs Provided	09/22/21	20 21	4973–5000 5001–5030
139	Defendants' Motion in Limine No. 8, Offered in the Alternative to MIL No. 7, to Preclude Plaintiffs from Offering Evidence as to the Qualitative Value, Relative Value, Societal Value, or Difficulty of the Services they Provided	09/22/21	21	5031–5054
140	Defendants' Motion in Limine No. 9 to Authorize Defendants to Offer Evidence of	09/22/21	21	5055–5080

Tab	Document	Date	Vol.	Pages
	Plaintiffs Organizational, Management, and Ownership Structure, Including Flow of Funds Between Related Entities, Operating Companies, Parent Companies, and Subsidiaries			
271	Defendants' Motion to Apply the Statutory Cap on Punitive Damages	12/30/21	50	12,342–12,363
71	Defendants' Motion to Compel Plaintiffs' Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/11/21	14	3398–3419
52	Defendants' Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiffs to Supplement Their NRCP 16.1 Initial Disclosures on an Order Shortening Time	09/21/20	8 9	1998–2000 2001–2183
23	Defendants' Motion to Dismiss	03/12/20	3	553–698
32	Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint	05/26/20	5	1027–1172
348	Defendants' Motion to Redact Portions of Trial Transcript	10/06/22	72	17,979–17,989
304	Defendants' Motion to Retax Costs	03/21/22	62	15,374–15,388
277	Defendants' Motion to Seal Courtroom During January 12, 2022 Hearing on Defendants' Motion to Seal Certain Confidential Trial Exhibits on Order Shortening Time	01/11/22	52	12,757–12,768
487	Defendants' Motion to Supplement Record Supporting Objections to Reports and Recommendations #2 & #3 on Order Shortening Time (Filed Under Seal)	05/24/21	143 144	35,635–35,643 35,644–35,648
169	Defendants' Objection to Media Requests	10/28/21	29	7004–7018

Tab	Document	Date	Vol.	Pages
339	Defendants' Objection to Plaintiffs' Proposed Order Approving Plaintiffs' Motion for Attorneys' Fees	07/26/22	71	17,700–17,706
273	Defendants' Objection to Plaintiffs' Proposed Order Denying Defendants' Motion for Judgment as a Matter of Law	01/04/22	51	12,707–12,717
94	Defendants' Objection to the Special Master's Report and Recommendation No. 2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order	04/12/21	17	4059–4079
98	Defendants' Objection to the Special Master's Report and Recommendation No. 3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Request for Production on Order Shortening Time	04/28/21	17	4109–4123
370	Defendants' Objection to the Special Master's Report and Recommendation No. 5 Regarding Defendants' Motion for Protective Order Regarding Confidentiality Designations (Filed April 15, 2021) (Filed Under Seal)	06/01/21	82	20,152–20,211
61	Defendants' Objections to Plaintiffs to Plaintiffs' Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	10/26/20	11	2573–2670
151	Defendants' Objections to Plaintiffs' NRCP 16.1(a)(3) Pretrial Disclosures	10/08/21	22	5288–5294
64	Defendants' Objections to Plaintiffs' Order Denying Defendants' Motion to Compel	11/02/20	11	2696–2744

Tab	Document	Date	Vol.	Pages
	Motion for Entry of Judgment		53	13,001–13,004
322	Defendants' Opposition to Plaintiffs' Motion for Attorneys' Fees	04/20/22	69	17,036–17,101
155	Defendants' Opposition to Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment	10/18/21	22	5323–5333
141	Defendants' Opposition to Plaintiffs' Motion in Limine No. 1: to Exclude Evidence, Testimony and/or Argument Relating to (1) Increase in Insurance Premiums (2) Increase in Costs and (3) Decrease in Employee Wages/Benefits Arising from Payment of Billed Charges	09/29/21	21	5081–5103
417	Defendants' Opposition to Plaintiffs' Motion in Limine No. 3: To Exclude Evidence Subject to the Court's Discovery Orders (Filed Under Seal)	09/29/21	104 105	25,869–25,893 25,894–25,901
50	Defendants' Opposition to Plaintiffs' Motion to Compel Defendants' Production of Claims File for At-Issue Claims, Or, in The Alternative, Motion in Limine on Order Shortening Time	09/04/20	8	1846–1932
56	Defendants' Opposition to Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents, and Answers to Interrogatories on Order Shortening Time	10/06/20	10	2293–2336
251	Defendants' Opposition to Plaintiffs' Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time	11/22/21	47	11,609–11,631
89	Defendants' Opposition to Plaintiffs' Renewed Motion for Order to Show Cause	03/22/21	16	3916–3966

Tab	Document	Date	Vol.	Pages
	Why Defendants Should Not be Held in Contempt and for Sanctions			
220	Defendants' Proposed Jury Instructions (Contested)	11/15/21	38	9427–9470
259	Defendants' Proposed Second Phase Jury Instructions	12/05/21	49	12,049–12,063
263	Defendants' Proposed Second Phase Jury Instructions-Supplement	12/07/21	49	12,136–12,142
313	Defendants' Renewed Motion for Judgment as a Matter of Law	04/06/22	66	16,400–16,448
421	Defendants' Reply in Support of Motion for Partial Summary Judgment (Filed Under Seal)	10/11/21	107 108	26,606–26,643 26,644–26,663
74	Defendants' Reply in Support of Motion to Compel Plaintiffs' Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/19/21	14	3449–3465
28	Defendants' Reply in Support of Motion to Dismiss	05/07/20	4	919–948
36	Defendants' Reply in Support of Motion to Dismiss Plaintiffs' First Amended Complaint	06/03/20	6	1310–1339
325	Defendants' Reply in Support of Motion to Retax Costs	05/04/22	69	17,122–17,150
457	Defendants' Reply in Support of Motion to Seal Certain Confidential Trial Exhibits (Filed Under Seal)	01/05/22	126	31,259–31,308
37	Defendants' Reply in Support of Their Supplemental Brief in Support of Their Motions to Dismiss Plaintiff's First Amended Complaint	06/03/20	6	1340–1349
334	Defendants' Response to Improper Supplement Entitled "Notice of	06/28/22	71	17,579–17,593

Tab	Document	Date	Vol.	Pages
	Supplemental Attorney Fees Incurred After Submission of Health Care Providers' Motion for Attorneys Fees"			
286	Defendants' Response to Plaintiffs' Motion to Unlock Certain Admitted Trial Exhibits on Order Shortening Time	02/15/22	53	13,047–13,053
225	Defendants' Response to TeamHealth Plaintiffs' Trial Brief Regarding Defendants' Prompt Pay Act Jury Instruction Re: Failure to Exhaust Administrative Remedies	11/16/21	40	9799–9806
12	Defendants' Statement of Removal	05/30/19	1	123–126
33	Defendants' Supplemental Brief in Support of Their Motion to Dismiss Plaintiffs' First Amended Complaint Addressing Plaintiffs' Eighth Claim for Relief	05/26/20	5	1173–1187
247	Defendants' Supplemental Proposed Jury Instruction	11/21/21	46	11,262–11,266
240	Defendants' Supplemental Proposed Jury Instructions (Contested)	11/19/21	44	10,947–10,952
48	Errata	08/04/20	7	1684
241	Errata	11/19/21	44	10,953
402	Errata to Defendants' Motion in Limine No. 11 (Filed Under Seal)	09/22/21	96	23,824–23,859
404	Errata to Defendants' Motion in Limine No. 12 (Filed Under Seal)	09/22/21	96 97	23,880–23,893 23,894–23,897
54	Errata to Plaintiffs' Motion to Compel Defendants' List of Witnesses Production of Documents and Answers to Interrogatories	09/28/20	9	2196–2223
85	Errata to Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for	03/12/21	16	3884–3886

Tab	Document	Date	Vol.	Pages
	Sanctions			
238	Errata to Source on Defense Contested Jury Instructions	11/18/21	43	10,618–10,623
430	Excerpts of Recorder's Transcript of Jury Trial – Day 13 (Filed Under Seal)	11/16/21	109	27,093–27,099
427	Excerpts of Recorder's Transcript of Jury Trial – Day 9 (Filed Under Seal)	11/09/21	109	26,998–27003
481	Exhibits P473_NEW, 4002, 4003, 4005, 4006, 4166, 4168, 4455, 4457, 4774, and 5322 to "Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits" (Tabs 98, 106, 107, 108, 109, 111, 112, 113, 114, 118, and 119) (Filed Under Seal)	10/07/22	142	35,243–35,247
30	First Amended Complaint	05/15/20	4 5	973–1000 1001–1021
13	Freemont Emergency Services (MANDAVIA), Ltd's Response to Statement of Removal	05/31/19	1	127–138
226	General Defense Verdict	11/16/21	40	9807–9809
305	Health Care Providers' Motion for Attorneys' Fees	03/30/22	62	15,389–15,397
326	Health Care Providers' Reply in Support of Motion for Attorneys' Fees	05/04/22	69	17,151–17,164
294	Health Care Providers' Verified Memorandum of Cost	03/14/22	53	13,198–13,208
44	Joint Case Conference Report	07/17/20	7	1606–1627
164	Joint Pretrial Memorandum Pursuant to EDRC 2.67	10/27/21	26 27	6486–6500 6501–6567
465	Joint Status Report and Table Identifying	03/04/22	128	31,888–31,893

Tab	Document	Date	Vol.	Pages
	the Redactions to Trial Exhibits That Remain in Dispute (Filed Under Seal)		129	31,894–31,922
221	Jointly Submitted Jury Instructions	11/15/21	38	9471–9495
255	Jury Instructions	11/29/21	48	11,957–11,999
264	Jury Instructions Phase Two	12/07/21	49	12,143–12,149
347	Limited Objection to "Order Unsealing Trial Transcripts and Restoring Public Access to Docket"	10/06/22	72	17,973–17,978
156	Media Request and Order Allowing Camera Access to Court Proceedings (Legal Newsline)	10/18/21	22	5334–5338
167	Media Request and Order Allowing Camera Access to Court Proceedings (Dolcefino Communications, LLC)	10/28/21	28 28	6992–6997
168	Media Request and Order Allowing Camera Access to Court Proceedings (Dolcefino Communications, LLC)	10/28/21	28 29	6998–7000 7001–7003
314	Motion for New Trial	04/06/22	66 67	16,449–16,500 16,501–16,677
119	Motion for Order to Show Cause Why Plaintiffs Should Not Be Held in Contempt and Sanctioned for Violating Protective Order	08/10/21	18	4465–4486
79	Motion for Reconsideration of Order Denying Defendants' Motion to Compel Plaintiffs Responses to Defendants' First and Second Requests for Production	02/18/21	15 16	3714–3750 3751–3756
488	Motion in Limine No. 3 to Allow References to Plaintiffs; Decision Making Processes Regarding Setting Billed Charges (Filed Under Seal)	09/21/21	144	35,649–35,702

Tab	Document	Date	Vol.	Pages
382	Motion in Limine No. 3 to Allow References to Plaintiffs' Decision Making Process Regarding Settling Billing Charges (Filed Under Seal)	09/21/21	86	21,260–21,313
133	Motion in Limine No. 4 to Preclude References to Defendants' Decision Making Process and Reasonableness of billed Charges if Motion in Limine No. 3 is Denied	09/21/21	20	4853–4868
11	Motion to Remand	05/24/19	1	101–122
432	Motion to Seal Certain Confidential Trial Exhibits (Filed Under Seal)	12/05/21	110	27,288–27,382
434	Motion to Seal Certain Confidential Trial Exhibits (Filed Under Seal)	12/13/21	111	27,401–27,495
267	Motion to Seal Defendants' Motion to Seal Certain Confidential Trial Exhibits	12/15/21	50	12,294–12,302
275	Motion to Seal Defendants' Reply in Support of Motion to Seal Certain Confidential Trial Exhibits	01/10/22	51	12,739–12,747
276	Motion to Seal Defendants' Second Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits	01/10/22	51 52	12,748–12,750 12,751–12,756
268	Motion to Seal Defendants' Supplement to Motion to Seal Certain Confidential Trial Exhibits	12/15/21	50	12,303–12,311
315	Notice of Appeal	04/06/22	67	16,678–16,694
355	Notice of Appeal	10/12/22	73 74	18,126–18,250 18,251–18,467
292	Notice of Entry of Judgment	03/09/22	53	13,168–13,178
115	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 2	08/09/21	18	4403–4413

Tab	Document	Date	Vol.	Pages
	Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order and Overruling Objection			
116	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Requests for Production on Order Shortening Time and Overruling Objection	08/09/21	18	4414–4424
127	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 6 Regarding Defendants' Motion to Compel Further Testimony from Deponents Instructed Not to Answer Questions and Overruling Objection	09/16/21	19	4709–4726
128	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 7 Regarding Defendants' Motion to Compel Responses to Defendants' Amended Third Set of Request for Production of Documents and Overruling Objection	09/16/21	19	4727–4747
129	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 9 Regarding Defendants' Renewed Motion to Compel Further Testimony from Deponents Instructed No to Answer and Overruling Objection	09/16/21	19 20	4748–4750 4751–4769
200	Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 11 Regarding Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified	11/03/21	32	7853–7874

Tab	Document	Date	Vol.	Pages
340	Notice of Entry of Order Approving Plaintiffs' Motion for Attorney's Fees	08/02/22	71	17,707–17,725
351	Notice of Entry of Order Approving Supplemental Attorney's Fee Award	10/12/22	73	18,005–18,015
357	Notice of Entry of Order Denying "Motion to Redact Portions of Trial Transcript"	10/13/22	75	18,599–18,608
40	Notice of Entry of Order Denying Defendants' (1) Motion to Dismiss First Amended Complaint; and (2) Supplemental Brief in Support of Their Motion to Dismiss Plaintiffs' First Amended Complaint Addressing Plaintiffs' Eighth Claim for Relief	06/24/20	6 7	1472–1500 1501–1516
274	Notice of Entry of Order Denying Defendants' Motion for Judgement as a Matter of Law	01/06/22	51	12,718–12,738
352	Notice of Entry of Order Denying Defendants' Motion for New Trial	10/12/22	73	18,016–18,086
154	Notice of Entry of Order Denying Defendants' Motion for Order to Show Cause Why Plaintiffs Should not be Held in Contempt for Violating Protective Order	10/14/21	22	5309–5322
161	Notice of Entry of Order Denying Defendants' Motion for Partial Summary Judgment	10/25/21	25	6116–6126
338	Notice of Entry of Order Denying Defendants' Motion for Remittitur and to Alter or Amend the Judgment	07/19/22	71	17,689–17,699
171	Notice of Entry of Order Denying Defendants' Motion in Limine No. 1 Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Agreements with Other Market Players and Related Negotiations	11/01/21	29	7040–7051

Tab	Document	Date	Vol.	Pages
172	Notice of Entry of Order Denying Defendants' Motion in Limine No. 2: Motion Offered in the Alternative to MIL No. 1, to Preclude Plaintiffs from Offering Evidence Relating to Defendants' Agreements with Other Market Players and Related Negotiations	11/01/21	29	7052–7063
173	Notice of Entry of Order Denying Defendants' Motion in Limine No. 3 to Allow Reference to Plaintiffs' Decision Making Processes Regarding Setting Billed Charges	11/01/21	29	7064–7075
174	Notice of Entry of Order Denying Defendants' Motion in Limine No. 4 to Preclude References to Defendants' Decision Making Processes and Reasonableness of Billed Charges if Motion in Limine No. 3 is Denied	11/01/21	29	7076–7087
175	Notice of Entry of Order Denying Defendants' Motion in Limine No. 12, Paired with Motion in Limine No. 11, to Preclude Plaintiffs from Discussing Defendants' Approach to Reimbursement	11/01/21	29	7088–7099
176	Notice of Entry of Order Denying Defendants' Motion in Limine No. 5 Regarding Argument or Evidence that Amounts TeamHealth Plaintiffs Billed for Services are Reasonable [An Alternative Motion to Motion in Limine No. 6]	11/01/21	29	7100–7111
177	Notice of Entry of Order Denying Defendants' Motion in Limine No. 7 to Authorize Defendants to Offer Evidence of the Costs of the Services that Plaintiffs Provided	11/01/21	29	7112–7123
178	Notice of Entry of Order Denying	11/01/21	29	7124–7135

Tab	Document	Date	Vol.	Pages
	Defendants' Motion in Limine No. 8, Offered in the Alternative to MIL No. 7, to Preclude Plaintiffs from Offering Evidence as to the Qualitative Value, Relative Value, Societal Value, or Difficulty of the Services they Provided			
179	Notice of Entry of Order Denying Defendants' Motion in Limine No. 10 to Exclude Evidence of Defendants' Corporate Structure (Alternative Motion to be Considered Only if Court Denies Defendants' Counterpart Motion in Limine No. 9)	11/01/21	29	7136–7147
180	Notice of Entry of Order Denying Defendants' Motion in Limine No. 11, Paired with Motion in Limine No. 12, to Authorize Defendants to Discuss Plaintiffs' Conduct and Deliberations in Negotiating Reimbursement	11/01/21	29	7148–7159
181	Notice of Entry of Order Denying Defendants' Motion in Limine No. 13 Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Collection Practices for Healthcare Claims	11/01/21	29	7160–7171
182	Notice of Entry of Order Denying Defendants' Motion in Limine No. 14: Motion Offered in the Alternative MIL No. 13 to Preclude Plaintiffs from Contesting Defendants' Defenses Relating to Claims that were Subject to a Settlement Agreement Between CollectRx and Data iSight; and Defendants' Adoption of Specific Negotiation Thresholds for Reimbursement Claims Appealed or Contested by Plaintiffs	11/01/21	29	7172–7183
183	Notice of Entry of Order Denying	11/01/21	29	7184–7195

Tab	Document	Date	Vol.	Pages
	Defendants' Motion in Limine No. 15 to Preclude Reference and Testimony Regarding the TeamHealth Plaintiffs Policy not to Balance Bill			
184	Notice of Entry of Order Denying Defendants' Motion in Limine No. 18 to Preclude Testimony of Plaintiffs' Non-Retained Expert Joseph Crane, M.D.	11/01/21	29	7196–7207
185	Notice of Entry of Order Denying Defendants' Motion in Limine No. 20 to Exclude Defendants' Lobbying Efforts	11/01/21	29	7208–7219
186	Notice of Entry of Order Denying Defendants' Motion in Limine No. 24 to Preclude Plaintiffs from Referring to Themselves as Healthcare Professionals	11/01/21	29	7220–7231
187	Notice of Entry of Order Denying Defendants' Motion in Limine No. 27 to Preclude Evidence of Complaints Regarding Defendants' Out-Of-Network Rates or Payments	11/01/21	29	7232–7243
188	Notice of Entry of Order Denying Defendants' Motion in Limine No. 29 to Preclude Evidence Only Relating to Defendants' Evaluation and Development of a Company that Would Offer a Service Similar to Multiplan and Data iSight	11/01/21	29 30	7244–7250 7251–7255
189	Notice of Entry of Order Denying Defendants' Motion in Limine No. 32 to Exclude Evidence or Argument Relating to Materials, Events, or Conduct that Occurred on or After January 1, 2020	11/01/21	30	7256–7267
191	Notice of Entry of Order Denying Defendants' Motion in Limine No. 38 to Exclude Evidence or Argument Relating to	11/01/21	30	7280–7291

Tab	Document	Date	Vol.	Pages
	Defendants' use of MultiPlan and the Data iSight Service, Including Any Alleged Conspiracy or Fraud Relating to the use of Those Services			
190	Notice of Entry of Order Denying Defendants' Motion in Limine to Preclude Certain Expert Testimony and Fact Witness Testimony by Plaintiffs' Non-Retained Expert Robert Frantz, M.D.	11/01/21	30	7268–7279
293	Notice of Entry of Order Denying Defendants' Motion to Apply Statutory Cap on Punitive Damages	03/09/22	53	13,179–13,197
62	Notice of Entry of Order Denying Defendants' Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiff to Supplement Their NRCP 16.1 Initial Disclosures on Order Shortening Time	10/27/20	11	2671–2683
78	Notice of Entry of Order Denying Defendants' Motion to Compel Responses to Defendants' First and Second Requests for Production on Order Shortening Time	02/04/21	15	3703–3713
193	Notice of Entry of Order Denying Defendants' Motion to Strike Supplement Report of David Leathers	11/01/21	30	7355–7366
353	Notice of Entry of Order Denying Defendants' Renewed Motion for Judgment as a Matter of Law	10/12/22	73	18,087–18,114
97	Notice of Entry of Order Denying Motion for Reconsideration of Court's Order Denying Defendants' Motion to Compel Responses to Defendants' First and Second Requests for Production	04/26/21	17	4096–4108

Tab	Document	Date	Vol.	Pages
77	Notice of Entry of Order Granting Defendants' Motion for Appointment of Special Master	02/02/21	15	3693–3702
269	Notice of Entry of Order Granting Defendants' Motion for Leave to File Defendants' Preliminary Motion to Seal Attorneys' Eyes Only Documents Used at Trial Under Seal	12/27/21	50	12,312–12,322
202	Notice of Entry of Order Granting Defendants' Motion in Limine No. 17	11/04/21	33	8092–8103
203	Notice of Entry of Order Granting Defendants' Motion in Limine No. 25	11/04/21	33	8104–8115
204	Notice of Entry of Order Granting Defendants' Motion in Limine No. 37	11/04/21	33	8116–8127
205	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion in Limine No. 9	11/04/21	33	8128–8140
206	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion in Limine No. 21	11/04/21	33	8141–8153
207	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion in Limine No. 22	11/04/21	33	8154–8165
341	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion to Retax Costs	08/02/22	71	17,726–17,739
358	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits	10/18/22	75 76	18,609–18,750 18,751–18,755
215	Notice of Entry of Order Granting in Part and Denying in Part Plaintiffs' Motion in Limine to Exclude Evidence Subject to the	11/12/21	37	9162–9173

Tab	Document	Date	Vol.	Pages
	Court's Discovery Orders			
147	Notice of Entry of Order Granting Plaintiffs' Motion for Leave to File Second Amended Complaint on Order Shortening Time	10/07/21	21	5235–5245
242	Notice of Entry of Order Granting Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment	11/19/21	44	10,954–10,963
192	Notice of Entry of Order Granting Plaintiffs' Motion in Limine to Exclude Evidence, Testimony And-Or Argument Regarding the Fact that Plaintiff have Dismissed Certain Claims	11/01/21	30	7292–7354
63	Notice of Entry of Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	10/27/20	11	2684–2695
335	Notice of Entry of Order Granting Plaintiffs' Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time	06/29/22	71	17,594–17,609
281	Notice of Entry of Order Granting Plaintiffs' Proposed Schedule for Submission of Final Redactions	01/31/22	52	12,969–12,979
114	Notice of Entry of Order Granting Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	08/03/21	18	4383–4402
53	Notice of Entry of Order Granting, in Part Plaintiffs' Motion to Compel Defendants'	09/28/20	9	2184–2195

Tab	Document	Date	Vol.	Pages
	Production of Claims for At-Issue Claims, Or, in The Alternative, Motion in Limine			
102	Notice of Entry of Order of Report and Recommendation #6 Regarding Defendants' Motion to Compel Further Testimony from Deponents Instructed Not to Answer Question	05/26/21	17	4157–4165
22	Notice of Entry of Order Re: Remand	02/27/20	3	543–552
142	Notice of Entry of Order Regarding Defendants' Objection to Special Master's Report and Recommendation No. 11 Regarding Defendants' Motion to Compel Plaintiffs' Production of Documents about which Plaintiffs' Witnesses Testified on Order Shortening Time	09/29/21	21	5104–5114
66	Notice of Entry of 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	11/09/20	12	2775–2785
285	Notice of Entry of Order Shortening Time for Hearing Re: Plaintiffs' Motion to Unlock Certain Admitted Trial Exhibits	02/14/22	53	13,029–13,046
354	Notice of Entry of Order Unsealing Trial Transcripts and Restoring Public Access to Docket	10/12/22	73	18,115–18,125
86	Notice of Entry of Report and Recommendation #1	03/16/21	16	3887–3894
120	Notice of Entry of Report and Recommendation #11 Regarding Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs'	08/11/21	18	4487–4497

Tab	Document	Date	Vol.	Pages
	Witnesses Testified			
91	Notice of Entry of Report and Recommendation #2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order	03/29/21	16	3971–3980
95	Notice of Entry of Report and Recommendation #3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Requests for Production on Order Shortening Time	04/15/21	17	4080–4091
104	Notice of Entry of Report and Recommendation #7 Regarding Defendants' Motion to Compel Plaintiffs' Responses to Defendants' Amended Third Set of Requests for Production of Documents	06/03/21	17	4173–4184
41	Notice of Entry of Stipulated Confidentiality and Protective Order	06/24/20	7	1517–1540
69	Notice of Entry of Stipulated Electronically Stored Information Protocol Order	01/08/21	12	2860–2874
289	Notice of Entry of Stipulation and Order Regarding Certain Admitted Trial Exhibits	02/17/22	53	13,074–13,097
360	Notice of Entry of Stipulation and Order Regarding Expiration of Temporary Stay for Sealed Redacted Transcripts	10/25/22	76	18,759–18,769
282	Notice of Entry of Stipulation and Order Regarding Schedule for Submission of Redactions	02/08/22	52	12,980–12,996
111	Notice of Entry Report and Recommendations #9 Regarding Pending Motions	07/01/21	18	4313–4325

Tab	Document	Date	Vol.	Pages
490	Notice of Filing of Expert Report of Bruce Deal, Revised on November 14, 2021 (Filed Under Seal)	04/18/23	144	35,714–35,812
361	Notice of Filing of Writ Petition	11/17/22	76	18,770–18855
24	Notice of Intent to Take Default as to: (1) Defendant UnitedHealth Group, Inc. on All Claims; and (2) All Defendants on the First Amended Complaint's Eighth Claim for Relief	03/13/20	3 4	699–750 751
324	Notice of Posting *Supersedeas* Bond	04/29/22	69	17,114–17,121
10	Notice of Removal to Federal Court	05/14/19	1	42–100
333	Notice of Supplemental Attorneys Fees Incurred After Submission of Health Care Providers' Motion for Attorneys Fees	06/24/22	70 71	17,470–17,500 17,501–17,578
291	Objection to Plaintiffs' Proposed Judgment and Order Denying Motion to Apply Statutory Cap on Punitive Damages	03/04/22	53	13,161–13,167
345	Objection to Plaintiffs' Proposed Orders Denying Renewed Motion for Judgment as a Matter of Law and Motion for New Trial	09/13/22	72	17,941–17,950
377	Objection to R&R #11 Regarding United's (Filed Under Seal)Motion to Compel Documents About Which Plaintiffs' Witnesses Testified (Filed Under Seal)	08/25/21	84 85	20,864–20,893 20,894–20,898
320	Opposition to Defendants' Motion to Retax Costs	04/13/22	68	16,856–16,864
153	Opposition to Plaintiffs' Motion in Limine to Exclude Evidence, Testimony and/or Argument Regarding the Fact that Plaintiffs have Dismissed Certain Claims and Parties on Order Shortening Time	10/12/21	22	5301–5308

Tab	Document	Date	Vol.	Pages
20	Order	02/20/20	3	519–524
21	Order	02/24/20	3	525–542
337	Order Amending Oral Ruling Granting Defendants' Motion to Retax	07/01/22	71	17,682–17,688
2	Peremptory Challenge of Judge	04/17/19	1	18–19
415	Plaintiffs' Combined Opposition to Defendants Motions in Limine 1, 7, 9, 11 & 13 (Filed Under Seal)	09/29/21	104	25,786–25,850
416	Plaintiffs' Combined Opposition to Defendants' Motions in Limine No. 2, 8, 10, 12 & 14 (Filed Under Seal)	09/29/21	104	25,851–25,868
145	Plaintiffs' Motion for Leave to File Second Amended Complaint on Order Shortening Time	10/04/21	21	5170–5201
422	Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment (Filed Under Seal)	10/17/21	108	26,664–26,673
378	Plaintiffs' Motion in Limine to Exclude Evidence Subject to the Court's Discovery Orders (Filed Under Seal)	09/21/21	85	20,899–20,916
380	Plaintiffs' Motion in Limine to Exclude Evidence, Testimony and/or Argument Relating to (1) Increase in Insurance Premiums (2) Increase in Costs and (3) Decrease in Employee Wages/Benefits Arising from Payment of Billed Charges (Filed Under Seal)	09/21/21	85	21,077–21,089
149	Plaintiffs' Motion in Limine to Exclude Evidence, Testimony and-or Argument	10/08/21	22	5265–5279

Tab	Document	Date	Vol.	Pages
	Regarding the Fact that Plaintiffs Have Dismissed Certain Claims and Parties on Order Shortening Time			
363	Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time (Filed Under Seal)	09/28/20	78	19,144–19,156
49	Plaintiffs' Motion to Compel Defendants' Production of Claims File for At-Issue Claims, or, in the Alternative, Motion in Limine on Order Shortening Time	08/28/20	7 8	1685–1700 1701–1845
250	Plaintiffs' Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time	11/22/21	47	11,594–11,608
194	Plaintiffs' Notice of Amended Exhibit List	11/01/21	30	7367–7392
208	Plaintiffs' Notice of Deposition Designations	11/04/21	33 34	8166–8250 8251–8342
152	Plaintiffs' Objections to Defendants' Pretrial Disclosures	10/08/21	22	5295–5300
328	Plaintiffs' Opposition to Defendants' Motion for New Trial	05/04/22	69 70	17,179–17,250 17,251–17,335
420	Plaintiffs' Opposition to Defendants' Motion for Partial Summary Judgment (Filed Under Seal)	10/05/21	107	26,498–26,605
327	Plaintiffs' Opposition to Defendants' Motion for Remittitur and to Alter or Amend the Judgment	05/04/22	69	17,165–17,178
144	Plaintiffs' Opposition to Defendants' Motion in Limine No. 24 to Preclude Plaintiffs from Referring to Themselves as Healthcare Professionals	09/29/21	21	5155–5169
143	Plaintiffs' Opposition to Defendants' Motion	09/29/21	21	5115–5154

Tab	Document	Date	Vol.	Pages
	in Limine Nos. 3, 4, 5, 6 Regarding Billed Charges			
279	Plaintiffs' Opposition to Defendants' Motion to Apply Statutory Cap on Punitive Damages and Plaintiffs' Cross Motion for Entry of Judgment	01/20/22	52	12,773–12,790
374	Plaintiffs' Opposition to Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs' Witnesses Testified on Order Shortening Time (Filed Under Seal)	07/06/21	84	20,699–20,742
25	Plaintiffs' Opposition to Defendants' Motion to Dismiss	03/26/20	4	752–783
34	Plaintiffs' Opposition to Defendants' Motion to Dismiss First Amended Complaint	05/29/20	5 6	1188–1250 1251–1293
349	Plaintiffs' Opposition to Defendants' Motion to Redact Portions of Trial Transcript	10/07/22	72	17,990–17,993
278	Plaintiffs' Opposition to Defendants' Motion to Seal Courtroom During January 12, 2022 Hearing	01/12/22	52	12,769–12,772
369	Plaintiffs' Opposition to Defendants' Motion to Supplement the Record Supporting Objections to Reports and Recommendations #2 and #3 on Order Shortening Time (Filed Under Seal)	06/01/21	81 82	20,066–20,143 20,144–20,151
329	Plaintiffs' Opposition to Defendants' Renewed Motion for Judgment as a Matter of Law	05/05/22	70	17,336–17,373
317	Plaintiffs' Opposition to Defendants' Rule 62(b) Motion for Stay	04/07/22	68	16,826–16,831
35	Plaintiffs' Opposition to Defendants' Supplemental Brief in Support of Their Motion to Dismiss Plaintiffs' First Amended	05/29/20	6	1294–1309

Tab	Document	Date	Vol.	Pages
	Complaint Addressing Plaintiffs' Eighth Claim for Relief			
83	Plaintiffs' Opposition to Motion for Reconsideration of Order Denying Defendants' Motion to Compel Plaintiffs Responses to Defendants' First and Second Requests for Production	03/04/21	16	3833–3862
55	Plaintiffs' Opposition to Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiff to Supplement Their NRCP 16.1 Initial Disclosures on an Order Shortening Time	09/29/20	9-10	2224–2292
72	Plaintiffs' Opposition to Motion to Compel Responses to Defendants' First and Second Requests for Production on Order Shortening Time	01/12/21	14	3420–3438
122	Plaintiffs' Opposition to United's Motion for Order to Show Cause Why Plaintiffs Should Not Be Held in Contempt and Sanctioned for Allegedly Violating Protective Order	08/24/21	19	4528–4609
270	Plaintiffs' Opposition to United's Motion to Seal	12/29/21	50	12,323–12,341
222	Plaintiffs' Proposed Jury Instructions (Contested)	11/15/21	38 39	9496–9500 9501–9513
260	Plaintiffs' Proposed Second Phase Jury Instructions and Verdict Form	12/06/21	49	12,064–12,072
243	Plaintiffs' Proposed Special Verdict Form	11/19/21	44	10,964–10,973
227	Plaintiffs' Proposed Verdict Form	11/16/21	40	9810–9819
84	Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	03/08/21	16	3863–3883

Tab	Document	Date	Vol.	Pages
287	Plaintiffs' Reply in Support of Cross Motion for Entry of Judgment	02/15/22	53	13,054–13,062
364	Plaintiffs' Reply in Support of Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions (Filed Under Seal)	04/01/21	78	19,157–19,176
366	Plaintiffs' Response to Defendants Objection to the Special Master's Report and Recommendation No. 2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order (Filed Under Seal)	04/19/21	78 79	19,389–19,393 19,394–19,532
195	Plaintiffs' Response to Defendants' Objection to Media Requests	11/01/21	30	7393–7403
371	Plaintiffs' Response to Defendants' Objection to Report and Recommendation #6 Regarding Defendants' Motion to Compel Further Testimony from Deponents Instructed Not to Answer Questions (Filed Under Seal)	06/16/21	82	20,212–20,265
376	Plaintiffs' Response to Defendants' Objection to Special Master Report and Recommendation No. 9 Regarding Defendants' Renewed Motion to Compel Further Testimony from Deponents Instructed not to Answer Questions (Filed Under Seal)	07/22/21	84	20,751–20,863
110	Plaintiffs' Response to Defendants' Objection to Special Master's Report and Recommendation #7 Regarding Defendants' Motion to Compel Responses to Amended	06/24/21	18	4281–4312

Tab	Document	Date	Vol.	Pages
	Third Set of Request for Production of Documents			
367	Plaintiffs' Response to Defendants' Objection to the Special Master's Report and Recommendation No. 3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Request for Production on Order Shortening Time (Filed Under Seal)	05/05/21	79	19,533–19,581
426	Plaintiffs' Response to Defendants' Trial Brief Regarding Evidence and Argument Relating to Out-of-State Harms to Non-Parties (Filed Under Seal)	11/08/21	109	26,965–26,997
246	Plaintiffs' Second Supplemental Jury Instructions (Contested)	11/20/21	46	11,255–11,261
261	Plaintiffs' Supplement to Proposed Second Phase Jury Instructions	12/06/21	49	12,072–12,077
236	Plaintiffs' Supplemental Jury Instruction (Contested)	11/17/21	42	10,308–10,313
248	Plaintiffs' Third Supplemental Jury Instructions (Contested)	11/21/21	46	11,267–11,272
216	Plaintiffs' Trial Brief Regarding Defendants' Prompt Payment Act Jury Instruction Re: Failure to Exhaust Administrative Remedies	11/12/21	37	9174–9184
223	Plaintiffs' Trial Brief Regarding Punitive Damages for Unjust Enrichment Claim	11/15/21	39	9514–9521
218	Plaintiffs' Trial Brief Regarding Specific Price Term	11/14/21	38	9417–9425
428	Preliminary Motion to Seal Attorneys' Eyes Documents Used at Trial (Filed Under Seal)	11/11/21	109	27,004–27,055
211	Recorder's Amended Transcript of Jury Trial – Day 9	11/09/21	35	8515–8723

Tab	Document	Date	Vol.	Pages
73	Recorder's Partial Transcript of Proceedings Re: Motions (Unsealed Portion Only)	01/13/21	14	3439–3448
125	Recorder's Partial Transcript of Proceedings Re: Motions Hearing	09/09/21	19	4667–4680
126	Recorder's Partial Transcript of Proceedings Re: Motions Hearing (Via Blue Jeans)	09/15/21	19	4681–4708
31	Recorder's Transcript of Hearing All Pending Motions	05/15/20	5	1022–1026
88	Recorder's Transcript of Hearing All Pending Motions	03/18/21	16	3910–3915
90	Recorder's Transcript of Hearing All Pending Motions	03/25/21	16	3967–3970
96	Recorder's Transcript of Hearing All Pending Motions	04/21/21	17	4092–4095
82	Recorder's Transcript of Hearing Defendants' Motion to Extend All Case Management Deadlines and Continue Trial Setting on Order Shortening Time (Second Request)	03/03/21	16	3824–3832
101	Recorder's Transcript of Hearing Motion for Leave to File Opposition to Defendants' Motion to Compel Responses to Second Set of Requests for Production on Order Shortening Time in Redacted and Partially Sealed Form	05/12/21	17	4155–4156
107	Recorder's Transcript of Hearing Motion for Leave to File Plaintiffs' Response to Defendants' Objection to the Special Master's Report and Recommendation No. 3 Regarding Defendants' Second Set of Request for Production on Order Shortening Time in Redacted and Partially Sealed Form	06/09/21	17	4224–4226
92	Recorder's Transcript of Hearing Motion to Associate Counsel on OST	04/01/21	16	3981–3986

Tab	Document	Date	Vol.	Pages
483	Recorder's Transcript of Hearing re Hearing (Filed Under Seal)	10/13/22	142	35,259–35,263
346	Recorder's Transcript of Hearing Re: Hearing	09/22/22	72	17,951–17,972
359	Recorder's Transcript of Hearing Status Check	10/20/22	76	18,756–18,758
162	Recorder's Transcript of Jury Trial – Day 1	10/25/21	25 26	6127–6250 6251–6279
213	Recorder's Transcript of Jury Trial – Day 10	11/10/21	36 37	8933–9000 9001–9152
217	Recorder's Transcript of Jury Trial – Day 11	11/12/21	37 38	9185–9250 9251–9416
224	Recorder's Transcript of Jury Trial – Day 12	11/15/21	39 40	9522–9750 9751–9798
228	Recorder's Transcript of Jury Trial – Day 13	11/16/21	40 41	9820–10,000 10,001–10,115
237	Recorder's Transcript of Jury Trial – Day 14	11/17/21	42 43	10,314–10,500 10,501–10,617
239	Recorder's Transcript of Jury Trial – Day 15	11/18/21	43 44	10,624–10,750 10,751–10,946
244	Recorder's Transcript of Jury Trial – Day 16	11/19/21	44 45	10,974–11,000 11,001–11,241
249	Recorder's Transcript of Jury Trial – Day 17	11/22/21	46 47	11,273–11,500 11.501–11,593
253	Recorder's Transcript of Jury Trial – Day 18	11/23/21	47 48	11,633–11,750 11,751–11,907
254	Recorder's Transcript of Jury Trial – Day 19	11/24/21	48	11,908–11,956
163	Recorder's Transcript of Jury Trial – Day 2	10/26/21	26	6280–6485
256	Recorder's Transcript of Jury Trial – Day 20	11/29/21	48 49	12,000 12,001–12,034

Tab	Document	Date	Vol.	Pages
262	Recorder's Transcript of Jury Trial – Day 21	12/06/21	49	12,078–,12,135
266	Recorder's Transcript of Jury Trial – Day 22	12/07/21	49 50	12,153–12,250 12,251–12,293
165	Recorder's Transcript of Jury Trial – Day 3	10/27/21	27 28	6568–6750 6751–6774
166	Recorder's Transcript of Jury Trial – Day 4	10/28/21	28	6775–6991
196	Recorder's Transcript of Jury Trial – Day 5	11/01/21	30 31	7404–7500 7501–7605
197	Recorder's Transcript of Jury Trial – Day 6	11/02/21	31 32	7606–7750 7751–7777
201	Recorder's Transcript of Jury Trial – Day 7	11/03/21	32 33	7875–8000 8001–8091
210	Recorder's Transcript of Jury Trial – Day 8	11/08/21	34 35	8344–8500 8501–8514
212	Recorder's Transcript of Jury Trial – Day 9	11/09/21	35 36	8724–8750 8751–8932
27	Recorder's Transcript of Proceedings Re: Motions	04/03/20	4	909–918
76	Recorder's Transcript of Proceedings Re: Motions	01/21/21	15	3659–3692
80	Recorder's Transcript of Proceedings Re: Motions	02/22/21	16	3757–3769
81	Recorder's Transcript of Proceedings Re: Motions	02/25/21	16	3770–3823
93	Recorder's Transcript of Proceedings Re: Motions	04/09/21	16 17	3987–4000 4001–4058
103	Recorder's Transcript of Proceedings Re: Motions	05/28/21	17	4166–4172
43	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	07/09/20	7	1591–1605

Tab	Document	Date	Vol.	Pages
45	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	07/23/20	7	1628–1643
58	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	10/08/20	10	2363–2446
59	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	10/22/20	10	2447–2481
65	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	11/04/20	11 12	2745–2750 2751–2774
67	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	12/23/20	12	2786–2838
68	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	12/30/20	12	2839–2859
105	Recorder's Transcript of Proceedings Re: Motions Hearing	06/03/21	17	4185–4209
106	Recorder's Transcript of Proceedings Re: Motions Hearing	06/04/21	17	4210–4223
109	Recorder's Transcript of Proceedings Re: Motions Hearing	06/23/21	17 18	4240–4250 4251–4280
113	Recorder's Transcript of Proceedings Re: Motions Hearing	07/29/21	18	4341–4382
123	Recorder's Transcript of Proceedings Re: Motions Hearing	09/02/21	19	4610–4633
121	Recorder's Transcript of Proceedings Re: Motions Hearing (Unsealed Portion Only)	08/17/21	18 19	4498–4500 4501–4527
29	Recorder's Transcript of Proceedings Re: Pending Motions	05/14/20	4	949-972
51	Recorder's Transcript of Proceedings Re: Pending Motions	09/09/20	8	1933–1997
15	Rely in Support of Motion to Remand	06/28/19	2	276–308
124	Reply Brief on "Motion for Order to Show	09/08/21	19	4634–4666

Tab	Document	Date	Vol.	Pages
	Cause Why Plaintiffs Should Not Be Hold in Contempt and Sanctioned for Violating Protective Order"			
19	Reply in Support of Amended Motion to Remand	02/05/20	2 3	486–500 501–518
330	Reply in Support of Defendants' Motion for Remittitur and to Alter or Amend the Judgment	06/22/22	70	17,374–17,385
57	Reply in Support of Defendants' Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiff to Supplement Their NRCP 16.1 Initial Disclosures	10/07/20	10	2337–2362
331	Reply in Support of Defendants' Renewed Motion for Judgment as a Matter of Law	06/22/22	70	17,386–17,411
332	Reply in Support of Motion for New Trial	06/22/22	70	17,412–17,469
87	Reply in Support of Motion for Reconsideration of Order Denying Defendants' Motion to Compel Plaintiffs Responses to Defendants' First and Second Requests for Production	03/16/21	16	3895–3909
344	Reply in Support of Supplemental Attorney's Fees Request	08/22/22	72	17,935–17,940
229	Reply in Support of Trial Brief Regarding Evidence and Argument Relating to Out-Of-State Harms to Non-Parties	11/16/21	41	10,116–10,152
318	Reply on "Defendants' Rule 62(b) Motion for Stay Pending Resolution of Post-Trial Motions" (*on Order Shortening Time*)	04/07/22	68	16,832–16,836
245	Response to Plaintiffs' Trial Brief Regarding Punitive Damages for Unjust Enrichment Claim	11/19/21	45 46	11,242–11,250 11,251–11,254

Tab	Document	Date	Vol.	Pages
230	Response to Plaintiffs' Trial Brief Regarding Specific Price Term	11/16/21	41	10,153–10,169
424	Response to Sur-Reply Arguments in Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment (Filed Under Seal)	10/21/21	109	26,931–26,952
148	Second Amended Complaint	10/07/21	21 22	5246–5250 5251–5264
458	Second Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits (Filed Under Seal)	01/05/22	126 127	31,309–31,393 31,394–31,500
231	Special Verdict Form	11/16/21	41	10,169–10,197
257	Special Verdict Form	11/29/21	49	12,035–12,046
265	Special Verdict Form	12/07/21	49	12,150–12,152
6	Summons – Health Plan of Nevada, Inc.	04/30/19	1	29–31
9	Summons – Oxford Health Plans, Inc.	05/06/19	1	38–41
8	Summons – Sierra Health and Life Insurance Company, Inc.	04/30/19	1	35–37
7	Summons – Sierra Health-Care Options, Inc.	04/30/19	1	32–34
3	Summons - UMR, Inc. dba United Medical Resources	04/25/19	1	20–22
4	Summons – United Health Care Services Inc. dba UnitedHealthcare	04/25/19	1	23–25
5	Summons – United Healthcare Insurance Company	04/25/19	1	26–28
433	Supplement to Defendants' Motion to Seal Certain Confidential Trial Exhibits (Filed	12/08/21	110 111	27,383–27,393 27,394–27,400

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

Tab	Document	Date	Vol.	Pages
	Exhibits – Volume 10 of 18 (Filed Under Seal)			
449	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 11 of 18 (Filed Under Seal)	12/24/21	121	29,908–30,051
450	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 12 of 18 (Filed Under Seal)	12/24/21	121 122	30,052–30,143 30,144–30,297
451	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 13 of 18 (Filed Under Seal)	12/24/21	122 123	30,298–30,393 30,394–30,516
452	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 14 of 18 (Filed Under Seal)	12/24/21	123 124	30,517–30,643 30,644–30,677
453	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 15 of 18 (Filed Under Seal)	12/24/21	124	30,678–30,835
454	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 16 of 18 (Filed Under Seal)	12/24/21	124 125	30,836–30,893 30,894–30,952
455	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 17 of 18 (Filed Under Seal)	12/24/21	125	30,953–31,122
456	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 18 of 18 (Filed Under	12/24/21	125 126	30,123–31,143 31,144–31,258

Tab	Document	Date	Vol.	Pages
	Seal)			
466	Transcript of Proceedings re Hearing Regarding Unsealing Record (Filed Under Seal)	10/05/22	129	31,923–31,943
350	Transcript of Proceedings re Status Check	10/10/22	72 73	17,994–18,000 18,001–18,004
467	Transcript of Proceedings re Status Check (Filed Under Seal)	10/06/22	129	31,944–31,953
157	Transcript of Proceedings Re: Motions	10/19/21	22 23	5339–5500 5501–5561
160	Transcript of Proceedings Re: Motions	10/22/21	24 25	5908–6000 6001–6115
459	Transcript of Proceedings Re: Motions (Filed Under Seal)	01/12/22	127	31,501–31,596
460	Transcript of Proceedings Re: Motions (Filed Under Seal)	01/20/22	127 128	31,597–31,643 31,644–31,650
461	Transcript of Proceedings Re: Motions (Filed Under Seal)	01/27/22	128	31,651–31,661
146	Transcript of Proceedings Re: Motions (Via Blue Jeans)	10/06/21	21	5202–5234
290	Transcript of Proceedings Re: Motions Hearing	02/17/22	53	13,098–13,160
319	Transcript of Proceedings Re: Motions Hearing	04/07/22	68	16,837–16,855
323	Transcript of Proceedings Re: Motions Hearing	04/21/22	69	17,102–17,113
336	Transcript of Proceedings Re: Motions Hearing	06/29/22	71	17,610–17,681
463	Transcript of Proceedings Re: Motions Hearing (Filed Under Seal)	02/10/22	128	31,673–31,793

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

Tab	Document	Date	Vol.	Pages
	on Order Shortening Time			
258	Verdict(s) Submitted to Jury but Returned Unsigned	11/29/21	49	12,047–12,048

CERTIFICATE OF SERVICE

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

Electronic notification will be sent to the following:

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

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

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

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

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

Attorneys for Respondents (case no. 85525)

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

Attorneys for Amicus Curiae (case no. 85656)

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

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

Respondent (case no. 85656)

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

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

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

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

October 2018); Dignity Health – St. Rose Dominican Hospitals, Siena Campus (approximately July 2017-October 2018); Southern Hills Hospital and Medical Center (approximately July 2017-present); and Sunrise Hospital and Medical Center (approximately July 2017-present).

b. At all times relevant hereto, Team Physicians and Ruby Crest have provided emergency medicine services to Defendants' Members as out-of-network providers of emergency services at Banner Churchill Community Hospital in Fallon, Nevada and Northeastern Nevada Regional Hospital in Elko, Nevada, respectively.

20. Defendants have generally adjudicated and paid claims with dates of service through July 31, 2019. As the claims continue to accrue, so do the Health Care Providers' damages. For each of the claims for which the Health Care Providers seek damages, Defendants have already determined the claim was covered and payable.

The Relationship Between the Health Care Providers and Defendants

21. Defendants provide health insurance to their members (*i.e.*, their insureds).

005251

22. In exchange for premiums, fees, and/or other compensation, Defendants are responsible for paying for health care services rendered to members covered by their health plans.

005251

23. In addition, Defendants provide services to their Members, such as building participating provider networks and negotiating rates with providers who join their networks.

24. Defendants offer a range of health insurance plans. Plans generally fall into one of two categories.

25. "Fully Funded" plans are plans in which Defendants collect premiums directly from their members (or from third parties on behalf of their members) and pay claims directly from the pool of funds created by those premiums.

26. "Employer Funded" plans are plans in which Defendants provide administrative services to their employer clients, including processing, analysis, approval, and payment of health care claims, using the funds of the claimant's employer.

27. Defendants provide coverage for emergency medical services under both types of plans.

005251

28. Defendants are contractually and legally responsible for ensuring that their members can receive such services (a) without obtaining prior approval and (b) without regard to the "in network" or "out-of-network" status of the emergency services provider.

29. Defendants highlight such coverage in marketing their insurance products.

30. For all claims at issue in this lawsuit, the Health Care Providers were non-participating providers, meaning they did not have an express contract with Defendants.

31. Specifically, the reimbursement claims within the scope of this action are (a) non-participating commercial claims (including for patients covered by Affordable Care Act Exchange products), (b) that were adjudicated as covered, and allowed as payable by Defendants, (c) at rates below the reasonable payment for the services rendered, (d) as measured by the community where they were performed and by the person who provided them. These claims are collectively referred to herein as the "Non-Participating Claims."

32. The Non-Participating Claims involve only commercial and Exchange Products operated, insured, or administered by the insurance company Defendants. They do not involve Medicare Advantage or Medicaid products.

33. Further, the Non-Participating Claims at issue do not involve coverage determinations under any health plan that may be subject to the federal Employee Retirement Income Security Act of 1974, or claims for benefits based on assignment of benefits.[2]

34. Those counts concern the *rate* of payment to which the Health Care Providers are entitled, not whether a *right* to receive payment exists.

35. Defendants bear responsibility for paying for emergency medical care provided to their members regardless of whether the treating physician is an in-network or out-of-network provider.

36. Defendants understand and expressly acknowledge that their members will seek emergency treatment from non-participating providers and that Defendants are obligated to pay for those services.

[2] The Health Care Providers understand, in any event, that Defendants do not require or rely upon assignments from their members in order to pay claims for services provided by the Health Care Providers to their members.

005252

Defendants Paid the Health Care Providers Unreasonable Rates

37. Defendants bear responsibility for paying for emergency medical care provided to their Members regardless of whether the treating physician is an in-network or out-of-network provider.

38. Defendants expressly acknowledge that their Members will seek emergency treatment from non-participating providers and that they are obligated to pay for those services.

39. In emergency situations, individuals go to the nearest hospital for care, particularly if they are transported by ambulance. Patients facing an emergency situation are unlikely to have the opportunity to determine in advance which hospitals and physicians are in-network under their health plan. Defendants are obligated to reimburse the Health Care Providers at the reasonable value of the services provided.

40. Defendants' Members received a wide variety of emergency services (in some instances, life-saving services) from the Health Care Providers' physicians: treatment of conditions ranging from cardiac arrest, to broken limbs, to burns, to diabetic ketoacidosis and shock, to gastric and/or obstetrical distress.

41. As alleged herein, the Health Care Providers provided treatment on an out-of-network basis for emergency services to thousands of Patients who were Members in Defendants' Health Plans. The total underpayment amount for these related claims is in excess of $15,000.00 and continues to grow. Defendants have likewise failed to attempt in good faith to effectuate a prompt, fair, and equitable settlement of these claims.

42. Defendants paid claims at a significantly reduced rate which is demonstrative of an arbitrary and selective program and motive or intent to unjustifiably reduce the overall amount Defendants pay to the Health Care Providers. Defendants implemented this program to influence and leverage the Health Care Providers as well as to unfairly and illegally profit from a manipulation of payment rates.

43. Defendants failed to attempt in good faith to effectuate a prompt, fair, and equitable settlement of the subject claims as legally required.

44. The Health Care Providers contested the unsatisfactory rate of payment received

005253

from Defendants in connection with the claims that are the subject of this action.

45. All conditions precedent to the institution and maintenance of this action have been performed, waived, or otherwise satisfied.

46. The Health Care Providers bring this action to compel Defendants to pay it the reasonable value of the professional emergency medical services for the emergency services that it provided and will continue to provide Patients and to stop Defendants from profiting from their manipulation of payment rate data.

Defendants' Prior Manipulation of Reimbursement Rates

47. Defendants have a history of manipulating their reimbursement rates for non-participating providers to maximize their own profits at the expense of others, including their own Members.

48. In 2009, UnitedHealth Group, Inc. was investigated by the New York Attorney General for allegedly using its wholly-owned subsidiary, Ingenix, to illegally manipulate reimbursements to non-participating providers.

005254

49. The investigation revealed that Ingenix maintained a database of health care billing information that intentionally skewed reimbursement rates downward through faulty data collection, poor pooling procedures, and lack of audits.

50. UnitedHealth Group, Inc. ultimately paid a $50 million settlement to fund an independent nonprofit organization known as FAIR Health to operate a new database to serve as a transparent reimbursement benchmark.

51. In a press release announcing the settlement, the New York Attorney General noted that: "For the past ten years, American patients have suffered from unfair reimbursements for critical medical services due to a conflict-ridden system that has been owned, operated, and manipulated by the health insurance industry."

52. Also in 2009, for the same conduct, UnitedHealth Group, Inc. and Defendants United HealthCare Insurance Co., and United HealthCare Services, Inc. paid $350 million to settle class action claims alleging that they underpaid non-participating providers for services in *The American Medical Association, et al. v. United Healthcare Corp., et al.*, Civil Action No.

005254

00-2800 (S.D.N.Y.).

53. Since its inception, FAIR Health's benchmark databases have been used by state government agencies, medical societies, and other organizations to set reimbursement for non-participating providers.

54. For example, the State of Connecticut uses FAIR Health's database to determine reimbursement for non-participating providers' emergency services under the state's consumer protection law.

55. Defendants tout the use of FAIR Health and its benchmark databases to determine non-participating, out-of-network payment amounts on its website.

56. While Defendants give the appearance of remitting reimbursement to non-participating providers that meet the reasonable value of services based on geography that is measured from independent benchmark services such as the FAIR Health database, Defendants have found other ways to manipulate the reimbursement rate downward from a reasonable rate in order to maximize profits at the expense of the Health Care Providers.

005255

57. During the relevant time, Defendants imposed significant cuts to the Health Care Providers' reimbursement rate for out-of-network claims under Defendants' fully funded plans, without rationale or justification.

58. Defendants pay claims under fully funded plans out of their own pool of funds, so every dollar that is not paid to the Health Care Providers is a dollar retained by Defendants for their own use.

59. Defendants' detrimental approach to payments for members in fully funded plans continues today,

60. As a result of these deep cuts in payments for services provided to Members of fully funded plans, Defendants have not paid the Health Care Providers a reasonable rate for those services.

61. In so doing, Defendants have illegally retained those funds.

005255

FIRST CLAIM FOR RELIEF

(Breach of Implied-in-Fact Contract)

62. The Health Care Providers incorporate herein by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

63. At all material times, the Health Care Providers were obligated under federal and Nevada law to provide emergency medicine services to all patients presenting at the emergency departments they staff, including Defendants' Patients.

64. At all material times, Defendants were obligated to provide coverage for emergency medicine services to all of its Members.

65. At all material times, Defendants knew that the Health Care Providers were non-participating emergency medicine groups that provided emergency medicine services to Patients.

66. From July 1, 2017 to the present, Fremont has undertaken to provide emergency medicine services to UH Parties' Patients, and the UH Parties have undertaken to pay for such services provided to UH Parties' Patients.

67. From approximately March 1, 2019 to the present Fremont has undertaken to provide emergency medicine services to the patients of Sierra and HPN, and Sierra and HPN have undertaken to pay for such services provided to their Patients.

68. At all material times, Defendants were aware that the Health Care Providers were entitled to and expected to be paid at rates in accordance with the standards established under Nevada law.

69. At all material times, Defendants have received the Health Care Providers' bills for the emergency medicine services the Health Care Providers have provided and continue to provide to Defendants' Patients, and Defendants have consistently adjudicated and paid, and continue to adjudicate and pay, the Health Care Providers directly for the non-participating claims.

70. Through the parties' conduct and respective undertaking of obligations concerning emergency medicine services provided by the Health Care Providers to Defendants'

005256

Patients, the parties implicitly agreed, and the Health Care Providers had a reasonable expectation and understanding, that Defendants would reimburse the Health Care Providers for non-participating claims at rates in accordance with the standards acceptable under Nevada law.

71. Under Nevada common law, including the doctrine of quantum meruit, the Defendants, by undertaking responsibility for payment to the Health Care Providers for the services rendered to Defendants' Patients, impliedly agreed to reimburse the Health Care Providers at the reasonable value of the professional emergency medical services provided by the Health Care Providers.

72. Defendants, by undertaking responsibility for payment to the Health Care Providers for the services rendered to the Defendants' Patients, impliedly agreed to reimburse the Health Care Providers at the reasonable value of the professional emergency medical services provided by the Health Care Providers.

005257

73. In breach of its implied contract with the Health Care Providers, Defendants have and continue to unreasonably and systemically adjudicate the non-participating claims at rates substantially below the reasonable value of the professional emergency medical services provided by the Health Care Providers to the Defendants' Patients.

005257

74. The Health Care Providers have performed all obligations under the implied contract with the Defendants concerning emergency medical services to be performed for Patients.

75. At all material times, all conditions precedent have occurred that were necessary for Defendants to perform their obligations under their implied contract to pay the Health Care Providers for the non-participating claims, at a minimum, based upon the reasonable value of the Health Care Providers' professional emergency medicine services

76. The Health Care Providers did not agree that the lower reimbursement rates paid by Defendants were reasonable or sufficient to compensate the Health Care Providers for the emergency medical services provided to Patients.

77. The Health Care Providers have suffered damages in an amount equal to the difference between the amounts paid by Defendants and the reasonable value of their

005257

professional emergency medicine services, that remain unpaid by the Defendants through the date of trial, plus the Health Care Providers' loss of use of that money.

78. As a result of the Defendants' breach of the implied contract to pay the Health Care Providers for the non-participating claims at the rates required by Nevada law, the Health Care Providers have suffered injury and is entitled to monetary damages from Defendants to compensate them for that injury in an amount in excess of $15,000.00, exclusive of interest, costs and attorneys' fees, the exact amount of which will be proven at the time of trial.

79. The Health Care Providers have been forced to retain counsel to prosecute this action and is entitled to receive their costs and attorneys' fees incurred herein.

SECOND CLAIM FOR RELIEF

(Alternative Claim for Unjust Enrichment)

80. The Health Care Providers rendered valuable emergency services to the Patients.

81. Defendants received the benefit of having their healthcare obligations to their plan members discharged and their members received the benefit of the emergency care provided to them by the Health Care Providers.

82. As insurers or plan administrators, Defendants were reasonably notified that emergency medicine service providers such as the Health Care Providers would expect to be paid by Defendants for the emergency services provided to Patients.

83. Defendants accepted and retained the benefit of the services provided by the Health Care Providers at the request of the members of its Health Plans, knowing that the Health Care Providers expected to be paid the reasonable value of services provided, for the medically necessary, covered emergency medicine services it performed for Defendants' Patients.

84. Defendants have received a benefit from the Health Care Providers' provision of services to its Patients and the resulting discharge of their healthcare obligations owed to their Patients.

85. Under the circumstances set forth above, it is unjust and inequitable for Defendants to retain the benefit they received without paying the value of that benefit; i.e., by paying the Health Care Providers at the reasonable value of services provided, for the claims that

005258

005258

are the subject of this action and for all emergency medicine services that the Health Care Providers will continue to provide to Defendants' Members.

86. The Health Care Providers seek compensatory damages in an amount which will continue to accrue through the date of trial as a result of Defendants' continuing unjust enrichment.

87. As a result of the Defendants' actions, the Health Care Providers have been damaged in an amount in excess of $15,000.00, exclusive of interest, costs and attorneys' fees, the exact amount of which will be proven at the time of trial.

88. The Health Care Providers sue for the damages caused by the Defendants' conduct and is entitled to recover the difference between the amount the Defendants' paid for emergency care the Health Care Providers rendered to its members and the reasonable value of the service that the Health Care Providers rendered to Defendants by discharging their obligations to their plan members.

89. As a direct result of the Defendants' acts and omissions complained of herein, it has been necessary for the Health Care Providers to retain legal counsel and others to prosecute their claims. The Health Care Providers are thus entitled to an award of attorneys' fees and costs of suit incurred herein.

005259

THIRD CLAIM FOR RELIEF

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

90. The Health Care Providers incorporate herein by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

91. The Nevada Insurance Code prohibits an insurer from engaging in an unfair settlement practices. NRS 686A.020, 686A.310.

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

93. As detailed above, Defendants have failed to comply with NRS 686A.310(1)(e) by failing to pay the Health Care Providers' medical professionals the usual and customary rate

005259

for emergency care provided to Defendants' members. By failing to pay the Health Care Providers' medical professionals the usual and customary rate Defendants have violated NRS 686A.310(1)(e) and committed an unfair settlement practice.

94. The Health Care Providers are therefore entitled to recover the difference between the amount Defendants paid for emergency care the Health Care Providers rendered to their members and the usual and customary rate, plus court costs and attorneys' fees.

95. The Health Care Providers are entitled to damages in an amount in excess of $15,000.00, exclusive of interest, costs and attorneys' fees, the exact amount of which will be proven at the time of trial.

96. Defendants have acted in bad faith regarding their obligation to pay the usual and customary fee; therefore, the Health Care Providers are entitled to recover punitive damages against Defendants.

97. As a direct result of Defendants' acts and omissions complained of herein, it has been necessary for the Health Care Providers to retain legal counsel and others to prosecute their claims. The Health Care Providers are thus entitled to an award of attorneys' fees and costs of suit incurred herein.

005260

005260

FOURTH CLAIM FOR RELIEF

(Violations of Nevada Prompt Pay Statutes & Regulations)

98. The Health Care Providers incorporate herein by reference the allegations set forth in the preceding paragraphs as if fully set forth herein.

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

100. Despite this obligation, as alleged herein, Defendants have failed to reimburse the

005260

Health Care Providers at the usual and customary rate within 30 days of the submission of the claim. Indeed, Defendants failed to reimburse the Health Care Providers at the usual and customary rate at all. Because Defendants have failed to reimburse the Health Care Providers at the usual and customary rate within 30 days of submission of the claims as the Nevada Insurance Code requires, Defendants are liable to the Health Care Providers for statutory penalties.

101. For all claims payable by plans that Defendants insure wherein it failed to pay at the usual and customary fee within 30 days, Defendants are liable to the Health Care Providers for penalties as provided for in the Nevada Insurance Code.

102. Additionally, Defendants have violated NV Prompt Pay Laws, by among things, only paying part of the subject claims that have been approved and are fully payable.

103. The Health Care Providers seek penalties payable to it for late-paid and partially paid claims under the NV Prompt Pay Laws.

005261

104. The Health Care Providers are entitled to damages in an amount in excess of $15,000.00 to be determined at trial, including for its loss of the use of the money and its attorneys' fees.

005261

105. Under the Nevada Insurance Code and NV Prompt Pay Laws, the Health Care Providers are also entitled to recover their reasonable attorneys' fees and costs.

REQUEST FOR RELIEF

WHEREFORE, the Health Care Providers request the following relief:

A. For awards of general and special damages in amounts in excess of $15,000.00, the exact amounts of which will be proven at trial;

B. Judgment in their favor on the Second Amended Complaint;

C. Awards of actual, consequential, general, and special damages in an amount in excess of $15,000.00, the exact amounts of which will be proven at trial;

D. An award of punitive damages, the exact amount of which will be proven at trial;

E. The Health Care Providers costs and reasonable attorneys' fees pursuant to NRS 207.470;

005261

F. Reasonable attorneys' fees and court costs;

G. Pre-judgment and post-judgment interest at the highest rates permitted by law; and

H. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

The Health Care Providers hereby demand trial by jury on all issues so triable.

DATED this 4th day of October, 2021.

AHMAD, ZAVITSANOS, ANAIPAKOS, ALAVI & MENSING, P.C

By: */s/ P. Kevin Leyendecker*

P. Kevin Leyendecker (admitted pro hac vice)
John Zavitsanos (admitted pro hac vice)
Joseph Y. Ahmad (admitted pro hac vice)
Jason S. McManis (admitted pro hac vice)
Michael Killingsworth (admitted pro hac vice)
Louis Liao (admitted pro hac vice)
Jane L. Robinson (admitted pro hac vice)
Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, P.C
1221 McKinney Street, Suite 2500
Houston, Texas 77010
kleyendecker@azalaw.com
joeahmad@azalaw.com
jzavitsanos@azalaw.com
jmcmanis@azalaw.com
mkillingsworth@azalaw.com
lliao@azalaw.com
jrobinson@azalaw.com

Justin C. Fineberg (admitted pro hac vice)
Martin B. Goldberg (admitted pro hac vice)
Rachel H. LeBlanc (admitted pro hac vice)
Lash & Goldberg LLP
Weston Corporate Centre I
2500 Weston Road Suite 220
Fort Lauderdale, Florida 33331
Telephone: (954) 384-2500
jfineberg@lashgoldberg.com
mgoldberg@lashgoldberg.com
rleblanc@lashgoldberg.com

Pat Lundvall (NSBN 3761)
Kristen T. Gallagher (NSBN 9561)

005262

005262

005262

Amanda M. Perach (NSBN 12399)
McDONALD CARANO LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
plundvall@mcdonaldcarano.com
kgallagher@mcdonaldcarano.com
aperach@mcdonaldcarano.com

Attorneys for Plaintiffs Fremont Emergency Services (Mandavia), Ltd., Team Physicians of Nevada-Mandavia, P.C. & Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine

005263

005263

005263

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 7th day of October, 2021, I caused a true and correct copy of the foregoing **SECOND AMENDED COMPLAINT** to be served via this Court's Electronic Filing system in the above-captioned case, upon the following:

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Brittany M. Llewellyn, Esq.
Phillip N. Smith, Jr., Esq.
Marjan Hajimirzaee, Esq.
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
lroberts@wwhgd.com
cbalkenbush@wwhgd.com
bllewellyn@wwhgd.com
psmithjr@wwhgd.com
mhajimirzaee@wwhgd.com

Paul J. Wooten, Esq. (admitted *pro hac vice*)
Amanda Genovese, Esq. (admitted *pro hac vice*)
Philip E. Legendy, Esq. (admitted *pro hac vice*)
O'Melveny & Myers LLP
Times Square Tower,
Seven Times Square,
New York, New York 10036
pwooten@omm.com
agenovese@omm.com
plegendy@omm.com

Dimitri Portnoi, Esq. (admitted *pro hac vice*)
Jason A. Orr, Esq. (admitted *pro hac vice*)
Adam G. Levine, Esq. (admitted *pro hac vice*)
Hannah Dunham, Esq. (admitted *pro hac vice*)
Nadia L. Farjood, Esq. (admitted *pro hac vice*)
O'MELVENY & MYERS LLP
400 South Hope Street, 18th Floor
Los Angeles, CA 90071-2899
dportnoi@omm.com
jorr@omm.com
alevine@omm.com
hdunham@omm.com
nfarjood@omm.com

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Abraham G. Smith, Esq.
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
dpolsenberg@lewisroca.com
jhenriod@lewisroca.com
asmith@lewisroca.com

Attorneys for Defendants

K. Lee Blalack, II, Esq. (admitted *pro hac vice*)
Jeffrey E. Gordon, Esq. (admitted *pro hac vice*)
Kevin D. Feder, Esq. (admitted *pro hac vice*)
Jason Yan, Esq. (*pro hac vice* pending)
O'Melveny & Myers LLP
1625 I Street, N.W.
Washington, D.C. 20006
Telephone: (202) 383-5374
lblalack@omm.com
jgordon@omm.com
kfeder@omm.com

Attorneys for Defendants

Judge David Wall, Special Master
Attention: Mara Satterthwaite & Michelle Samaniego
JAMS
3800 Howard Hughes Parkway, 11th Floor
Las Vegas, NV 89123
msatterthwaite@jamsadr.com
msamaniego@jamsadr.com

/s/ *Beau Nelson*
An employee of McDonald Carano LLP

005264
005264
005264

149

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

Justin C. Fineberg (admitted *pro hac vice*)
Rachel H. LeBlanc (admitted *pro hac vice*)
Jonathan E. Siegelaub (admitted *pro hac vice*)
Lash & Goldberg LLP
Weston Corporate Centre I
2500 Weston Road Suite 220
Fort Lauderdale, Florida 33331
Telephone: (954) 384-2500
jfineberg@lashgoldberg.com
rleblanc@lashgoldberg.com
jsiegelaub@lashgoldberg.com

Joseph Y. Ahmad (admitted *pro hac vice*)
John Zavitsanos (admitted *pro hac vice*)
Jason S. McManis (admitted *pro hac vice*)
Michael Killingsworth (admitted *pro hac vice*)
Louis Liao (admitted *pro hac vice)*
Jane L. Robinson (admitted *pro hac vice*)
P. Kevin Leyendecker (admitted *pro hac vice*)
Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, P.C.
1221 McKinney Street, Suite 2500
Houston, Texas 77010
Telephone: 713-600-4901
joeahmad@azalaw.com
jzavitsanos@azalaw.com
jmcmanis@azalaw.com
mkillingsworth@azalaw.com
lliao@azalaw.com
jrobinson@azalaw.com
kleyendecker@azalaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

UNITED HEALTHCARE INSURANCE COMPANY, a Connecticut corporation; UNITED HEALTH CARE SERVICES INC., dba UNITEDHEALTHCARE, a Minnesota corporation; UMR, INC., dba UNITED MEDICAL RESOURCES, a Delaware corporation; SIERRA HEALTH AND LIFE INSURANCE COMPANY, INC., a Nevada corporation; HEALTH PLAN OF NEVADA, INC., a Nevada corporation,

Defendants.

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

HEARING REQUSTED

PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE EVIDENCE, TESTIMONY AND/OR ARGUMENT REGARDING THE FACT THAT PLAINTIFFS HAVE DISMISSED CERTAIN CLAIMS AND PARTIES ON ORDER SHORTENING TIME

Plaintiffs Fremont Emergency Services (Mandavia), Ltd.; Team Physicians of Nevada-Mandavia, P.C.; Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine (collectively the "Health Care Providers") move for an order in limine against defendants UnitedHealthcare Insurance Company; United HealthCare Services, Inc.; UMR, Inc.; Sierra Health and Life Insurance Co., Inc.; and Health Plan of Nevada, Inc. (collectively, "United") for the exclusion of all evidence, testimony and/or argument regarding the fact that the Health Care Providers have dismissed certain claims and parties prior to trial.

Yesterday, the Court granted the Health Care Providers' Motion for Leave to File Second Amended Complaint, with no opposition from United, and allowed the Health Care Providers to dismiss certain claims and parties without prejudice. Now, United seeks to gain a tactical advantage from that by introducing evidence, argument, and testimony to the jury about the fact that the Health Care Providers have dismissed certain claims and parties prior to trial.

Many courts have found this type of evidence to be irrelevant, confusing, misleading, and unfairly prejudicial. This case is no different. Were such evidence to be admitted, it would require extensive explanation of trial strategy and the procedural mechanisms of litigation, none of which are familiar to the jury and none of which relate to the critical disputed issues in the case. This is bound to be confusing and misleading because it has nothing to do with the rate of payments the jury is going to be asked to render a decision on. Because the evidence is irrelevant, and because it carries a significant danger of unfair prejudice, the Court should grant this motion in limine and preclude United from presenting any evidence, testimony and/or argument regarding the fact that the Health Care Providers have dismissed certain claims and parties prior to trial.

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

…

…

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

005266

005266

DATED this 7th day of October, 2021.

AHMAD, ZAVITSANOS, ANAIPAKOS, ALAVI & MENSING P.C.

By: */s/ Jason S. McManis*

P. Kevin Leyendecker (admitted pro hac vice)
John Zavitsanos (admitted pro hac vice)
Joseph Y. Ahmad (admitted pro hac vice)
Jason S. McManis (admitted pro hac vice)
Michael Killingsworth (admitted pro hac vice)
Louis Liao (admitted pro hac vice)
Jane L. Robinson (admitted pro hac vice)
Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, P.C
1221 McKinney Street, Suite 2500
Houston, Texas 77010
kleyendecker@azalaw.com
joeahmad@azalaw.com
jzavitsanos@azalaw.com
jmcmanis@azalaw.com
mkillingsworth@azalaw.com
lliao@azalaw.com
jrobinson@azalaw.com

Pat Lundvall (NSBN 3761)
Kristen T. Gallagher (NSBN 9561)
Amanda M. Perach (NSBN 12399)
McDonald Carano LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
plundvall@mcdonaldcarano.com
kgallagher@mcdonaldcarano.com
aperach@mcdonaldcarano.com

Justin C. Fineberg (admitted pro hac vice)
Rachel H. LeBlanc (admitted pro hac vice)
Lash & Goldberg LLP
Weston Corporate Centre I
2500 Weston Road Suite 220
Fort Lauderdale, Florida 33331
jfineberg@lashgoldberg.com
rleblanc@lashgoldberg.com

Attorneys for Plaintiffs

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

005267
005267

DECLARATION OF JASON MCMANIS IN SUPPORT OF PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE EVIDENCE, TESTIMONY AND/OR ARGUMENT REGARDING THE FACT THAT PLAINTIFFS HAVE DISMISSED CERTAIN CLAIMS AND PARTIES ON ORDER SHORTENING TIME

I, Jason S. McManis, declare as follows:

1. I am an attorney licensed to practice law in the State of Texas, and am an associate in the law firm of Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing P.C., counsel for Plaintiffs Fremont Emergency Services (Mandavia), Ltd.; Team Physicians of Nevada-Mandavia, P.C.; Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine (collectively the "Health Care Providers") in the above-captioned case currently pending in the Eighth Judicial District Court, Clark County, Nevada, Case No. A-19-792978-B.

2. This Declaration is made of my own personal knowledge except where stated on information and belief, and as to those matters, I believe them to be true, and I am competent to testify thereto if called upon to do so.

3. This Declaration is made in support of Plaintiffs' Motion in Limine to Exclude Evidence, Testimony, and/or Argument Regarding the Fact that Plaintiffs Have Dismissed Certain Claims and Parties.

4. On October 6, 2021, pursuant to EDCR 2.47, in a good faith effort to avoid a dispute at trial, I met with counsel for defendants UnitedHealthcare Insurance Company; United HealthCare Services, Inc.; UMR, Inc.; Sierra Health and Life Insurance Co., Inc.; and Health Plan of Nevada, Inc.'s (collectively, "United") stating my clients' position that any evidence, testimony and/or argument regarding the fact that the Health Care Providers have dismissed certain claims and parties prior to trial was inadmissible under the Nevada Rules of Evidence, and that such evidence should be excluded at trial. In response, United's counsel confirmed that it would not agree to exclude this evidence.

5. Counsel for United agreed that they were unopposed to the filing of this motion after the motion in limine deadline.

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

005268

6. Accordingly, a dispute concerning the admissibility of evidence regarding discussion regarding the fact that the Health Care Providers have dismissed certain claims and parties prior to trial has arisen, necessitating the filing of the instant motion.

7. The Health Care Providers seek the relief requested herein prior to commencement of the firm civil jury trial that is scheduled to begin on October 25, 2021. In the interests of judicial economy, the Health Care Providers respectfully request that this Motion be heard at the same time as the other pending motions in limine, on October 14, 2021, with United's opposition being due at any point before that October 14, 2021 hearing..

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

Executed: October 7, 2021 *<u>/s/ Jason S. McManis</u>*
Jason S. McManis

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

005269

005269

ORDER SHORTENING TIME

It appearing to the satisfaction of the Court and good cause appearing therefor, IT IS HEREBY ORDERED that the hearing on **PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE EVIDENCE, TESTIMONY AND/OR ARGUMENT REGARDING THE FACT THAT PLAINTIFFS HAVE DISMISSED CERTAIN CLAIMS AND PARTIES ON ORDER SHORTENING TIME** shall be shortened and heard before the above-entitled Court in Department XXVII on the 14th day of October, 2021 at 1:30 ~~a.m.~~ / p.m., or as soon thereafter as counsel may be heard; that Defendants' opposition, if any, shall be electronically filed and served on or before the 12th day of October, 2021.

October 7, 2021

Dated this 8th day of October, 2021

Nancy L Allf

TW

6C9 B05 D0E2 6444
Nancy Allf
District Court Judge

Submitted by:

AHMAD, ZAVITSANOS, ANAIPAKOS, ALAVI & MENSING P.C.

/s/ Jason S. McManis
P. Kevin Leyendecker (admitted pro hac vice)
John Zavitsanos (admitted pro hac vice)
Joseph Y. Ahmad (admitted pro hac vice)
Jason S. McManis (admitted pro hac vice)
Michael Killingsworth (admitted pro hac vice)
Louis Liao (admitted pro hac vice)
Jane L. Robinson (admitted pro hac vice)
Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, P.C
1221 McKinney Street, Suite 2500
Houston, Texas 77010
kleyendecker@azalaw.com
joeahmad@azalaw.com
jzavitsanos@azalaw.com
jmcmanis@azalaw.com
mkillingsworth@azalaw.com
lliao@azalaw.com
jrobinson@azalaw.com

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

005270

005270

POINTS AND AUTHORITIES

I. INTRODUCTION

The premise of this motion is narrow and straightforward. "Testimony regarding claims that have been resolved or parties that have been dismissed is irrelevant."[1] *Lyons v. Leonhardt*, No., 05-cv-400, 2013 WL 3807996, at *8 (D. Nev. July 19, 2013). As the Court is aware, United consented to the Health Care Providers request for leave to file a Second Amended Complaint and dismiss certain claims without prejudice. Now, after consenting, United seeks to use the dismissed claims as a hammer with which to batter the Health Care Providers' witnesses at trial. But these "previously dismissed claims, and evidence thereof, are not of consequence in determining the action, and [should] be excluded." *Gorbea v. Verizon New York, Inc.*, No. 11-cv-3758, 2014 WL 2916964, at *2 (E.D.N.Y. June 25, 2014). Allowing this evidence or argument would only serve to confuse and mislead the jury, who is not familiar with litigation strategy or the process of preparing to take a complex case to trial. The Court should grant this motion and preclude United from presenting argument, evidence, or testimony regarding the fact that the Health Care Providers have dismissed certain claims and parties prior to trial.

II. PROCEDURAL BACKGROUND

On October 3, 2021, counsel for United agreed that they would not oppose the Health Care Providers' in a request to amend their complaint and dismiss certain claims and defendants without prejudice. The Health Care Providers filed their motion for leave the next day, October 4, 2021. Later that same day, United filed a Notice of Non-Opposition to Plaintiffs' Motion for Leave to File Second Amended Complaint. At a hearing on October 6, 2021, the Court granted the Health Care Providers' motion. That evening, the Health Care Providers learned that United intends to present argument, evidence, and testimony to the jury regarding the fact that the Health Care Providers have dismissed certain claims and parties prior to trial.

[1] United's effort to introduce this evidence is an end run around United's agreement to exclude reference to pretrial rulings. The Second Amended Complaint is a direct result of a pretrial ruling granting the Health Care Providers leave to amend (without opposition from United). In effect, United wants to selectively reference pretrial matters for its benefit, while precluding the Health Care Providers from referencing pretrial matters to United's detriment.

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

005271
005271
005271

III. ARGUMENT[2]

In effect, by seeking to argue the fact that the Health Care Providers dropped certain claims in their Second Amended Complaint, United is seeking to walk back its agreement that the claims removed from the Second Amended Complaint would be considered dismissed "without prejudice." There is no legal basis for doing so.

"Testimony regarding claims that have been resolved or parties that have been dismissed is irrelevant." *Lyons v. Leonhardt*, 2013 WL 3807996, at *8. Numerous courts have reached the same conclusion. *See, e.g.*, *L-3 Comm'ns Corp. v. OSI Sys., Inc.*, No. 02-CV-9114, 2006 WL 988143, at *2 (S.D.N.Y. Apr. 13, 2006) ("Any contested document or proposed testimony that relates to a dismissed or withdrawn claim is either irrelevant or unduly confusing or cumulative."); *L-3 Comm'ns Corp. v. OSI Sys., Inc.*, No. 02-CV-9114, 2006 WL 988143, at *2 (S.D.N.Y. Apr. 13, 2006); *Gorbea v. Verizon New York, Inc.*, 2014 WL 2916964, at *2 ("[P]reviously dismissed claims, and evidence thereof, are not of consequence in determining the action, and [should] be excluded."); *Guangyu Wang v. Nevada Sys. of Higher Educ.*, No. 18-cv-75, 2020 WL 9072845, at *2 (D. Nev. Mar. 30, 2020) ("The Court agrees with Defendants that evidence relating to Plaintiff's first four—previously dismissed—claims should be excluded because such claims are irrelevant.").

The fact that the Health Care Providers removed claims and defendants from the case is not probative of any fact "that is of consequence to the determination of the action." NRS 48.015 (defining relevant evidence). There is no claim for which liability or damages will be determined

[2] As the Court is well aware, motions in limine are the proper vehicle to exclude inadmissible or inappropriate evidence in advance of trial. EDCR 2.47. A motion in limine allows the trial court to rule prior to trial on the admissibility and relevance of evidence that parties may later offer at trial. *See Luce v. United States*, 469 U.S. 38, 41 n. 4 (1984). This "decision to admit or exclude testimony is within the sound discretion of the trial court and will not be disturbed unless it is manifestly wrong." *Hall v. SSF, Inc.*, 112 Nev. 1384, 1392-93, 930 P.2d 94, 99 (1996). Motions in limine take two forms: (1) to procure a definitive ruling on the admissibility of evidence at the outset of trial; or (2) to prevent counsel for the opposing party from mentioning potentially inadmissible evidence in his opening statement, or eliciting such evidence from a witness until a definitive ruling on the admissibility or non-admissibility of the evidence can be made, outside the presence of the jury. *Born v. Eisenman*, 114 Nev. 854, 962 P.2d 1227 (1998); NRS 47.080; *see* Wright and Graham, Federal Practice and Procedure: Evidence §5037.

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

005272
005272
005272

by whether the Health Care Providers dropped claims or why. This evidence is plainly irrelevant and therefore inadmissible. NRS 48.015; NRS 48.025.

On top of that, if such evidence were admitted, its probative value (none) would be substantially outweighed by the danger of unfair prejudice, of confusion, and of misleading the jury. The average juror has no idea about the ins and outs of litigation strategy or choosing particular claims to take to trial—if such evidence were admitted, however, it would necessarily require the Health Care Providers to respond by explaining those concepts to the jurors. This irrelevant ministry would lead to undue delay and waste of time.[3] Accordingly, the evidence should also be excluded under NRS 48.035.

To be clear, the Health Care Providers do not seek to exclude factual statements made in prior pleadings or discovery responses. Both sides' prior admissions in their pleadings and discovery responses, regardless of amendment or supplementation, remain fair game. But the fact that the Health Care Providers amended their complaint prior to trial to dismiss certain claims and defendants without prejudice has no place at trial. The Court should grant this motion and preclude United from introducing any argument, evidence, or testimony regarding the fact that the Health Care Providers have dismissed certain claims and parties prior to trial.

IV. CONCLUSION

Based on the foregoing, the Health Care Providers respectfully request that the Court enter an order in limine precluding United from introducing any argument, evidence, or testimony regarding the fact that the Health Care Providers have dismissed certain claims and parties prior to trial.

DATED this 7th day of October, 2021.

AHMAD, ZAVITSANOS, ANAIPAKOS,
ALAVI & MENSING P.C.

By: */s/ Jason S. McManis*
P. Kevin Leyendecker (admitted pro hac vice)
John Zavitsanos (admitted pro hac vice)
Joseph Y. Ahmad (admitted pro hac vice)

[3] On top of that, allowing United to present this evidence would effectively force the Health Care Providers to waive privilege over their trial strategy in order to explain it to the jury.

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

005273
005273
005273

Jason S. McManis (admitted pro hac vice)
Michael Killingsworth (admitted pro hac vice)
Louis Liao (admitted pro hac vice)
Jane L. Robinson (admitted pro hac vice)
Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, P.C
1221 McKinney Street, Suite 2500
Houston, Texas 77010
kleyendecker@azalaw.com
joeahmad@azalaw.com
jzavitsanos@azalaw.com
jmcmanis@azalaw.com
mkillingsworth@azalaw.com
lliao@azalaw.com
jrobinson@azalaw.com

Pat Lundvall (NSBN 3761)
Kristen T. Gallagher (NSBN 9561)
Amanda M. Perach (NSBN 12399)
McDonald Carano LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
plundvall@mcdonaldcarano.com
kgallagher@mcdonaldcarano.com
aperach@mcdonaldcarano.com

Justin C. Fineberg (admitted pro hac vice)
Rachel H. LeBlanc (admitted pro hac vice)
Lash & Goldberg LLP
Weston Corporate Centre I
2500 Weston Road Suite 220
Fort Lauderdale, Florida 33331
jfineberg@lashgoldberg.com
rleblanc@lashgoldberg.com

Attorneys for Plaintiffs

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

005274

005274

005274

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 7th day of October, 2021, I caused a true and correct copy of the foregoing **PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE EVIDENCE, TESTIMONY AND/OR ARGUMENT REGARDING THE FACT THAT PLAINTIFFS HAVE DISMISSED CERTAIN CLAIMS AND PARTIES ON ORDER SHORTENING TIME** to be served via this Court's Electronic Filing system in the above-captioned case, upon the following:

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Brittany M. Llewellyn, Esq.
Phillip N. Smith, Jr., Esq.
Marjan Hajimirzaee, Esq.
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
lroberts@wwhgd.com
cbalkenbush@wwhgd.com
bllewellyn@wwhgd.com
psmithjr@wwhgd.com
mhajimirzaee@wwhgd.com

Dimitri Portnoi, Esq. (admitted *pro hac vice*)
Jason A. Orr, Esq. (admitted *pro hac vice*)
Adam G. Levine, Esq. (admitted *pro hac vice*)
Hannah Dunham, Esq. (admitted *pro hac vice*)
Nadia L. Farjood, Esq. (admitted *pro hac vice*)
O'MELVENY & MYERS LLP
400 South Hope Street, 18th Floor
Los Angeles, CA 90071-2899
dportnoi@omm.com
jorr@omm.com
alevine@omm.com
hdunham@omm.com
nfarjood@omm.com

K. Lee Blalack, II, Esq. (admitted *pro hac vice*)
Jeffrey E. Gordon, Esq. (admitted *pro hac vice*)
Kevin D. Feder, Esq. (admitted *pro hac vice*)
Jason Yan, Esq. (*pro hac vice* pending)
O'Melveny & Myers LLP
1625 I Street, N.W.
Washington, D.C. 20006
Telephone: (202) 383-5374
lblalack@omm.com
jgordon@omm.com
kfeder@omm.com
Attorneys for Defendants

Paul J. Wooten, Esq. (admitted *pro hac vice*)
Amanda Genovese, Esq. (admitted *pro hac vice*)
Philip E. Legendy, Esq. (admitted *pro hac vice*)
O'Melveny & Myers LLP
Times Square Tower,
Seven Times Square,
New York, New York 10036
pwooten@omm.com
agenovese@omm.com
plegendy@omm.com

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Abraham G. Smith, Esq.
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
dpolsenberg@lewisroca.com
jhenriod@lewisroca.com
asmith@lewisroca.com

Attorneys for Defendants

Judge David Wall, Special Master
Attention: Mara Satterthwaite & Michelle Samaniego
JAMS
3800 Howard Hughes Parkway, 11th Floor
Las Vegas, NV 89123
msatterthwaite@jamsadr.com
msamaniego@jamsadr.com

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

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

005275
005275

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Fremont Emergency Services (Mandavia) Ltd, Plaintiff(s) vs. United Healthcare Insurance Company, Defendant(s)	CASE NO: A-19-792978-B DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 10/8/2021

Michael Infuso	minfuso@greeneinfusolaw.com
Frances Ritchie	fritchie@greeneinfusolaw.com
Greene Infuso, LLP	filing@greeneinfusolaw.com
Audra Bonney	abonney@wwhgd.com
Cindy Bowman	cbowman@wwhgd.com
D. Lee Roberts	lroberts@wwhgd.com
Raiza Anne Torrenueva	rtorrenueva@wwhgd.com
Pat Lundvall	plundvall@mcdonaldcarano.com
Kristen Gallagher	kgallagher@mcdonaldcarano.com
Amanda Perach	aperach@mcdonaldcarano.com

005276

005276

Beau Nelson	bnelson@mcdonaldcarano.com
Marianne Carter	mcarter@mcdonaldcarano.com
Karen Surowiec	ksurowiec@mcdonaldcarano.com
Colby Balkenbush	cbalkenbush@wwhgd.com
Daniel Polsenberg	dpolsenberg@lewisroca.com
Joel Henriod	jhenriod@lewisroca.com
Abraham Smith	asmith@lewisroca.com
Brittany Llewellyn	bllewellyn@wwhgd.com
Phillip Smith, Jr.	psmithjr@wwhgd.com
Flor Gonzalez-Pacheco	FGonzalez-Pacheco@wwhgd.com
Kelly Gaez	kgaez@wwhgd.com
Justin Fineberg	jfineberg@lashgoldberg.com
Yvette Yzquierdo	yyzquierdo@lashgoldberg.com
Virginia Boies	vboies@lashgoldberg.com
Martin Goldberg	mgoldberg@lashgoldberg.com
Rachel LeBlanc	rleblanc@lashgoldberg.com
Jonathan Feuer	jfeuer@lashgoldberg.com
Jason Orr	jorr@omm.com
Adam Levine	alevine@omm.com
Jeff Gordon	jgordon@omm.com
Hannah Dunham	hdunham@omm.com
Paul Wooten	pwooten@omm.com
Dimitri Portnoi	dportnoi@omm.com

005277
005277
005277

Lee Blalack	lblalack@omm.com
David Ruffner	druffner@lashgoldberg.com
Amanda Genovese	agenovese@omm.com
Kimberly Kirn	kkirn@mcdonaldcarano.com
Emily Pincow	epincow@lashgoldberg.com
Cheryl Johnston	Cheryl.Johnston@phelps.com
Ashley Singrossi	asingrossi@lashgoldberg.com
Jonathan Siegelaub	jsiegelaub@lashgoldberg.com
Marjan Hajimirzaee	mhajimirzaee@wwhgd.com
Jessica Helm	jhelm@lewisroca.com
Cynthia Kelley	ckelley@lewisroca.com
Emily Kapolnai	ekapolnai@lewisroca.com
Maxine Rosenberg	Mrosenberg@wwhgd.com
Mara Satterthwaite	msatterthwaite@jamsadr.com
Tara Teegarden	tteegarden@mcdonaldcarano.com
Errol KIng	errol.King@phelps.com
Philip Legendy	plegendy@omm.com
Andrew Eveleth	aeveleth@omm.com
Kevin Feder	kfeder@omm.com
Nadia Farjood	nfarjood@omm.com
Jason Yan	jyan@omm.com
AZAlaw AZAlaw	TMH010@azalaw.com
Beau Nelson	beaunelsonmc@gmail.com

005278
005278
005278

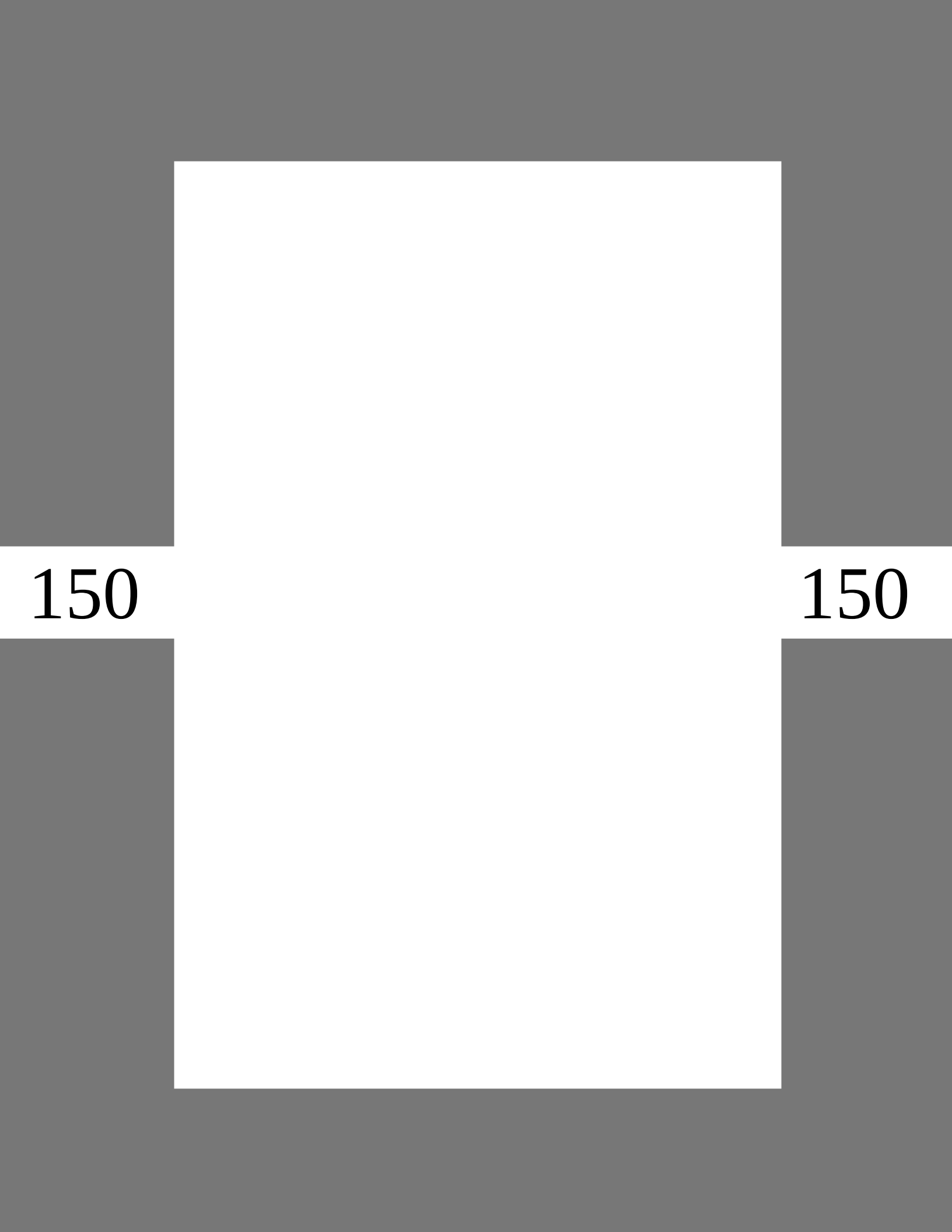
Marianne Carter mcarter.mc2021@gmail.com

Dexter Pagdilao dpagdilao@omm.com

Hollis Donovan hdonovan@omm.com

005279

005279


150
150

ANAC

D. Lee Roberts, Jr., Esq.
Nevada Bar No. 8877
lroberts@wwhgd.com
Colby L. Balkenbush, Esq.
Nevada Bar No. 13066
cbalkenbush@wwhgd.com
Brittany M. Llewellyn, Esq.
Nevada Bar No. 13527
bllewellyn@wwhgd.com
Phillip N. Smith, Jr., Esq.
Nevada Bar No. 10233
psmithjr@wwhgd.com
Marjan Hajimirzaee, Esq.
Nevada Bar No. 11984
mhajimirzaee@wwhgd.com
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Daniel F. Polsenberg, Esq.
Nevada Bar No. 2376
dpolsenberg@lewisroca.com
Joel D. Henriod, Esq.
Nevada Bar No. 8492
jhenriod@lewisroca.com
Abraham G. Smith, Esq.
Nevada Bar No. 13250
asmith@lewisroca.com
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996
Telephone: (702) 949-8200

Attorneys for Defendants

Dimitri D. Portnoi, Esq.(*Admitted Pro Hac Vice*)
dportnoi@omm.com
Jason A. Orr, Esq. (*Admitted Pro Hac Vice)*
jorr@omm.com
Adam G. Levine, Esq. *(Admitted Pro Hac Vice)*
alevine@omm.com
Hannah Dunham, Esq. *(Admitted Pro Hac Vice)*
hdunham@omm.com
Nadia L. Farjood, Esq. (*Admitted Pro Hac Vice*)
nfarjood@omm.com
O'Melveny & Myers LLP
400 S. Hope St., 18th Floor
Los Angeles, CA 90071
Telephone: (213) 430-6000

K. Lee Blalack, II, Esq.(*Admitted Pro Hac Vice)*
lblalack@omm.com
Jeffrey E. Gordon, Esq. *(Admitted Pro Hac Vice)*
jgordon@omm.com
Kevin D. Feder, Esq. *(Admitted Pro Hac Vice)*
kfeder@omm.com
O'Melveny & Myers LLP
1625 Eye St. NW
Washington, DC 20006
Telephone: (202) 383-5374

Paul J. Wooten, Esq. *(Admitted Pro Hac Vice)*
pwooten@omm.com
Amanda L. Genovese *(Admitted Pro Hac Vice)*
agenovese@omm.com
Philip E. Legendy *(Admitted Pro Hac Vice)*
plegendy@omm.com
O'Melveny & Myers LLP
Times Square Tower
Seven Times Square
New York, NY 10036
Telephone: (212) 728-5857

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

DEFENDANTS' ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT

005280

WEINBERG WHEELER HUDGINS GUNN & DIAL
005280

UNITED HEALTHCARE INSURANCE COMPANY, a Connecticut corporation; UNITED HEALTH CARE SERVICES INC., dba UNITEDHEALTHCARE, a Minnesota corporation; UMR, INC., dba UNITED MEDICAL RESOURCES, a Delaware corporation; SIERRA HEALTH AND LIFE INSURANCE COMPANY, INC., a Nevada corporation; HEALTH PLAN OF NEVADA, INC., a Nevada corporation,

Defendants.

ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT

Defendants UnitedHealthcare Insurance Company ("UHIC"), United HealthCare Services, Inc. ("UHS"), UMR, Inc. ("UMR"), Sierra Health and Life Insurance Co., Inc. ("SHL"), and Health Plan of Nevada, Inc. ("HPN") (collectively "Defendants"), by and through their attorneys of the law firms of Weinberg Wheeler Hudgins Gunn & Dial, LLC and O'Melveny and Myers LLP, hereby deny each and every allegation of the TeamHealth Plaintiffs' Second Amended Complaint, and the whole thereof, to the extent it purports to make claims against Defendants, and deny that they are liable for any of the happenings or events mentioned in the Second Amended Complaint. Defendants further deny that TeamHealth Plaintiffs were damaged or will sustain damages, in the sum alleged or in any other sum, or at all, by reason of any act or omission, fault, negligence, or conduct on the part of or attributable to Defendants, or any of Defendants' agents, or anyone acting on Defendants' behalf. To the extent the TeamHealth Plaintiffs have included material that is inappropriate under Rules 8 and 12(f) of the Nevada Rules of Civil Procedure, any such material should be stricken.

Defendants assert the following affirmative defenses to the TeamHealth Plaintiffs' Second Amended Complaint:

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

TeamHealth Plaintiffs' Second Amended Complaint fails to state a claim upon which relief can be granted.

/ / /

SECOND AFFIRMATIVE DEFENSE

Some or all of the disputed claims are preempted by the Employee Retirement Income Security Act of 1974 ("ERISA") because the members in question obtained their health care coverage through employer-based health plans. These claims relate to payments under plans governed by ERISA, and all such claims are both conflict and completely preempted by ERISA.

THIRD AFFIRMATIVE DEFENSE

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

FOURTH AFFIRMATIVE DEFENSE

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

FIFTH AFFIRMATIVE DEFENSE

The terms and conditions of the applicable health plans stand as a bar to some or all of the relief requested.

SIXTH AFFIRMATIVE DEFENSE

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

SEVENTH AFFIRMATIVE DEFENSE

Some or all of the claims asserted are subject to rates set by TeamHealth Plaintiffs' participation in networks offered by MultiPlan, Inc.

EIGHTH AFFIRMATIVE DEFENSE

To the extent that TeamHealth Plaintiffs have any right to receive plan benefits, that right is subject to basic preconditions and prerequisites that have not been established, such as that the patients are members of health plans insured or administered by Defendants on the date of

service, that the coordination of benefits has been applied, that the services were medically necessary, that an emergency medical condition was present, that TeamHealth Plaintiffs timely submitted correctly coded claims and supplied any requested documentation, and/or that any necessary authorizations were obtained.

NINTH AFFIRMATIVE DEFENSE

TeamHealth Plaintiffs lack standing to pursue claims against Defendants.

TENTH AFFIRMATIVE DEFENSE

Some or all of the Defendants did not function as an insurer or issuer of the health plan coverage alleged to be at issue, and TeamHealth Plaintiffs therefore lack standing as to any such Defendant.

ELEVENTH AFFIRMATIVE DEFENSE

TeamHealth Plaintiffs failed to timely correct known defects with respect to some or all of the claims asserted.

TWELFTH AFFIRMATIVE DEFENSE

TeamHealth Plaintiffs' claims are barred, in whole or in part, to the extent that they seek to unjustly enrich TeamHealth Plaintiffs by allowing them to retain funds in excess of any amounts due for covered services under plans insured or administered by Defendants.

THIRTEENTH AFFIRMATIVE DEFENSE

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

FOURTEENTH AFFIRMATIVE DEFENSE

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

FIFTEENTH AFFIRMATIVE DEFENSE

TeamHealth Plaintiffs' claims are barred in whole or in part by the failure to exhaust mandatory administrative and/or contractual remedies.

/ / /

SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

TeamHealth Plaintiffs' claims are barred in whole or in part, by the equitable doctrines of waiver, estoppel, and/or laches.

EIGHTEENTH AFFIRMATIVE DEFENSE

TeamHealth Plaintiffs' claims are barred, in whole or in part, to the extent TeamHealth Plaintiffs failed to sue the appropriate entity.

NINETEENTH AFFIRMATIVE DEFENSE

TeamHealth Plaintiffs' claims are barred, in whole or in part, by the doctrines of accord and satisfaction and/or release.

TWENTIETH AFFIRMATIVE DEFENSE

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

/ / /

TWENTY-SECOND AFFIRMATIVE DEFENSE

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

TWENTY-THIRD AFFIRMATIVE DEFENSE

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

TWENTY-FOURTH AFFIRMATIVE DEFENSE

All of TeamHealth Plaintiffs' causes of action, both legal and equitable, are barred by the doctrine of unclean hands. TeamHealth Plaintiffs wrongfully and fraudulently billed Plaintiff Fremont Emergency Services' reimbursement claims under Plaintiff Ruby Crest Emergency Medicine's tax identification number in order to deceive the Defendants into paying a higher rate of reimbursement for Fremont Emergency Services' claims.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

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

WHEREFORE, having fully responded to the allegations of the Second Amended Complaint, Defendants pray:

1. That TeamHealth Plaintiffs' Second Amended Complaint be dismissed with prejudice;
2. That TeamHealth Plaintiffs take nothing by their Second Amended Complaint;
3. That Defendants be discharged from this action without liability;

4. That the Court award to Defendants all of their costs and attorneys' fees in defending this action; and

5. That the Court award to Defendants such other and further relief as the Court deems just and proper.

Dated this 8th day of October, 2021.

/s/ Colby L. Balkenbush

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Brittany M. Llewellyn, Esq.
Phillip N. Smith, Jr., Esq.
Marjan Hajimirzaee, Esq.
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd.
Suite 400
Las Vegas, Nevada 89118

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Abraham G. Smith, Esq.
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169-5996
Telephone: (702) 949-8200

Attorneys for Defendants

Dimitri D. Portnoi, Esq. (*Pro Hac Vice*)
Jason A. Orr, Esq. (*Pro Hac Vice)*
Adam G. Levine, Esq. *(Pro Hac Vice)*
Hannah Dunham, Esq. *(Pro Hac Vice)*
Nadia L. Farjood, Esq. (*Pro Hac Vice*)
O'Melveny & Myers LLP
400 S. Hope St., 18th Floor
Los Angeles, CA 90071

K. Lee Blalack, II, Esq.(*Pro Hac Vice)*
Jeffrey E. Gordon, Esq. *(Pro Hac Vice)*
Kevin D. Feder, Esq. *(Pro Hac Vice)*
O'Melveny & Myers LLP
1625 Eye St. N.W.
Washington, DC 20006

Paul J. Wooten, Esq. *(Pro Hac Vice)*
Amanda L. Genovese *(Pro Hac Vice)*
Philip E. Legendy *(Pro Hac Vice)*
O'Melveny & Myers LLP
Times Square Tower, Seven Times Square
New York, NY 10036

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day October, 2021, a true and correct copy of the foregoing **DEFENDANTS' ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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

Judge David Wall, Special Master
Attention:
Mara Satterthwaite & Michelle Samaniego
JAMS
3800 Howard Hughes Parkway, 11th Floor
Las Vegas, NV 89123
msatterthwaite@jamsadr.com
msamaniego@jamsadr.com

Justin C. Fineberg
Martin B. Goldberg
Rachel H. LeBlanc
Jonathan E. Feuer
Jonathan E. Siegelaub
David R. Ruffner
Lash & Goldberg LLP
Weston Corporate Centre I
2500 Weston Road Suite 220
Fort Lauderdale, Florida 33331
jfineberg@lashgoldberg.com
mgoldberg@lashgoldberg.com
rleblanc@lashgoldberg.com
jfeuer@lashgoldberg.com
jsiegelaub@lashgoldberg.com
druffner@lashgoldberg.com

Attorneys for Plaintiffs

/s/ _Kelly L. Pierce
An employee of WEINBERG, WHEELER, HUDGINS GUNN & DIAL, LLC

005287

151

OBJ

D. Lee Roberts, Jr., Esq.
Nevada Bar No. 8877
lroberts@wwhgd.com
Colby L. Balkenbush, Esq.
Nevada Bar No. 13066
cbalkenbush@wwhgd.com
Brittany M. Llewellyn, Esq.
Nevada Bar No. 13527
bllewellyn@wwhgd.com
Phillip N. Smith, Jr., Esq.
Nevada Bar No. 10233
psmithjr@wwhgd.com
Marjan Hajimirzaee, Esq.
Nevada Bar No. 11984
mhajimirzaee@wwhgd.com
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Daniel F. Polsenberg, Esq.
Nevada Bar No. 2376
dpolsenberg@lewisroca.com
Joel D. Henriod, Esq.
Nevada Bar No. 8492
jhenriod@lewisroca.com
Abraham G. Smith, Esq.
Nevada Bar No. 13250
asmith@lewisroca.com
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996
Telephone: (702) 949-8200

Attorneys for Defendants

Dimitri D. Portnoi, Esq.(*Admitted Pro Hac Vice*)
dportnoi@omm.com
Jason A. Orr, Esq. (*Admitted Pro Hac Vice)*
jorr@omm.com
Adam G. Levine, Esq. *(Admitted Pro Hac Vice)*
alevine@omm.com
Hannah Dunham, Esq. *(Admitted Pro Hac Vice)*
hdunham@omm.com
Nadia L. Farjood, Esq. (*Admitted Pro Hac Vice*)
nfarjood@omm.com
O'Melveny & Myers LLP
400 S. Hope St., 18th Floor
Los Angeles, CA 90071
Telephone: (213) 430-6000

K. Lee Blalack, II, Esq.(*Admitted Pro Hac Vice)*
lblalack@omm.com
Jeffrey E. Gordon, Esq. *(Admitted Pro Hac Vice)*
jgordon@omm.com
Kevin D. Feder, Esq. *(Admitted Pro Hac Vice)*
kfeder@omm.com
Jason Yan, Esq. *(Admitted Pro Hac Vice)*
jyan@omm.com
O'Melveny & Myers LLP
1625 Eye St. NW
Washington, DC 20006
Telephone: (202) 383-5374

Paul J. Wooten, Esq. *(Admitted Pro Hac Vice)*
pwooten@omm.com
Amanda L. Genovese *(Admitted Pro Hac Vice)*
agenovese@omm.com
Philip E. Legendy *(Admitted Pro Hac Vice)*
plegendy@omm.com
O'Melveny & Myers LLP
Times Square Tower, Seven Times Square
New York, NY 10036
Telephone: (212) 728-5857

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

DEFENDANTS' OBJECTIONS TO PLAINTIFFS' NRCP 16.1(a)(3) PRETRIAL DISCLOSURES

005288

WEINBERG WHEELER HUDGINS GUNN & DIAL
005288

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.

Defendants UnitedHealthcare Insurance Company, United HealthCare Services, Inc., UMR, Inc., Sierra Health and Life Insurance Co., Inc., and Health Plan of Nevada, Inc. (collectively "Defendants"), by and through their attorneys of the law firm of Weinberg Wheeler Hudgins Gunn & Dial, LLC, hereby submit the following objections to Plaintiffs' Pretrial Disclosures Pursuant to NRCP 16.1(a)(3). Defendants reserve the right to withdraw any objection herein, and any objections herein are without prejudice to Defendants offering any such evidence at trial.

005289

1. Witnesses

Plaintiffs do not properly designate which witnesses Plaintiffs expect to present at trial, thereby making it impossible to evaluate which witnesses are truly at issue. Plaintiffs also purport to have served trial subpoenas on numerous out-of-state witnesses not subject to the subpoena power of this Court who may not be compelled to appear at trial. Plaintiffs thus have no proper basis to expect to present live testimony of such witnesses at trial.

In addition, Defendants object to the appearance and testimony of any witness listed in Plaintiffs' disclosures whose appearance or testimony would violate a stipulation of the parties and/or Orders of this Court in the instant matter. Defendants further object to the appearance and testimony of any witness listed in Plaintiffs' disclosures whose appearance or testimony is excluded, limited and/or stricken as a result of this Court's motion in limine rulings. For the reasons set forth in the various motions in limine filed by Defendants in this matter, Defendants

005289

specifically object to part or all of the testimony from Dr. Joseph Crane, Dr. Robert Frantz, David Leathers, Scott Phillips or any witness offered to testify on issues Defendants seek to exclude through their motions in limine. Defendants also reserve the right to object to the appearance and testimony of any witness listed in Plaintiffs' disclosures on any basis at the time of trial.

2. Witnesses to be presented by Deposition

Defendants object to the presentation of deposition testimony of any witnesses listed in Plaintiffs' disclosures to the extent the presentation of such deposition testimony is inconsistent with NRCP 32. Defendants further object to the presentation of deposition testimony of any witness listed in Plaintiffs' disclosures where presentation of such testimony would violate a stipulation of the parties and/or Orders of this Court in the instant matter. Defendants further object to the presentation of deposition testimony of any witness listed in Plaintiffs' disclosures where such testimony is excluded, limited and/or stricken as a result of this Court's motion in limine rulings. Defendants reserve the right to object to the presentation of deposition testimony of any witness listed in Plaintiffs' disclosures on any basis at the time of trial.

Pursuant to the parties' agreement, Defendants' objections to Plaintiffs' specific deposition designations will be served on Plaintiffs on or before October 20, 2021, or on a different date as agreed to by the parties. Defendants object to any deposition designations from witnesses not listed in Plaintiffs' NRCP 16.1(a)(3)(A)(ii) section of their Plaintiffs' disclosures.

3. Exhibits

The parties have met and conferred and agreed to the following exhibit list and exhibit objection exchange schedule:

- October 7: Parties exchange exhibit lists (in excel format)
- October 11: Parties exchange the exhibits on each other's exhibit lists, including summary exhibits.
- October 14: Parties exchange objections to exhibits on the opposing parties' list.
- October 18: Parties meet and confer about those objections.
- October 20: Parties submit exhibit lists and objections to exhibits of opposing

party to the Court.

Pursuant to the agreed upon schedule, objections to documents listed on Plaintiffs' exhibit list are not due to be exchanged until October 14. For present purposes, Defendants object to any document untimely identified by Plaintiffs. Defendants reserve the right to object to and/or seek to exclude any document, on any basis, at the time of trial.

4. Summary Exhibits

Pursuant to the parties' agreement, Defendants objections to Plaintiffs' summary exhibits will be served on Plaintiffs on or before October 14, 2021, or on a different date as agreed to by the parties.

5. Demonstrative Exhibits

Defendants reserve the right to object to demonstrative exhibits that Plaintiffs may offer at trial. Defendants further object to any information, documentation, animation, or depiction that does not present evidence relevant to this action, or is inaccurate or without foundation, or that presents evidence that is the subject of a pending motion in limine before the Court, and/or that has been precluded either by Court order or by stipulation of the parties.

Defendants reserve the right to supplement their objections to Plaintiffs' Pretrial Disclosure Statement.

Dated this 8th day of October, 2021.

/s/Colby Balkenbush

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Brittany M. Llewellyn, Esq.
Phillip N. Smith, Jr., Esq.
Marjan Hajimirzaee, Esq.
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd.
Suite 400
Las Vegas, Nevada 89118

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Abraham G. Smith, Esq.
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway

Dimitri D. Portnoi, Esq.(*Pro Hac Vice*)
Jason A. Orr, Esq. (*Pro Hac Vice)*
Adam G. Levine, Esq. *(Pro Hac Vice)*
Hannah Dunham, Esq. *(Pro Hac Vice)*
Nadia L. Farjood, Esq. (*Pro Hac Vice*)
O'Melveny & Myers LLP
400 S. Hope St., 18th Floor
Los Angeles, CA 90071

K. Lee Blalack, II, Esq.(*Pro Hac Vice)*
Jeffrey E. Gordon, Esq. *(Pro Hac Vice)*
Kevin D. Feder, Esq. *(Pro Hac Vice)*
Jason Yan, Esq. *(Pro Hac Vice)*
O'Melveny & Myers LLP
1625 Eye St. NW
Washington, DC 20006

Suite 600
Las Vegas, Nevada 89169-5996
Telephone: (702) 949-8200

Attorneys for Defendants

Paul J. Wooten, Esq. *(Pro Hac Vice)*
Amanda L. Genovese *(Pro Hac Vice)*
Philip E. Legendy *(Pro Hac Vice)*
O'Melveny & Myers LLP
Times Square Tower, Seven Times Square
New York, NY 10036

005292

005292

005292

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of October, 2021, a true and correct copy of the foregoing **DEFENDANTS' OBJECTIONS TO PLAINTIFFS' NRCP 16.1(a)(3) PRETRIAL DISCLOSURES** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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

Judge David Wall, Special Master
Attention:
Mara Satterthwaite & Michelle Samaniego
JAMS
3800 Howard Hughes Parkway, 11th Floor
Las Vegas, NV 89123
msatterthwaite@jamsadr.com
msamaniego@jamsadr.com

Justin C. Fineberg
Martin B. Goldberg
Rachel H. LeBlanc
Jonathan E. Feuer
Jonathan E. Siegelaub
David R. Ruffner
Emily L. Pincow
Ashley Singrossi
Lash & Goldberg LLP
Weston Corporate Centre I
2500 Weston Road Suite 220
Fort Lauderdale, Florida 33331
jfineberg@lashgoldberg.com
mgoldberg@lashgoldberg.com
rleblanc@lashgoldberg.com
jfeuer@lashgoldberg.com
jsiegelaub@lashgoldberg.com
druffner@lashgoldberg.com
epincow@lashgoldberg.com
asingrassi@lashgoldberg.com

Joseph Y. Ahmad
John Zavitsanos
Jason S. McManis
Michael Killingsworth
Louis Liao
Jane L. Robinson
Patrick K. Leyendecker
Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, P.C
1221 McKinney Street, Suite 2500
Houston, Texas 77010

005293

005293

005293

WEINBERG WHEELER HUDGINS GUNN & DIAL

joeahmad@azalaw.com
jzavitsanos@azalaw.com
jmcmanis@azalaw.com
mkillingsworth@azalaw.com
lliao@azalaw.com
jrobinson@azalaw.com
kleyendecker@azalaw.com

Attorneys for Plaintiffs

/s/ Kelly L. Pierce
An employee of WEINBERG, WHEELER, HUDGINS GUNN & DIAL, LLC

005294

005294

152

Electronically Filed
10/8/2021 4:55 PM
Steven D. Grierson
CLERK OF THE COURT

OBJ

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

Justin C. Fineberg (admitted *pro hac vice*)
Rachel H. LeBlanc (admitted *pro hac vice*)
Jonathan E. Siegelaub (admitted *pro hac vice*)
Lash & Goldberg LLP
Weston Corporate Centre I
2500 Weston Road Suite 220
Fort Lauderdale, Florida 33331
Telephone: (954) 384-2500
jfineberg@lashgoldberg.com
rleblanc@lashgoldberg.com
jsiegelaub@lashgoldberg.com

Joseph Y. Ahmad (admitted *pro hac vice*)
John Zavitsanos (admitted *pro hac vice*)
Jason S. McManis (admitted *pro hac vice*)
Michael Killingsworth (admitted *pro hac vice*)
Louis Liao (admitted *pro hac vice)*
Jane L. Robinson (admitted *pro hac vice*)
P. Kevin Leyendecker (admitted *pro hac vice*)
Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, P.C.
1221 McKinney Street, Suite 2500
Houston, Texas 77010
Telephone: 713-600-4901
joeahmad@azalaw.com
jzavitsanos@azalaw.com
jmcmanis@azalaw.com
mkillingsworth@azalaw.com
lliao@azalaw.com
jrobinson@azalaw.com
kleyendecker@azalaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

UNITED HEALTHCARE INSURANCE COMPANY, a Connecticut corporation; UNITED HEALTH CARE SERVICES INC., dba UNITEDHEALTHCARE, a Minnesota corporation; UMR, INC., dba UNITED MEDICAL RESOURCES, a Delaware corporation; SIERRA HEALTH AND LIFE INSURANCE COMPANY, INC., a Nevada corporation; HEALTH PLAN OF NEVADA, INC., a Nevada corporation,

Defendants.

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

PLAINTIFFS' OBJECTIONS TO DEFENDANTS' PRETRIAL DISCLOSURES

005295

Pursuant to NRCP 16.1(a)(3)(B)(ii), 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 make the following objections to Defendants' pretrial disclosures:

I. Witnesses

The Health Care Providers object to Defendants' disclosure of 39 witnesses they may present at trial, in addition to 16 witnesses they expect to present at trial, as an overly broad and insufficient disclosure, because it fails to provide adequate notice of the actual witnesses Defendants intend to present at trial.

The Health Care Providers also object to the following witnesses, specifically:

1. **Rena Harris.** The Health Care Providers object to Defendants' disclosure of Ms. Harris as a witness Defendants expect to present at trial because Ms. Harris's personal knowledge relates solely to issues that have been ruled irrelevant by the Court and should be excluded from trial.

2. **Charles Sims.** The Health Care Providers object to Defendants' disclosure of Mr. Sims as a witness Defendants expect to present at trial because Defendants provided no contact information for Mr. Sims.

3. **Greg Dosedel.** The Health Care Providers object to Defendants' disclosure of Mr. Dosedel as a witness Defendants expect to present at trial because Defendants provided no contact information for Mr. Dosedel.

The Health Care Providers reserve the right to object to any witness called during the trial.

II. Witnesses to be Presented by Deposition

The Health Care Providers object to Defendants' disclosure of the following witnesses as witnesses whose deposition testimony Defendants may present at trial because Defendants did not provide deposition designations:

- Lisa Dealy
- Rebecca Paradise

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

005296

- Leslie Hare
- John Haben
- Angie Nierman
- Jacy Jefferson
- Dan Rosenthal
- Jolene Bradley
- Greg Dosedel
- Kevin Ericson
- Marty Millerliele
- Jason Schoonover
- David Yerich
- Scott Ziemer
- Vince Zuccarrello
- Paul Bevilacqua
- Brad Blevins
- Kent Bristow
- Dan Collard
- Rhone D'Errico
- Robert Frantz (disclosed twice by Defendants)
- Jason Heuberger
- Scott Scherr
- Wade Sears
- Jennifer Shrader
- Miles Snowden
- Lisa Zima
- Scott Phillips
- David Leathers
- Joseph Crane

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

005297

005297

The Health Care Providers further object to any effort by Defendants to call a witness by deposition who is available to call live or who will testify live at trial.

The Health Care Providers additionally object to Defendants' disclosure of Dan Schumacher as a witness who Defendants may call by deposition because Mr. Schumacher is within Defendants' control and Defendants have provided no explanation for his unavailability to testify live at trial. Should Defendants wish to call Mr. Schumacher, Defendants should call him live at trial.

The Health Care Providers will provide specific objections to the deposition testimony designated by Defendants in accordance with the agreement between the parties on dates for exchange of counter-designations and objections.

III. NRCP 16.1(a)(3)(A)(iii) Exhibits

In accordance with NRCP 16.1(a)(3)(C), attached hereto as **Exhibit 1** is a spreadsheet identifying each exhibit the Health Care Providers expect to offer at trial or, if the need arises, may offer at trial. The Health Care Providers reserve the right to use as a trial exhibit any document disclosed or exchanged during discovery. The Health Care Providers further reserve the right to use any exhibits disclosed by any other party in this action, and to use any exhibit for purposes of rebuttal or impeachment.

The Health Care Providers anticipate using demonstrative exhibits in addition to evidentiary exhibits identified in Exhibit 1.

The Health Care Providers reserve the right to amend and supplement this disclosure in advance of trial.

IV. Demonstratives

The Health Care Providers reserve the right to object to any demonstrative exhibits once shown to the Health Care Providers.

V. Other Objections

Pursuant to agreement of the parties, the Health Care Providers will submit objections to exhibits, counter-designations and objections to designated deposition testimony, and objections

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

005298

to summaries on October 20. The Health Care Providers reserve the right to amend and supplement this disclosure in advance of trial.

DATED this 8th day of October, 2021.

AHMAD, ZAVITSANOS, ANAIPAKOS, ALAVI & MENSING P.C.

By: */s/ Jason S. McManis*

P. Kevin Leyendecker (admitted pro hac vice)
John Zavitsanos (admitted pro hac vice)
Joseph Y. Ahmad (admitted pro hac vice)
Jason S. McManis (admitted pro hac vice)
Michael Killingsworth (admitted pro hac vice)
Louis Liao (admitted pro hac vice)
Jane L. Robinson (admitted pro hac vice)
1221 McKinney Street, Suite 2500
Houston, Texas 77010
kleyendecker@azalaw.com
joeahmad@azalaw.com
jzavitsanos@azalaw.com
jmcmanis@azalaw.com
mkkillingsworth@azalaw.com
lliao@azalaw.com
jrobinson@azalaw.com

Pat Lundvall (NSBN 3761)
Kristen T. Gallagher (NSBN 9561)
Amanda M. Perach (NSBN 12399)
McDonald Carano LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
plundvall@mcdonaldcarano.com
kgallagher@mcdonaldcarano.com
aperach@mcdonaldcarano.com

Justin C. Fineberg (admitted pro hac vice)
Rachel H. LeBlanc (admitted pro hac vice)
Lash & Goldberg LLP
Weston Corporate Centre I
2500 Weston Road Suite 220
Fort Lauderdale, Florida 33331
jfineberg@lashgoldberg.com
rleblanc@lashgoldberg.com

Attorneys for Plaintiffs

005299
005299

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 8th day of October, 2021, I caused a true and correct copy of the foregoing **PLAINTIFFS' OBJECTIONS TO DEFENDANTS' PRETRIAL DISCLOSURES** to be served via this Court's Electronic Filing system in the above-captioned case, upon the following:

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Brittany M. Llewellyn, Esq.
Phillip N. Smith, Jr., Esq.
Marjan Hajimirzaee, Esq.
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
lroberts@wwhgd.com
cbalkenbush@wwhgd.com
bllewellyn@wwhgd.com
psmithjr@wwhgd.com
mhajimirzaee@wwhgd.com

Paul J. Wooten, Esq. (admitted *pro hac vice*)
Amanda Genovese, Esq. (admitted *pro hac vice*)
Philip E. Legendy, Esq. (admitted *pro hac vice*)
O'Melveny & Myers LLP
Times Square Tower,
Seven Times Square,
New York, New York 10036
pwooten@omm.com
agenovese@omm.com
plegendy@omm.com

Dimitri Portnoi, Esq. (admitted *pro hac vice*)
Jason A. Orr, Esq. (admitted *pro hac vice*)
Adam G. Levine, Esq. (admitted *pro hac vice*)
Hannah Dunham, Esq. (admitted *pro hac vice*)
Nadia L. Farjood, Esq. (admitted *pro hac vice*)
O'MELVENY & MYERS LLP
400 South Hope Street, 18th Floor
Los Angeles, CA 90071-2899
dportnoi@omm.com
jorr@omm.com
alevine@omm.com
hdunham@omm.com
nfarjood@omm.com

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Abraham G. Smith, Esq.
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
dpolsenberg@lewisroca.com
jhenriod@lewisroca.com
asmith@lewisroca.com

Attorneys for Defendants

K. Lee Blalack, II, Esq. (admitted *pro hac vice*)
Jeffrey E. Gordon, Esq. (admitted *pro hac vice*)
Kevin D. Feder, Esq. (admitted *pro hac vice*)
Jason Yan, Esq. (*pro hac vice* pending)
O'Melveny & Myers LLP
1625 I Street, N.W.
Washington, D.C. 20006
Telephone: (202) 383-5374
lblalack@omm.com
jgordon@omm.com
kfeder@omm.com

Attorneys for Defendants

Judge David Wall, Special Master
Attention: Mara Satterthwaite & Michelle Samaniego
JAMS
3800 Howard Hughes Parkway, 11th Floor
Las Vegas, NV 89123
msatterthwaite@jamsadr.com
msamaniego@jamsadr.com

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

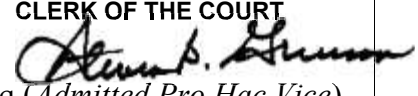
005300

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

005300

153

Electronically Filed
10/12/2021 9:06 PM
Steven D. Grierson
CLERK OF THE COURT



OML
D. Lee Roberts, Jr., Esq.
Nevada Bar No. 8877
lroberts@wwhgd.com
Colby L. Balkenbush, Esq.
Nevada Bar No. 13066
cbalkenbush@wwhgd.com
Brittany M. Llewellyn, Esq.
Nevada Bar No. 13527
bllewellyn@wwhgd.com
Phillip N. Smith, Jr., Esq.
Nevada Bar No. 10233
psmithjr@wwhgd.com
Marjan Hajimirzaee, Esq.
Nevada Bar No. 11984
mhajimirzaee@wwhgd.com
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Daniel F. Polsenberg, Esq.
Nevada Bar No. 2376
dpolsenberg@lewisroca.com
Joel D. Henriod, Esq.
Nevada Bar No. 8492
jhenriod@lewisroca.com
Abraham G. Smith, Esq.
Nevada Bar No. 13250
asmith@lewisroca.com
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996
Telephone: (702) 949-8200

Attorneys for Defendants

Dimitri D. Portnoi, Esq.(*Admitted Pro Hac Vice*)
dportnoi@omm.com
Jason A. Orr, Esq. (*Admitted Pro Hac Vice)*
jorr@omm.com
Adam G. Levine, Esq. *(Admitted Pro Hac Vice)*
alevine@omm.com
Hannah Dunham, Esq. *(Admitted Pro Hac Vice)*
hdunham@omm.com
Nadia L. Farjood, Esq. (*Admitted Pro Hac Vice*)
nfarjood@omm.com
O'Melveny & Myers LLP
400 S. Hope St., 18th Floor
Los Angeles, CA 90071
Telephone: (213) 430-6000

K. Lee Blalack, II, Esq.(*Admitted Pro Hac Vice)*
lblalack@omm.com
Jeffrey E. Gordon, Esq. *(Admitted Pro Hac Vice)*
jgordon@omm.com
Kevin D. Feder, Esq. *(Admitted Pro Hac Vice)*
kfeder@omm.com
Jason Yan, Esq. *(Admitted Pro Hac Vice)*
jyan@omm.com
O'Melveny & Myers LLP
1625 Eye St. NW
Washington, DC 20006
Telephone: (202) 383-5374

Paul J. Wooten, Esq. *(Admitted Pro Hac Vice)*
pwooten@omm.com
Amanda L. Genovese *(Admitted Pro Hac Vice)*
agenovese@omm.com
Philip E. Legendy *(Admitted Pro Hac Vice)*
plegendy@omm.com
O'Melveny & Myers LLP
Times Square Tower
Seven Times Square
New York, NY 10036
Telephone: (212) 728-5857

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,

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

OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE EVIDENCE, TESTIMONY AND/OR ARGUMENT REGARDING THE FACT THAT PLAINTIFFS HAVE DISMISSED CERTAIN CLAIMS AND PARTIES ON ORDER SHORTENING TIME

005301

WEINBERG WHEELER HUDGINS GUNN & DIAL
005301

vs.

UNITED HEALTHCARE INSURANCE COMPANY, a Connecticut corporation; UNITED HEALTH CARE SERVICES INC., dba UNITEDHEALTHCARE, a Minnesota corporation; UMR, INC., dba UNITED MEDICAL RESOURCES, a Delaware corporation; SIERRA HEALTH AND LIFE INSURANCE COMPANY, INC., a Nevada corporation; HEALTH PLAN OF NEVADA, INC., a Nevada corporation,

Defendants.

Defendants UnitedHealthcare Insurance Company ("UHIC"), United HealthCare Services, Inc. ("UHS"), UMR, Inc. ("UMR"), Sierra Health and Life Insurance Co., Inc. ("SHL"), and Health Plan of Nevada, Inc. ("HPN") (collectively "Defendants" or "United Healthcare") hereby submit the following Opposition to Plaintiffs' Fremont Emergency Services (Mandavia), Ltd., Team Physicians of Nevada-Mandavia, P.C., and Crum, Stefanko and Jones, Ltd. d/b/a Ruby Crest Emergency Medicine (collectively, the "TeamHealth Plaintiffs") Motion in Limine to Exclude Evidence, Testimony and/or Argument Regarding the Fact that Plaintiffs Have Dismissed Certain Claims and Parties on Order Shortening Time. This Opposition is made and based upon the following Memorandum of Points and Authorities, the pleadings and papers on file herein, and any argument presented at the time of hearing on this matter.

I. INTRODUCTION

Despite the TeamHealth Plaintiffs' reference to unpublished caselaw from other jurisdictions, the fact remains that ***Nevada allows references to prior pleadings***. *Las Vegas Network, Inc. v. B. Shawcross & Assocs.*, 80 Nev. 405, 407–08, 395 P.2d 520, 521 (1964) ("…it is noted that the great weight of authority holds that an admission against the interest of a pleader contained in a prior abandoned pleading may be received in evidence") (permitting statements in prior abandoned pleading to be introduced as evidence).

All of the statements made in the TeamHealth Plaintiffs' First Amended Complaint ("FAC) are judicial admissions that may be used against them if they now take contradictory positions at trial. Plaintiffs' Motion is a transparent attempt to shield their witnesses from being

005302

005302

impeached with the FAC. Defendants must be permitted to use Plaintiffs' statements in prior pleadings against Plaintiffs at trial. Nevada law is clear that a prior pleading may be referenced at trial. Plaintiffs' Motion should be denied.

II. LEGAL ARGUMENT

A. Statements made in prior abandoned pleadings are admissible.

Nevada allows references to prior pleadings. *Las Vegas Network, Inc. v. B. Shawcross & Assocs.*, 80 Nev. 405, 407–08, 395 P.2d 520, 521 (1964) ("…it is noted that the great weight of authority holds that an admission against the interest of a pleader contained in a prior abandoned pleading may be received in evidence). Indeed, the TeamHealth Plaintiffs admit the same. *See* Mot. at 9 ("To be clear, the Health Care Providers do not seek to exclude factual statements made in prior pleadings or discovery responses. ***Both sides' prior admissions in their pleadings and discovery responses, regardless of amendment or supplementation, remain fair game***.") (emphasis added). Instead, TeamHealth Plaintiffs wish to make an arbitrary distinction in what they believe are "factual statements" and the fact that they have omitted those "factual statements" in the operative pleading. But this is not in accord with the law allowing the admission of prior pleadings.

Indeed, when a party amends its interrogatory responses, deposition testimony, or other litigation related documents, it is no secret that the opposing party may comment on the amendment or change. Pleadings are no different.[1] *See State Farm Mut. Auto. Ins. Co. v. Porter*, 186 F.2d 834, 840 (9th Cir. 1950) ("a statement in a superseded pleading…has the same force and effect as any other admission of a party and constitutes substantive evidence").

The TeamHealth Plaintiffs' Motion relies solely on unpublished cases from other jurisdictions in an attempt to bolster an argument that is not grounded in Nevada law. Mot. at 8:6-17. For example, in both of the Nevada *federal court* cases cited by the TeamHealth Plaintiffs the courts did ***not*** exclude reference to a prior pleading. In *Lyons v. Leonhardt*, the

[1] TeamHealth Plaintiffs' argument that referencing its prior judicial admissions is an end run to reference pretrial rulings is similarly misplaced. *See* Mot. at n.1. A party's pleading is not the same as a court order.

court excluded ***testimony*** related to parties whose claims had already been resolved in an Americans with Disabilities Act discrimination case, ***not the prior pleading naming those parties***. *Lyons v. Leonhardt*, No. 3:05-CV-400 JCM VPC, 2013 WL 3807996, at *8 (D. Nev. July 19, 2013). This makes sense; of course, evidence of discrimination related to a person not involved in a lawsuit is separate from discrimination faced by the plaintiff. Similarly, in *Guangyu Wang v. Nevada Sys. of Higher Educ*., the Court only excluded "***evidence*** relating to Plaintiff's first four previously dismissed claims." *Guangyu Wang v. Nevada Sys. of Higher Educ*., No. 318CV00075MMDCBC, 2020 WL 9072845, at *2 (D. Nev. Mar. 30, 2020) (emphasis added). The Court did not exclude Plaintiffs' prior statements in the superseded pleading or preclude reference to the prior pleading.

Here, for example, had Plaintiff Team Physicians of Nevada-Mandavia, P.C ("Team Physicians") settled all its claims with Defendants, evidence related to reimbursement rates to Team Physicians, specifically, would likely be irrelevant to the claims pursued by the remaining TeamHealth Plaintiffs. But that is not what happened. The changes in position by the TeamHealth Plaintiffs and concessions made in the pleadings themselves are directly relevant to the remaining claims. *Infra*, Section I(C). The prior pleadings, and references thereto, are thus admissible under Nevada law.

B. The TeamHealth Plaintiffs' prior judicial admissions are relevant to defending the current claims.

The TeamHealth Plaintiffs contend that their prior judicial admissions are not relevant because they are not facts "that [are] of consequence to the determination of the action." Mot. at 8. There are many reasons that TeamHealth Plaintiffs' FAC and action in dropping half of it on the eve trial of trial is relevant. The TeamHealth Plaintiffs previously made bold allegations about the national negotiations between United and TeamHealth, threats allegedly made during those negotiations and various communications TeamHealth Plaintiffs had with representatives of Data iSight. Defendants do not know what Plaintiffs' witnesses will say about these dropped allegations or what arguments Plaintiffs' counsel intends to make at trial. Nevada law gives

005304

005304

005304

Defendants the right to use TeamHealth Plaintiffs' prior statements in the FAC and changes in position against them where appropriate at trial.

C. The TeamHealth Plaintiffs' prior judicial admissions are not likely to confuse a jury. Defendants Do Not Intend to Introduce Evidence of Motion Work or the Court's Pre-Trial Rulings

TeamHealth Plaintiffs lastly contend that their prior pleadings should be excluded because "[t]he average juror has no idea about the ins and outs of litigation strategy or choosing particular claims to take to trial" and that any time to explain "would lead to undue delay and waste of time." Mot. at 9:5-8. While relevant evidence is generally admissible, such evidence may be inadmissible "if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues[,] or of misleading the jury." NRS 48.025(1); NRS 48.035(1).

TeamHealth Plaintiffs misunderstand the issue at-hand. The Defendants agree that the Parties should generally not be permitted to discuss pre-trial rulings and motion work. The issue is whether TeamHealth Plaintiffs' statements in prior pleadings may be used against them at trial. The answer under Nevada law is unequivocally, YES. The jury will have no trouble understanding that Plaintiffs said one thing in the FAC and that their witnesses are now saying something contradictory on the stand. Therefore, Defendants request that TeamHealth Plaintiffs' Motion be denied.

/ / /

/ / /

/ / /

/ / /

III. CONCLUSION

Nevada allows references to statements by parties in prior pleadings. Indeed, the judicial admissions made in the TeamHealth Plaintiffs' prior pleadings are relevant to the claims that still stand and can be used to impeach contradictory testimony by the TeamHealth Plaintiffs at trial. Accordingly, based on the foregoing, this Court should deny the Motion.

Dated this 12th day of October, 2021.

/s/ Colby L. Balkenbush

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Brittany M. Llewellyn, Esq.
Phillip N. Smith, Jr., Esq.
Marjan Hajimirzaee, Esq.
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd.
Suite 400
Las Vegas, Nevada 89118

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Abraham G. Smith, Esq.
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169-5996
Telephone: (702) 949-8200

Attorneys for Defendants

Dimitri D. Portnoi, Esq.(*Pro Hac Vice*)
Jason A. Orr, Esq. (*Pro Hac Vice)*
Adam G. Levine, Esq. *(Pro Hac Vice)*
Hannah Dunham, Esq. *(Pro Hac Vice)*
Nadia L. Farjood, Esq. (*Pro Hac Vice*)
O'Melveny & Myers LLP
400 S. Hope St., 18th Floor
Los Angeles, CA 90071

K. Lee Blalack, II, Esq.(*Pro Hac Vice)*
Jeffrey E. Gordon, Esq. *(Pro Hac Vice)*
Kevin D. Feder, Esq. *(Pro Hac Vice)*
Jason Yan, Esq. *(Pro Hac Vice)*
O'Melveny & Myers LLP
1625 Eye St. NW
Washington, DC 20006

Paul J. Wooten, Esq. *(Pro Hac Vice)*
Amanda L. Genovese *(Pro Hac Vice)*
Philip E. Legendy *(Pro Hac Vice)*
O'Melveny & Myers LLP
Times Square Tower, Seven Times Square
New York, NY 10036

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of October, 2021, a true and correct copy of the foregoing **OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE TO EXCLUDE EVIDENCE, TESTIMONY AND/OR ARGUMENT REGARDING THE FACT THAT PLAINTIFFS HAVE DISMISSED CERTAIN CLAIMS AND PARTIES ON ORDER SHORTENING TIME** was electronically filed/served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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

Judge David Wall, Special Master
Attention:
Mara Satterthwaite & Michelle Samaniego
JAMS
3800 Howard Hughes Parkway, 11th Floor
Las Vegas, NV 89123
msatterthwaite@jamsadr.com
msamaniego@jamsadr.com

Justin C. Fineberg
Martin B. Goldberg
Rachel H. LeBlanc
Jonathan E. Feuer
Jonathan E. Siegelaub
David R. Ruffner
Emily L. Pincow
Ashley Singrossi
Lash & Goldberg LLP
Weston Corporate Centre I
2500 Weston Road Suite 220
Fort Lauderdale, Florida 33331
jfineberg@lashgoldberg.com
mgoldberg@lashgoldberg.com
rleblanc@lashgoldberg.com
jfeuer@lashgoldberg.com
jsiegelaub@lashgoldberg.com
druffner@lashgoldberg.com
epincow@lashgoldberg.com
asingrassi@lashgoldberg.com

Joseph Y. Ahmad
John Zavitsanos
Jason S. McManis
Michael Killingsworth
Louis Liao
Jane L. Robinson
Patrick K. Leyendecker

Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, P.C
1221 McKinney Street, Suite 2500
Houston, Texas 77010
joeahmad@azalaw.com
jzavitsanos@azalaw.com
jmcmanis@azalaw.com
mkillingsworth@azalaw.com
lliao@azalaw.com
jrobinson@azalaw.com
kleyendecker@azalaw.com

Attorneys for Plaintiffs

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

154

Electronically Filed
10/14/2021 4:37 PM
Steven D. Grierson
CLERK OF THE COURT

NEOJ

Pat □und□all □□S□□ □7□□□
□risten T□□allagher □□S□□ □□□□□
Amanda M□Perach □□S□□ □□□□□
McD□□A□D CARA□□ □□P
□□□□ □ est Sahara A□enue□Suite □□□
□as □egas□□e□ada □□□□
Telephone□7□□□□7□□□□□
plund□all□ mcdonaldcarano□com
□gallagher□ mcdonaldcarano□com
aperach□ mcdonaldcarano□com

7 □ustin C□□ine□erg □admitted *pro hac vice*□
Martin □□□old□erg □admitted *pro hac vice)*
Rachel □□□e□lanc □admitted *pro hac vice*□
□ash □ □old□erg □□P
□ □eston Corporate Centre □
□□□□ □eston Road Suite □□□
□□ □ort □auderdale□□lorida □□□□□
Telephone□□□□□□□□□□□□
□□ □fine□erg□ lashgold□erg□com
mgold□erg□ lashgold□erg□com
□□ rle□lanc□ lashgold□erg□com

□□ *Attorneys for Plaintiffs*

□joseph □□Ahmad □admitted *pro hac vice*□
□ohn □a□itsanos □admitted *pro hac vice*□
□ason S□McManis □admitted *pro hac vice*□
Michael □illings□orth □admitted *pro hac vice*□
□ouis □iao □admitted *pro hac vice)*
□ane □□Ro□inson □admitted *pro hac vice*□
P□□e□in □e□endec□er □admitted *pro hac vice*□
Ahmad□□a□itsanos□Anaipa□os□Ala□i □
Mensing□P□C□
□□□□Mc□inne□Street□Suite □□□□
□ouston□Te□as 77□□□
Telephone□7□□□□□□□□□□
□oeahmad□ a□ala□□com
□□a□itsanos□ a□ala□□com
□mcmanis□ a□ala□□com
m□illings□orth□ a□ala□□com
lliao□ a□ala□□com
□ro□inson□ a□ala□□com
□le□endec□er□ a□ala□□com

005309

DISTRICT COURT

CLARK COUNTY, NEVADA

005309

□R□M□□T □M□R□□□C□ S□R□□C□S
□MA□DA□□A□□□TD□□a □e□ada professional corporation; T□AM P□□S□C□A□S □□
□7 □□□ADA□MA□DA□□A□P□C□□a □e□ada professional corporation; CR□M□
□□ ST□□A□□□ A□D □□□□S□□TD□d□a R□□□ CR□ST □M□R□□□C□ M□D□C□□□□a
□□ □e□ada professional corporation□

Plaintiffs□

□□ □s□

□□ □□□T□D □□A□T□CAR□ □□S□RA□C□ C□MPA□□□a Connecticut corporation;
□□ □□□T□D □□A□T□ CAR□ S□R□□C□S □□C□□ d□a □□□T□D□□A□T□CAR□□a Minnesota
□□ corporation; □MR□□□C□□d□a □□□T□D M□D□CA□ R□S□□RC□S□a Dela□are
□□ corporation; S□□RRA □□A□T□ A□D □□□□ □□S□RA□C□ C□MPA□□□□□C□□a □e□ada
□□ corporation; □□A□T□ P□A□ □□□□□□ADA□ □□C□□a □e□ada corporation□

□7 Defendants

□□

Case □o□□ A□□□□7□□□7□□□
Dept□□o□□ □□□□□□

NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' MOTION FOR ORDER TO SHOW CAUSE WHY PLAINTIFFS SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATING PROTECTIVE ORDER

Please ta□e notice than an □rder Den□ing Defendants' Motion □or □rder To Sho□ Cause □ h□ Plaintiffs Should □ot □e □eld □n Contempt □or □iolating Protecti□e □rder □as entered on □cto□er □□□□□□□a cop□of □hich is attached hereto□

DAT□D this □□th da□of □cto□er□□□□□□

McD□□A□D CARA□□ □□P

□□□ */s/ Pat Lundvall*

Pat □und□all □□S□□ □7□□□
□risten T□□allagher □□S□□ □□□□□
Amanda M□Perach □□S□□ □□□□□□
□□□□□ est Sahara A□enue□Suite □□□□
□as □egas□□e□ada □□□□□
plund□all□ mcdonaldcarano□com
□gallagher□ mcdonaldcarano□com
aperach□ mcdonaldcarano□com

P□□e□in □e□endec□er □admitted pro hac □ice□
□ohn □a□itsanos □admitted pro hac □ice□
□oseph □□Ahmad □admitted pro hac □ice□
□ason S□McManis □admitted pro hac □ice□
Michael □illings□orth □admitted pro hac □ice□
□ouis □iao □admitted pro hac □ice□
□ane □□Ro□inson □admitted pro hac □ice□
Ahmad□□a□itsanos□Anaipa□os□Ala□i □ Mensing□P□C
□□□□Mc□inne□Street□Suite □□□□
□ouston□Te□as 77□□□
□le□endec□er□ a□ala□□com
□oeahmad□ a□ala□□com
□a□itsanos□ a□ala□□com
□mcmanis□ a□ala□□com
m□illings□orth□ a□ala□□com
lliao□ a□ala□□com
□ro□inson□ a□ala□□com

□ustin C□□ine□erg □admitted pro hac □ice□
Martin □□□old□erg □admitted pro hac □ice□
Rachel □□□e□lanc □admitted pro hac □ice□
□ash □ □old□erg □□P
□ eston Corporate Centre □
□□□□□ eston Road Suite □□□
□ort □auderdale□□lorida □□□□□
□fine□erg□ lashgold□erg□com
mgold□erg□ lashgold□erg□com
rle□lanc□ lashgold□erg□com

005310

Attorneys for Plaintiffs Fremont Emergency Services (Mandavia), Ltd., Team Physicians of Nevada-Mandavia, P.C. & Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine

005311

005311

005311

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP and that on this 10th day of October 2017, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' MOTION FOR ORDER TO SHOW CAUSE WHY PLAINTIFFS SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATING PROTECTIVE ORDER** to be served via this Court's electronic filing system in the above captioned case upon the following:

Debbie Roberts Esq.
Colby Balkenbush Esq.
Brittany Mangelli Esq.
Phillip Smith Esq.
Marjan Hajimirzaee Esq.
WOLF, RIFKIN, SHAPIRO, SCHULMAN & RABKIN, LLP
3773 Howard Hughes Parkway
Suite 590 South
Las Vegas, Nevada 89169
lroberts@wrslawyers.com
cbalkenbush@wrslawyers.com
bmangelli@wrslawyers.com
psmith@wrslawyers.com
mhajimirzaee@wrslawyers.com

Paul Wooten Esq. admitted *pro hac vice*
Amanda Genovese Esq. admitted *pro hac vice*
Philip Legendy Esq. admitted *pro hac vice*
HOLLAND & KNIGHT LLP
Times Square Tower
Seven Times Square
New York, New York 10036
pwooten@hklaw.com
agenovese@hklaw.com
plegendy@hklaw.com

Dimitri Portnoi Esq. admitted *pro hac vice*
Jason A. Orr Esq. admitted *pro hac vice*
Adam G. Levine Esq. admitted *pro hac vice*
Hannah Dunham Esq. admitted *pro hac vice*
Nadia L. Farjood Esq. admitted *pro hac vice*
O'MELVENY & MYERS LLP
400 South Hope Street, 18th Floor
Los Angeles, CA 90071
dportnoi@omm.com
jorr@omm.com
alevine@omm.com
hdunham@omm.com
nfarjood@omm.com

Daniel J. Polsenberg Esq.
Joel D. Henriod Esq.
Abraham G. Smith Esq.
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
dpolsenberg@lewisroca.com
jhenriod@lewisroca.com
asmith@lewisroca.com

Attorneys for Defendants

Gregg J. Clalacas Esq. admitted *pro hac vice*
Jeffrey J. Gordon Esq. admitted *pro hac vice*
Erin D. Feder Esq. admitted *pro hac vice*
Jason Yan Esq. *pro hac vice* pending
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
Telephone: (202) 383-5300
gclalacas@omm.com
jgordon@omm.com
ffeder@omm.com

Attorneys for Defendants

Judge David T. Wall, Special Master
Attention: Mara Satterthwaite & Michelle Samaniego
JAMS
3800 Howard Hughes Parkway, 11th Floor
Las Vegas, NV 89169
msatterthwaite@jamsadr.com
msamaniego@jamsadr.com

/s/ *Beau Nelson*
An employee of McDonald Carano LLP

005312

ORDD

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

Justin C. Fineberg (admitted *pro hac vice*)
Martin B. Goldberg (admitted *pro hac vice)*
Rachel H. LeBlanc (admitted *pro hac vice*)
Jonathan E. Feuer (admitted *pro hac vice*)
Jonathan E. Siegelaub (admitted *pro hac vice*)
David R. Ruffner (admitted *pro hac vice*)
Emily L. Pincow (admitted *pro hac vice*)
Ashley Singrossi (admitted *pro hac vice*)
Lash & Goldberg LLP
Weston Corporate Centre I
2500 Weston Road Suite 220
Fort Lauderdale, Florida 33331
Telephone: (954) 384-2500
jfineberg@lashgoldberg.com
mgoldberg@lashgoldberg.com
rleblanc@lashgoldberg.com
jfeuer@lashgoldberg.com
jsiegelaub@lashgoldberg.com
druffner@lashgoldberg.com
epincow@lashgoldberg.com
asingrossi@lashgoldberg.com

Joseph Y. Ahmad (admitted *pro hac vice*)
John Zavitsanos (admitted *pro hac vice*)
Jason S. McManis (admitted *pro hac vice*)
Michael Killingsworth (admitted *pro hac vice*)
Louis Liao (admitted *pro hac vice*)
Jane L. Robinson (admitted *pro hac vice*)
P. Kevin Leyendecker (admitted *pro hac vice*)
Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, P.C
1221 McKinney Street, Suite 2500
Houston, Texas 77010
Telephone: 713-600-4901
joeahmad@azalaw.com
jzavitsanos@azalaw.com
jmcmanis@azalaw.com
mkillingsworth@azalaw.com
lliao@azalaw.com
jrobinson@azalaw.com
kleyendecker@azalaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

FREMONT EMERGENCY SERVICES (MANDAVIA), LTD., a Nevada professional corporation; TEAM PHYSICIANS OF NEVADA-MANDAVIA, P.C., a Nevada professional corporation; CRUM, STEFANKO AND JONES, LTD. dba RUBY CREST EMERGENCY MEDICINE, a Nevada professional corporation, Plaintiffs, vs. UNITEDHEALTH GROUP, INC., a Delaware corporation; UNITED HEALTHCARE	Case No.: A-19-792978-B Dept. No.: XXVII **ORDER DENYING DEFENDANTS' MOTION FOR ORDER TO SHOW CAUSE WHY PLAINTIFFS SHOULD NOT BE HELD IN CONTEMPT FOR VIOLATING PROTECTIVE ORDER** Hearing Date: September 15, 2021 Hearing Time: 1:00 p.m.

005313

005313

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.

This matter came before the Court on September 15, 2021 on defendants UnitedHealth Group, Inc.; UnitedHealthcare Insurance Company; United HealthCare Services, Inc.; UMR, Inc.; Oxford Health Plans, Inc.; Sierra Health and Life Insurance Co., Inc.; Sierra Health-Care Options, Inc.; and Health Plan of Nevada, Inc.'s (collectively, "United") Motion for Order to Show Cause Why Plaintiffs Should Not Be Held in Contempt for Violating Protective Order ("Motion"). Colby L. Balkenbush, Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, Daniel F. Polsenberg and Abraham G. Smith, Lewis Roca Rothgerber Christie LLP, appeared on behalf of United. Pat Lundvall, Amanda M. Perach and Kristen T. Gallagher, McDonald Carano LLP, and John Zavitsanos, Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, P.C appeared on behalf of 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").

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

I. SUMMARY OF ORDER.

On July 29, 2021 the Court held a hearing on United's objection to Special Master Wall's report and recommendation no. 5 which recommended that AEO confidentiality should be stripped from the documents at issue. At that hearing the Court made a decision and issued an

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

005314

order ruling and adopting report and recommendation no. 5 as an order of the court pursuant to NRCP 53(f)(2). Under the negotiated terms of the parties' Stipulated Protective Order, in particular paragraph 9, the documents at issue lost any confidentiality designation as of July 29, 2021. United alleges that the Health Care Providers violated the parties' Stipulated Protective Order by releasing the documents before issuance of the written order, which was dated August 10, 2021, which memorialized the court's July 29, 20201 decision/ruling/order, and therefore should be found in contempt of court. The Court finds that it cannot make the findings that would be required to grant the Order to Show Cause and therefore denies United's Motion.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW.

To find a party in contempt, the court must first identify the order at issue, and then second, confirm that the order allegedly violated is clear and unambiguous before deciding if it has been breached without cause. *Div. of Child & Fam. services, Dept. Of Human Resources v. Eighth Jud. Dist.,* 120 Nev. 445, 92 P.3d 1239 (2004).

The order alleged to have been violated by the Health Care Providers is the parties' Stipulated Protective Order ("SPO"). That SPO is a written agreement which was heavily negotiated by the parties before submission to the court to enter as an order of the court.

On June 24, 2020 the SPO was filed as an order of the court. The SPO is a case management order dealing with how documents produced as relevant and discoverable during discovery but designated by the parties as confidential or AEO are to be treated during the course of discovery in this case.

During the course of discovery United produced certain documents to the Health Care Providers marked as AEO pursuant to paragraph 2(b) of SPO which afforded protection to documents fitting the following description:

> b. A Party may only designate as "ATTORNEYS' EYES ONLY" any document or portion of a document, and any other thing, material, testimony, or other information, that it reasonably and in good faith believes contains trade secrets or is of such highly competitive or commercially sensitive proprietary and non-public information that would significantly harm business advantages of the producing or designating Party or information concerning third-party pricing and/or reimbursement rates (i.e., reimbursement rates that providers other than Plaintiffs have charged or accepted and that insurers and payors other than the Defendants have paid for claims

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

005315

similar to those at issue in this case) and that disclosure of such information could reasonably be expected to be detrimental to the producing or designating Party's interests.

The documents at issue are referred to as the "Yale Study Documents" or "the documents at issue". The recent motion practice that led to the Court's July 29, 2021 Decision concerned the Yale Study documents.

On March 25, 2021 the Health Care Providers challenged the AEO designation given to the Yale Study Documents by United. On April 15, 2021 United filed a motion for protective order concerning those documents seeking to maintain AEO confidentiality protection, which the Health Care Providers opposed. On May 10, 2021 the motion for protective order was heard by Special Master David Wall, who issued Report and Recommendation No. 5 on May 17, 2021, finding that the documents at issue were not entitled to any confidentiality protection under the SPO. On June 1, 2021 United filed its objection to Report and Recommendation No. 5.

On July 29, 2021 the Court held a hearing on United's June 1, 2021 objection. After giving the parties a full opportunity to be heard and conducting a de novo review, the court issued its decision ruling and ordering that the documents at issue be stripped of any confidentiality protection under the SPO by adopting as its own the Special Master's Report and Recommendation No. 5.

United learned on August 2, 2021 that the Health Care Providers had disseminated the documents at issue. An article was published on August 10, 2021 describing some of the documents at issue. United filed it's Motion for Order to Show Cause on August 10, 2021, asserting that the Health Care Providers had violated the SPO.

Paragraph 9 of the SPO is the paragraph alleged to have been breached by the Health Care Providers. That paragraph provides:

> "The party designating information as Confidential Information bears the burden of establishing confidentiality. Nothing in this Protective Order shall constitute a waiver of any Party's right to object to the designation or non-designation of a particular document as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY." If a Party contends that any document has been erroneously or improperly designated or not designated Confidential or Attorneys' Eyes Only, the document at issue shall be treated

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

005316
005316

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

Under the SPO, the Health Care Providers had the right to rely upon the court's July 29, 2021 oral order ruling that the documents at issue were stripped of any confidentiality designation or protection.

NOW THEREFORE, **IT IS HEREBY ORDERED** that United's Motion for an Order to Show Cause Why Plaintiffs Should Not Be Held in Contempt is DENIED.

October 14, 2021

Dated this 14th day of October, 2021

Nancy L Allf

TW

5D9 385 060A B8FC
Nancy Allf
District Court Judge

Submitted by:

McDONALD CARANO LLP

/s/ *Pat Lundvall*
Pat Lundvall (NSBN 3761)
Kristen T. Gallagher (NSBN 9561)
Amanda M. Perach (NSBN 12399)
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
plundvall@mcdonaldcarano.com
kgallagher@mcdonaldcarano.com
aperach@mcdonaldcarano.com

Justin C. Fineberg
Martin B. Goldberg
Rachel H. LeBlanc

Approved as to form and content:

WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC

/s/
D. Lee Roberts, Jr.
Colby L. Balkenbush
Brittany M. Llewellyn
Phillip N. Smith, Jr.
Marjan Hajimirzaee
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
lroberts@wwhgd.com
cbalkenbush@wwhgd.com
bllewellyn@wwhgd.com

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

005317
005317

Jonathan E. Feuer
Jonathan E. Siegelaub
David R. Ruffner
LASH & GOLDBERG LLP
Weston Corporate Centre I
2500 Weston Road Suite 220
Fort Lauderdale, Florida 33331
Phone: (954) 384-2500
jfineberg@lashgoldberg.com
mgoldberg@lashgoldberg.com
rleblanc@lashgoldberg.com
jfeuer@lashgoldberg.com
druffner@lashgoldberg.com
(admitted *pro hac vice*)

Joseph Y. Ahmad (admitted *pro hac vice*)
John Zavitsanos (admitted *pro hac vice*)
Jason S. McManis (admitted *pro hac vice*)
Michael Killingsworth (admitted *pro hac vice*)
Louis Liao (admitted *pro hac vice*)
Jane L. Robinson (admitted *pro hac vice*)
P. Kevin Leyendecker (admitted *pro hac vice*)
Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, P.C
1221 McKinney Street, Suite 2500
Houston, Texas 77010
Telephone: 713-600-4901
joeahmad@azalaw.com
jzavitsanos@azalaw.com
jmcmanis@azalaw.com
mkillingsworth@azalaw.com
lliao@azalaw.com
jrobinson@azalaw.com
kleyendecker@azalaw.com

Attorneys for Plaintiffs

psmithjr@wwhgd.com
mhajimirzaee@wwhgd.com

Dimitri Portnoi
Jason A. Orr
Adam G. Levine
Hannah Dunham
Nadia L. Farjood
O'MELVENY & MYERS LLP
400 South Hope Street, 18th Floor
Los Angeles, CA 90071-2899
nfedder@omm.com
dportnoi@omm.com
jorr@omm.com
alevine@omm.com
hdunham@omm.com
nfarjood@omm.com
(admitted *pro hac vice*)

K. Lee Blalack, II
Jeffrey E. Gordon
Kevin D. Feder
Jason Yan
O'Melveny & Myers LLP
1625 I Street, N.W.
Washington, D.C. 20006
Telephone: (202) 383-5374
lblalack@omm.com
jgordon@omm.com
kfeder@omm.com
(admitted *pro hac vice*)

Paul J. Wooten
Amanda Genovese
Philip E. Legendy
O'Melveny & Myers LLP
Times Square Tower,
Seven Times Square,
New York, New York 10036
pwooten@omm.com
agenovese@omm.com
plegendy@omm.com
(admitted *pro hac vice*)
Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Abraham G. Smith, Esq.
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
dpolsenberg@lewisroca.com
jhenriod@lewisroca.com
asmith@lewisroca.com
Attorneys for Defendants

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

005318

005318

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Fremont Emergency Services (Mandavia) Ltd, Plaintiff(s) vs. United Healthcare Insurance Company, Defendant(s)	CASE NO: A-19-792978-B DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 10/14/2021

Michael Infuso	minfuso@greeneinfusolaw.com
Frances Ritchie	fritchie@greeneinfusolaw.com
Greene Infuso, LLP	filing@greeneinfusolaw.com
Audra Bonney	abonney@wwhgd.com
Cindy Bowman	cbowman@wwhgd.com
D. Lee Roberts	lroberts@wwhgd.com
Raiza Anne Torrenueva	rtorrenueva@wwhgd.com
Pat Lundvall	plundvall@mcdonaldcarano.com
Kristen Gallagher	kgallagher@mcdonaldcarano.com
Amanda Perach	aperach@mcdonaldcarano.com

005319

005319

Beau Nelson	bnelson@mcdonaldcarano.com
Marianne Carter	mcarter@mcdonaldcarano.com
Karen Surowiec	ksurowiec@mcdonaldcarano.com
Colby Balkenbush	cbalkenbush@wwhgd.com
Daniel Polsenberg	dpolsenberg@lewisroca.com
Joel Henriod	jhenriod@lewisroca.com
Abraham Smith	asmith@lewisroca.com
Brittany Llewellyn	bllewellyn@wwhgd.com
Phillip Smith, Jr.	psmithjr@wwhgd.com
Flor Gonzalez-Pacheco	FGonzalez-Pacheco@wwhgd.com
Kelly Gaez	kgaez@wwhgd.com
Justin Fineberg	jfineberg@lashgoldberg.com
Yvette Yzquierdo	yyzquierdo@lashgoldberg.com
Virginia Boies	vboies@lashgoldberg.com
Martin Goldberg	mgoldberg@lashgoldberg.com
Rachel LeBlanc	rleblanc@lashgoldberg.com
Jonathan Feuer	jfeuer@lashgoldberg.com
Jason Orr	jorr@omm.com
Adam Levine	alevine@omm.com
Jeff Gordon	jgordon@omm.com
Hannah Dunham	hdunham@omm.com
Paul Wooten	pwooten@omm.com
Dimitri Portnoi	dportnoi@omm.com

005320

005320

Lee Blalack	lblalack@omm.com
David Ruffner	druffner@lashgoldberg.com
Amanda Genovese	agenovese@omm.com
Kimberly Kirn	kkirn@mcdonaldcarano.com
Emily Pincow	epincow@lashgoldberg.com
Cheryl Johnston	Cheryl.Johnston@phelps.com
Ashley Singrossi	asingrossi@lashgoldberg.com
Jonathan Siegelaub	jsiegelaub@lashgoldberg.com
Marjan Hajimirzaee	mhajimirzaee@wwhgd.com
Jessica Helm	jhelm@lewisroca.com
Cynthia Kelley	ckelley@lewisroca.com
Emily Kapolnai	ekapolnai@lewisroca.com
Maxine Rosenberg	Mrosenberg@wwhgd.com
Mara Satterthwaite	msatterthwaite@jamsadr.com
Tara Teegarden	tteegarden@mcdonaldcarano.com
Errol KIng	errol.King@phelps.com
Philip Legendy	plegendy@omm.com
Andrew Eveleth	aeveleth@omm.com
Kevin Feder	kfeder@omm.com
Nadia Farjood	nfarjood@omm.com
Jason Yan	jyan@omm.com
AZAlaw AZAlaw	TMH010@azalaw.com
Beau Nelson	beaunelsonmc@gmail.com

005321

005321

Marianne Carter	mcarter.mc2021@gmail.com
Dexter Pagdilao	dpagdilao@omm.com
Hollis Donovan	hdonovan@omm.com

If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 10/15/2021

D Roberts	6385 S Rainbow BLVD STE 400 Las Vegas, NV, 89118
Patricia Lundvall	McDonald Carano Wilson LLP c/o: Pat Lundvall 2300 W. Sahara Avenue, Suite 1200 Las Vegas, NV, 89102

005322

005322

155

Electronically Filed
10/18/2021 9:34 PM
Steven D. Grierson
CLERK OF THE COURT

OPPM

D. Lee Roberts, Jr., Esq.
Nevada Bar No. 8877
lroberts@wwhgd.com
Colby L. Balkenbush, Esq.
Nevada Bar No. 13066
cbalkenbush@wwhgd.com
Brittany M. Llewellyn, Esq.
Nevada Bar No. 13527
bllewellyn@wwhgd.com
Phillip N. Smith, Jr., Esq.
Nevada Bar No. 10233
psmithjr@wwhgd.com
Marjan Hajimirzaee, Esq.
Nevada Bar No. 11984
mhajimirzaee@wwhgd.com
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Daniel F. Polsenberg, Esq.
Nevada Bar No. 2376
dpolsenberg@lewisroca.com
Joel D. Henriod, Esq.
Nevada Bar No. 8492
jhenriod@lewisroca.com
Abraham G. Smith, Esq.
Nevada Bar No. 13250
asmith@lewisroca.com
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996
Telephone: (702) 949-8200

Attorneys for Defendants

Dimitri D. Portnoi, Esq.(*Admitted Pro Hac Vice*)
dportnoi@omm.com
Jason A. Orr, Esq. (*Admitted Pro Hac Vice)*
jorr@omm.com
Adam G. Levine, Esq. *(Admitted Pro Hac Vice)*
alevine@omm.com
Hannah Dunham, Esq. *(Admitted Pro Hac Vice)*
hdunham@omm.com
Nadia L. Farjood, Esq. (*Admitted Pro Hac Vice*)
nfarjood@omm.com
O'Melveny & Myers LLP
400 S. Hope St., 18th Floor
Los Angeles, CA 90071
Telephone: (213) 430-6000

K. Lee Blalack, II, Esq.(*Admitted Pro Hac Vice)*
lblalack@omm.com
Jeffrey E. Gordon, Esq. *(Admitted Pro Hac Vice)*
jgordon@omm.com
Kevin D. Feder, Esq. *(Admitted Pro Hac Vice)*
kfeder@omm.com
Jason Yan, Esq. *(Admitted Pro Hac Vice)*
jyan@omm.com
O'Melveny & Myers LLP
1625 Eye St. NW
Washington, DC 20006
Telephone: (202) 383-5374

Paul J. Wooten, Esq. *(Admitted Pro Hac Vice)*
pwooten@omm.com
Amanda L. Genovese *(Admitted Pro Hac Vice)*
agenovese@omm.com
Philip E. Legendy *(Admitted Pro Hac Vice)*
plegendy@omm.com
O'Melveny & Myers LLP
Times Square Tower, Seven Times Square
New York, NY 10036
Telephone: (212) 728-5857

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL RECORD IN OPPOSITION TO ARGUMENTS RAISED FOR THE FIRST TIME IN DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT

005323

Case Number: A-19-792978-B

UNITED HEALTHCARE INSURANCE COMPANY, a Connecticut corporation; UNITED HEALTH CARE SERVICES INC., dba UNITEDHEALTHCARE, a Minnesota corporation; UMR, INC., dba UNITED MEDICAL RESOURCES, a Delaware corporation; SIERRA HEALTH AND LIFE INSURANCE COMPANY, INC., a Nevada corporation; HEALTH PLAN OF NEVADA, INC., a Nevada corporation,

Defendants.

I. INTRODUCTION

Apparently recognizing that their Opposition to Defendants'[1] Motion for Partial Summary Judgment was severely deficient in presenting evidence to defeat an adverse summary judgment ruling, TeamHealth Plaintiffs[2] now seek another bite at the apple with the benefit of hindsight. Defendants' argument with respect to punitive damages was based on a single premise:[3] evidence does not exist in this case to merit proceeding to trial on the punitive damages claim. TeamHealth Plaintiffs chance to rebut that contention was in their Opposition. They did so, presenting an argument that evidence existed to proceed on the oppression and fraud prongs; an argument they now believe was so thoroughly rebutted by Defendants' reply that they seek another shot as well as the last word. So TeamHealth Plaintiffs waited until nearly a week after seeing the Reply to their points to conjure up additional evidence in an attempt to beat summary judgment, but ask this Court to permit them doing so under the guise that a "supplement" is warranted.

[1] "Defendants" collectively refers to UnitedHealthcare Insurance Company, United HealthCare Services, Inc., UMR, Inc., Sierra Health and Life Insurance Co., Inc., and Health Plan of Nevada, Inc.

[2] "TeamHealth Plaintiffs" collectively refers to Fremont Emergency Services (Mandavia), Ltd., Team Physicians of Nevada-Mandavia, P.C., and Crum, Stefanko And Jones, Ltd. dba Ruby Crest Emergency Medicine

[3] Defendants' Motion for Partial Summary Judgment did initially address some additional issues. However, those issues were mooted by the Plaintiffs' filing of the Second Amended Complaint which dropped various claims and allegations.

To justify their conduct, TeamHealth Plaintiffs' argument is this: they should be permitted to respond to the arguments made by Defendants in Reply—the ones that did no more than directly refute the arguments made by TeamHealth Plaintiffs in their Opposition—because those arguments are "new." Similarly, TeamHealth Plaintiffs complain that the evidence set forth in Defendants' Reply—that was attached to show this Court that the evidence initially presented by the TeamHealth Plaintiffs in their Opposition does not say what they contended it said—is also "new." It goes without saying that a movant is entitled to fully respond to arguments made in an opposition. Those arguments are not considered "new."

TeamHealth Plaintiffs' Motion[4] is an obvious attempt to get the last word, afforded by rule to the movant, and make arguments that should have and could have been made in their Summary Judgment Opposition. The Motion should thus be denied, and this Court should proceed with its decision on Defendants' Motion for Partial Summary Judgment so that the parties do not proceed to trial on claims that may ultimately be dismissed by this Court. In the alternative, because the Motion shows that TeamHealth Plaintiffs intend to take new positions on the same issues in any supplemental response, Defendants should be permitted three days to file a Reply to the new substantive points raised by TeamHealth Plaintiffs in their supplemental brief. The October 19, 2021 hearing on Defendants' Partial Motion for Summary Judgement should be briefly continued to allow for this additional briefing.

II. RELEVANT FACTUAL AND PROCEDURAL HISTORY

This case has a firm trial setting exactly one week from today. On September 21, 2021, Defendants filed their Motion for Partial Summary Judgment in accordance with this Court's scheduling order. Defs.' Mot. for Partial Summ. J. (Sept. 21, 2021). TeamHealth Plaintiffs filed their Opposition on October 5th, two weeks later, and Defendants filed their Reply less than a week after that. Pls.' Opp. To Defs.' Mot. for Partial Summ. J. (October 5, 2021); Defs. Reply in Support of Mot. for Partial Summ. J. (October 11, 2021).

[4] Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment ("Motion")

Six days after Defendants filed their Reply—the same time frame that Defendants were given to substantively respond to the Opposition—TeamHealth Plaintiffs filed their Motion seeking to file a supplemental opposition. As explained below, this is not appropriate at any stage based on the arguments presented, and particularly here, where the parties are due to proceed to trial in less than a week.

III. LEGAL ARGUMENT

A. Supplemental Briefing is Not Warranted.

1. TeamHealth Plaintiffs Seek a Second Bite at the Apple.

The crux of Defendants' Motion for Partial Summary Judgment regarding the punitive damages claim is that TeamHealth Plaintiffs do not have the evidence sufficient to sustain an award in Nevada for punitive damages. Defs.' Mot. for Summ. J., at 4:27-5:1. Defendants satisfied this burden by "pointing to an absence of evidence to support the nonmoving party's claims." *Sutherland v. State Farm Mut. Auto. Ins. Co*., 133 Nev. 1080, published at 2017 WL 4996835, at *2 (Ct. App. Oct. 31, 2017) (citing *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev*., 123 Nev. 598, 602–03, 172 P.3d 131, 134 (2007)). TeamHealth Plaintiffs' Opposition was their chance to present evidence showing their basis for an award of punitive damages.

TeamHealth Plaintiffs took that chance. TeamHealth Plaintiffs filed a brief, most of which was an attempt to argue why evidence existed to proceed to trial on punitive damages. TeamHealth Plaintiffs argued that evidence would support the oppression and fraud prongs under NRS 42.005. To meet the burden of showing that a reasonable could find by clear and convincing evidence that TeamHealth Plaintiffs were entitled to punitive damages, TeamHealth Plaintiffs pointed to only four meager and inapposite exhibits. But, as Defendants properly explained in their Reply, none of those four exhibits, individually or collectively, met TeamHealth Plaintiffs' burden.

Now having the benefit of seeing the arguments that would be made in response, TeamHealth Plaintiffs seek to argue additional new points on the eve of trial and just before argument on the motion. This is inappropriate and is not a basis for supplementation under the

Rules.[5] Their chance to make these arguments was in their initial opposition. To allow TeamHealth Plaintiffs to continue making arguments in opposition would only further delay this case in the process and cause an ongoing "ping-pong" battle of arguments inhibiting this Court from making a final disposition.

2. The Arguments Made in the Reply Responded to TeamHealth Plaintiffs' Opposition.

A party is permitted to use a reply to appropriately respond to arguments made in an opposition. TeamHealth Plaintiffs' complain that they should be permitted a supplemental opposition because Defendants "shift[ed]" from reliance on *Great Am. Ins. Co. v. Gen. Builders, Inc.*, 113 Nev. 346, 934 P.2d 257 (1997) [hereinafter *Great American*], to the standard in NRS 42.005 in challenging the sufficiency of the evidence for the TeamHealth Plaintiffs to show "oppression, fraud, or malice." Mot. at 4:11-14. TeamHealth Plaintiffs further complain that Defendants introduced "new facts" and "ommitt[ed] key context" to do this. *Id.* at 4:14-15. These contentions lack merit.

a. <u>TeamHealth Plaintiffs Changed Their Theory of Punitive Damages in Opposing Summary Judgment.</u>

The crux of Defendants' argument in their Motion for Summary Judgment is that there is no evidence to support a finding of punitive damages. Defs.' Mot. Summ. J., at 32:23-33:3. The onus was then on TeamHealth Plaintiffs to demonstrate that evidence exists that could cause a reasonable jury to award punitive damages against Defendants, taking into account the clear and convincing evidence standard. To do this, TeamHealth Plaintiffs argued in response that Defendants are "guilty of oppression, fraud or malice, express or implied," under NRS 42.005, and presented the evidence they contended supported a punitive damages award. Pls.' Opp. To Defs.' Mot. for Summ. J., at 9:16-18. To this, Defendants were entitled to respond.

---

[5] TeamHealth Plaintiffs do not cite to any appropriate Nevada authority as to why supplementation is warranted. Indeed, they cite the *federal* standard, rather than this Court's standard for supplemental briefing. Mot. at 4:22 (citing United States District Court for the District of Nevada Local Rule 7-2(g). To be clear, the applicable rule governing supplemental briefs is found in EDCR 2.20(i), which provides supplemental briefing that is not filed in the applicable time periods are permitted only by leave of court.

That direct response is the content TeamHealth Plaintiffs now assert was a "shift" from the Opposition. *See* Mot. at 4:11-14 (contending that Defendants shifted to the standard in NRS 42.005 in challenging the sufficiency of the evidence for the TeamHealth Plaintiffs to show "oppression, fraud, or malice."). A direct response to an argument made in an opposition does not constitute a "new argument." Similarly, presenting evidence in a reply that shows why the evidence presented by TeamHealth Plaintiffs in an opposition does not actually say what they contend it says is not "new evidence."

b. TeamHealth Plaintiffs Misinterpret the Case Law to Encourage This Court to Allow Them to Supplement.

TeamHealth Plaintiffs misinterpret *Great American* in an attempt to assert that Defendants somehow asserted a different and "new" argument in Reply. Mot. at 4:4-15. To do so, they contend that *Great American* uses a standard that is different from the one that TeamHealth Plaintiffs used in their Opposition, which Defendants then responded to in the Reply. This distinction is simply incorrect.

Ultimately, *Great American* interprets Nevada's punitive damages statute, NRS 42.005. *See Great American*, 113 Nev. at 354, 934 P.2d at 263 (interpreting punitive damages under NRS 42.005(1)). NRS 42.005(1) states that "where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice, express or implied" a plaintiff may recover punitive damages. Accordingly, *Great American* is not a *different* standard for punitive damages, but a case interpreting the same statute that was argued in the Motion, Opposition, and Reply.[6] Indeed, there is no authority that a movant is constrained to using only caselaw initially cited in the Motion when responding to arguments made in opposition, all of which deal with the same statute and same issue—here, punitive damages under NRS 42.005.

[6] In TeamHealth Plaintiffs' recently filed Second Amended Complaint, they alleged entitlement to punitive damages on the basis of Defendants' "bad faith," but not on the basis of malice, oppression, or fraud. Second Amended Complaint at ¶ 96. In TeamHealth Plaintiffs' opposition brief, they changed course and asserted entitlement on the basis of oppression and fraud instead, and not bad faith.

B. If TeamHealth Plaintiffs are Allowed a Supplemental Opposition, Fairness Demands that Defendants Are Given Leave to File a Reply to the Supplemental Opposition.

In an attempt to end run EDCR 2.20(i), which allows supplemental briefing *only after leave of court is obtained*, TeamHealth Plaintiffs make substantive arguments pertaining to the summary judgment briefing in their Motion. This appears to relate to TeamHealth Plaintiffs misapprehension that federal court rules, rather than the rule of this Court, apply. *See supra* n. 5. In fact, these substantive arguments make up more than half of the Motion. Mot. at 5-8. First, this further demonstrates that—from a procedural standpoint—TeamHealth Plaintiffs have no basis to file a supplemental opposition, but are attempting to have additional points considered that they failed to raise in their initial Opposition; and attempting to do so just before the hearing on the Motion so that they can have the last word. But more concerning is that these substantive points are completely new theories and arguments that demand Defendants too be given an opportunity to substantively address them. *See Claytor v. Rebel Oil Co.*, Case No. A566869, 2011 WL 5117901 (Nev. Dist. Ct. July 20, 2011) (Allf, J.) (where this court allowed supplemental briefing from ***all parties*** regarding summary judgment as to the punitive damages issue).

In just a single example, TeamHealth Plaintiffs—for the very first time in this case—rely on evidence of national negotiations between the corporate parents of TeamHealth Plaintiffs and Defendants to establish a punitive damages award for Nevada conduct. *See* Mot. at 5::21-22 (referring to statements made in national negotiations and made to parties *other than the TeamHealth Plaintiffs*). This theory implicates due process concerns of grave importance. *See BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 572 (1996) ("We think it follows from these principles of state sovereignty and comity that a State may not impose economic sanctions on violators of its laws with the intent of changing the tortfeasors' lawful conduct in other States."). Yet, the issue of whether Nevada may punish Defendants' lawful conduct in other states has not yet been addressed because this is the *first time* in pleadings, briefing, or elsewhere that TeamHealth Plaintiffs have attempted to use this evidence to justify their claim for punitive

005329

005329

damages. Indeed, until this brief TeamHealth Plaintiffs have moved to preclude discovery of the national negotiations and have moved in limine to preclude evidence of national negotiations. Realizing they cannot identify evidence in the voluminous discovery record for the harmful consequences or evil intent necessary to succeed on punitive damages otherwise, TeamHealth Plaintiffs seek to shift the focus to those very national negotiations, as well as alleged hospital closures that occurred in other states to other parties.

In another example, the TeamHealth Plaintiffs' Summary Judgment Opposition states that they are pursuing only the oppression and fraud components of the punitive damages statute. *See* Summ. J. Opp., at 9:24-25 ("United engaged in an oppressive and fraudulent scheme to artificially and drastically reduce reimbursement rates…."). But now, they argue that evidence exists to sustain an award for punitive damages based on malice instead. Mot. at 7:8-8:14 ("a jury could reasonably find oppression or malice, both express and implied.") TeamHealth Plaintiffs continue to change their theory, but ultimately full briefing on the new theory asserted would show that they cannot present *any evidence* that would defeat summary judgment in favor of Defendants on the punitive damages claim. Defendants should be permitted the opportunity to respond to this new theory, should this Court grant leave and substantively consider Plaintiffs' new arguments.

If the Court is inclined to consider these new arguments on the merits, Defendants request that they be given three days from the date of the Court's ruling to file a response before the Court decides the Motion for Partial Summary Judgment.

/ / /

/ / /

/ / /

/ / /

005330

WEINBERG WHEELER HUDGINS GUNN & DIAL

005330

005330

IV. CONCLUSION

TeamHealth Plaintiffs' chance to present evidence showing a triable issue of fact regarding punitive damages under NRS 42.005 was in their Opposition. That they did not do so does not warrant a second bite at the apple with the benefit of hindsight. This Court should accordingly deny the motion or, in the alternative, allow Defendants to substantively reply to the newly raised points within three days.

Dated this 18th day of October, 2021.

/s/ Colby L. Balkenbush

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Brittany M. Llewellyn, Esq.
Phillip N. Smith, Jr., Esq.
Marjan Hajimirzaee, Esq.
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd.
Suite 400
Las Vegas, Nevada 89118

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Abraham G. Smith, Esq.
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169-5996
Telephone: (702) 949-8200

Attorneys for Defendants

Dimitri D. Portnoi, Esq.(*Pro Hac Vice*)
Jason A. Orr, Esq. (*Pro Hac Vice)*
Adam G. Levine, Esq. *(Pro Hac Vice)*
Hannah Dunham, Esq. *(Pro Hac Vice)*
Nadia L. Farjood, Esq. (*Pro Hac Vice*)
O'Melveny & Myers LLP
400 S. Hope St., 18th Floor
Los Angeles, CA 90071

K. Lee Blalack, II, Esq.(*Pro Hac Vice)*
Jeffrey E. Gordon, Esq. *(Pro Hac Vice)*
Kevin D. Feder, Esq. *(Pro Hac Vice)*
Jason Yan, Esq. *(Pro Hac Vice)*
O'Melveny & Myers LLP
1625 Eye St. NW
Washington, DC 20006

Paul J. Wooten, Esq. *(Pro Hac Vice)*
Amanda L. Genovese *(Pro Hac Vice)*
Philip E. Legendy *(Pro Hac Vice)*
O'Melveny & Myers LLP
Times Square Tower, Seven Times Square
New York, NY 10036

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of October, 2021, a true and correct copy of the foregoing **DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR LEAVE TO FILE SUPPLEMENTAL RECORD IN OPPOSITION TO ARGUMENTS RAISED FOR THE FIRST TIME IN DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT** was electronically filed/served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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

Justin C. Fineberg
Martin B. Goldberg
Rachel H. LeBlanc
Jonathan E. Feuer
Jonathan E. Siegelaub
David R. Ruffner
Emily L. Pincow
Ashley Singrossi
Lash & Goldberg LLP
Weston Corporate Centre I
2500 Weston Road Suite 220
Fort Lauderdale, Florida 33331
jfineberg@lashgoldberg.com
mgoldberg@lashgoldberg.com
rleblanc@lashgoldberg.com
jfeuer@lashgoldberg.com
jsiegelaub@lashgoldberg.com
druffner@lashgoldberg.com
epincow@lashgoldberg.com
asingrassi@lashgoldberg.com

Joseph Y. Ahmad
John Zavitsanos
Jason S. McManis
Michael Killingsworth
Louis Liao
Jane L. Robinson
Patrick K. Leyendecker

Judge David Wall, Special Master
Attention:
Mara Satterthwaite & Michelle Samaniego
JAMS
3800 Howard Hughes Parkway, 11th Floor
Las Vegas, NV 89123
msatterthwaite@jamsadr.com
msamaniego@jamsadr.com

Michael V. Infuso, Esq.
Keith W. Barlow, Esq.
Sean B. Kirby, Esq.
Greene Infuso, LLP
3030 S. Jones Blvd., Suite 101
Las Vegas, NV 89146
minfuso@greeneinfusolaw.com
kbarlow@greeneinfusolaw.com
skirby@greeneinfusolaw.com

Errol J. King, Esq.
Phelps Dunbar LLP
II City Plaza, 400 Convention St., Suite 1100
Baton Rouge, LA 70802
errol.king@phelps.com

Attorneys for Non Party Multiplan, Inc.

005332

005332

005332

Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, P.C
1221 McKinney Street, Suite 2500
Houston, Texas 77010
joeahmad@azalaw.com
jzavitsanos@azalaw.com
jmcmanis@azalaw.com
mkillingsworth@azalaw.com
lliao@azalaw.com
jrobinson@azalaw.com
kleyendecker@azalaw.com

Attorneys for Plaintiffs

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

005333

005333

156

CLERK OF THE COURT

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

Freemont Emergency Services

PLAINTIFF

-VS-

UnitedHealth

DEFENDANT

CASE NO: A-19-792978-B

DEPT. NO: 27

MEDIA REQUEST AND ORDER ALLOWING CAMERA ACCESS TO COURT PROCEEDINGS

* Please fax to (702) 671-4548 to ensure that the request will be processed as quickly as possible.

John Sammon (name), of Legal Newsline (media organization),

hereby requests permission to broadcast, record, photograph or televise proceedings in the above-entitled case in Dept. No. 27, the Honorable Judge Nancy Allf Presiding, on the 25th day of October, 2021.

I hereby certify that I am familiar with, and will comply with Supreme Court Rules 229-246, inclusive. If this request is being submitted less than twenty-four (24) hours before the above-described proceedings commence, the following facts provide good cause for the Court to grant the request on such short notice:

_____.

It is further understood that any media camera pooling arrangements shall be the sole responsibility of the media and must be arranged prior to coverage, without asking for the Court to mediate disputes.

Dated this 15th day of October, 20_____.

SIGNATURE: Ann Maher (editor) **PHONE:** 618-604-8688

****

IT IS HEREBY ORDERED THAT:

[ ] The media request is **denied** because it was submitted less than 24 hours before the scheduled proceeding was to commence, and no "good cause" has been shown to justify granting the request on shorter notice.

[ ] The media request is **denied** for the following reasons: _____

_____.

[ ] The media request is **granted**. The requested media access remains in effect for each and every hearing in the above-entitled case, at the discretion of the Court, and unless otherwise notified. This order is made in accordance with Supreme Court Rules 229-246, inclusive, at the discretion of the judge, and is subject to reconsideration upon motion of any party to the action. Media access may be revoked if it is shown that access is distracting the participants, impairing the dignity of the Court, or otherwise materially interfering with the administration of justice.

[ ] **OTHER:** _____.

IT IS FURTHER ORDERED that this document shall be made a part of the record of the proceedings in this case.

Dated this 18th day of October, 2021

Dated this 18th **day of** October, **20** 21.

Nancy L Allf

DISTRICT COURT JUDGE

TW

109 380 7B7E 4775
Nancy Allf
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Fremont Emergency Services (Mandavia) Ltd, Plaintiff(s) vs. United Healthcare Insurance Company, Defendant(s)	CASE NO: A-19-792978-B DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 10/18/2021

Michael Infuso	minfuso@greeneinfusolaw.com
Frances Ritchie	fritchie@greeneinfusolaw.com
Greene Infuso, LLP	filing@greeneinfusolaw.com
Audra Bonney	abonney@wwhgd.com
Cindy Bowman	cbowman@wwhgd.com
Pat Lundvall	plundvall@mcdonaldcarano.com
Kristen Gallagher	kgallagher@mcdonaldcarano.com
Amanda Perach	aperach@mcdonaldcarano.com
D. Lee Roberts	lroberts@wwhgd.com
Raiza Anne Torrenueva	rtorrenueva@wwhgd.com

005335

005335

Colby Balkenbush	cbalkenbush@wwhgd.com
Daniel Polsenberg	dpolsenberg@lewisroca.com
Joel Henriod	jhenriod@lewisroca.com
Abraham Smith	asmith@lewisroca.com
Brittany Llewellyn	bllewellyn@wwhgd.com
Beau Nelson	bnelson@mcdonaldcarano.com
Marianne Carter	mcarter@mcdonaldcarano.com
Karen Surowiec	ksurowiec@mcdonaldcarano.com
Kimberly Kirn	kkirn@mcdonaldcarano.com
Justin Fineberg	jfineberg@lashgoldberg.com
Yvette Yzquierdo	yyzquierdo@lashgoldberg.com
Virginia Boies	vboies@lashgoldberg.com
Martin Goldberg	mgoldberg@lashgoldberg.com
Rachel LeBlanc	rleblanc@lashgoldberg.com
Jonathan Feuer	jfeuer@lashgoldberg.com
Jason Orr	jorr@omm.com
Phillip Smith, Jr.	psmithjr@wwhgd.com
Flor Gonzalez-Pacheco	FGonzalez-Pacheco@wwhgd.com
Kelly Gaez	kgaez@wwhgd.com
Marjan Hajimirzaee	mhajimirzaee@wwhgd.com
Jessica Helm	jhelm@lewisroca.com
Cynthia Kelley	ckelley@lewisroca.com
Emily Kapolnai	ekapolnai@lewisroca.com

005336

005336

Maxine Rosenberg	Mrosenberg@wwhgd.com
Mara Satterthwaite	msatterthwaite@jamsadr.com
Emily Pincow	epincow@lashgoldberg.com
Cheryl Johnston	Cheryl.Johnston@phelps.com
Ashley Singrossi	asingrossi@lashgoldberg.com
Jonathan Siegelaub	jsiegelaub@lashgoldberg.com
Philip Legendy	plegendy@omm.com
Andrew Eveleth	aeveleth@omm.com
Kevin Feder	kfeder@omm.com
Nadia Farjood	nfarjood@omm.com
Jason Yan	jyan@omm.com
AZAlaw AZAlaw	TMH010@azalaw.com
Beau Nelson	beaunelsonmc@gmail.com
Marianne Carter	mcarter.mc2021@gmail.com
Dexter Pagdilao	dpagdilao@omm.com
Hollis Donovan	hdonovan@omm.com
Adam Levine	alevine@omm.com
Jeff Gordon	jgordon@omm.com
Hannah Dunham	hdunham@omm.com
Paul Wooten	pwooten@omm.com
Dimitri Portnoi	dportnoi@omm.com
Lee Blalack	lblalack@omm.com
David Ruffner	druffner@lashgoldberg.com

005337

005337

Amanda Genovese	agenovese@omm.com
Tara Teegarden	tteegarden@mcdonaldcarano.com
Errol KIng	errol.King@phelps.com
John Zavitsanos	jzavitsanos@azalaw.com
P. Leyendecker	kleyendecker@azalaw.com
Michael Killingsworth	mkillingsworth@azalaw.com
Jason McManis	jmcmanis@azalaw.com
Louis Liao	lliao@azalaw.com
Jane Robinson	jrobinson@azalaw.com
Myrna Flores	mflores@azalaw.com
Ruth Deres	rderes@azalaw.com
Michelle Rivers	mrivers@azalaw.com
Angie Keniston	akeniston@azalaw.com
Joe Ahmad	joeahmad@azalaw.com

005338

005338

157

Electronically Filed
10/20/2021 1:11 PM
Steven D. Grierson
CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

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

005339

005339

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

TUESDAY, OCTOBER 19, 2021

TRANSCRIPT OF PROCEEDINGS

RE: MOTIONS

SEE PAGE 2 FOR APPEARANCES

SEE PAGE 3 FOR MATTERS

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

A P P E A R A N C E S

FOR PLAINTIFF(S):

PATRICIA K. LUNDVALL, ESQ.
KRISTEN T. GALLAGHER, ESQ.
AMANDA PERACH, ESQ.
JOHN ZAVITSANOS, ESQ.
JANE ROBINSON, ESQ.
JASON M. McMANIS, ESQ.
JOSEPH Y. AHMAD, ESQ.
P. KEVIN LEYENDECKER, ESQ.

FOR DEFENDANT(S):

D. LEE ROBERTS, JR., ESQ.
COLBY BALKENBUSH, ESQ.
K. LEE BLALACK, ESQ.
DIMITRI D. PORTNOI, ESQ.
DANIEL F. POLSENBERG, ESQ. (Blue Jeans)

005340
005340

005340

LAS VEGAS, CLARK COUNTY, NEVADA

TUESDAY, OCTOBER 20, 2021 9:29 a.m.

*** * * * ***

THE COURT: Good morning, everyone. Please be seated.

So is everybody here in person? Wow. Okay. Welcome.

Let me call the case, Fremont versus United.

Let's take appearances.

MS. GALLAGHER: Good morning, Your Honor. Kristen Gallagher, on behalf of the plaintiff Health Care Provider's.

MS. LUNDVALL: Good morning, Your Honor. Pat Lundvall from McDonald Carano, also here on behalf of the Health Care Providers.

005341

005341

THE COURT: Thank you.

MR. ZAVITSANOS: Good morning, Your Honor. John Zavitsanos, on behalf of the Health Care Providers.

MR. AHMAD: Good morning. Joe Ahmad, also on behalf the Health Care Providers.

MR. McMANIS: Good morning, Your Honor. Jason McManis, on behalf of the Health Care Providers.

MR. LEYENDECKER: Good morning. At Kevin Leyendecker, on behalf of the Health Care Providers.

THE COURT: Thank you.

MS. ROBINSON: Good morning, Your Honor. Jane Robinson, on behalf of the Health Care Providers.

005341

THE COURT: Any other appearances on this side?

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

THE COURT: Thank you.

And Mr. Blalack?

MR. BLALACK: Good morning, Your Honor. Lee Blalack, on behalf of the defendants.

MR. ROBERTS: Good morning, Your Honor. Lee Roberts, also on behalf of the defendants.

MR. PORTNOI: Good morning, Your Honor. Dimitri Portnoi, on behalf of the defendants.

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

005342

005342

THE COURT: Okay. Well, welcome everyone.

MR. POLSENBERG: And good morning, Your Honor. Not in person, Dan Polsenberg, for the defendant.

THE COURT: All right. Thank you. And welcome everyone.

Let's talk about today first. I know you have lots of questions about courtroom and jury selection.

Today we have to break at 11:45. I have to present at noon at the Civil Bench Bar. And then we stop at 4:45. I am moving some things in case you need more time tomorrow afternoon.

Now, jury selection. I am trying to find a bigger

005342

courtroom. This room only holds 41 people. I don't have an answer on any of that yet. But when I do, I will let you know. I'm sure you have other questions before we get into the motions. No? All right.

Let's take then the plaintiffs' motion for further sanctions.

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

Your Honor, the Health Care Providers have been impacted by United's failure to produce documents in this case. Your Honor is well familiar with this. We have been before Your Honor on numerous occasions over the course of this case, that has resulted in the most recent August 3rd order that resulted in findings of willfulness against United for its failure to produce documents. And information that they presented during that presentation at that time, which was back in April, indicated to Your Honor that they had been substantially compliant with their obligations with respect to the prior orders.

And so United continues to reap the benefits of its conduct and its failure to produce documents during the course of this litigation. Without further sanction now, as we have explained in our papers and I will provide more detail here today, is that to allow United to have the last word, which would be simply that it is disregarding the orders of this

005343

005343

005343

Court.

Since the August 3rd order that the Health Care Providers brought, with respect to the Order to Show Cause, they have filed a second amended complaint which is a streamlined version of the earlier allegations.

What is not different in the second amended complaint is the underlying conduct that is being alleged, that United has orchestrated a plan to manipulate and lower reimbursement rates in a manner that capitalizes on its market power and because, as it threatened long ago, because they can.

The Health Care Providers have elected now to streamline the allegations and the causes of action that will be going to the jury next week, upon which the Court will provide instruction. This is no different than litigants do typically in a pretrial motion. Health Care Providers opted to do a second amended complaint.

The reason I raise this issue, Your Honor, of the second amended complaint, is because United has made much of the fact of the amendment, indicating that much of the discovery that is at issue today in this motion for further sanctions would not have been permitted.

But the Health Care Provider's perspective is that the discovery would have been permitted because the allegations are the same with respect to the underlying conduct, with a scheme to deflate the reimbursement rates that has been

005344

005344

005344

alleged and that we will intend to prove in trial next week.

The Health Care Providers did not move lightly to renew and bring this further motion for further sanctions. But it really is -- the reason we did it is because it is the exemplification of United's approach to this case, which has been to take the orders of this Court as mere suggestion and not something that they will follow that with actual sanctions.

United's philosophy will become quite evident as this day goes on. We will see numerous *Motions in Limine* that are really just reconsideration motions for the Court's prior motions that have been entered long ago and enter --

005345

THE COURT: Excuse me. Someone who was on the phone needs to mute. Thank you.

Go ahead, please.

MS. GALLAGHER: So, Your Honor, will see that that is the philosophy that has preceded today and which continues and for which the reason why the Health Care Providers decided to move for further sanctions.

At the April 9th hearing, United represented that it was substantially compliant. It represented that it had completed the document production with respect to what we have defined as the negative inference categories in this particular motion.

United further denied at that April 9th hearing that

005345

005345

any evidence had been lost or destroyed. As the Health Care Providers presented during the Order to Show Cause, they were concerned with, and they had a fear and -- on the receiving end of what we call the sophisticated form of fabrication -- a half-truth, Your Honor may recall as part of that presentation, with respect to missing information, with respect to not producing information, with respect to obstruction that we saw time and time again.

The most obvious example of that was with the e-mail protocol, where United was asking the Health Care Providers to basically identify the name of a document before they would admit that it existed.

005346

The Court was put, at that April 9th hearing, in a position of having to balance the moving Order to Show Cause with respect to -- and United's representations about substantial compliance. And there was significant back and forth, as Your Honor may recall, with respect to what does substantial compliance mean.

005346

At that time -- and this is in the August 3rd order at paragraph 15 -- United urged the Court not to limit sanctions based on its representations, that it had substantially complied with the September 8 -- 28th, excuse me, October 27th November 9th, and January 20th orders.

Also in the August 3rd order at paragraph 21, the Court has found that United has shown that a consistent

practice of delay and obstruction in this case. The Court also finds United conduct to be willful at paragraph 31.

Further, by omission, there has been an effort by United to keep the Health Care Providers from discovering information and having access to witnesses -- that was at paragraph 31 as well.

The Court also found that based on the information, it did not know whether or not there had been any fabrication or loss of evidence. The Court then entered those measured sanctions based on the information available, based on the representations that United made to this Court at that time.

005347

Only after the April 9th hearing did the Health Care Providers learn United had not been candid about its actual level of substantial compliance with its document production or that documents had not been preserved or that a litigation hold had not issued until at least two months after the commencement of this action.

005347

As to the purported level of completion of document production, United told this Court it was complete as to its RFP responses.

But it was not even a close call, Your Honor. What we learned after that is that United produced 81 percent of its overall document production after April 9th. As the Health Care Providers detailed in their motion for further sanctions, United produced documents that spanned a base range of 433,387

005347

after the April 9th hearing, which is not representative, as Your Honor is aware, of the actual number of pages. Your Honor is familiar with the fact that native productions also are -- are also very lengthy and sometimes don't represent the single Bates number that has been assigned to it.

You will likely hear today from United that it was simply trying to complete its ESI production. But this is a game of semantics, Your Honor. True, there is an ESI protocol in place. But the Court made it clear back in September of 2020 in the order denying United's motion for e-mail protocol, that that was not going to be an excuse from producing documents. It would not operate as a stay or any rebuttal of interference with United's obligation to produce documents.

005348

005348

It certainly defies logic, now looking at that document production, that United could have been complete with the negative inference categories on April 9th, when 81 percent of the production was made after that time.

The challenge of this motion now is the fact that we are left with trying to identify what is missing. United says in its opposition that we have no remedy available.

And as we've explained in our papers and I will explain today, we don't agree with that. We think Your Honor has the ability under Rule 37, under NRS 47.250, and also within the Court's adherent power, to sanction parties and

005348

litigants for continually failing to follow orders of the Court, when the result is missing information -- missing information that will allow the Health Care Providers to prepare and now to present their case to the jury next week.

The Health Care Providers are requesting, as Your Honor knows from the papers, a sanction that precludes United from being able to contradict evidence that is already in the documentation, which is that it has an obligation to pay bill charges.

What United does in the opposition is something different. They say the testimony says the Health Care Providers aren't paying their bill charges. Those are two different things, Your Honor. What the obligation to pay and what United decides to pay is what the Health Care Providers are fighting about.

005349

005349

And so if United internally has documents that say, they know they have an obligation to pay, and they have structured a program or a scheme or whatever label we want to call it, to pay something less so they don't have to pay bill charges, that is what this case is about.

As set forth in the motion, United did not preserve the found handwritten notebooks of Dan Schumacher. He was United Healthcare's then president and COO at the time. He testified that he kept his notes in books. He also testified that one of the meetings that is of the subject of much to

005349

do -- and you will hear more about it today -- that at one of the meetings, he took notes of that meeting when he met with representatives of TeamHealth, and they were discussing a national in-network contract that never came to fruition and those notes were not preserved.

Now, United indicates that, well, we didn't get served with a complaint yet. But we demonstrated in our moving papers that Mr. Schumacher indicated that he was well aware that TeamHealth would need to move to litigate this case because that was the only option left.

When United says they are going to do something and they do it, which is what this case is about, the only option left is to litigate. And so they knew at that time, yet they did not institute a litigation hold over those notebooks. Mr. Schumacher did not keep those notebooks. And we only know specifically of the one note with respect to TeamHealth. Perhaps there are others. Perhaps he was making notes in business strategy meetings and meetings about the outlier cost management program and meetings about shared savings, but we don't know because they weren't preserved.

United, in its opposition, comes forward and says, well, look we put it on privilege log. But the Health Care Providers should of reached out, should have challenged the log in order to get those factual summary notes. Your Honor is well familiar that has no privilege when there is a factual

005350

005350

005350

summary purportedly done by Mr. Schumacher.

And to place it on a privilege log which I, you know, obviously, I went to go see, What did it say? Was it obvious? It's not obvious, Your Honor. It's logged with a subject line of, quote, TeamHealth; and the second log entry is, quote, FW, dash, TeamHealth.

The person who is reviewing that would not know that that is Mr. Schumacher's translations, supposedly, of his handwritten notebook that was then later destroyed.

Some of the cases that United brings forward are just so factually not analogous to this particular case. The case specifically that they cite, *Hamilton versus Mount Sinai Hospital* is a case where it was a fight over literally whether or not handwriting transmuted to typewritten should have been a negative inference. Under those circumstances, the answer was no. There was no knowledge that there could have been litigation at the time. And then there was little translation and production on the typewritten notes.

This is a situation that is different. We have United now trying to cure itself from this failure on the notes only with respect to the game. We also have the issue of all the other notebooks. But with respect to this, they are trying to cure the situation by saying they produced it and put it on a log, but we don't have access to it. And so this is the type of gamesmanship that just shouldn't be happening with respect

005351

005351

005351

to a factual summary.

They did cc an attorney on it. But Your Honor is well aware that attorneys in-house wear many hats. A factual summary recitation is not one that would afford privilege. And it is United's obligation to indicate that they have that privilege available to them, but they cannot now hide behind that and say that they have cured the issue with the notebooks.

This also dovetails with the situation with the litigation hold which was not implemented until June, and this case was commenced in April. The 30(b)(6) representative for United designated on this particular topic indicated the hold wasn't an issue until June 7th.

005352

005352

And so as a result, not only are these found notebooks were not preserved, we don't know what else might not have been preserved, given that time lapse, given that time lag, in between the time that the Health Care Providers commenced litigation.

And again, United will point to the time of service. But there was information in advance of that, or at least contemporaneously, with that timeline that United should have known and was on notice with the Health Care Providers would be seeking to enforce their rights to get a reimbursement based on their billed charges and the usual and customary rate based on those conversations.

005352

In the motion, Your Honor, the Health Care Providers have identified missing documents from United's production that constitutes missing links, missing folders that were not searched, missing reports, and then missing communications between MultiPlan and Data iSight.

We have established through our moving papers that United is in continuing violation of the Court's prior order and that United should not be permitted to gain a tactical advantage going into trial by virtue of its strategic decision to see if the Court would actually hold it to its prior orders.

005353

We think the Court has authority to sanction United in the manner that we requested under Rule 37, under NRS 47.250, as well as the Court's inherent power.

005353

And I want to spend a few minutes on United's opposition, Your Honor. United's opposition is typical. It blames the victim, the Health Care Providers, trying to point out issues that were never before the Court in any other motion practice.

This is similar to what we saw in the Yale Study documents, with respect to Surround Sound's strategic approach to disparage the Health Care Providers and other emergency Health Care Providers in the industry. This is no different. Bringing to the Court things that were never -- no meet and confers; no issues before the Court -- simply to distract the

005353

Court from the situation at hand.

So what's important and what is missing from United's opposition is that there is no direct explanation for how United could have been substantially compliant at the April 9th hearing, given what we know about that post-April 9th production.

United does not affirmatively deny in the opposition that the documents identified in the motion exist. Instead, they take the tactic that we have not proven that they do exist.

United tries to downplay identified missing documents as not having any importance. They attached 25 volumes of documents in an effort to show what they did produce, which is not the issue at hand. The issue at hand is what is missing. What did they not produce that we are entitled to under the negative inference categories.

A list of what is produced is simply not a curative situation to how the Health Care Providers have structured this argument and what they are moving for in terms of the sanctions requested.

Using United's own figures from its opposition, it is notable that of the documents produced, 42 percent are administrative records. That's over 227,000 documents -- pages of documents. Of the 540,000 pages that United states that was produced are administrative records. The Court is

005354

005354

005354

familiar. We went round and round. That is all United wanted to produce was administrative records and that constitutes 42 percent.

This provides the Court perspective about what was produced and truly what could be missing from the production when there is ample evidence that there is a unilateral strategy to set low out-of-network reimbursement rates by United.

United also turns to blaming the Health Care Providers for not being able to identify documents that they withheld or perhaps put out a privilege log. The same tactic, again, was tried by United and rejected at the time of the e-mail protocol, when they wanted us to identify closure reports or performance reports that Data iSight made by name.

005355

005355

Your Honor may remember that what happened is that United actually had a dedicated e-mail for those closure reports that was discovered later. Had we not pushed that issue, we never would have identified that.

What the Health Care Providers have been able to identify that has been omitted from United's document production is clear -- shared savings. The Court has heard a lot about shared savings.

At the April 9th hearing, United denied it was its program. But the documents demonstrate that the shared savings program yields 35 percent of the difference between

005355

what a Health Care Provider charges and what they set as the rate. So that the higher the rate, the higher the bill charged, the more United makes. So to suggest, that United does, that we are not entitled to bill charges just defies credibility because that is in the actual nature and the structure of the shared savings program.

So the Health Care Providers were able to secure some information from third parties as set forth in our moving papers. It is incredible the amount of money that employers are paying United on a monthly basis for their shared savings. You can imagine the revenue is one billion annually.

But those documents were not produced by United. Why? Well, we don't know. Certainly it would be helpful to know, but I think it is obvious that United does not want the Health Care Providers to have that information.

005356

005356

In opposition, United points to Exhibits 16 through 19 as demonstrative of what they say is a fulsome production on shared savings. But when you go and look at Exhibits 16 through 19, what Your Honor will see is, in Exhibit 16, there is three documents there that reflect the exact same MGM Fremont participating provider agreement. A single e-mail about MGM is Exhibit 17. An ASO, administrative services only, agreement and a renewal with Las Vegas Metro Police Department is Exhibit 18. And then there is one e-mail about purported rates -- it doesn't have a lot of other

005356

information -- in Exhibit 19.

Surely, this cannot be a complete production about United Shares Savings Program when it generates a billion dollars in internal revenue every year.

What's also compelling is that third parties that we subpoenaed came back and said, Look, we don't have this information. This is in United's possession. And then we go to the document production, it is not there, Your Honor.

United also points to two documents about client adoption of the Shared Shavings Extended Program, the SSPE. The first United refers to is Exhibit 41A, which is literally a list of who has adopted the shared savings program or perhaps they haven't adopted the shared savings program.

005357

What's interesting, if you look at that document in the right column, there is actually file cap that exists there, which obviously that is one of the issues in this motion that we are bringing is that there are documents that are there that have not been produced. United makes no mention of this file cap in its opposition.

But what is interesting of Exhibit 41A is line 93 of that spreadsheet says this -- and I will quote from it -- and I will leave out the person's name. But an employee, quote, Heard them on the call we had with them last week, and all of the additional materials we sent them to try to convince them. They do not believe it will be as big of a savings, compared

005357

005357

to the member noise, which they feel outweighs the savings. And on today's call said, no, they are not moving to this, and they don't want to discuss it with us any further.

So what stood out to me is, as United is telling us that they have produced everything -- and they point to this one document with a list, I want to know where are, quote, all of the additional materials we sent to them to try and convince them.

That is the type of information that is missing, Your Honor.

The second document, Exhibit 41B, is a PowerPoint slide that includes slides that say exactly our position in this case, Your Honor. It says, With SSPE, the client benefits are: Offers, discounts on claims from noncontracted providers where billed charges would typically apply.

That is a document that they are putting in front of Your Honor saying that they have produced information with respect to shared savings, but it is also supportive of the evidentiary inference and sanction that we are looking for because that is exactly United's obligation to pay -- which is what this case is about. Not what they want to pay.

In opposition, United states that this slide deck is sent to customers. But it couldn't have been because it contains all the headnotes with instructions to the presenter about what to include or exclude depending on your audience.

005358

005358

005358

And so what we don't have are the actual materials that have been sent to their ASO customers.

The other thing we have identified are missing links. United tries to minimize the missing information and says that we have identified what they call obscure links. These links are not obscure, Your Honor. These links depict how United operates its business. They save information on shared drives where people can access, which is what I would expect. They update the information constantly and people know where to go to get the information.

The PIG drive that we identified through discovery contains significant information about out-of-network programs. It has numerous subfolders and contains weekly reports. It contains, we know, from one of the links that we provided to the Court, information about TeamHealth and other information about United's strategy.

Despite a weekly cash report that we have identified, United admits it produced but 17. This case has spanned the relevant period more than a few years, and we all know how many weeks are in a year, so we know just by virtue of their opposition that there are documents that are missing there.

And this is particularly important because they were looking to identify what kind of savings they were getting off of the Health Care Providers and other TeamHealth related entities. They were looking to find out how much they were

005359

005359

005359

saving between our billed charge and what they were deciding they were going to pay. That amount is their operating revenue.

The Health Care Providers also identified an e-mail where information about TeamHealth, in terms of cutting rates and implementing a negative communication strategy, was stored off the grid.

In opposition, United argues that off the grid means that it was just in MultiPlan's possession. But if you look at the document, there is nothing that can be gleaned with respect to that. That document says that it -- normally they should be on the main project, SharePoint. But this one is off the grid. Meaning it is stored somewhere different, because maybe not a lot of people knew about it; maybe they didn't want to a lot of people to know about what they were doing specifically to target TeamHealth and other emergency Health Care Providers.

005360

005360

United offers no declaration or affidavit of that employee in their opposition, but rather points to some MultiPlan documents. But none of those offered in Exhibit 30, which is where they refer, say that MultiPlan is the custodian of any off-the-grid documents. This argument is crafted, Your Honor, without any support.

United also informs the Court that the corporate shared driver had two terabytes of data. That is a lot of

005360

data. One terabyte has about six and a half million pages, so two terabytes would've had about 13 million pages. So by way of example, if the document averages 10 pages, that is 1.3 million documents. United put in its opposition papers that from those shared drives, they produced just 4,000.

E-mails from MultiPlan -- the Health Care Providers pointed out PowerPoints that were in MultiPlan's production concerning their presentation to United. In opposition, United opposes this by saying that we haven't put proven they ever received them.

This is not an affirmative statement saying that they did not receive it. Again, it is shifting back to the Health Care Providers to basically identify documents without knowing whether or not they are there, whether they have been obstructed, whether they have been placed on a privileged log without any basis.

The Health Care Providers pointed out e-mails sent by two MultiPlan employees -- Emma Johnson and Kim Dugan -- to United and the lack of e-mail and testimony compared to their job duties.

So let me clarify that a little bit. These two employees were account -- assigned United as their account. And so their testimony indicated that they were communicating routinely, regularly. Emma Johnson indicated she would've sent tens of thousands of e-mails over the course of her

005361

005361

005361

tenure with MultiPlan.

So in opposition, United says, Well, she was only there through 2018. And, oh, by the way, you know, this case has a more narrow timeline in terms of document production.

So I thought about that. So let's assume for a minute, a two-year period of time, 2017/2018. And United, instead of looking at what we did, which is how many documents did Emma Johnson send to them? They looked at to and from, so they are providing the Court with a different comparison point, not an apples-to-apples comparison.

But just for a moment, let's take them at their word, to and from Emma Johnson, 1,200 e-mails. In a period of time that would encompass that, it equates to about 12 and a half e-mails per week. Given her testimony and how often she was communicating with them, and that she was in constant communication with them, 12 and a half e-mails doesn't seem to be realistic in terms of what you would expect. I think we all know when you get going on a particular project, even in a day, you may have more than 12 and a half e-mails.

So given that constant communication testimony, Health Care Providers do not think United has refuted that point in their opposition.

Salesforce Platform has also been identified as a potential source of information that we do not think has been properly reviewed. United does not deny that information is

005362

005362

005362

shared through the Salesforce Platform, only arguing again that we had not proven the existence of information on that platform.

United argues that we found an obscure e-mail. Exhibit 28 to our motion depicts an e-mail that MultiPlan routinely sent messages using that platform.

If you look at Exhibit 28 it says, quote, the message is mandatory for all clients who use DIS, which is Data iSight, for professional claims. And it needs to be sent through Salesforce so that we have a record of it.

There are also other e-mails that demonstrate MultiPlan used the Salesforce Platform to communicate with United. For example -- MPI 4707 says, quote, It's important that you send the messages through Salesforce so that legal has a record it was sent.

005363

005363

So we did not identify an obscure, random e-mail that would not reasonably be -- reasonably yield additional information, Your Honor. What we are seeing is that MultiPlan was using that platform routinely to communicate with United, which means that that platform is accessible to United; that information has been sent through Salesforce.

And their argument that they don't have possession of the doesn't go as far to say they don't have the ability to have custody of it or the ability to have control over it, given the contractual relationship that exists with MultiPlan.

005363

And finally, we also identified a Muddy Waters report, which may seem not particularly of interest, but the opposition was sort of interesting, Your Honor. United characterized its vice president of having a, quote, dim memory about whether or not she received the Muddy Waters investment-related report. So this report is basically depicting United's latest endeavor, which is to bring the work that MultiPlan and Data iSight do in-house through a new entity called Naviguard.

If this seems familiar, the Health Care Providers think it's a repeat of the Ingenix database that happened about 10 years ago, a little longer, with respect to manipulating reimbursement rates.

005364

005364

But what is important is that what was clear from Ms. Paradise's testimony is that she testified she received it. She just didn't remember who she received it from. And so it is indicative, when United says that she has a dim memory, it doesn't deny that that document may exist within their documents, Your Honor.

We have been before your Court often on this issue. And I greatly appreciate the Court's attention to these matters because they are so important to the Health Care Providers in trying to present this case to a jury next week. We can't imagine what hasn't been produced or may be sitting on a privilege log behind some, you know, some description

005364

that isn't forthcoming.

But in either situation, we think the Court has sufficient evidence. We think we have provided the Court sufficient evidence to be able to establish the relief we are looking for, again, under the Rules 37 Nevada Rules of Civil Procedure, NRS 47.250, and the Court's inherent authority.

And we would ask that you impose those sanctions on United, Your Honor.

THE COURT: Okay. And the exact sanction you are asking me to impose.

MS. GALLAGHER: We are asking if United is found liable and owes the Health Care Providers money, that the compensatory damage model will be the billed charge is what United is obligated to pay.

THE COURT: Thank you.

MS. GALLAGHER: Thank you, Your Honor.

THE COURT: Opposition, please.

MR. ROBERTS: Good morning, Your Honor. Lee Roberts, for defendant United.

I'd like to start by addressing the issue of the sanction that has been requested, because I do believe that frames the rest of the Court's analysis here. And while I believe Ms. Gallagher may have stated that a little bit different, it sounds like the same relief that is requested in the brief.

005365

005365

005365

And I would submit that this is a case-terminating sanction at this point in the litigation. And here is why.

What Ms. Gallagher just said was if United is found liable, then the damages are the difference between what United paid and the full billed charges.

Well, as this Court knows, United tried to get discovery on medical records underlying the claims. We contended that we were entitled to put in issue whether the services were performed and whether the level of services performed actually met the CPT codes billed.

And we cited a Florida court that had found that when they sued for recovery, it put those issues in dispute, and United could contest its liability.

005366

005366

As this Court may recall, you disagreed with the Florida decision and you found that this was only a rate of payment case -- that because United had paid and paid something, and paid under a certain CPT code, that United could not contest whether the charges were actually due. United could not contest whether the charges met that CPT code that they were billed under, and found that this was only a rate of payment case. Under that court decision, the only thing left for trial is the rate of payment that the emergency room physician groups were entitled to.

Well, if this Court enters that sanction and finds that they are entitled to full billed charges, there is

005366

nothing left. The Court found that the only thing we can dispute is the rate of payment, and their sanction asked this Court to set the rate of payment at their full billed charges.

So this is case terminating. Make no mistake about it. And therefore, the *Young* factors apply. And we believe the requirement for an evidentiary hearing would also apply before the Court can enter that sanction, to determine whether there was willful violation by the client; to determine whether or not the client would be punished for the actions of the attorneys who were dealing with most of this document production after the Court's hearing on April 9th.

005367

You may recall that you asked Mr. Portnoi some very pointed questions about that. Wait a minute, is this the client or is this the lawyers? And he responded that at this point the client has turned over the database to us. They have given us the two terabytes of data. And now it is us and the third-party eDiscovery vendor and actually 100 attorneys in all, you know, through the eDiscovery vendor and also at O&M were involved in trying to get through that two terabytes.

005367

So we do believe that the Court would have to enter an evidentiary hearing on that issue before it could enter the sanctions requested.

And that is the only additional sanction requested because, in fact, the Court's order entered on August 3rd, based on the record made at the April 9th hearing, is

005367

self-executing.

In production, on the first page of the motion currently before the Court, United has violated yet another order of the Court, the August 3rd order granting a renewed motion for an Order to Show Cause. And they continually reference that throughout the motion, that they are seeking sanctions for a violation of the August 3rd order.

With due respect, Your Honor, there is nothing in the August 3rd order that United could possibly have violated.

Do we have the ability to display the order to the Court?

THE COURT: I was just pulling it up. So when I am up here clicking, I am not sneaking mail. I am looking at [indiscernible]. I am just pulling it up. Give me a second.

MR. ROBERTS: And I think Shane has it, if that would help. But if you can toggle to him, but otherwise --

THE COURT: I just get a better picture on my screen, but thank you.

MR. ROBERTS: Okay. And I would refer the Court to page 11 of 13, which is the Court's actual order, after it goes through the findings of fact and the conclusions of law.

So the first is the renewed motions granted. It is further ordered that United be sanctioned for its violation of the orders of this Court. And those are the prior four orders, which were the subject of the April 9th hearing.

005368

005368

005368

A, United should not be allowed to seek additional extensions of any discovery deadline. We have not been allowed to seek any extensions, and there is nothing there we could have violated. We didn't seek any.

B, there is a list of specific RFPs which says that anything not produced by United by 5 p.m., Pacific time, on April 15th, 2021, will result in a negative inference which may be asked of witnesses at the time of the trial, or at any hearing, and will be included in jury instructions stating that the jury should infer that the information would have been harmful to United's position.

005369

This subparagraph B contains no affirmative obligation for United to perform. It says, if you don't do it, United, there is going to be a penalty which will be imposed at trial. Based on this, United, as I have said, made tremendous efforts to complete its document production and produce as many documents as possible by that April 15th deadline.

005369

There is no violation of paragraph B. To the extent there were things that we could not produced by the deadline, they can ask for a negative inference, which is a self-executing sanction and no further sanction is necessary. To the extent they are asking for additional sanctions, they're really asking you to reconsider this order, and they haven't done that.

Paragraph C, United's privilege law shall be produced

005369

by 5 p.m., Pacific time, on April 15th. In the event the Health Care Providers choose to challenge any documents identified as withheld or redacted on the basis of privilege or work product can be done by separate motion. The Health Care Providers shall be awarded their attorney's fees and costs for the bringing of this motion.

The affirmative obligation here is for United to produce a privilege log. And there is no allegation that we violated that order and did not produce a privilege log.

And even though the Health Care Providers had the specific ability and permission to bring a Motion to Compel, those documents -- the privilege log was produced back in April, May, June, July, August, September. Now we are here in October, there has been no Motion to Compel. There has been no allegation that our privilege log is noncompliant or that we have improperly withheld any documents.

The Court heard some speculation that the lawyers could have hidden stuff and buried it in a privilege log through an improper designation, but there is no evidence of that. The Court can't speculate that the lawyers breached of their ethical duties, when they haven't brought a Motion to Compel -- a single Motion to Compel in connection with our privilege log. So there is no violation of paragraph C.

Paragraph D, United shall be sanctioned in the amount of $10,000 to be paid to a Nevada pro bono legal service of

005370

005370

005370

its choice and noticed by the Court. And they do include a footnote in their brief saying that we had not -- that United had not satisfied that obligation.

Since that time, we have filed a notice with the Court where United chose Southern Nevada Legal Services for their legal aid donation required by this order.

And as we have set forth in our brief, that was not in response to this motion. That check was requested on September 24th, a week before the motion was filed, and it was actually the FedEx'd out the same day the motion was filed, and the order was just entered on August 3rd. It doesn't set a date of compliance, but I would note that United has not violated that order of the Court.

005371

005371

Finally on page 12 of 13, it is further ordered that due to United's failure to produce documents to set forth herein, that Health Care Providers may apply to the Special Master to retake depositions after the May 31st, 2021, deadline, based on any new information provided by United. We had not prevented the plaintiffs from taking any deposition or any deposition a second time that they wanted to, pursuant to this provision. We have not violated that last further order of the Court.

So I think if the Court looks at the August 3rd order, there could be no possible violation of this order. And the Health Care Providers opened their brief by saying that we

violated yet another order of the Court, August 3rd. And they represent that the August 3rd order requires us to do things that it does not require us to do.

I would, therefore, submit that to the extent this Court previously found violations of the four discovery orders at issue in the April 9th hearing, the Court has already considered those issues and issued a sanction, which penalizes United heavily at trial to the extent there are things that it did not produce.

Turning to -- I think maybe the most critical issue for this Court today is the argument that the Court would have somehow come to a different conclusion after the April 9th hearing, if United, and primarily its counsel, Mr. Portnoi, who is here today, had not misrepresented the level of compliance. And that United had misrepresented that they had substantially complied at the time of that hearing and the fact that United produced 400,000 documents after that hearing is proof that United had misrepresented the status of its productions.

And I'm going to go through the representations that were made in court, because I think this is key for the Court to understand.

During the hearing -- and this is at page 41 of the transcript -- Mr. Portnoi says, starting at line 9, Ms. Gallagher is absolutely correct. Though it is the case

005372
005372
005372

that at the end of this, at the end of discovery, discovery is not going to be measured in thousands of pages of documents; it is not going to be measured in tens of thousands of documents. It is going to be measured in hundreds of thousands of pages of documents, multiple hundreds of thousands.

If there were only 100,000 documents produced before that hearing, he is at least telling the Court there's going to be at least 100,000 more, hundreds of thousands. He is conveying to the Court this idea that production is going to be substantial. And he said that's necessarily incurred some delays. It has incurred delays because of many issues in discovery, because of priorities that have been placed by the plaintiffs, for instance, the administrative records.

But it is concurrent with the search through the electronic information stored on United systems was the provision of only administrative records, of 2,000 records a month, ordered by the Court. And the targeted responses to RFPs, because the Court had said, You can't wait for the ESI protocol to produce documents. You've got a duty to answer those RFPs to the best of your ability before the ESI protocols are agreed to and before the ESI searches are done.

So we are searching and producing 2,000 administrative records a month. We are doing targeted RFP searches, which are expedited based on depositions being taken. And we are

005373
005373
005373

also producing -- we are also searching through two terabytes with which -- that sounds about right to me, what Ms. Gallagher said -- that is about 13 million pages.

And he then says, beginning of line 20, and this -- and at the same time we continue to make further productions and the discovery period is not over. The discovery period will end next week. And by that time there will be further substantial productions.

So despite his argument that United had substantially complied with the Court's order, he was telling the Court, Hey, we are continuing to search through the electronic information. There are going to be hundreds of thousands of documents and further substantial productions are coming by next week.

005374

005374

And that's where I think the Court needs to understand the contrast between the argument that the plaintiffs are making, which is essentially that United told the Court we substantially complied. And look at the number of documents that came after that representation, so it can't be true.

But it can be true, if you look at our briefing and the way that Mr. Portnoi described it to the Court, which is the Court ordered us to try to comply with the RFPs before the ESI is done. And we have completed that. And we think we substantially complied with that obligation to do the best we can and do those searches and produce documents pursuant to

005374

each one the RFPs in prior four orders of the Court.

That's the substantial compliance that has been represented, because this is a sanction hearing. And he is representing that your prior orders, we substantially complied with.

The prior orders didn't compel United to do search terms through all of its ESI, but that was going on parallel. And he fully disclosed to the Court that we substantially complied with this search to try to produce documents responsive to the RFPs. But by the way, there is also this ESI thing going on and it is hundreds of thousands of pages. And there are going to be substantial productions by April 15th. And we are trying to comply with that deadline.

005375

005375

The Court then followed up on this and the Court asked Mr. Portnoi some questions beginning at page 51, line 14, In your brief you said your client had substantially complied.

Mr. Portnoi: Yes, Your Honor. And where --

The Court: And where, from 0 to 100, are we on that?

And Mr. Portnoi said: We're in a place right now, you know, document discovery deadline is April 15th. And it is our belief we are going to have completed -- you know, we are going to do our absolute best to get there. And my hope is that you will.

The Court: You didn't answer my question. How much has been provided of the entirety that will be provided?

005375

Half, three-fourths?

Mr. Portnoi said that he needed the Court to repeat.

The Court said: You guys responded by providing more documents in response to the motion. And your brief said you were at substantial compliance.

The Court: Quantify that for me.

Mr. Portnoi says: Your Honor, we had already provided at that time, the answer is, we believe to all of the RFPs.

So that's what he's talking about -- substantial compliance with Court ordering responses in RFPs. We were engaged in that time solely -- and as I believe the plaintiffs are as well right now -- in complying with the ESI protocol.

005376

Now, if I could back up for just a second here to Ms. Gallagher's argument that the ESI protocol is no excuse because this Court found that United couldn't wait on the ESI protocol. That is not the argument that we made or are making now. We did do targeted searches to comply with the RFP. And that is what we said we had substantially complied with -- the searches were done and the documents are produced. But we are still working on the ESI protocol.

005376

And after that September warning to United, which was referenced by Ms. Gallagher, this Court, on January 8th, 2021, did issue a stipulated order governing an ESI protocol, and United took that obligation seriously.

And frankly, Your Honor, when you're talking about two

005376

terabytes of data and multiple custodians over multiple years, the only way to really thoroughly and rationally search that is through use of search terms and trying to narrow that down through electronic means. And that is customarily what's done in this jurisdiction, where you have databases this big that you're trying to search for all relevant documents on.

And Mr. Portnoi described what was going on here, that there is a third-party vendor; that there are multiple contract attorneys; that they need to take that database. They need to run search terms. They need to take those results and thread them, which means that if I send you an e-mail, you send me one, I send you one -- that's three e-mails, but they are all in one e-mail. So threading -- and that eliminates the manual review of three e-mails into one.

005377

005377

And then there is de-duping so -- because the same custodian -- an e-mail would be both in our databases. It would be in there twice, and so the computer can de-dupe those. And all of those things resulted in narrowed number of documents, which then have to be manually reviewed to see, one, if they are relevant and responsive; and two, are they privileged. You can't just throw it all to the other side, because then you would be voluntarily producing privileged information. So that was a massive undertaking.

And we also argue that goes to willful compliance. You look at the *Young* factor. Did we just willfully disregard

005377

the Court? Did we just say no, we aren't going to do it?

My client hired 100 lawyers who spent 7,000 hours trying to meet the deadlines imposed by the Court, which resulted ultimately in over half a million documents produced.

Contrast that to the plaintiffs in this case who produced about 3,000 documents. A third of those were produced on August 15th. They were doing the same thing we were.

So ultimately, Mr. Portnoi then said, We've reached agreement on an ESI protocol. We've reached an agreement that ESI is going to be produced five days before each deposition, so we are pulling people out of order to try to make it so they wouldn't have to take depositions twice, even though they were permitted to by order of the Court.

005378

005378

And our anticipation has been the goal to have all of the ESI pieces produced prior to the April 15th document discovery deadline, but with respect to the RFPs our production is complete.

And what did the Court take out of all this? If the Court goes to the order again, the Court found that United should be sanctioned because they were in not substantial compliance.

So to the extent that the basis of this hearing is that United had misrepresented substantial compliance, which I contend they did not do, based on the argument I've just

005378

presented. But the Court actually found in numbered paragraphs throughout the order that United had not substantially complied and, therefore, should be sanctioned. So the Court has already noted a lack of compliance.

The plaintiffs argue that the volume of productions is proof that we somehow violated an order, but the order required us to produce as much as we could by that deadline. The volume of documents is actually proof of the efforts that United went to in attempting to comply with this Court's order. And in fact, the sanctions here are still predicated, to some extent, on something that is missing.

005379

And Ms. Gallagher did raise some arguments, I will address a couple of those. But that is the key, not how many documents we produced, but what have they shown is missing? And if they show something is missing, the remedy is already in your sanctions order.

005379

And we start trial soon. And rather than seeking to prove that stuff was missing and asking this Court to enter an adverse inference, as contemplated by the current order, we are a week from trial and they are seeking to throw the order out with the trash and impose a whole new sanction that is case dispositive at this point in the litigation.

And Your Honor, that's just not fair and that is not proper. This Court issued an order telling United what would happen if it didn't produce things. This Court ordered United

to produce things, and that is what United attempted to do.

And plaintiffs criticize us for bringing up things which had never been brought before the Court, which where never subject to meet and confers. Motions to Compel about issues where we believe plaintiffs have interpreted their obligations similarly to ours.

But we are not seeking any relief here based on those violations. We are not bringing motions that we haven't met and conferred on. We are raising those documents to show that our actions were reasonable in light of their actions and certainly not justifying sanctions.

005380

But let's talk about matters that are not before the Court. This production was made April 15th. There are no motions to compel saying things still seem to be missing. Please give them to us.

005380

We are not allowed to produce things after April 15th. They certainly could have moved to compel additional things if they wanted to. Not a single motion. Not a single challenge to the privilege log, as I have admitted. And instead we are just getting sandbagged at the last minute with the casing-ending sanction motion.

There is a mention of 42 percent of the documents that have been produced deal with the ASOs, I believe what they referred to as the administrative record. Well, one, this Court ordered us to produce that, so it is not surprising that

005380

it is in there.

But second, that leaves 58 percent that is not administrative record. Over 200,000 documents that is not administrative record. Again, contrast that to the plaintiffs having produced 3,000 documents.

Mr. Schumacher -- they point out that one of the things that we failed to produce and that they didn't know about at the last hearing were some notebooks that Mr. Schumacher testified in his deposition that he would translate the notes and throw away every 30 days.

And I would point the Court to page 26 of our brief and note that this is an April 2019 [indiscernible]. And they claim that we should be sanctioned for not putting a litigation hold on that notebook, way back in April of 2019.

005381

005381

But they have admitted that they had Mr. Murphy, the CEO of TeamHealth. Neil Simpkins and Bob Galvan did not receive a litigation hold on any notes from that either.

Now, this is not, well, they violated their obligations too. This goes to the reasonableness of their claim that we should have anticipated litigation and the relevance of that notebook and that meeting and preserved it even though he had transferred into notes to his attorney.

And I would submit that if they, looking at that meeting, decided that they didn't need to advise their attendees to put a litigation hold on any notes from that

005381

meeting, that it was also reasonable for United to think that they didn't need to do that at that time.

And we do believe the case law is applicable because he did say he translated those notes into a memo to his attorney. It is on a privilege log. They haven't moved to compel. They could have moved to compel. We would have given those notes in camera to the Court. But they didn't -- they didn't seek that relief. What they seek instead is case-terminating sanctions.

Shared savings -- you've heard a lot of shared savings. And our brief does address that, where we actually point out to the Court that we did searches in our database for the term, shared savings program, in order to try to find any documents that were responsive. And that search, as indicated in paragraph 19 of Mr. Portnoi's affidavit, resulted in 6,300 documents which have all been produced.

Again, contrast that to the amount of documents the Court would expect. Plaintiffs have produced 3,000 documents to everything. We produced twice that volume, just having the term shared savings in the documents, by searching through our systems. The -- and the Court will see it in the brief, the billion dollars is exaggerated based on the testimony of the record.

But where is the prejudice here? This, according to the Court's orders, is a rate of payment case. They have

005382
005382
005382

admitted that the rate they're charging has to be reasonable. This has no relevance to whether that rate is reasonable.

The shared drives -- and Mr. Portnoi came here today in case the Court had any questions because he was the one personally supervising much of this effort on behalf of the client.

But in Mr. Portnoi's declaration, he indicates that defendants searched the corporate shared drive folder that houses the out-of-network programs teams documents and collected documents from SharePoint and locations identified by defendants' custodians. This folder on the shared drive contained over two terabytes of data. Defendants' production from the search sources is over 4,000 documents.

005383

005383

And he specifically addresses the production from the UCH EI HCE PAM folder. And he addresses other specific documents that the plaintiffs claim were not produced or that United failed to do searches, which would have triggered them to find those documents.

The Emma Johnson -- Emma Johnson testified that she e-mailed United all of the time; right? But people's recollection of their volume of e-mails over years is often spotty. I think, based on the number that we produced in the period of time that she was sending e-mails, that was about two e-mails a week. Two e-mails a week could reasonably be considered, I am e-mailing them all the time. But ultimately,

005383

that's just speculation. You've got a witness that said, yeah, I sent them a lot of e-mails.

We've come up with about two a week. So can you really sanction United for doing a search for those e-mails, producing everything they find, but speculating that there is something that didn't come up on their searches? And I would submit there is something very compelling on this issue in the record. And that is that United, after searching its systems, identified 1,419 e-mails and attachments to or from Emma Johnson.

Nonparty MultiPlan, faced with a subpoena, produced 1,247 e-mails to or from Ms. Johnson and United. So you've got sort of verification that the volume is about right, by subpoena they have served on a third-party. They match up pretty well.

Salesforce. We've set forth in the brief that Salesforce is a system used by MultiPlan. And the argument that is being made by plaintiff demonstrates [indiscernible] to know how the Salesforce system works and what it is.

United doesn't use the Salesforce system. And I actually have been involved in a case with Ben Clower and Jacuzzi, where Judge Scotty ordered a forensic search of Jacuzzi -- Jacuzzi's Salesforce database. So I've got a pretty good understanding of the system.

And when you say send an e-mail through Salesforce, it

005384
005384
005384

doesn't somehow communicate to United Salesforce system which we didn't. Salesforce is a way for someone to document their client contacts and their business contacts. If someone calls you, you enter the phone call into Salesforce and it's stored. If you send an e-mail, you do it through Salesforce, and then you have a record in the Salesforce system of the e-mail. But the person on the receiving end just gets an e-mail which has been searched and produced.

They could try to verify that the all the e-mails sent through Salesforce by MultiPlan were found by United's e-mail searches, by going to Salesforce and asking to search their Salesforce program.

005385

We don't have a Salesforce database. We just got e-mails and we searched the e-mails. It is a fundamental misunderstanding of what Salesforce is. It is a platform, but there is absolutely nothing in the record which would demonstrate their claim that United or any of the defendants have access to MultiPlan's internal Salesforce database. We don't. There is no evidence of that.

The Court's indulgence just for a second.

So finally, in closing, I would again ask the Court as we do in closing our brief, to apply the *Young* factors in order to determine if case dispositive sanctions are appropriate here, and note that the Court should impose sanctions only in extreme circumstances where willful

005385

005385

noncompliance of the court orders shown in the record or the adversarial process is halted by the unresponsive party.

The efforts -- the Herculean efforts that United made ultimately resulted in all of the searches being done electronically. The terms being used were disclosed to the plaintiffs. The searches were done. Half a million documents were produced. Justice has not been obstructed here. It is the exact opposite of willful noncompliance.

And I understand that given the extreme burden, United initially did not act as quickly as this Court thought was appropriate, and I understand the Court has criticized that before. And we are not here to dispute that part of the record. That is what it is.

005386

005386

But after the Court issued these orders, United did go in and attempt to comply with the RFPs before the ESI protocols agreed to and before the tremendous electronic search was done. They did make rolling productions. They did have back up to the fact that they believe they had responded to the RFPs. And the only thing left was the completion of the ESI protocols, which are going to be hundreds of thousands of documents by next week. And we hope we can get there.

Ultimately, they did get there. And I would ask that the Court not penalize United for putting 7,000 attorney hours and 100 attorneys on this file in order to try to plow through two terabytes of data and make productions by the Court's

005386

deadline. I would ask you not to punish for that with further sanctions and consider the tremendous efforts which United did make, albeit late in view of the Court -- the Court's schedule. But we did make it, and we did comply by the April 15th deadline imposed by the Court. We didn't ask for any further extensions. We haven't fought any depositions they want to take.

And we are here. And we are a week from court. And we would ask the Court to allow us, to the extent possible, to try the case on the merits.

THE COURT: Thank you.

MR. ROBERTS: Thank you, Your Honor.

THE COURT: And we're going to have to take a break this morning. I am so sorry, but the administrative orders require us to take frequent breaks because we have to keep our masks on the whole time.

It's 10:45. Let's be back at 10:55.

Thank you.

[Recess taken from 10:45 a.m., until 10:55 a.m.]

THE COURT: Thanks, everyone. Please be seated.

And the reply, please.

MS. GALLAGHER: Thank you, Your Honor.

I would like to start with just sort of a rhetorical question with respect to the presentation that we just heard. And is that if you think about their argument, since they

produced 81 percent of their production after the April 9th hearing -- and it was in that production that causes us to be here today; it was in that production where we see the missing information. We found these examples after the last time we were here. And so there examples of noncompliance, of earlier orders, would basically under their theory -- would prevent us from being able to seek any relief from what we saw after we were here last time.

It is also important for the Court to hear what we heard from United in terms of everything they did to try and comply. But everything they did was after they were sanctioned, Your Honor.

005388

They talk about all the things that they did all the time and hours that they had to put in, but it was after, that we saw that production. Perhaps had the Court not sanctioned at all, maybe we wouldn't have seen any of that information, because they were waiting to see how serious the situation really was for them. And it was serious.

005388

We heard the presentation about they tried to comply. They wanted to comply -- trying to make a distinction between the ESI protocol and request for production of documents.

But picking and choosing from the transcript from that day and putting in isolation certain things that were said by United's counsel is taken out of context from the Health Care Providers' viewpoint and recollection of what was discussed at

005388

that hearing.

United's counsel made it clear when it was said -- we all know what substantial compliance is. And we know that is a term of art demonstrating near total compliance. And that compliance in this case, it demonstrates that compliance will be done before the discovery period has been completed.

And there was an inference if -- at the least -- if not an outwardly expressed statement, that United was in near substantial completion, substantial compliance -- whatever term that they were trying to use at the time -- to get out of additional sanctions and more serious sanctions.

And the Court relied on those representations. The Court relied on the fact that United had not disclosed yet -- maybe had not uncovered yet that Mr. Schumacher's found notes were not retained. They were destroyed every 30 days.

And I think what is important about Mr. Schumacher is that this is the meeting where there was discussion about United unilaterally reducing its rates, because they can. Because testimony did not deny he said it. He didn't recall that he said it. But those notes are an instrumental piece of this case. This isn't some ancillary issue with no connection to the heart of the case.

One of the things too that needs to be pointed out is that Mr. Schumacher also testified that he took a photo of his notes. We do not have a photo, Your Honor.

005389

005389

005389

So there were ample opportunities for United to present this information, if they chose -- supposedly in the notes on the privilege log and a picture. We don't have those, Your Honor. And so because that is the crux of the case we are asking for a sanction that is commensurate with that destruction of evidence.

United tries to recharacterize this as case-terminating sanctions that we're seeing -- that we are seeking. However, our request for sanctions still requires United to put on a case with respect to liability. They have not stipulated to liability. So this is not a case-terminating sanction that would require the Court to undergo the *Young* factors.

005390

005390

We do think that the *Young* factors can be met here. The Court has already found a willful noncompliance by United in its production and discovery efforts in this case. This failing to produce critical information is no different than those earlier decisions by this Court.

So United still must prove that liability at trial for the claims asserted in the second amended complaint. The remedy that we are seeking is directly related to the documents that we believe they withheld.

As for an evidentiary hearing, the Court is well familiar with the motion hearing like this satisfies that evidentiary requirement, Your Honor.

005390

So the relief that we seek in this motion is an application of an adverse inference relief that makes application of that inference specific to the damaged [indiscernible]. An adverse inference of document production is not a jury question of fact, but a determination if a party has complied with the court orders, which is why it is appropriate now and in these pretrial proceedings before this case proceeds to the jury trial next week.

Your Honor, what I heard in United's presentation was not of direct indication that we got it wrong. They didn't come to the Court and say, Wait a minute. All the documents you say you think are missing are actually here, and here they are. That is not United's presentation.

005391

005391

United's presentation is that, again, we have to prove what is missing. We have sufficient evidence of what is missing, specifically by Mr. Schumacher. And that is an admission by an executive that he did not preserve those documents. He took a picture. We do not have those. United has purportedly placed that document on a privilege log. But they cannot use that argument as a way to cure their inability and their failure to produce that document.

Your Honor, given what we've presented in motion, the additional information that we have opposed here today with respect to United's opposition, we would ask that you grant the motion and enter the sanctions that we have requested.

005391

Thank you.

THE COURT: Thank you. This is the plaintiffs' motion for further sanctions.

And the motion will be denied for the following reasons: There wasn't a Motion to Compel the August order. It's asking for a negative inference for an adoption of the damage model. But the issue for the jury is the reasonableness of the reimbursement rates and that would be taking that away from the jury.

So the motion will be denied.

But let me caution the defendant that that August order is really very careful. If the plaintiff establishes that something wasn't turned over, there will be a negative inference instruction to the jury.

005392

005392

So all right. That takes us to the defendant's motion for partial summary judgment, which also relates to *Motion in Limine* 32.

MR. PORTNOI: Thank you, Your Honor. Dimitri Portnoi for defendant.

We have a presentation that will come up in a moment that relates to this. I would also say opening on this subject is, you may have seen on Sunday night, there was a motion for leave to file a supplemental opposition that was filed by plaintiff. In fact, the motion for leave --

Thank you.

005392

The motion for leave actually included the substantive arguments they would like to make. We believe that is because plaintiffs improperly cited the federal rule of court under the Federal District of Nevada, as opposed to citing or applying the state court rule [indiscernible] which requires leave of Court before that brief was filed.

So we would like -- so one issue that is present here is the fact that there is an improper surreply for the Court right now. And we filed an opposition to that last night, so that the Court would have papers on that.

But I'm curious if the Court would like to hear argument on that, if the Court is seeking either plaintiffs' papers or defendants' papers.

005393

005393

THE COURT: No. I just want to hear your motion today.

MR. PORTNOI: Okay. Thank you, Your Honor. So I will skip ahead in my presentation to the summary judgment motion itself.

So primarily as the Court knows at this stage there has been an amended complaint. A number of the issues that were present in the partial summary judgment motion are mooted by that.

In response to our Motion for Summary Judgment, plaintiffs dropped the RICO claim, plaintiffs dropped other claims. Plaintiffs dropped a number of carve-outs that were

005393

present, and that puts a number of what we are talking about here today.

However, what we still have as a result is punitive damages, and we also have a number of claims that are outside of the case. These are claims that were paid under Medicare or Medicaid. These are claims where United denied, disallowed part of the claims. And these are additionally -- additional carve-outs that we will address as we get there.

But I want to focus first on punitive damages.

Obviously, punitive damages is significant, you know, will terminally affect the presentation that can go to the jury, and especially, given the amendment. But really given the evidence the plaintiffs cited in their opposition brief, and even considering the evidence that was filed in the improper surreply that was filed on Sunday night. There is no basis for the Court to allow punitive damages to go to the jury.

I think the Court knows the punitive damages standard, which is that in an action not arising from contract, in Nevada law, where we have clear and convincing evidence of oppression, fraud, or malice. As the Court also knows, the Court is fine for the special gatekeeper role when it comes to punitive damages -- that the trial court has to make an initial determination as a matter of law as to whether the plaintiffs offered substantial evidence of oppression, fraud,

005394

005394

005394

or malice to support a punitive damages instruction. The Court expressed this well in the *Clare v. Rebel Oil* case that was affirmed by the Nevada Supreme Court [indiscernible].

We started here with plaintiffs, as you can see, that initially alleged in their second amended complaint that they were pursuing only a bad faith theory. In their motion for partial summary -- in their opposition brief, what they raised is oppression and fraud as their two prongs. In their surreply, they have expanded that now to argue oppression, fraud, and malice.

So we have a moving target in the sense that the second amended complaint doesn't even plead those. It only pleads bad faith, which would have been insufficient on its face to justify punitive damages.

005395

005395

So it makes a note here as well. What we are looking for here is clear and convincing evidence, again, that the plaintiffs are guilty of oppression, fraud, or malice. And we need to remember that the Nevada Supreme Court has ruled that Your Honor, the Court has to consider that clear and convincing evidence standard on summary judgment. That means that there needs to be sufficient evidence for which a reasonable juror could find a clear and convincing evidence of either fraud, oppression, or malice.

These are all *mens rea* -- these all have certain a *mens rea* to them and they are a little bit different.

005395

Fraud requires two intentional findings: The intentional misrepresentation, deception, or concealment of material fact known to the person; and intention to deprive another person of his rights to property or to otherwise injure another person.

And in addition, with respect to oppression or malice, they have a conscious disregard standard, and that requires knowledge of the probable harmful consequences of a wrongful act and a willful or deliberate failure to act to avoid those consequences.

I want to point out, the claims that are currently in the case: Breach of implied contract, unjust enrichment, the Unfair Claims Settlement Practices Act, and the Prompt Payment Act -- none of these have these sort of *mens rea* here.

005396

005396

And in fact, when we challenged the RICO claim on the inability to show reckless fraud, plaintiffs responded by dropping that and dropping the significant treble damages that come with it, because they were unable to put on a case for reckless fraud -- but have put in their opposition, without evidence, that there is intentional fraud and intent to harm.

Again in the opposition brief, we don't see an attempt to show conscious disregard which is necessary for oppression. The opposition brief doesn't use the term conscious disregard. And remember conscious disregard means that defendants need to know of a probable harmful consequence that would accrue to a

005396

plaintiffs and they need to proceed anyway, and then that consequent needs to actually happen. But there are no harmful consequences that have occurred in this case, other than the lost profits, which is remedied by compensatory damages and don't justify punitive damages.

And for that reason, the opposition brief does not mention a consequence. It does not mention that defendants should have known -- should have known is not good enough -- that the defendants knew of a harmful consequence and that they proceeded anyway and that room for consequence occurred.

These are basic -- these are basic facts that even reading the opposition for -- of summary judgment, we wouldn't even be able to pass muster pleading that. And we don't have a pleading with respect to punitive damages either in the second amended complaint.

In the improper surreply, TeamHealth plaintiffs used the word conscious disregard, though they still do not plead any -- they still do not claim that there is any intentional fraud in the case.

We have conscious disregard. And what you see here in the surreply for the first time is two facts that are the harmful consequences that we are now talking about. And those two facts are that they said in a meeting in July of 2019 there was a discussion with TeamHealth's CEO about the fact that hospitals would have to close and physician pay would

005397
005397
005397

have to come down as a result of certain contract terminations.

Those are the two facts and that's what we want to focus on. Those are the two negative consequences of that -- that defendants are alleged to have known. And those are the two consequences that they say are the harmful consequences that should go to the jury on punitive damages.

Here is the bottom line. The first problem is that's a national -- national negotiation. The states that they are talking about states that aren't in -- aren't Nevada. And if you look at the PowerPoint presentation here, you can see the exhibit that I am talking about.

005398

We are talking about the possibility that hospitals might close and physician pay might go down in Tennessee, in Texas, in Florida, in New Jersey, in Ohio. We are not talking about that in Nevada. The reason is they're talking about contract termination. Either a situation where in July 2019 certain United entities, that are not parties to this case, had terminated contracts with certain TeamHealth health subsidiaries that are not parties to this case in other states.

005398

It's not an issue at this time because the contracts between United entities and TeamHealth entities in Nevada had terminated long before it, and they terminate by choice of Fremont who terminated those contracts.

So what we have is -- here is we have allegations that maybe hospitals might close in the future in other states. And we have allegations that maybe might affect TeamHealth entities -- not Fremont, not Ruby Crest. Not to be glib, but you might call them their cousins. They are other subsidiaries of TeamHealth, and that is the harm that plaintiffs want before you today.

However, you can't do the harm to nonparties in other states, and there is an important reason. And this is why it is so troublesome that this argument -- the argument that is actually the only place where we are talking about the conscious disregard and what they are going to prove in front of the jury only comes up in an unapproved surreply.

005399

005399

A court in Nevada is not permitted to issue punitive damages based on harmful consequences that occur in other states. This is something that has time and again been ruled on by the U.S. Supreme Court.

The cites are there. Unfortunately, we don't have leave to reply to their surreply, so we -- it is here that we again, we would ask that if the Court is going to consider their surreply, that we have an opportunity to respond to it.

But the mere fact is under the principles of economy, under principles of due process, a court in Nevada issues punitive damages only for consequences that occurred in Nevada.

005399

There is also a problem of double recovery here, because, don't forget, these TeamHealth subsidiaries -- not Fremont, not [indiscernible] physicians, not Ruby Crest -- they also are suing United entities in these other states where they at times are asking for punitive damages.

They are asking this Court to allow punitive damages to go forward, for instance, with respect to the possibility that maybe hospitals closed in New Jersey, maybe physician pay when down in Texas. Well, they are also suing United entities in Texas and New Jersey. They are potentially seeking punitive damages in some of those suits. So it simply is an ill fit, and it also violates, very most, if not all, principles of constitutional law.

005400

005400

Now, the key here to understand is in order to do this, in order to have a punitive damages case, it is predicated on what happened at national negotiations and harms that occurred in other states to party -- to entities that are not parties to the suit.

This case has to be what [indiscernible] does not want it to be, which is a case about the national entity TeamHealth. They aren't able to produce any evidence of harm to Fremont. They unable to produce any evidence of harm to physician group. They aren't able to produce any evidence of harm to Ruby Crest. So this has to by -- of necessity become evidence of harm to TeamHealth. And, more importantly, not

005400

just TeamHealth, Your Honor, but TeamHealth's subsidiaries in other states.

So now the only evidence of conscious disregard is you have comments made allegedly in national negotiations, referencing Florida, New Jersey, New York, Ohio, and Texas.

And they are being quite clear that they want to put TeamHealth at issue in this trial. If you actually look at the declaration of Kent Briscoe, which is attached to plaintiffs' motion -- well, opposition to the Motion for Summary Judgment that they want this Court to consider. They open with team physicians, Fremont, Ruby Crest are part of TeamHealth.

005401

They want to put TeamHealth front and center now in this trial. Again, the -- so then -- but however, it's a little late for that now.

005401

As Your Honor knows, TeamHealth plaintiffs prevented discovery [indiscernible], and they moved [indiscernible] to keep TeamHealth out of the case. They've also -- as they've said, it harms our physician pay and hospital closures. Defendants sought discovery on physician pay. We sought to find out, What is the component of their cost that is physician pay? And that would have shown us, does physician pay actually go down or not?

And plaintiffs moved for a -- moved for protection from this Court for discovery on that subject. Your Honor

005401

ordered that there would be no discovery on physician pay. And there's a *motion in limine*, as well, to prevent us from talking about physician pay.

So central to their argument on motion of damages is the idea that defendants knew that physician pay would have gone down, and that physician pay in fact did go down.

Again, it's not clear why that's harmed to -- to Fremont, Ruby Crest, and team physicians. But nonetheless, you gave credit to that argument. That has been kept out of this case. And this case would have to change fundamentally in order to go forward to trial next week, as a trial of punitive damages about physician pay.

005402

We also sought discovery related to plaintiffs' relationship to hospitals in order to understand, because plaintiffs are not hospitals, they are ER staffing companies. And plaintiffs moved to further protection from any discovery on their relationships with hospitals, and they moved *in limine* to prevent any presentation to the jury by defendants on their relationship with hospitals.

005402

And yet the fact that hospitals closed is now the center of their punitive damages claim, but we have not been able to -- we can't make that presentation. To be clear, there is not a statement. There is no statement from plaintiffs that physician pay went down in Nevada. There is no statement that hospitals closed in Nevada.

005402

It's all simply the fact, again, this may have happened in some unspecified state among this list of New Jersey, New York, Texas, Ohio, Florida, and a few others. But that's going to -- that is the center of their punitive damages presentation, as demonstrated by their improper server log.

So again, the only evidence against them to announce their oppression would relate to out-of-state hospital closures and physician pay, and perforce would violate the U.S. Supreme Court's constitutional holdings; and it would make this case about TeamHealth, about costs to pay physicians, and what caused hospitals to close in other states, if they did close in other states.

005403

005403

I want to just, in thinking about conscious disregard, really understand how meager the evidence is in this case and how it has, you know, other cases related where the Nevada Supreme Court has held that a district court, by pure coincidence, Your Honor -- and honestly we --

THE COURT: That was one of my first jury trials as a judge that --

MR. PORTNOI: I'm going to be honestly, we -- I'm going to be honest, Your Honor, we put this in our reply brief. It was only in preparing for oral argument that I looked up and noticed that it was your decision.

But this -- in this case, this is from the Nevada

005403

Supreme Court's decision and how they characterized the evidence -- that what happened is that there was evidence that executives of the company knew that benzene was a dangerous carcinogen and the company did nothing -- did not monitor the atmospheric benzene at a Las Vegas terminal, or at -- or estimate the damage to cumulative benzene exposure.

And Your Honor properly, nonetheless -- even with that knowledge of a harmful consequence and in the actual occurrence of that harmful consequence -- that was not enough to go to a jury, because it was not enough to show clear and convincing evidence -- and I'm not sure that a reasonable juror could possibly find clear and convincing evidence of the kind of evil intent, the kind of conscious disregard that is necessary to go to a jury on oppression or malice.

005404

005404

It is not enough to show that, as the Nevada Supreme Court ruled here, that it willfully and deliberately disregarded the risk such as to submit the punitive damages issue to the jury. Plaintiffs' evidence may have shown a negligence verdict. They failed to show an issue of fact that cumulative actions could support an award of punitive damages.

Here, with respect to the most analogous claims -- the racketeering claim, the RICO claim -- that was abandoned after we filed a motion for summary judgment. It wasn't enough to put up evidence to justify that.

They may say it was simply an attempt to streamline a

005404

case. Your Honor, very rarely do plaintiffs give up treble damages [indiscernible] to streamline a case. There simply was not enough evidence to afford on a racketeering case. They dropped those allegations -- and now are still saying that there is enough evidence for punitive damages on a clear and convincing evidence standard.

So, you know, again, just to -- now to move on to the final prong. Now, we have here the idea that TeamHealth is going to show that defendants intended to defraud them and intended to deprive them of rights or property or to otherwise injury.

Now, in their opposition brief, they're willing to say that there were fraudulent representations about using third-party vendors. They're unwilling in their opposition brief, they're unwilling in their improper surreply, to say that those representations were intentional or that they were made with an intent to harm. They're just unwilling to go there, even as a matter of argument.

Keep in mind, their only claim with respect -- in the opposition brief, in the surreply, that relates to fraud is MultiPlan, and our relationship with -- United's relationship with MultiPlan and Data iSight.

It's important to note that after -- again, after we moved for summary judgment, TeamHealth plaintiffs didn't only abandon the RICO claim; they deleted 168 paragraphs in the

005405

005405

005405

second amended complaint. Every single mention of MultiPlan was removed, because it's not relevant to any claim in this case. It's no longer relevant -- as Your Honor said, this isn't a rate of payment case. It's no longer relevant. It's not relevant to the implied in fact contract claim. And it's going to say, is there a contract? If we -- what are the terms of that contract? Did we breach it?

It's not relevant to an unjust enrichment claim, which is a rate of payment claim. Is the rate that we paid a reasonable rate? And experts can disagree on that, and I imagine the experts will disagree, as they have disagreed before.

005406

And again, the RICO action was removed in the face of an argument that they could not show reckless fraud. And now they -- nonetheless, there's a claim in here for intentional fraud.

005406

So let's talk about Data iSight. Data iSight is a tool that's operated by MultiPlan. It helps with calculated reimbursements. It also helps with negotiation after something is challenged.

So oftentimes, plaintiffs as -- sorry -- oftentimes, either insureds or the -- or providers will challenge the amount of something that was paid, and that will route through Data iSight who negotiates. And that's something that happens after the reimbursement has already -- after the reimbursement

005406

has already -- the initial reimbursement has already been calculated, after the reimbursement has already been made.

As plaintiffs' expert, David Leathers said, this is something other companies do. This is something other insurance companies hire MultiPlan for this. This is something that exists out there in the industry.

Really, what we've shown, and these are -- there are only three exhibits in the opposition brief relating to fraud -- three exhibits. Four exhibits total, that relate to punitive damages at all.

And what we have in that opposition brief is a discussion of two different topics -- two different things that data iSight does. The first thing is that there was a -- at a certain point, there was a negotiation cap. That's a word that we will probably hear, that you will hear from plaintiffs as well.

Now, again, remember what I just said, that you first calculate a reimbursement. And then if there's a disagreement with that, there's an appeal and you may negotiate what is -- what's going to happen afterwards.

And there was a point in which the defendants -- in response to getting a great deal, a large number of appeals, when the plaintiffs hired a separate company CollectRX to pursue a lot of those appeals -- to appeal them in an attempt to reimburse higher. And United at that point had a

005407
005407
005407

discussion, as other companies do when they work with MultiPlan, and set a cap of 350 -- a negotiation cap of 350 percent of Medicare, with respect to the -- excuse me -- 350 percent of Medicare with respect to what Data iSight was permitted to negotiate when negotiating when they agreed TeamHealth plaintiffs had issue in this case.

Separately, there was something called an ER override -- there's a few different names for this. And what the ER override was is that when Data iSight claims were -- what United actually did was to say, well, when Data iSight priced something too low, we don't want them to get too low of something, so we actually increased that amount automatically. And we directed Data iSight to increase it according to a particular percentage of Medicare.

005408

005408

So these are the two elements that make up the intentional fraud claim -- one of which -- again, there has to be an intent to deprive the -- deprive someone of rights and property -- one of which was actually serves only to increase reimbursements; the other of which serves only to apply well after initial reimbursements have occurred, and only with respect to the practices of negotiating subsequent settlements.

Just, you know what we -- I could see that you are -- just again -- we put some more stuff in here that relates, again, to the fact that these are plaintiffs' exhibits --

005408

walking through them, so Exhibit 4, one of the exhibits on punitive damages. This only relates, again, to the fee negotiations, clinical negotiations. That's what those abbreviations mean in their exhibits, FNX and CNX.

Again, what we're talking about here has nothing to do with the initial rate of payment. It has only to do with the subsequent negotiation.

And with respect, looking at Exhibit 4, there's no evidence here of fraud or oppression -- only cost control to rein in exorbitant rates and egregious billing.

And again, what we see here is that contrary -- in depositions that were conducted by plaintiffs of defense witnesses, these were things that were -- these negotiation parameters, which didn't affect the initial reimbursements -- these were things that were being applied ultimately to many providers. They were being provided -- and as the witness from MultiPlan said -- these were something that other insurance companies also requested, or rather that United entities were requesting, not just with TeamHealth. But, in fact, that they were just fairly common. So yes, fairly common. In the industry, a fairly common practice.

Sorry. I'm going to push ahead in an effort to see what we can get done before Your Honor has to get out before lunch.

So to come to the summary of where we stand on

005409

005409

005409

punitive damages, again, with respect to fraud, reading through their opposition brief -- no evidence of a false statement, no evidence of intent to defraud. And in the opposition brief and in the surreply, not even the barest statement that there was an intent to defraud, and no evidence of an intent to harm.

Oppression -- again, there's no probable harmful consequences, be it on lost profits. There's no conscious disregard under any standard.

And again, that would -- the oppression claim, also based on the surreply would require evidence from other states and other entities. Malice, not alleged, nor is there anything to show that we have the sort of evil intent that is necessary for that.

And again, there's nothing. And where we have to -- where we want to stand here is on the exhibits to the opposition brief. There's nothing in any of those exhibits which show that defendants were doing anything other than attempting to control skyrocketing healthcare costs. Nothing that could get a jury to a clear and convincing evidence of oppression or fraud.

I'm going to move to the second set of subjects that are relevant here, unless you have questions on punitive damages, Your Honor.

THE COURT: I don't.

005410

005410

005410

MR. PORTNOI: Okay. So there are three sets of -- after we filed our Motion for Summary Judgment, in addition to dropping some [indiscernible], also plaintiffs conceded to a number of carve-outs, but there are three sets of carve-outs that remain. I call them carve-outs.

These are categories of claims that are outside the scope of the second amended complaint and would raise preemption problems if they were in the complaint.

And what we have are essentially claims that were paid under Medicare or Medicaid -- there's about 62 of them; claims that were denied by -- denied by the entity to which they were submitted; and claims that were actually not submitted to the defendants. In many cases, they were submitted to out-of-state entities. For instance, this will be -- as we'll talk about later, these are situations where they may have been submitted to, let's say, United Healthcare of North Carolina, because that's what the person was insured by. They weren't admitted by any of the defendants in this case.

So I had started with the Medicare and Medicaid claims. So what we have here with the Medicare and Medicaid claims, these are 62 at-issue claims. I'm not sure we're fighting about them when we're at over 10,000, but nonetheless, the 62 would -- are all claims that, based on our experts declaration, based on actually looking at the matching spreadsheet that was provided by plaintiffs -- what we have is

005411
005411

005411

one claim that was paid out according to Medicare, and 61 claims that were paid out according to Medicaid.

There's no specific evidence about these 62 claims in the opposition brief. And this does not come -- this subject does not come up in the surreply -- only evidence from one deponent and one declarant that they generally tried to get to get Medicare and Medicaid claims out. Not even a statement that these 62 claims that we're raising are not Medicare and Medicaid claims -- just simply that some folks tried and they did their best.

So we have Mr. Briscoe's [phonetic] declaration, which does not discuss the 62 claims, does not reference a single one of the 62 claims to say that they are not Medicare and not Medicaid claims.

005412

005412

Likewise, we had the deposition of Eddie Accasio [phonetic]. He, likewise, does not mention the 62 claims, does not talk about them, and does not rebut any evidence that these 62 specifically identified at-issue claims were paid through Medicare or Medicaid.

As we -- you know -- when we -- when asked at deposition is it before we -- before we got to summary judgment obviously, we've narrowed to the 62 claims -- when asked whether there was any attempt to go through and really weed them out one by one, you know, they -- there was no statement in the depositions.

I'm only citing to the evidence that is cited by plaintiffs here, by the way, in assessing, as we have to, to assess the evidence that plaintiffs have put forward.

And so in terms of -- well, not talking about the 62 claims, but when asked is it possible that there are Medicare and Medicaid claims in here, the answer is, I'm pretty confident that we did our -- we tried to get them out, which is not to say that there are not 62 claims in here.

And in terms of what analysis Mr. Accasio did to make sure Medicare and Medicaid was out, he said, Well, I received information from the defendant -- from the plaintiffs. And whatever was given to me by them, I applied. That's not an independent analysis of whether these 62 claims are Medicare or Medicaid claims.

005413

005413

So once again, these are 62 specific benefit claims that are there. And to understand, it's not surprising that we would have these. We've been through multiple iterations of claims-matching spreadsheets in order to get to -- to do our best for all parties, to get to a narrower list.

But plaintiffs' experts basically say that they accepted the representations that claims that weren't Medicare or Medicaid, were, in fact, not Medicare or Medicaid. No expert from plaintiffs did any independent analysis to get them out. And to understand, the claims-matching spreadsheet has changed six times as claims that were mistakenly included

005413

in there had to be pulled out.

And of the 23,000 claims that were initially included in the first claims-matching spreadsheet, 10,000 have already been deleted, because they were mistakenly placed there to begin with. That's 43 percent.

So again, it's not surprising that there might be 62 Medicare and Medicaid claims that are still on there. What is surprising that they would be the subject of dispute, when that's going to result in a claim-by-claim exercise with the jury to go through and get testimony on whether November was -- whether that particular claim was actually paid by Medicare or Medicaid.

005414

Now, kind of now going over to deny the benefit claims. This is the second category; this is a larger category. Defendants have identified over 1700 at-issue claims that were partially denied by defendants, and therefore not adjudicated as covered and not allowed as payable.

Again, we submitted an exhibit that had the 1791 at-issue claims that were partially denied. And yet, for even denied claims, TeamHealth plaintiffs are seeking to recover their full billed charges on claims that were denied and are seeking full bill of charges for denied claims.

Now, to understand how this happens, Your Honor, it's important to understand that when you seek a -- when a [indiscernible] seeks reimbursement -- somebody comes into the

005414

ER, and they may look for two different treatments or they may receive two different treatments. There may be an evaluation code. And then there may also be, maybe you've got a split; you got something set; you got some second type of procedure.

And so the single bill that goes to the insurance company, it may have those two claim lines on there. And what happens is if one is denied -- in this case, one may have been denied and one may have been reimbursed at a lower level than plaintiffs would like in this case, if -- in this case what we see, with respect to these 1791 claims, is seeking full billed charges on those claims that were disallowed a company that claimed that it was allowed.

005415

We put an example of one of these in our motion papers. And you can see, if you look at, you know -- it's at -- it's described here -- it's a little hard to put up as an image because it is -- we would be looking at an Excel spreadsheet.

005415

But when we go to Exhibit 38, we look at line 86. This is a situation where Fremont billed UHC a little over a thousand dollars, one charge for $508 under CPT code 992830, United paid that at $222.94.

Another code was submitted under 29105 for $496. United denied coverage for that.

With respect to that claim, the TeamHealth plaintiffs are seeking a full billed charges on the claim that was

005415

partially allowed and the claim that was fully denied.

And the problem with that is that for that claim that was partial -- that was fully denied, that claim was preempted by [indiscernible]. And that claim -- when something is disallowed, it can only -- then what we're talking about is not a rate of payment case, Your Honor. That's a right of payment case, because that is a claim that has not been paid yet.

And so if we have those, then we have the risk that we go through this -- this is true for the Medicare and Medicaid. We have this risk that we have a whole exercise where we go to trial, and then it turns out afterwards, well, some of these actually -- some of the claims in this case actually should never have been in it, because they are ERISA claims. They could have been brought in this court as ERISA claims. They could have been removed. They could have brought in federal court as ERISA claims. Whatever it is, we have a situation where we [indiscernible] know what the damages are because we have faulty ERISA claims that are sitting in the middle here.

And it's also worth noting that the U.S. District Court, when this case was removed, plaintiffs asserted to that Court that the claims at issue were not denied, but were fully covered and payable by defendants. And on that basis, that district court remanded the case. And so plaintiffs are also judicially estopped from today putting those claims at issue

005416

005416

005416

and putting those claims in front of the jury.

Now, going to the final claim category, the claims that were not submitted to the defendants to begin with.

So again, we have unrebutted evidence that 445 at-issue claims, for which there's no evidence that those benefit claims were submitted to defendants. Again, we put these at issue. Many of these we have found were submitted to UHC Insurance Company of Illinois, UHC Insurance Company of New York, and UHC Insurance Company of North Carolina.

These are -- some of them we cannot identify and may have been submitted to totally different insurance companies that have no relationship to United.

005417

We put on evidence of this fact. We put on evidence that actually identified these specific claims so that plaintiffs can look them up and provide evidence regarding them. We showed there was no record in defendants' claims database. We showed that there was evidence that confirms that many times that that evidence was submitted to a nondefendant insurance company using the legal entity number that is in their claims data spreadsheet. We put in declaration evidence that these were submitted to nondefendants from multiple witnesses.

005417

What we have, instead, is we have -- we don't -- we have the same kind of evidence that we had for Medicare and Medicaid when it comes back to -- or comes back from

005417

plaintiffs, which is essentially evidence of, look, we put in -- we made a spreadsheet of about 10,000 -- 23,000 claims. We reduced it to 10,000. We did our best to weed these out.

Can we say that these 445 claims were actually submitted to United? Their witnesses aren't asked about them. They don't talk about the 445 claims. And so there's no evidence in the record -- no testimony, no affidavits, nothing else -- that actually genuinely disputes the fact that these 445 claims were ever submitted to any defendant in this case.

And again, this will be -- unfortunately it will have to be a lengthy sideshow at trial where the jury is going to have the think about which of these claims was actually submitted to defendants, as opposed to having a clean list where we know that all of the claims are properly within the case.

And so as a result, taking these three carve-outs, pulling them out means that we at least know that going to trial every claim was allowed; it was partially paid; and there's a dispute as to the amount.

With these carve-outs remaining in the case, what we would have is having to actually go through the 62 Medicare and Medicaid claims, the 1791 claims that are partially denied, and the 445 claims that were not submitted to defendants at all -- and have that as a disputed issue that the jury is going to have to find with respect to those

005418

005418

005418

disputed amounts.

Your Honor, with that, I would respectfully ask the Court to grant summary judgment with respect to punitive damages, and with respect to the listed carve-outs that I have raised today and that were raised in the countermotion.

THE COURT: Thank you.

It's 11:41. I want to go ahead and take our lunch break now. There's only one working elevator back here, and I waited six minutes the other day to get up to the 10th floor. So is 12:45 okay for everyone? I'll leave the other meeting early. Thank you.

Court's in recess.

[Recess taken from 11:42 a.m., until 12:49 p.m.]

THE COURT: Thanks, everyone. Please remain seated.

And for your opposition in motion, please, will you please introduce yourself again.

MS. ROBINSON: Thank you, Your Honor. My name is Jane Robinson. Is this mic, [indiscernible]. Is that good?

THE REPORTER: Yes. Thank you.

THE COURT: It's fine either way.

MS. ROBINSON: Okay. Let me know if you can't hear me at any time.

THE COURT: We use them for jury trials so that everybody knows.

MS. ROBINSON: My name is Jane Robinson. And I am

005419

005419

005419

here on behalf of the Health Care Providers.

And Your Honor, I would like to echo what my colleague John Zavitsanos said the last time we were here that we are grateful for the opportunity to appear here in this court in Nevada. And we thank the Court for that opportunity.

So I would like to start by addressing the punitive damages claim. And I want to be clear, I just want to start with the simple point of clarification. We did not amend the complaint in response to the MSJ. The Health Care Providers amended the complaint to focus the trial on the most important causes of actions, the ones that we felt were the strongest and that were the most worthy of the Court and the jury's time.

005420

005420

But as Ms. Gallagher said earlier this morning, although we have focused the causes of action, the underlying conduct and the evidence is the same.

This is no surprise to United. Everything that I am about to say is what we have been alleging all throughout this case. And so this -- you are going to see MultiPlan and Data iSight -- I know the Court mentioned -- I hear a lot of feedback. I know the Court mentioned an upcoming *Motion in Limine.* But I just wanted to assure the Court that MultiPlan and Data iSight are very much in this case as evidence. They are throughout our exhibits and they are throughout United's exhibits. So all of that is still relevant.

005420

New, as I said, we have been clear throughout this case. United is engaging in an intentional and purposeful campaign to drive down reimbursement rates for ERs and harm Nevada doctors.

United is intentionally manipulating reimbursement rates, and it is lying to everyone about it. It is telling the world that it is being fair and objective -- which I'm going to get to; it's telling its members that; it's telling its clients that; and it's telling doctors that. But our evidence is going to show that that is not true. This conduct is intentional. It is malicious, oppressive, and it's fraudulent.

005421

I apologize for the feedback.

005421

So I would like to give you a little background. I know you have heard a lot of this before, so please I'll try and keep it brief. I know the Court in [indiscernible].

THE COURT: You guys, I have been in a four-week trial. We just got a verdict Thursday. I only had two days to prepare, so I only read everything once.

MR. ROBERTS: And that's really all we can ask, Your Honor. Thank you very much.

So ER doctors have to treat everyone who comes. When you are -- when you go to an ER either because your life is in danger or because you believe your life is in danger, the ER does not say, Hold on, who is your insurance provider? And if

005421

you don't have one, you're going to have to go to the ER down the street. ERs and hospitals, they can't do that. And they treat everyone. And in fact, many of the patients they treat don't pay them anything.

And a lot, about 50 percent of the patients they treat pay them, but they pay them an amount that is not sustainable. It's maybe just at or often below the cost. So ERs, it's a very difficult economic situation for them, but they keep treating all of these patients.

Now, United is one of the largest private insurers in Nevada. And it is exploiting its market power and exploiting the fact that ER groups don't have a choice.

005422

Now, if somebody goes to United and asks for insurance, and they say -- and United says, Great, that will be $250 a month -- we should hope; right? And the person says, You know, I don't have $250 a month, but I would still like insurance, United can just tell them no.

We don't have that option. We just treat you. We save your life. Or we treat you, we stabilize you, and we assure you that, although you believed reasonably that your life was in danger, you are actually going to be okay. That's what we do every day.

Now, most ERs are staffed by small independent provider groups. And United has figured out that they really don't have much choice because they have to accept whatever

005422

people are willing to pay them. United thinks, Well, doctors pretty much have to take what we give them.

And so most of the others, because of the small independent practices, they don't have the resources to fight back. And that's why United is targeting us and that is what this evidence shows that TeamHealth affiliated practice groups -- excuse me -- that TeamHealth affiliated practice groups are being targeted specifically by United because we have the resources to fight back, and that makes us, the TeamHealth affiliated practice groups, Enemy Number 1 to United.

005423

And there is real harm at stake. It is more than just these claims at issue, because United's goal isn't just to underpay these claims. United's goal is to force us to accept contracts at rock bottom reimbursement rates. So they are targeting us, because once they get TeamHealth to agree -- the TeamHealth groups to agree to these rock bottom reimbursement rates, who else is going to say no to them? They can just drive down those rates as far as they want to.

005423

So their goal isn't to reduce the cost of healthcare. It is to send their profits and their share price skyrocketing.

Now, who benefits when they don't pay? When they underpay? For fully insured, United is as motivated as they could be to pay as little as possible, because they keep

everything else. And for the ASO clients, United charges its customers. United makes its customers pay a percentage of what United takes from us. And that is often more than what the doctors are paid.

So you have the ER doctors -- and I know this because my dad was an ER doctor. They work nights. They work weekends. They work holidays. They give their lives to these practices. And they save people's lives.

And United will take a claim from an ER doc and pay itself for administering this claim more than the ER doctor made for saving that person's life.

005424

Now, that is the kind of conduct that we think shocks the conscience, and we think that that's something that deserves to go to the jury.

005424

So when United says that we are not being reasonable, I would like to know what is reasonable about them charging more to administer a claim than for us to do the actual work.

Now, that is the malice and oppression. So I would like to talk a little bit about the fraud.

United doesn't tell the world, we pay whatever we think we can get away with. Of course they don't say that. They tell the world, we use objective data. We use independent third parties. And that's what we use to come up with our reimbursement rates.

But that is simply not true. The evidence that we

005424

have offered and that we will show at trial is that United manipulated both its internal programs and its external sources to generate the reimbursement rate that United shows.

So there is a lot of discussion about conscious disregard. United says we can't show that.

Well, there is a little bit of mismatch because conscious disregard typically applies to unintentional fraud -- or excuse me -- unintentional torts.

What we can show is worse. What we allege is that United is targeting us and harming us intentionally. So it is more than just a conscious disregard; it is an intent to harm us.

005425

And I would distinguish this from the *Kinder Morgan* case, which I know the court is familiar with. The plaintiffs, as I understand it, in that case allege that their cancer was caused by exposure to gasoline. The evidence against the defendants was that their executives knew of the risk of raw benzene. And there was inference that the plaintiffs wanted, that knowledge of the risk of raw benzene was the same as gasoline, and the Court rejected that. Said that might be negligence, but it's not enough for punitive damages.

005425

That's not what we have here. We have specific intentional conduct that is specifically targeted at us. And the harm again is not just a lower rate. It is trying to

005425

force us to accept contracts going forward that will be unsustainable. This is significant. And it's damaging, not just to us, but will damage other doctors in Nevada as well.

After TeamHealth is driven into the basement, no other provider group will be able to push back.

Now, on the topic of the national conduct. There is going to be another *Motion in Limine* that is going to be argued later. But what I do want to say about that is if there is intentional conduct to harm Nevada plaintiffs, it doesn't matter if that conduct happens in the state or out of the state. It's intentional conduct that was intended to harm Nevada practice groups. That harms us here; we have a cause of action here.

005426

005426

Now, United has spent a lot of time walking through the evidence.

We obviously have a story to tell about the evidence. United has a story to tell about the evidence. That's fine. That's a story we are going to talk to the jury about.

United wants to say there's only one way to interpret this evidence and that is that we are just simple insurers who are trying to avoid the skyrocketing costs of healthcare. That's fine. I expect to hear that at trial. But that's not a reason to grant summary judgment.

To the extent there are inferences to be drawn from this evidence, it should be drawn in our favor. But we think

005426

there is more than enough here to take this issue to the jury.

Now, on the other claims, I am going to talk a little bit about both types of claims. I'm just going to group together, for the sake of time, the claims that there was a government payor and claims that there was another United payor. And what's this really amounts to is a straightforward conflict of the evidence.

Our evidence is that we pulled data claims from our file. We reviewed them. We QC'd them. And I think, although United would like to characterize the fact that we had brought the claims as weakness or that we are not really serious about our claims -- I would submit that it is the exact opposite.

005427

We have narrowed our claims because we are showing good faith. We want to bring only those claims that we think are defensible to this court and this jury. And that is what we have done. And our evidence says that we have reviewed these claims and we stand by these claims. These came from our database. And we show that they were paid by defendants.

Now, they, I am sure, will have great deal of cross-examination, if they want. That is the function of cross-examination. But those conflicts of evidence are not intended to be resolved through summary judgment.

Now, on the question of the denied benefits, I think we have been crystal clear. I want to be crystal clear. We are only pursuing claims for line items that United paid. We

005427

are not pursuing claims for line items that United denied entirely and paid zero.

I looked through -- I mean, I think they interpreted something that one of our experts said to suggest the opposite. And I just want to be very clear right now. We are not seeking reimbursement for claims that United denied and paid zero -- only for the ones for the United paid something.

And I really think that's dispositive of this point. If they can find a way that we are claiming a line item that they paid zero, we will drop that. We do not want this case to get removed. And we understand that if we were to challenge our right to payment. That would be an ERISA issue. That is not our goal. We will drop those claims.

005428

005428

Now, the *Barrero* case in the 11th Circuit talks about hybrid claims. To be clear, it's not talking about a situation where we have a line item that is paid and that is being targeted and a line item that is not paid and that's being dropped. That's talking about when somebody is claiming both rate and right to reimbursement, and it's mixed together. It's just not applicable here.

The example -- so, the example that they gave was an example of a line item that was not paid. But I still don't understand what the basis is for saying that we are seeking that, but that is certainly not our intention. I will just say that right now.

005428

Your Honor, do you have any questions? I'm sorry. I spent a little [indiscernible].

THE COURT: No.

MS. ROBINSON: All right. Thank you, Your Honor.

THE COURT: Just because I looked away doesn't mean I wasn't listening.

MS. ROBINSON: Oh, no. I was wrapping up. But it's always my -- I just wanted to give you an opportunity to ask some questions, if you had them, before I stepped away from the podium.

THE COURT: Okay. Thank you.

MS. ROBINSON: Thank you, Your Honor.

THE COURT: And your reply, please.

MR. PORTNOI: [Indiscernible.]

THE COURT: Take your time.

MR. PORTNOI: Likewise, let me know if I'm either too soft or too loud. We weren't using this before.

So let me start where Ms. Robinson finished, which is on the disallowed claims. So again, we put in the spreadsheet of 1791 claims that were the disallowed line items. We have no argument, here under Barrero for anything else that -- where there is a claim that is disallowed and a claim that is allowed. But they are not allowed to pursue the allowed claims.

We put in 1791 specific claims in our exhibits. And

005429

005429

005429

we also pointed out where their experts are using the disallowed amounts as part of their damages calculation. And that's all in our Motion for Summary Judgment. We had no opposition to that.

And there is not -- we went through an example here. And we said this is an example where it is a zero dollar payment, and they want full dollar -- full payable charges on the zero dollar payment. [Indiscernible] to evidence to respond to that would have picked -- would have showed even one of the 1791 claims, and said, well, that's a claim that -- where United paid zero dollars and where we said United paid zero dollars and they said, said, no, no. We got a check. It was $100, and we want more. And these are disallowed.

005430

005430

If they want to stipulate to those 1791 claims dropping out of the case, the 1791 line items within a claim where they could be semantically different, then we will agree to that. That is not a problem.

We have no problem with the idea where you go to the ER and one of your two procedures -- one of your two codes says reimburse and the other one does not -- we have no problem that they can proceed with the one that's reimbursed, sl long as they are dropping the one that is not. And those are the 1791.

And it's important to note again what Ms. Robinson just said, which is that that is the clear ERISA preemption

005430

problem. If we don't resolve that before trial, if we go to trial with those uncertainties, then we have a risk that the entire trial should have been removed to federal court. So we really -- this is a very important issue that we have to figure out.

Likewise, what we did -- what Your Honor did here with the step -- that also applies with equal force to the claims that were submitted to entities that are not a Nevada United entity, because those are fees we did not pay. Perforce that creates the same problem.

And again, those are 445 claims. We listed them. We showed the receipts. We showed the spreadsheets. We showed evidence. And what their evidence does not show is any discussion whatsoever about even one of those 445 claims. One, two, three -- none of them -- do they actually present any evidence against what -- [indiscernible] summary judgment.

There's a discussion here that there is maybe -- these are just a conflict of evidence. But it's not a conflict of evidence. A summary judgment motion is a common tool. You put -- we put up some evidence; they put up some contrary evidence to create a genuine of disputed facts.

But with respect to these 62 Medicare and Medicaid claims, with respect to the 445 claims that were submitted to nondefendants, and with respect to the 1791 claimed line items that are disallowed claims -- there is a disputed issue of

005431

005431

005431

fact. And there's nothing that could create [indiscernible] arbitrary argument.

Now, I just want to say, turning to punitive damages, if you would for just one moment.

It's hard to talk through this mask for a long time. I don't know if you've had that same experience, having just gone through a trial.

What you didn't hear in that discussion of punitive damages was the reference to a single exhibit -- was a reference to a single piece of deposition testimony. You didn't hear -- you heard a lot of discussion about the heroes that ER doctors are. And they are. What you didn't hear was a -- was that, attached to the summary judgment opposition, is a declaration from an ER doctor talking about the harm that he had caused, because there isn't one. What you didn't hear was that there's actually some tangible harm in Nevada that has been caused.

I stood up here before, and I said, where are they -- you know, they're going to argue that hospitals have closed across the country. But they didn't actually even do that. We saw no evidence of a single hospital that was closed. We don't even have a piece of evidence [indiscernible] anything that the defendants did, that a single dollar was reduced in physician pay, which is the core of their argument -- that physician pay was reduced and hospitals closed.

005432

005432

005432

Nor was there any attempt to eliminate the problem under the Supreme Court's rulings in *State Farm v. VFW*, that the harm is outside of Nevada to [indiscernible]. We agree. This --

We don't disagree that if something was done or said in national negotiations, that that caused actual tangible harm in Nevada. That could be the case. But we have a *Motion in Limine* to preclude all evidence regarding what happened in national negotiations.

And as a result -- and for that matter, remember, that statement that is in their surreply, which is what they're relying on right now -- is about hospital closures and physician pay outside of Nevada. It is not enough about physician pay going down in Nevada; it's not about hospitals closing in Nevada. They cannot -- they have not said hospitals closed in Nevada. They cannot. They have not said physician pay has gone down in Nevada.

For them to say physician pay has gone down in Nevada, they would be required to put on evidence. And we would be allowed to decide whether or -- we would be allowed to present to the jury whether or not physician pay went down in Nevada, because they -- because Medicare and Medicaid rates were too low, because they're not -- what they received from Blue Cross was too low, or because too much profits was being sent up to their parent company, Blackstone.

005433

005433

005433

All of that would be at issue if what -- if the jury presentation was, was it these United entities that caused physician pay to go down.

Remember, the folks that decided physician pay goes down are the folks that are the paying physician. The ER staffing companies that are the plaintiffs. So it really goes to a question of are we going to be allowed to [indiscernible] evidence that the physician pay going down was -- what were the -- what were the factors that the TeamHealth has considered in making a decision to lower pay? Because that seems to be what they're putting at issue, is the out -- is the understanding that what they're saying now. They never paid, and that's someone else's fault. And it happens to be that that happened right after they were purchased by a major private equity company Blackstone.

The other thing I wanted to point out is there is a discussion that our use of Data iSight shocks the conscience. However, something to note about this case in terms of the tail wagging the dog here. There are 12,000 claims that were made in this case. 792 were decided by Data iSight.

This is not our -- this is largely not a case about Data iSight. There were more case -- there more claims regarding to Data iSight. They were dropped by plaintiffs. What we are left with is over 11,000 claims decided, not by Data iSight -- just decided in United's regular course of

005434

005434

005434

business, though using Data iSight is another regular course of business.

So I think it is important to recognize that that is not the gravamen of this case, and that as a result allowing this to go forward through trial about what we claimed through Data iSight will only cause a massive sideshow about a handful of claims that would result, again, in a sideshow about national conduct, conduct in Texas, conduct in New Jersey, harm in Texas, harm in New Jersey, as opposed to anything that has to do with a case taking place right here in Nevada.

They say that they have a story to tell about the evidence. That's fine. And they say we also have a story to tell about the evidence. That's fine.

005435

005435

However, what they have done is put four exhibits in opposition. Those four exhibits do not prove enough to get up to the high standards that the Court has to find as a gatekeeper, that a reasonable jury would find by clear and convincing evidence entitlement to punitive damages on the basis of those four exhibits alone. If the Court decides to consider it a surreply, once again, we do believe we would be entitled to responded to that that surreply and would ask for three days to do so. That's in our papers that you have present.

THE COURT: Thank you.

I have one question for Ms. Robinson, and I'll give

005435

you a chance to respond.

MR. PORTNOI: Thank you, Judge.

THE COURT: Is there an actual factual dispute with regard to the denied claims?

MS. ROBINSON: So my understanding, Your Honor, is that we have a spreadsheet that shows that we are -- the claims we are seeking -- that there are many claims where there are two line items, and we are only seeking reimbursement for the claims that are -- that were part -- that were paid in part. We are not seeking reimbursement for claims that are zero.

And as you know, there was a little bit of a shoehorn there that if a different person paid it, then maybe that's going to be a right to reimbursement question. Well, if a different person paid it, then United doesn't have liability and it's just not going to be in the case.

And if United did pay it -- if we satisfy our burden to show that they did, then there's no preemption. I did just want to -- if I may just make one short point on the punitive damages. I think, to put in context the attack on our response -- and I didn't go through -- walk through all the exhibits because I know the Court has read our materials, and we do cite to them and we do have evidence.

THE COURT: There was a lot there. I don't want you to feel cut off.

005436

005436

005436

MS. ROBINSON: Okay. Well, I just -- I know it's there. And I know that, you know, we have cited to evidence. We attached evidence.

But I think it's really important to say that in their Motion for Summary Judgment, they had four lines on punitive damages that were exclusively focused on the tortuous -- or excuse me -- with the breach -- the tortious breach of the good faith and fair dealing covenant. And I really have to emphasize it was exclusive, because the case that they rely on, the only reference it has to the punitive damages statute is to say that because that was a breach of contract case, that statute is not triggered.

005437

And the question before the Court was, is this a tortuous case when it's a breach of contract? And to trigger even the availability of punitive damages, you need to talk about, well, the special relationship and the vulnerable plaintiff and the perfidious conduct. And that is all specific to the tortious interference -- excuse me -- the tortious breach of the good faith and fair dealing. It did not even raise a challenge to the punitive damages for the insurance claim that we had.

005437

Nonetheless, we did respond. But I think what we were responding to was something that wasn't even in their MSJ. And so before that -- you know, we get -- I just want to put that -- use that as a context for our response. I think it

was more than adequate for a claim that wasn't even in their argument until a reply brief.

Thank you, Your Honor.

THE COURT: Thank you.

Mr. Portnoi, it's your motion. You get the last word.

MR. PORTNOI: Well, I prefer -- getting the last word is part of what we're looking for in order to be -- in order to reply to their surreplies. I do appreciate that.

They were on notice that we were challenging punitive damages. We know that they were on notice because that was most of their opposition brief. Their first opposition brief was relative to punitive damages, and it was arguing that oppression and fraud were present.

005438

005438

It was unclear how they were not on notice.

Now, to be clear, what we did do was we put forth the idea that they were not entitled to punitive damages, and part of the reason we said that is because they hadn't shown bad faith. The reason we said bad faith was because their new second amended complaint only referenced bad faith as a basis for punitive damages that they had deleted -- malice, oppression, and fraud. But they said oppression and fraud in the opposition brief, so we went ahead and replied -- we replied to their argument.

That said, we don't think anything in the surreply may create the genuine issue of disputed fact. But we would --

005438

but however, what it does do is create profound constitutional problems, because not in their first amended complaint, not in their second amended complaint, not in their opposition brief do they raise extraterritorial allocation of Nevada's punitive damage statute. So it does warrant a response.

With respect to the 1791 claims, you may remember that I went through an example. That example was drawn from their expert report. That is actually cited at page 11 of our reply brief, we describe what's going on.

And that's the expert report of Scott Phillips. And in that expert report, Mr. Phillips says that they are looking for 100 percent full-blown charges for the line items where United paid and the line items where United did not pay. There's no question that that is what their expert report is showing. They have been -- they've been seeking that throughout this case. They're seeking it now, and that's on the basis solely of their expert report.

THE COURT: Thank you.

So let me tell you that it's my inclination to deny the motion in its entirety.

However, given the request for additional briefing, the defendant may have until Thursday at 5:00 to submit a brief. I'll review it Friday and issue a minute order Friday, so that at least you'll have some clarity before the trial.

MR. PORTNOI: Thank you, Your Honor.

005439

005439

005439

MS. ROBINSON: Thank you, Your Honor.

THE COURT: So the matter is technically taken under advisement, but you'll have a decision Friday.

Okay. That takes us to the plaintiffs' motion to strike. And we've got lots of briefs here. Okay.

MR. AHMAD: Your Honor, Joe Ahmad, if I'm being picked up.

THE COURT: I don't believe you are, but I can hear you.

MR. PORTNOI: I pushed the button off when I walked away.

005440

MR. AHMAD: I mean, I don't need a lot, because I'm going to be very brief.

005440

Okay. There we go. Your Honor, we have a motion to exclude evidence regarding the effect of billed charges on premiums. We have a -- a corollary motion regarding a motion to strike such evidence as it pertains to the defendants' experts of Bruce Deal and Karen King.

We have an understanding with the defendants that we will withdraw those motions at this time. I call it an understanding, because essentially, the parties are agreeing to reserve their rights. We are -- have stated that we will reserve rights to challenge the evidence in the normal course as it comes up in trial.

We've taken their response to heart. And we will be

005440

asking, depending on how the evidence comes in -- we certainly want to be able to respond. And we want the motion -- you know, we want the evidence to work both ways.

The defendant doesn't necessarily agree. And therefore, we are simply agreeing at this time to reserve our rights. And we may be raising it at trial, of course, and perhaps later in one of the other *Motion in Limine*s.

THE COURT: Thank you.

And who is the spokesperson on this issue? Mr. Blalack?

MR. BLALACK: I will handle it, Your Honor.

Your Honor, Lee Blalack, on behalf of the defendants.

Mr. Ahmad accurately characterized our discussion. I think our position is they're withdrawing the motion. We are agreeing that they're not waiving their right to make objections to this evidence in the course of trial.

And we're not waiving any rights or arguments we might make on any other motions or issues in the case.

So I think it's just one less issue the Court has to resolve.

THE COURT: Thank you both for your professional courtesy.

The matter comes off calendar.

The next motion is the defendant's motion to strike the supplemental report and opinions of Leathers.

005441

005441

005441

MR. BLALACK: That's me, Your Honor.

All right. May it please the Court. Your Honor, I'm here to address our motion to strike plaintiffs' supplemental expert report for David Leathers. It's in the context of [indiscernible], Your Honor.

Mr. Leathers is an expert that plaintiffs retained in July to render opinions on the single issue which was the measure of damages for their RICO claim, and he submitted an affirmative report by the Court's deadline of July 30th. He did not submit a rebuttal report to any affirmative reports from the defense experts by the deadline of August 31st.

005442

However, starting around September 1st, so right after the rebuttal deadline, he began work on a new set of opinions which resulted in a report that was served on the defendants and disclosed, I believe, on September 9th -- and so 8 or 9 days after the rebuttal expert deadline, and about 12 to 13 days before the close of expert discovery.

005442

That report was framed and described as a supplemental report, implying that the opinions contained in there were supplementing his prior opinions from his affirmative report relating to RICO damages. However, when you review the report, it is clear on its face that it doesn't have anything to do with RICO damages or his prior opinions relating to RICO damages. And in point of fact it is a series of new opinions that are responsive to the expert opinions of one of our

005442

experts, Bruce Deal, who will be rendering expert testimony on the market rate for out-of-network emergency services.

So when we deposed Mr. Leathers, shortly after the service of the supplemental report, we questioned him about the report. And he was quite candid in his testimony that this report was, in fact, not related to the RICO damages opinion that he had rendered in his affirmative report and was instead a new set of opinions related to issues raised by Mr. Deal.

So on that basis, Your Honor, we move to strike that supplemental report on the grounds that it was an untimely rebuttal report that did not get served by the deadline of August 31st.

005443

005443

So that's the background, Your Honor, for this argument. And so I'll just quickly take you through the relevant [indiscernible] --

THE COURT: And so you know, I have that screen up here.

MR. BLALACK: Oh, you do.

THE COURT: So if I'm not looking there, I'm still looking.

MR. BLALACK: Thank you, Your Honor.

So just to -- wait, how do I want to do this? It's like my remote on my TV.

Okay. So just to run through the undisputed facts,

005443

Your Honor. Deadline for the affirmative report July 30th. Again, Mr. Leathers submitted an affirmative report on that deadline.

Rebuttal report deadline, August 31st. Again, it's undisputed that he did not submit a rebuttal report by that deadline.

His deposition testimony, which I'll show you, confirms that he started working on his second report the day after the deadline for rebuttal reports, September 1st, which is when he received materials from the defendant -- plaintiffs' counsel, which was the foundation for the work he did on his supplemental report, including receiving Mr. Deal's rebuttal report on that date.

005444

005444

He served his supplemental report on September 9th. And importantly, before we could be given the nature of the opposition, on September 14th, the day before his deposition, counsel sent to us two spreadsheets that night. And one was an updated version of an analysis from the supplemental report served on September 9th, and another one was a new analysis reflecting a different methodology related to calculating out the work rate. That was provided to us on the 14th, and he was deposed on the 15th. Expert discovery closed, I believe, on September 21st, if my memory serves.

In their opposition, plaintiffs concede that Mr. Leathers' supplemental report was an untimely rebuttal

005444

report. And they noted, you know, correctly, and we pointed out, that his supplement at that time report was served after the 31st; and that Mr. Leathers conceded that if he was to do it again, he would have said that it was a supplemental and rebuttal opinion.

And in fact in his deposition, we asked him this, and he said, so it is supplement, in that way. Perhaps if I was to do this again, I may have said supplemental rebuttal [indiscernible] because essentially the genesis of this or part of the genesis of this is responsive to -- or the analysis would be responsive to Mr. Deal.

And in his testimony, in the same deposition, he explained that what became his supplemental report was the product of reviewing Mr. Deal's opinions, looking at the underlying analysis, and then conducting a new analysis unrelated to the RICO damages, unrelated to the prior opinion, for purposes of preparing the supplemental report.

Now, if you read their opposition, you know plaintiffs are candid that their sole basis for asking you to deny our motion is the absence of prejudice to the defendants. And we believe we have been prejudiced. And I'll address that in a minute.

But Your Honor, the Court doesn't get to the question of prejudice under the relevant rules, which is NRCP 60, until there's first a showing by plaintiffs of excusable neglect,

005445

005445

005445

which is the required showing toward any extension of a deadline that a party is going to miss in litigation.

I will note, Your Honor, that there was not a motion for relief filed to -- before the supplemental report was served, asking for permission to serve it in advance. It was just served.

And then there has never been any discussion in their briefs about complying with Rule 6 (b). In fact, if you read the brief, there's not even a reason for the noncompliance for the Court's deadline provided.

It's not a statement like Mr. Leathers was in Europe and didn't have a chance to see it; or critical data that he needed for the opinion wasn't available, and then it came in and we worked diligently to meet it. There's not even an explanation of what the reason for the noncompliance is; much less evidentiary submission justifying that that was a reasonable basis for missing the deadline.

So they just simply skipped to the end of the test in the rule to argue no prejudice. But prejudice is only relevant in the analysis, if the TeamHealth plaintiffs first established the other factors under Rule 6(b). And the key for those factors, Your Honor, which are stated in the *Mosley* case from 2008 are that the proponent of the evidence, the late evidence; acted in good faith; exercised due diligence; had a reasonable basis for not complying with the deadline,

005446

005446

005446

the Court deadline; and then that the defendant did not suffer prejudice. But if you don't make the showing of those other factors first, you don't even get to the question of prejudice.

And the Court in *Mosley* made that point, explaining and discussing the analogous federal rule that the party may obtain the extension of time to act under a particular rule. When the time to act has expired and the party seeking extension demonstrates good faith and a reasonable basis for not complying with the specified period and an absence of prejudice to the nonmoving party.

And it says, The key factor in the federal decisions is whether the plaintiff asserted a reasonable basis for not complying. Here, Your Honor, there's no basis for evaluating that question, because what basis has not been asserted for not complying, much less an evidentiary showing that there was a reasonable basis.

And again, *Mosley* then articulates the controlling standard for Rule 6(b) in the 2008 case, which just restates the elements of the rule that I've just discussed.

So Your Honor, in this case, plaintiffs cannot -- even if they were to offer that explanation now, which may be what's about to happen -- they can't make the evidentiary showing that they exercised diligence on a reasonable basis.

And here's why. Mr. Leathers testified in his

005447
005447
005447

deposition that all of the information that he relied on for his supplemental report was information that he received on September 1st. And all of that information existed well before the deadline of August 31st. And in fact, some of it existed and had been produced in discovery back in the spring, like, market data.

So, for example, the three key things he looked at were Mr. Deal's affirmative report and rebuttal report. The other thing he looked at was the defendant's market data; the payment data that the defendants had produced in the case; and a new list of disputed claims that plaintiffs had created, that had been created sometime in August.

005448

And we know all of this existed, because it either had been produced by the defendants earlier or one of the other experts had relied on it.

So for example, Mr. Phillips provided a rebuttal report on August 31st. He's one of the plaintiffs' other experts. In his report he relies on that market data. And he relies on the same list of disputed claims that Mr. Leathers didn't receive until September 1st.

So all of the information that Mr. Leathers relied on is information that was available, could have been provided to him earlier, and he could have prepared a rebuttal report if he wanted to do so in a timely way. And they did not provide that information to him until after the rebuttal report

005448

deadline.

And here's his testimony, Your Honor, from the deposition, where he's describing when he received this information from plaintiffs' counsel. And I think you could see here it says, I asked him: So it sounds like the various reports that are listed in paragraph 30 -- which were the affirmative and the rebuttal reports -- were sent to you then as a group, as a collection, sometime around August 31st, September 1st, something like that.

Answer: Yes, that's correct.

And the United market data file that's described there was sent to you about the same time?

About the same time, yes, sir.

As well as the new list of disputed claims as referenced there.

Yes, was the answer.

So, Your Honor, there's just not -- whatever the explanation for why the deadline was not complied with, whatever the explanation for why a motion for leave was not filed, whatever that ends up being, it's not stated in the opposition. You can't satisfy the reasonable diligence standard because the information existed, could have been provided, and it wasn't. And thus, there's not a basis for satisfying 6(b).

Now, the last issue is this question of prejudice,

005449

005449

005449

unfair prejudice. And the basic argument that's presented is that they focus on the spreadsheets that were sent to the defense the night before the deposition. And the argument goes, they -- we got just work papers, that these were work papers, and, therefore, we got them and we had time to look at them. And they were gracious enough to allow Mr. Leathers to stay all night, if need be, to question him about that material. And I absolutely stipulate that opposing counsel was very gracious and would have been -- we could have gone into the morning hours, I'm sure, at that point.

That's not why there's prejudice, though, Your Honor.

The prejudice here is twofold. One, if they complied with the rule, we would have had 15 days to review those -- that report, have our experts dissect it, evaluate it, develop lines of examination and impeachment; and really come after Mr. Leathers new report, you know, [indiscernible].

Instead we had six days from the time the supplemental was served and to when the depo occurred. And obviously we were trying to get these depos done in a very tight calendar, Your Honor, by the September 21st deadline.

The second issue is that, unlike the suggestion -- and I'm quoting there from the -- from the opposition -- there was new analysis in those spreadsheets that were sent to us [indiscernible] -- in two ways.

There was new analysis related to the methodology that

005450

005450

005450

Mr. Leathers had been using for his first opinion, his affirmative opinion that was different than what he had used in his first opinion. And then for his supplemental report, which is one that had been served on the 9th and is the subject of this motion, that one was adjusted and rerun to reflect the new -- new claims that he thought that were still on the disputed claims list should be taken off, because they were not emergency claims.

So it is not accurate to say that the materials we got on the night before the deposition were just the work papers from the supplemental report. They reflected new work that Mr. Leathers had conducted since he had finished the supplemental report and the deposition.

005451

005451

And the reason I know that is I asked him about where -- you know, how he had prepared these and when he prepared these. He said -- and I asked him the question:

And this was in part an effort by you to perform a damages analysis of the new list of disputed claims that you received sometime in September; correct?

Yes. It was part of my -- and he was very nice.

Candidly, it was part of my preparation for a deposition. I was looking at data and refreshing my memory, and I did some additional analysis. And as a result of that because I had a file, I felt that I had an obligation to provide it to counsel, which he did.

005451

So it -- what happened was he was preparing for his depo. He decided to do some additional work. And in fact, if you look at the file that he was working on, it was last modified at like 4:30 on the night before the deadline. He made some additional analysis. He introduced some additional methodology -- methodological changes to what he had done in his affirmative report. And then that was served on the night of the 14th, and then he was deposed on the night of the 15th.

Your Honor, so independent of the prejudice of prejudice of having such a compressed time to analysis the supplemental report, we submit we were unfairly prejudiced by receiving, you know, what I don't think can truly be called work papers, because they reflected new work that was not completed as of the date of the supplemental report.

005452

005452

So Your Honor, with that background, I'll submit unless the Court has any questions.

THE COURT: I don't. Thank you.

And the opposition, please.

MR. LEYENDECKER: Yes, Your Honor. Kevin Leyendecker for the Health Care Providers, Your Honor.

Let me first address the issue of excusable neglect, because there really are two -- what I think are two elephants in the room. And the first is this excusable neglect concept. And here is the cold-hearted reality. We have assigned lots of different portions of preparing for this trial to the group

005452

that's here before you.

I have the principle responsibility on the experts. I also had principle responsibility for studying the complaint and figuring out how do we streamline the trial in the way that we've been describing to Your Honor today.

And so there was a lot going on that I was trying to handle and that's layered over the fact that what I realize is I had a case that I was trying, a similar case in another state, where I had an expert at the 13th hour, came down with an issue -- a health issue that prevented the case from going to trial. And the lesson that I learned from that case is, if your client is amenable and willing to afford it, it's a good idea to have two experts that can cover the same topic -- not that I would offer to, but I've got two of them, if one of them falls out unexpectedly.

005453

005453

And so in that vein, all that's going on, studying that complaint, trying to figure out how to streamline this trial, it occurs to me that I should have Mr. Leathers work up essentially the same areas that Mr. Phillips has worked on for this reason.

And so I immediately, as soon as the thought occurred to me, got him working. I notified the defendants on Saturday the 4th, which is after the deadline, and we worked as quick as we could to get him ready.

So he -- Mr. Blalack is correct, the data was

005453

available. I could have had this thought three weeks earlier. But the reality is working very hard to do everything I can to figure out how to streamline a case and protect against the enormous energy and time that has been spent by the parties, to have this trial potentially going to naught if I had a problem with Mr. Phillips -- that I would have to come in here and say, Well, I need a different expert. So that's the reality of it.

Now, let me add context to that. The damages in this case are very straightforward. There's two competing methodologies for analyzing the damages -- one is comparing what was paid, slash, allowed to the billed charge. The second is comparing what was paid, slash, allowed to what United has paid/allowed other providers.

005454

005454

There's no rocket science to either one of them. None whatsoever.

There may be some cleverness, if you will, in how you would get at what is the median or the average amount. And there's going to be some of that arm-wrestling going on during the trial.

But the reality is there's two methodologies that are very straightforward. There's nothing difficult or complex about those methodologies. Our experts started with the billed charge. And then when Mr. Deal said, I'm going to look at the analysis comparing it to what United pays other

005454

providers, then we responded to that.

So two very straightforward analyses. And my view is that the parties are better off, and the case would be better off, if I had the ability to not have the problem that I had just about one year ago, in a very similar kind of case.

On the prejudice front, I just -- it's -- here's the reality. They produced Mr. Deal's work papers to me on Friday night after 6 p.m., for a deposition that had been agreed to probably two weeks earlier, to occur three days later. So I got Mr. Deal's work papers -- and that's really what the lawyers want to look at. Reports -- fine, the report is one thing. I want to see how you're going the math. I got Mr. Deal's math on Friday at 6:45, before his Monday morning at 9 a.m. deposition.

005455

005455

They got Mr. Leathers' math on Wednesday at 2:45 in the afternoon, about a week before the following Wednesday 9 a.m. deposition.

The suggestion that somehow they were deprived of the opportunity to study that information and sharpen their pencil on cross-examination, well, if that's true for six days, then what does it say about me for three days?

I'm not now complaining saying that I've somehow been prejudiced, even though the dates of these depositions had been agreed to. I'm not complaining that they did in in less than three days, sending it to me on a Friday the after work

005455

day ended. They got far more time than that.

I just -- so I guess to some degree I'm falling on my sword when it comes to the excusable neglect. That's the rubber on the road.

THE COURT: So now is Leathers the primary expert on the damages or the backup?

MR. LEYENDECKER: No. He was going -- he had focused simply on the RICO damages. And he also had analysis as it relates to the damages between the billed charge and the non-RICO damages. Mr. Phillips was not making an assessment of the RICO damages, but was also making an assessment of the damages between the billed charge and the allowed amount.

005456

THE COURT: Okay. And then what --

MR. LEYENDECKER: And then following the receipt of Mr. Deal, I said, I want to cover [indiscernible] from above.

THE COURT: And why did you not file a motion for leave? Because I freely grant those to everyone. So --

MR. LEYENDECKER: Pure oversight on my part. I have no legitimate explanation for why I didn't. I'm aware of that process. It's just pure oversight.

THE COURT: I've had to fall on my sword a few times as a lawyer. It's hard to do.

Did you have anything further?

MR. LEYENDECKER: I did. I often like to take notes of what other lawyers say that I think are good thoughts. And

005456

what I heard Mr. Roberts say to you in response to the motion for sanctions --

THE COURT: They were doing the same thing we were doing.

MR. LEYENDECKER: He said, Justice is not being obstructed here. That's what Mr. Roberts told Your Honor.

And in light of this relative simplicity of the two damage models, I acknowledge I'm late by a week or so. But justice is not being obstructed here by affording my side the opportunity to call one of those two witnesses in the event I have a problem with the other one.

Thank you, Judge.

THE COURT: Thank you.

And the reply?

MR. LEYENDECKER: Your Honor. Excuse me. I'm from Texas.

THE COURT: That's fine.

And reply, please, when you're ready.

MR. BLALACK: Yes, Your Honor.

Your Honor, just a quick point. I do think there's some important information shared there that is really relevant to the analysis.

Two damages experts on the other side; two affirmative reports in July from them -- one is Mr. Phillips who is -- I had been understood until today to be their lead damages

005457

005457

005457

expert what he's doing -- he did an analysis in July comparing the billed charge amount to the allowed amount, measuring the difference of the damage. It had nothing to do with RICO; nothing to do with any other theories -- just is there another payment and how much?

Expert report two, Mr. Leathers in July. Doesn't do anything like what Mr. Phillips did in July. Does an analysis with his Data iSight claims, come up with a discount percentage, and then backs into a new number and comes up with alleged RICO actual damages amount in July. And that's where we stood as of July 30th.

Until August 31st. Mr. Phillips files a rebuttal report and Mr. Leathers does not. The rebuttal report from Mr. Phillips says, I've read Mr. Deal's expert report -- our expert -- who does an analysis comparing the allowed amounts to what he calls his market benchmark, which is the average -- the range in the amounts between the average allowed reports that United pays other emergency room providers other than TeamHealth, and the average -- and the median that TeamHealth accepts with contracted rates with other health insurers other than United. That was the Deal affirmative report in July.

Mr. Phillips reviews that response and says, I disagree with that, and I'm giving an alternative damage number to the one I provided in July, based on looking at the amounts that United allows on an out-of-network only basis to

005458

005458

005458

help -- to providers other than TeamHealth. That should be the benchmark, and United underpaid, relative to that benchmark said that's an alternative damages number. So that's where we stood as of August 31st.

Then in September 9th, in the supplemental report, Mr. Leathers did the exact same thing in his supplemental report that Mr. Phillips did in his rebuttal report -- just called it a supplemental report -- and did the same kind of looking at the out-of-network rates that United paid to health -- to providers other than TeamHealth to come up with this benchmark.

005459

Mr. Leyendecker, I think, accurately characterized it as he basically has a backup expert giving the exact same opinion with the exact same analysis.

005459

The only real difference in those two opinions, Your Honor, is if Mr. Leathers removes certain claims that he contends aren't emergency claims, that Mr. Phillips kept in. Otherwise they basically do the same work.

So not only in our view did you not have compliance with Rule 6 -- and we think we have made a showing of prejudice based on the timing in which we got this material and how much time we had it and when we had to use it; but we've also just heard here that there's not really even any prejudice even to them because they've got their lead expert on damages for both the main calculation [indiscernible] no

005459

charge to be allowed and the fallback argument which is the difference between the average allowed for out-of-network claims to providers other than TeamHealth -- so they got that.

And so even if Mr. Leathers is excluded, they're still going to offer those same opinions that are in Mr. Leather's supplemental report. They're just not going to be coming from Mr. Leathers; they're going to be coming from Mr. Phillips.

And this notion that somehow they should be able to keep him in reserve, notwithstanding the lack of compliance with Rule 6, because Mr. Phillips may not show up, you know, we submit that's not a good enough reason to look away from noncompliance with the rule, Your Honor.

005460

So unless the Court has any questions on it --

THE COURT: So if I deny your motion, what relief would you want to alleviate any prejudice? Another deposition of Leathers at their expense?

MR. BLALACK: Well, Your Honor, I think -- obviously our position, and you know our position about our preference in terms of not -- I don't think the deposition will -- is the problem, that it would cure it. And I don't think they've made a showing that losing Mr. Leathers affects the presentation of their case because of Mr. Phillips' opinions.

005460

But if that were the Court's preference, then I suppose we would want to have that option. I need to confer. Frankly, we're six days away from starting trial. And the

notion of diverting critical time at this point before trial to taking another expert deposition would almost be worse.

So in my opinion, we would like the Court to exclude the supplemental report, and let them travel with Mr. Phillips.

THE COURT: All right.

MR. BLALACK: Thank you, Your Honor.

THE COURT: So this is the defendant's motion to strike the supplemental report of Leathers. The motion will be denied.

The Supreme Court always tells us to try matters on the merits when we can. I'm willing to alleviate any prejudice argued to the defendant here, based upon any recommendation you might make. I assume that jury selection will take at least a couple of days, because you guys have asked for a venire of 80. And I can only bring in 40 to 45 each day.

So if you ask for relief, I more than likely will grant it during the trial, as long as it's reasonable.

MR. BLALACK: Okay.

THE COURT: Okay? So that's that.

We've gone 50 -- well, we've got 65 minutes. I want to take a quick break. It's 1:50. Let's take a break until 2 p.m.

[Recess taken from 1:50 p.m., until 2:02 p.m.]

005461

005461

005461

THE COURT: Thanks, everyone. Please remain seated.

Okay. Are we ready with the plaintiffs' *Motion in Limine* 1 with regard to discovery orders?

MR. ROBERTS: Your Honor, may I just raise one issue with the Court?

THE COURT: Okay.

MR. ROBERTS: As the Court may -- I don't know if your clerk told you, but I actually had a prepaid flight tomorrow, and I'll be leaving tomorrow to go to Miami.

And I was assigned to argue the Motion to Stay Pending the Writ, which the Court set for this morning's calendar. I'm not asking you to take it out of order right now, but I am asking if the Court could hear that today, before the -- since I won't be here tomorrow.

005462

005462

THE COURT: Certainly. There's no objection, is there?

MR. ZAVITSANOS: No, Your Honor. No.

THE COURT: Okay. So if you guys are ready to argue this, then I'll probably break to take the Motion to Stay.

MS. GALLAGHER: Very well, Your Honor.

THE COURT: Thank you.

MS. GALLAGHER: Thank you, Your Honor. Kristen Gallagher, again, on behalf of the Health Care Providers.

So the Health Care Providers moved to this *Motion in Limine* to transform the Court's prior limiting discovery

005462

orders into evidentiary orders prior to trial.

We thought that this would be something that would potentially be met by stipulation, pending the Court's consideration, time and time again, if you will, on these particular matters. But what we learned during the meet and confer efforts is that United did intend to essentially use this opportunity as *Motions in Limine* for reconsideration of each and every one of the Court's prior orders.

So those prior orders encompass the October 26th, November 9th, February 4th, April 26th, August 3rd, and September 20 -- I'm sorry -- September 16th rulings that deemed information irrelevant.

005463

And just a broad list, Your Honor, and we can get into the specifics, as I go through and address United's opposition -- but underlying critical records and the coding of the at-issue claims, noncommercial and in-network reimbursement rates and agreements; in-network negotiations between the Health Care Providers and United; cost information relating to cost of services; corporate structure and relationship matters; hospital contracts; charge setting information relating to whether it or not the charges are, quote, excessive or not, as United has alleged; and so on.

005463

As Your Honor is well familiar, you have had the opportunity to consider each of these areas, not just once, but twice, often three or four times -- in connection with the

005463

successive orders that each dealt with the prior orders of this Court.

The Court did not find United's arguments to be meritorious the first, second, or third time around.

At the August 17th hearing, which was with respect to Report and Recommendations No. 6, 7, and 9, the Court reiterated that it has been consistently clear that those foregoing categories of information are simply irrelevant to this case.

So despite those recent reminders that the Court has provided, United opted to file a series of *Motions in Limine* that obviously opposed this motion that encompasses all of those orders in its combined *Motion in Limine*.

005464

005464

In urging the Court to reconsider its prior rulings, United cites to *Johnson v. State* for the proposition that a Court can admit evidence previously deemed irrelevant.

Johnson may stand for that general proposition, Your Honor, and the Court can make determinations of relevancy, but the facts there did not involve the district court's about-face, with respect to earlier relevancy determinations.

Instead, in that case, the defendant failed to preserve the record on an objection to the exclusion of evidence relating to a victim of crime, certain sexual conduct, pursuant to a statute. And the Nevada Supreme Court

further concluded that the evidence was irrelevant and properly excluded. The situation here bears no similarity, Your Honor, as United suggests.

Second, United argues that the earlier relevancy determines are not [indiscernible] the case. Your Honor is well familiar with what that doctrine means. It does not require the Court to reconsider its prior rulings, nor does it allow a party to completely ignore the fact that it has already objected or sought reconsideration on one and all of the issues that are before the Court today.

EDCR 2.24 also does not allow for continued attempts by a party to try and change the Court's mind, without regard to procedural requirements. Indeed, United has not offered any change in circumstance or any new information. If you Your Honor had the opportunity to read their opposition, you will see the same argument, the same cases that has been before this Court before.

The Court can grant the Health Care Providers' *Motion in Limine* and the decisions underlying the subject orders because they have already been thoroughly considered by yourself.

As to United's substantive arguments that they raise in their opposition, you'll notice it was quite dense with information, Your Honor. So I do want to have the opportunity to be able to respond to that, given that we agree not to do

005465
005465
005465

replies with respect to *Motions in Limine*.

United argues that the Court's relevancy determinations do not apply to documents that the Health Care Providers produced voluntarily during the course of discovery. This is something that is a manufactured standard. We've seen that in earlier oppositions and objections that United has filed, in terms of saying, if we produced it, it must mean it's relevant; and therefore any argument as to its relevancy has been waived.

It's simply not the standard, especially because many of those documents were produced prior to many of the Court's rulings, making that determination that the subject area was not relevant for purposes of the case.

005466

005466

United also seemingly makes the argument that production of a document waives the objection. And I want to also refer the Court to the stipulated confidentiality and protective order that has been entered in this case. With respect to paragraph 23, the parties actually specifically agreed that production of a document that would have been marked confidential or attorney's eyes only, does not waive any of that type of admissible evidence at the time.

Specifically categories that have already been deemed irrelevant by this Court include clinical documents. United confirms that it will not seek to offer clinical records to argue that they did not perform disputed emergency services.

005466

So with respect to that alone, the Court can grant the motion with respect to clinical records.

But then in opposition, United goes on to contend that it should be allowed to offer evidence that the Health Care Providers improperly recorded and upcoded many of the disputed claims it submitted for reimbursement. This is exactly the same issue that United forwarded in its Motion to Compel clinical records that resulted in the October 26 order.

United there also argued that it had the right to contest the value and performance of the underlying medical services. These are the same arguments forwarded by United now. The Court should abide by its prior ruling with respect to clinical records because they are not relevant; and United has deemed the services payable, has made a payment -- although we dispute the amount that United has paid.

005467

005467

United also says information about coding is relevant to the Health Care Providers' charges, whether they be excessive, as United likes to describe. This too, with respect to excessiveness of the charge, is subject to the Court's earlier orders.

The next topic is noncommercial and in-network reimbursement rates. United is still trying to inject Medicare rates, opening in its opposition that it is the single largest payor in the country, and it is a reliable reference for considering the relative costs and the

005467

reasonable value of emergency medicine services.

Your Honor is very familiar with United's attempt to inject that data into this litigation. It started early with respect to market data. And it followed throughout the course of discovery and resulted in several Reports and Recommendations that Your Honor affirmed indicating that Medicare rates, reimbursement rates are not relevant, and do not make a reasonable evaluation in terms of a comparison.

Those determinations were found in the August 9th order, affirming Report and Recommendation No. 2 and 3, and at paragraph 6(b). The finding specifically was documents comparing plaintiffs' billed charges to reimbursement costs that under Medicare and Medicaid is irrelevant.

005468

005468

Also in connection with Report and Recommendation No. 7, United sought both noncommercial and in-network data in its third set of requests for production. Included within those requests were topics specifically geared at discovering in-network reimbursement rates, seeking both noncommercial and in-network data.

The September 16th order, which is affirming Report and Recommendation No. 7, reaffirmed that the data is not relevant to out-of-network claims at issue.

The district court -- the 8th Judicial District Court has previously agreed. We've cited this case multiple times, and it appears in several orders, *Stinnett versus Sanders*

005468

[phonetic], granting a *Motion in Limine* regarding expert testimony that relied on Medicare reimbursement rates.

In-network reimbursement rates, this Court has ruled that in-network reimbursement rates are not relevant in connection with Report and Recommendation No. 7 being affirmed.

United points to market data produced by the Health Care Providers earlier in the litigation, but this does not provide the Court a basis for essentially overruling its prior order. Nor do other in-network agreements -- they don't inform what United is obligated to pay the Health Care Providers. There is testimony regarding in-network relationships. The Court has heard argument on this.

005469

005469

And the relationship is quite different when you have that transaction where people are agreeing and entering into an agreement. The Eighth Judicial District Court agrees with this. In *Shamon versus Universal Health Services* [phonetic], the Court found results of negotiated agreements between medical providers and third-party payors do not accurately reflect the reasonable value of medical services. That case has always been embodied within some of the Court's prior orders.

United seeks to introduce evidence of in-network contracts with Blue Cross® Blue Shield®, and a direct contract that the Health Care Providers have with MGM Resorts -- both

005469

of which are relevant based on the Court's prior orders that in-network agreements themselves are not relevant.

The next category, what other providers pay and how often the Health Care Providers receive their billed charges.

This type of testimony and argument is contradictory to the Court's prior discovery orders, including Report and Recommendation No. 9. There, United objected that defendants have a right to know reimbursement that plaintiffs typically receive from other insurance and other payors and what reimbursement levels they deemed acceptable.

The Court rejected this argument and instead adopted Report and Recommendation No. 9 in its entirety.

005470

Pointing to the Health Care Providers acceptance acceptance of less than their billed charges as purported proof of a market rate, or evidence of negotiated rates or agreements to accept a particular rate, is also an evidence of offers of compromise which would be excluded under NRS 48.105.

005470

Next, United wants to introduce information about costs, hospital contracts, and credentialing, relating to those agreements. In addition, how charges are set.

United argues in its opposition that the process of how the Health Care Providers set their charges is relevant to determining if those charges are reasonable. And they point to expert Scott Phillips' testimony about costs.

But when you look at that deposition testimony that's

005470

cited, United left out critical testimony where Mr. Phillips stated the cost becomes, in many cases, not a terribly important factor. The Health Care Providers also objected to the questioning on the basis of the Court's limiting orders. So to allow United to try and extract information, and then use it to try and overrule the Court's earlier orders that we were already fighting about in terms of the deposition, simply isn't a sufficient basis to be able to have a new chance, a new bite at the apple, if you will, Your Honor.

United also argues that hospital contracts and credentials are important. But this, again, goes back to their cost argument, and simply what they're trying to do is use that argument with respect to getting costs.

How charges are set. The Health Care Providers seek to exclude evidence that United intends to introduce aimed at the purported excessiveness of their charges.

Whether a hospital has an agreement with a provider, though, has no bearing on whether or not United has satisfied its payment obligation.

Your Honor, we have talked about that many times with respect to what this case is really about. It has been consistently through the orders of this Court that we're all aware that this case is about the rate of the payment that United is making.

The Health Care Providers seek exclusion of the

005471
005471
005471

process, deliberation, and decision making, and strategy, is not relevant under the Court's prior orders.

So I want to make this distinction because I think it's an important one in terms of trial presentation.

So with respect to the ultimate fact of the Chargemaster -- so the ultimate price that is being billed -- that is information that is the fact of the amount that should be admissible. The Health Care Providers should be able to talk about that.

But what Your Honor ruled earlier was that process, that deliberation, how the charges are set is something that is not relevant. But the actual end result is something that the Health Care Providers should be able to talk about.

005472

005472

The next category of corporate ownership, structure, acquisition, is one that we have seen come up time and time again. United makes it clear and does intend to try to introduce information about TeamHealth and Blackstone. They want to introduce evidence in costs. They want to introduce evidence of what they say cash sweeps and things of that nature. But the Court has made it clear that that information has no relevancy to how much United reimbursed and whether that amount is satisfactory.

United also wants to inject irrelevant Medicare reimbursement rates through its references to TeamHealth and to Blackstone. That too would be improper and subject to the

005472

Court's prior orders.

The next category of documents in evidence that United has opposed as being excluded is provider participation agreements. United wants to point to earlier in-network contracts as indicative of the usual and customary rate. But the Court has already deemed that that information is not relevant in the August 9th, September 6th orders, that refer to the Report and Recommendation No. 2, 6, 7, and 9.

United argues that the Court's limitation was only with respect to a third-party subpoena. But the Court considered the issue in connection with a Motion to Compel deposition testimony, and when it sought that information through its third set of requests for production of documents.

005473

005473

So that point in the opposition is not completely fulsome, Your Honor, with respect to that point.

The Court has properly deemed in-network agreements, regardless of whom they involve, as irrelevant. To allow United to point to prior in-network agreements would be prejudicial and also run afoul of the case that I cited earlier, *Shaman Versus Universal Health Services Foundation*.

United also wants to point to contracts with other insurers. They want to garner reconsideration through its expert, Bruce Deal, who wants to testify that in-network agreements represent a willing buyer and a willing seller. Indeed, United wants to offer an opinion that, quote, only

005473

payments from contracted services are relevant to determining reasonable value.

Your Honor, United garnered that opinion after knowing what the Court had already issued in terms of its limiting order. To now turn around and point to that as a reason for reconsideration, should not be considered, Your Honor.

Next is an issue that United has taken the opportunity to try and paint the Health Care Providers in a bad light. And that issue is known as the [indiscernible] issue within the documents. This is similar to the Yale study documents where United had tried to portray the Health Care Providers in a bad light.

005474

And so what they have said is that there's an agreement between Ruby Crest and Fremont, that they've described as fraudulent, manipulating, and potentially demonstrative of upcoding.

The issue is that, one, the substantive issue -- because it's a provider agreement -- falls within the Court's limiting orders.

But it's also with respect to a factual issue that isn't as it seems, Your Honor. And what I mean by that, is that it's disingenuous to present to the Court that the Health Care Providers were charging something more than the service was provided in that location.

So for example, there's Chargemasters that the Health

005474

Care Providers have, that is dependent upon the location where the services were provided. And so when you look at services provided in -- at the ER, at Aliante, at Mountain View, and at Sunrise -- all the patients here in Clark County -- that Chargemaster rate is what is listed on the bill.

And so the representation to the Court that somehow there was an attempt to gain more money than what was expected or what was permissible or what was being charged based on the location of the services, is not accurate.

And so I want to give an example with respect to a date of service, January 12th, 2019, with a CPT code of 99285, which the Court is familiar -- is the most severe level that somebody would present to an emergency room.

005475

005475

And the Chargemaster for the location at ER at Aliante was $1,353, and that's the amount that was billed. Now, Ruby Crest is listed on -- as the tent provider, if you will. But under that Chargemaster, the rate would have been $821.

And so that's consistent with those locations, is that where the service was being provided is what Chargemaster governed that particular charge.

And so not only does this issue fall within the Court's prior orders, it's also important for the Health Care Providers to explain that the location of the charge and the Chargemaster for that location was consistently applied in those circumstances.

005475

The last category, Your Honor, is billing and collection. And we've had quite a few instances to come before Your Honor with respect to billing and collection. Those matters have been in Report and Recommendations No. 2, 3, 6, and 9, that the Court has affirmed and adopted in addition to the February 4th order.

So United makes it clear it wants to offer evidence that the charges are purportedly excessive. Again, this goes back to the crux of that determination from the Court very early on, pointing to testimony that they want to say that the Health Care Providers were egregious, however, what is misleading is that while the Health Care Providers were labeled egregious, United was taking that opportunity to use their billed charges in an effort to gain net $1 billion in internal operating revenue.

005476

But regardless of that, that billing and collection that United wants to go down the road of, has already been determined by this Court not to be relevant to these issues. So the Health Care Providers would request that if the Court grants this *Motion in Limine* this resolves United's *Motions in Limine* 1, 3, 5, 7, 9, 11, 13, and 15, Your Honor.

Thank you.

THE COURT: Thank you.

And the opposition, please.

MR. BLALACK: Yes, Your Honor. May it please the

005476

Court, Your Honor, let me just set the table and try to preview what I hope to accomplish in this argument.

This is really an omnibus motion that the plaintiffs filed. And if I was to show you in this gallery, just walk through about 12 different categories of evidence that they contend should be excluded on the basis of prior discovery orders issued by the Court. We disagree.

As she notes, we filed a series of paired *Motions in Limine*. The ones she just ticked off, 1, 3, 5, 7, 9, 11, and 13 -- I don't know that I would include 15 in that, but- 1, 3, 5, 7, 9, 11, and 13, are our affirmative *Motions in Limine*, asking the Court to evaluate the admissibility of evidence that could arguably be implicated from prior discovery orders.

005477

005477

And then for each of those, there is a companion *Motion in Limine*, which would be the even numbers of reports [indiscernible], which say that if our *Motion in Limine* is denied, we believe there are ramifications for what the plaintiffs' proof would be as a result.

I'm going to devote a significant amount of time in this argument to responding to Plaintiffs' *Motion in Limine* -- *Motion in Limine* No. 3, in taking the Court through the evidence on each of those categories that are implicated in that omnibus motion. It is my view that -- and I agree with Ms. Gallagher on this point -- I think depending on the Court's rulings with respect to the various components in

005477

Motion in Limine No. 3, it will mute some or all of these -- 1, 3, 5, 7, 9, 11, and 13.

It wouldn't resolve the companion pieces in terms of what's the effect on their case, but it would absolutely, we think, you know, resolve it.

So I'm going to devote most of the time, frankly, that I would have devoted to these motions, to responding to plaintiffs' *Motion in Limine* No. 3. So I just wanted to give the Court that preview, because I think this will be a longer argument than normal for that reason.

Okay. With that, Your Honor, let me try to set the table on where the pleadings stand and the dispute stands, going into trial before the Court rules here.

We have now, after the second amended complaint, five defendants left out of the original eight. Some of those defendants are fully insured, self-insurance companies. And as the Court knows from prior briefing that means, in return for paying a premium from an employer or a union or an insurance policy, the company sells an insurance policy that a company gets premium and basically is responsible for the risk of providing healthcare coverage to the employees or the union members [indiscernible].

THE COURT: So the trial I just finished Thursday was -- involved a failed risk retention group.

MR. BLALACK: Okay.

005478
005478
005478

THE COURT: And it was a receiver suing the operator.

MR. BLALACK: Okay.

THE COURT: So I have a really good -- right now, at least for a while --

MR. BLALACK: Okay.

THE COURT: -- understanding of how insurance works.

MR. BLALACK: Okay. Well, I just want to distinguish, because it will be relevant to some of these arguments, Your Honor, the difference between evidence related to a fully insured plan and the role that our clients play for a fully insured plan; and evidence related to a self-insured plan, and the role that our clients can play.

005479

For those plans -- and we have some defendants in this case, Your Honor -- clients of ours that do nothing but that. That's the only work they do. They never insure anything. And they never charge a premium or get paid a premium for anything. All they do is administer the health plan that is sponsored by an employer or a union member, union group. And they, for a fee, administer the plan with the employers accepting the risk of the health plan for their employees.

005479

So that's two different types of business that you're going to see come up in these documents that are being discussed. One, we lovely called ASO, administrative services only, or self-insured. The other is fully insured. And you've got defendants that do just one or sometimes will do

005479

both. But from the defense side.

On the plaintiffs' side, as you know, we have three companies based here in Nevada that are staffing companies, that are owned by the TeamHealth organization. And the TeamHealth organization is the largest staffing company in the United States for emergency and other hospital based [indiscernible]. It's a very, very large [indiscernible] company. It's now private, because it was recently purchased by the Blackstone Group, which is a private equity company. So it's a big, big player in the staffing industry.

They -- those plaintiffs, those TeamHealth plaintiffs, based in Nevada and in the other states, they contract with physicians -- emergency room physicians on an independent contractor basis to staff the emergency departments of hospitals around the country. And in this case, there were eight hospitals based, during some period of time, where they staffed hospitals in Clark County. And they staffed one in Elko, and one in -- a Nevada hospital in -- team physicians in -- I can't remember the name of the community. But there's -- there's two smaller hospitals in the Northwest and Northeast Nevada.

I tell you that, Your Honor, because of the claims in dispute in this case and the damages in this case -- 90 percent of it relates to the practice group that staffs hospitals in Clark County. The other 5 percent each are

005480

005480

005480

affiliated with these two smaller practice groups in Northeast and Northwest Nevada.

We come to the trial, depending on where things settle out after today's arguments, with probably just under 2,000 disputed claims for -- allegedly for emergency services.

Up for which, United has already allowed payment -- and this part is not in dispute -- has already allowed payment of just about $3 million, for which plaintiffs are seeking to bill charges in the aggregate of around 14. And that may -- again, that may come down -- both of those numbers may come down slightly based on the final revisions of the disputed claims. We should be in that ballpark for [indiscernible].

005481

005481

So the claim for damage in the first instance is the difference between those billed charges and the allowed amount, which is, give or take, $11 million and maybe a little less.

All right. So the claims that remain, after -- so let me just -- as you know, Your Honor, these are the 12 topics that are subject to this omnibus *Motion in Limine* No. 3. And I want -- they're all different, so I'm going to go through them and show you the evidence that's implicated by these topics. Before we get there, I want to make sure we level some of the claims and the elements of the claims that are going to be at issue in the trial.

So after the second amended complaint when they

005481

dropped half of their causes of action, we had four left: Breach of implied contract; unjust enrichment, which had been their core lead accounts from the beginning; and then two remaining statutory claims: One for unfair claims, insurance claims settlement practice, which is Count 3; and then an alleged violation of the prompt pay statute, Count 4. That's where we go, going into trial.

Now, I want to talk real quick, Your Honor, just to level some of the elements for these, so that when we start talking about some of the evidence implicating, we can tie it back to some of these elements.

005482

And the first, of course, is the implied in fact contract, which requires evidence of the party's conduct, and that's the key. This is a contract formed by conduct. It is undisputed in this case that there was no written contract between the parties during the period of dispute. And they just recently amended their discovery responses in the last few weeks to make clear there was no oral contract.

005482

So to the extent there is a contract between the parties in this case, it has to be evidenced from their own behavior. That necessarily, Your Honor, means evidence of course of dealing and course of performance. So they had -- that course of performance and course of dealing has to manifest an intent to contract, has to show an exchange of [indiscernible] for promise in clear terms that was then

005482

breached. And the *Certified Fire Protections* case is a case both parties settle, which lays out those elements.

And then for unjust enrichment, it's showing that there was a benefit conferred on my clients from -- by the TeamHealth plaintiffs in rendering the services at issue; that our -- my clients received and accepted that benefit; and that would be inequitable under these circumstances for us to retain that benefit without compensation, which is defined under the same case law as the reasonable value of the service.

And I want to focus on that, real quick, Your Honor, because it is undisputed, I think, between the parties that the relevant standard here at -- under Nevada law that the jury is going to be asked to evaluate is the concept of reasonable value, as opposed to other potential terms, like usual and customary.

That's not reasonable value. Reasonable value is its own meaning within Nevada case law.

And so the parties agree that reasonable value is the tests shown for all of these claims. And so then the question becomes, What evidence is probative of reasonable value for any of these claims?

Now, unfair settlement practices.

In the complaints, the amended complaint, they rely on section -- Nevada Statute 686(A).3101(e), which is the element

005483
005483
005483

of the statute regarding failure to effectuate prompt, fair, equitable settlement of claims after -- after allowed, only when the claim has become reasonably clear to the defendant -- to the defendant insured.

So this will obviously get into questions of *mens rea*, state of mind, in terms of what defendants knew, when they knew it, and what the nature of their dealings with one another was regarding settlement of the disputed claim.

And then finally, the prompt pay statute -- this is a very simple statute that has to show that there was approval or denial of a claim within 30 days of receipt. And it was approved, it was paid within 30 days of approval, a straightforward claim, a much more direct [indiscernible].

005484

005484

Now, with that background, Your Honor, I want to talk about each of these categories. And what I -- let me start with a preface. Plaintiffs make a great deal of argument that this is, in fact, a motion for reconsideration in disguise. And I want to address that head on.

It is absolutely not that. It is true that there are prior discovery orders of the Court, implicated by this motion, where we willingly acknowledge that the Court's prior discovery order addresses the issue at hand. And the only question is whether it is appropriate to extend that reasoning to the admissibility of evidence that we possess, not evidence we're seeking in discovery, but that we possess to the trial.

005484

But for the bulk of the issues, those 12 issues I've listed above, we vigorously disagree that the Court's prior discovery orders address the question that's squarely presented with regard to this evidence, and resolved it.

So there definitely are some -- or were -- and this is one of them -- where I'm just going to say, yes, Your Honor, you had a prior ruling that said this. It applies to this body of evidence. We disagree, respectfully. But here's why we think it either doesn't apply to this evidence that's at issue, or we suggest that in light of what evidence has been produced in the case by the plaintiffs, and what the relevant claims and defenses are in the case, it should be admissible, and the Court's not bound by the prior discovery. But that's one class of argument.

005485

005485

But there are others. -and this is also an example of it -- where the Court -- they're citing a discovery order, and the discovery doesn't even come near the issue -- anywhere near it. And they're asking you to just kind of blithely say that your prior discovery order precludes us from offering evidence. And I'll give you an example of this first one.

But I wanted to highlight that, Your Honor, because as we go through it, I want to try to identify the ones that I think fit into that first bucket where we [indiscernible] your order addresses the issue squarely. And here's why we think you should take a different position for admissibility of

005485

trial.

But then there are others where I'm going to try to explain that the Court's prior discovery order just doesn't reach the issue squarely presented.

All right. So first one is clinical records. And the easy part is we don't have clinical records if they weren't produced. We won't be offering them -- even any ones that we have in our possession -- to contest that the services were ever performed, which was the original reason for seeking them. We originally sought clinical records, because we thought we had a right to contest that performance had been satisfied and that they had performed the services they billed.

005486

005486

That's not going to be an issue in the trial, so that's -- and that was the lead argument in the motion for this issue. So let's take that off the table.

But in their brief, they identified three other categories of evidence that they say is covered by this order: The improper coding of disputed claims, which means somebody, a doctor putting a code for reimbursement on a claim that triggers a higher level of reimbursement than is justified by what service was actually provided; the second is the actual process of submitting a disputed claim; and then whether the claims are emergency services.

And they contend that the discovery order related to

005486

clinical records precludes us from getting into those issues.

Now, Your Honor, on the first of those, our position is that if you look at the data, 75 percent of the claims, the disputed claims in this case, were E&M Codes 4 and 5. The highest intensity, most financially rewarding codes that are submitted -- can be submitted.

And their expert, Mr. Phillips, did an analysis of the intensity of that and the frequency with which the TeamHealth plaintiffs were using those high intensity codes and how frequently, relative to other providers, that was the case. We believe -- and our expert did the same thing, so both experts looked at this question.

005487

005487

We believe the fact that both experts from both sides did an analysis of the intensity levels of the coding and the frequency with which high intensity, high reimbursement codes before submitted by these plaintiffs is fair game. Certainly it's not precluded by an order barring discovery of clinical records, because we're not going to offer any evidence about clinical records.

We would be offering the evidence from their own claims information that they produced on their own disputed claims spreadsheet; and the testimony of their own expert and the testimony of our expert regarding the frequency with which they were coding at the highest level of intensity of claims -- again, 75 percent across all the emergency codes

005487

belonged in two buckets, the two highest levels of reimbursement that were permitted under the system. That's one point.

Point two, submission of disputed claims. You just heard argument in summary judgment that our position is there are hundreds of claims that were not submitted to the defendants in this case.

If you accept their argument, we can't put on proof to contest that we never got the claim because what we're going to want to do is cross-examine their witnesses and have them impeach that they ever submitted those claims to us. And we're going to want to put on our witnesses to talk about what our systems received and whether we received the submitted claim or not. That's just core foundational evidence.

005488

005488

And yet, according to plaintiffs, that would be off limits under the Court's discovery order related to clinical record.

And finally, it's been axiomatic since the beginning of this case that the case is only about emergency medical services -- not about anything else. And plaintiffs, if you hear them, say your discovery order precludes us from challenging that any of these claims are not, in fact, emergency services.

Well, the problem is their own expert Mr. Leathers, who is now going to testify, has said that there are claims on

005488

the list of disputed claims that are not an emergency claims. In fact, he didn't include them in his analysis. Whereas, Mr. Phillips, the other expert, did include them.

So on the list of disputed claims we currently have, we've got claims that are not emergency claims, where one of their experts says there's not an emergency code on the claim. And the other says there is and is including it in his damages analysis.

So our position is, Your Honor -- and when you read the discovery order, which I'll show you in a moment -- there's nothing in that order about clinical records that touches these three issues.

005489

So frankly, if plaintiffs want to stipulate that they're willing to withdraw the 400-and-some claims that are covered by categories 2 and 3, we'll take those two issues off the table. And we won't have to put on any proof on it.

But if they're in dispute for the jury, we've got to be able to offer evidence about whether the claims were submitted, process for submitting them, why they believe they were submitted, and the fact that we didn't get them. And we need to be able to offer evidence, including from their own experts, that there are claims on their lists that aren't emergency claims. So that's our position on here.

So let me show what the base evidence is on this, Your Honor. This is your order from October of 2020. Here's

005489

the key passage.

And I submit to Your Honor there's nothing in this order that says anything that would touch or get near the question of whether we could offer evidence on the three topics described.

And the relevant key paragraph is paragraph 18, cited in our [indiscernible].

Now, improper coding and disputed claim. This chart I'm showing Your Honor is a chart from the expert report of Mr. Phillips, their expert, their damages expert. He did an analysis of both the TeamHealth plaintiffs and other nonparticipating claims to show the frequency with which high intensity codes -- which are the highest reimbursing codes -- show up in the data. And what we see here is that 75 percent of those are in the top two levels, and 95 percent cover the top 30. And Mr. Phillips, in his deposition testimony, specifically agreed that the charged amounts and the reimbursement amounts increase when you billed the higher level codes.

And Your Honor, we have an affirmative defense in this case that makes clear that plaintiffs' claims are barred in whole or in part, to the extent they seek to unjustly enrich the TeamHealth plaintiffs by allowing them to retain funds in excess of any amounts due for covered services.

They would not be entitled to high reimbursing

005490

005490

005490

recovery if, in fact, they were billing claims at Levels 5 and Levels 4, when they should be billed at Level 3 and Level 2. So that kind of analysis is relevant.

Improper submission, Your Honor -- this charge is from our expert's report, Mr. Deal, where he's showing the disputed claims that both parties agree do not show up in the defendant's data -- which is over 400 claims -- which we have the right, we believe, to submit evidence to contest that we were -- that they were submitted and that we received them.

And then services that are not emergency medicine.

This is deposition testimony from Mr. Leathers, their expert who we talked to you about earlier.

005491

QUESTION: You determined that some of chose claims should not be considered because they did not involve emergency services.

005491

And the answer: Correct. They did not have an emergency service CPT code.

Okay. So you found that some of the disputed claims that have been pursued in this case did not reflect any emergency services of the claim?

ANSWER: Correct.

So Your Honor, I'm going to move on to Medicare rates next. But before I leave that, the point is you can fairly read your discovery order saying clinical records are out. But I don't think in fairness you can extend it to read

005491

touching these other issues. And I think that's emblematic of the entire motion, which is you take some snippet out of an R&R or an order, and then it's given this broad sweeping reach in the brief that we submit is unjustified and that would really unfairly hamper our ability to present a defense.

So I'll move on to the second item, the Medicare records. And Your Honor, in your order of November 2020, which related to whether the defendants would produce data for an included managed Medicare and Medicaid reimbursement death, plaintiffs asked for an order, saw an order, excluding that data from the productions, which Your Honor granted. But specifically in doing that -- and this is the order that you struck through and then signed -- you noted: Notwithstanding the foregoing, the Court does not make any admissibility ruling of this data at this stage of the litigation.

005492

So Your Honor, it was expressly contemplated, you weren't going to engage in prepare -- with the production of this government data for purposes of the claims analysis. But there was an expressed reservation on the question of whether you [indiscernible] would be a year later at trial.

And we submit that the evidence that was later produced in discovery in the spring and that the parties took depositions on proves why that was a prudent reservation for the Court to make, because frankly, Your Honor, these parties do business in the language of Medicare; they contract in the

005492

language of Medicare; they negotiate in the language of Medicare; they budget in the language of Medicare; they track their receivables in the language of Medicare. And so the notion that you could have a trial about the reasonable value of healthcare services, without the word Medicare rates being spoken or the Medicare B schedule, is just incomprehensible in our judgment and in my experience.

So let me show you why that is. And by the way, these are some other orders. This is -- Plaintiffs rely on R&R No. 2 which cites back to the Court's February 4, 2021, order. But if you review those materials, you're basically -- it does not add anything new to what the Court previously noted from the November hearing, which we just looked at. So basically it harkens back to the Court's prior ruling.

005493

005493

All right. So Medicare rates and why are they relevant? They are relevant because they are one of the pieces of information that can inform what a willing buyer and a willing seller, in an arm's length transaction, would consider reasonable reimbursement.

And for that -- and that standard is a standard that the Nevada courts in cases have adopted, and it's a standard that courts across the United States have adopted. We cited to you in your brief, and I think, you know, plaintiffs cited as well, the *California Children's Hospital* case, which is one of the leading cases in an out-of-network emergency dealing

005493

with the exact same issue, which is out-of-network emergency services.

And that's a case where the trial judge excluded evidence of government rates from the admissible -- excluded evidence of contracted rates and PAR data, participating rate data for contracted agreements. Went to trial. The verdict for the emergency room provider was sent up on appeal, and it was reversed on appeal on the grounds that the discovery had improperly been too narrow, and admissible evidence has been excluded.

And I commend that case, Your Honor, because there's things in there that I don't agree with it. For example, it says that cost is not relevant, because in that case the standard is the going rate, which the Court concluded wouldn't necessarily mean market type data. But it also goes on to talk about the types of evidence that necessarily is prohibited of reasonable data. And it included a lot of things that are in this motion -- network agreements, participating data, market data, out-of-network payment data, offers to contract, negotiations, testimony by a party about what the value of their service is, and government payment data.

And in fact, I've got a quote here, Your Honor, from the case, where it says: The scope of the rates accepted by or paid to a medical provider by other payors or insurers

005494

005494

005494

indicates that the value of those services in the marketplace -- and is therefore relevant to the reasonable value analysis. Quote, all rates that are the result of contractor negotiation, including rates paid by government payors, are relevant to the determination of reasonable value.

Now, in this case, Your Honor, it is not the defendant's position that the reasonable value of the disputed services in this case is the Medicare rate. That is not our position.

Our position, as you'll see in a moment, is that there is a benchmark rate that could be measured based on the participating market data for the Team Health plaintiffs and the participating market data for the defendants that shows what do the defendants -- what is the most common rate that the defendants pay to other emergency room providers besides TeamHealth, and what is the rate that the Team Health plaintiffs most commonly accept from other payors besides United, and that gives you the market rate range to measure reasonable value.

But our expert will testify that Medicare is still a very useful reference point to use -- being able to have an apples-to-apples comparison across the different types of reimbursement.

Some of these contracts, the payment is based on a case rate, so $320 per visit. Sometimes it's based on a

005495

005495

005495

multiple Medicare -- 300 percent of Medicare; 200 percent of Medicare.

Sometimes it's going to be based on a prior negotiated agreement or a fee scale or a government fee scale.

So there are different inputs in using a standard format like Medicare as a way to have an apples-to-apples comparison across different rate payment methods is very important for the jury to understand how to look at the evidence; and frankly, how the parties looked at the evidence at the time.

So in this case, the TeamHealth plaintiffs documents that they produced showed that they relied on Medicare rates in the ordinary course of their business and in their course of dealing with the defendant. And I'm going to show you the ways in which they did that.

So first, when they set their billed charges, which is the basis of their measure of damages, this is their document describing the inputs to their Chargemaster; they specifically say that Medicare, the Medicare allowable or the Medicare fee schedule is one of the two primary inputs in their charges. And in the deposition of Mr. Briscoe, who will be in trial on this in all likelihood, he confirmed that -- that alone, with the FAIR Health database, which is a private nonprofit organization, provided the two primary inputs for determining the charges that are at issue in the case.

005496

005496

005496

Next, TeamHealth plaintiffs offered reimbursement rates to the defendants in this case during contract negotiations, based on the Medicare rates.

So I'm showing you just two examples. There's many.

This is an e-mail from 2017 from Rena Harris [phonetic] who is a trial witness in the case, who worked for TeamHealth. She negotiated with the defendants. And in this document, she says, per our discussion in our recent market intelligence homework, we need to be at 260 percent of input of Medicare -- which is what she said in her memo.

She then made a similar statement in another e-mail from 2019, in speaking with my VP, we can counter you with 300 percent of Medicare. So literally, Your Honor, the -- this motion would preclude us from telling the jury that the plaintiffs who are claiming and demanding billed charges had indicated that they considered 300 percent of Medicare a reasonable value that they would be willing to accept, and that they said it in documents during the party's course of dealing, which is going to be relevant to the implied in fact contract, not to mention the other elements of the claim.

Now, TeamHealth plaintiffs also had network contracts with the Fremont defendant -- the plaintiff, so TeamHealth -- of the three TeamHealth plaintiffs, two had been out-of-network from beginning to end. One had been a longstanding network provider for several of defendants in

005497

005497

005497

this case. And the prior agreements between the parties, basic reimbursement in the contract, as you can see it here, on Medicare rates, on the Medicare fee scale, 181 percent of the Medicare fee scale.

The e-mails produced by TeamHealth's plaintiffs also showed that when they did their budgeting to evaluate, you know, what they thought their schedule -- fee schedule and their charges should be, and what reimbursement they needed, and what they could demand from United, they used Medicare rates as the way to do that budget. And this e-mail is an e-mail from Mr. Briscoe to a Jason Newberger [phonetic] of TeamHealth, and is discussing the budget process for 2019, and talking about whether and how to keep certain claims in the budgeting -- receivables in the budgeting process, relative to Medicare.

005498

005498

And then they track their AR and their collections based on Medicare, and specifically as to the defendants in this case. As this e-mail shows, they were looking at their payment receipts, and saying, you know, we were hoping and expecting to get about 244 percent of Medicare once we went out-of-network. But it looks like -- and we're -- he says, let's go ahead and record the 235 percent financial for now. And she says -- or excuse me -- Jason Newberger says, we were at 170 percent of Medicare for January to June, and up to 235 percent for July.

005498

So again, Your Honor, the language of this company -- and United is the same, all of the companies in the healthcare industry is. Medicare is the lexicon of reimbursement technology. People may [indiscernible] take a different rate.

So for example, I'm thinking of an analogy, like the prime rate. If you go to a bank, the bank -- you may get a rate that's 2 percent of prime, 3 percent of prime. The rate's not the prime rate you're borrowing, but it's pegged to a standard terminology that everybody in the industry understands.

That's what Medicare performs here. Medicare functions like the prime rate does in the healthcare industry and is the measure by which people negotiate, enter contracts, track budgeting, and do receivables.

005499

005500

THE COURT: Now, I'm going to stop you only because we could argue the rest of the afternoon this motion.

And I want to see how you guys want to manage the time. I want Mr. Roberts to be able to argue his motion and fully -- get that fully done. And I'm wondering if maybe we shouldn't go subject by subject, so I can give you some clarity along the way.

MR. BLALACK: Okay.

THE COURT: So it -- you know, it's been an hour since we had a last -- our last break. But if everybody is willing to go forward, I'm happy to go forward. We're just supposed

005499

to give you every hour a break.

MR. BLALACK: I defer to your preference, Your Honor. I mean, I think -- I've probably got another probably 30 minutes, I can say, 30 or 40 minutes.

THE COURT: Okay. All right.

MR. BLALACK: But I would -- then [indiscernible].

THE COURT: All right. And Mr. Roberts, without holding you to it, how long do you think you'll need on that Motion to Stay?

MR. ROBERTS: Your Honor, 10 minutes, 15 minutes on the outside, longest.

THE COURT: Okay. And who will argue the Motion to Stay for the plaintiffs?

MS. LUNDVALL: 15 or 20 minutes is what we'll need, Your Honor. This is Pat Lundvall.

THE COURT: Okay. Thank you.

So let's not recess now, take up the other motion. And then we'll take a break. And you guys can talk about how you want to present the entirety of the motion.

MR. BLALACK: Perfect.

THE COURT: All right. Let's pivot back over to page 2. Let me find this. It's a Motion to Stay enforcement of the order. And I have seen the writ petition come through.

MR. ROBERTS: Thank you, Your Honor.

THE COURT: Okay. Thank you.

005500

005500

005500