

CASE NO. 85525; *Combined with* CASE NO. 85656

IN THE SUPREME COURT OF NEVADA

UNITED HEALTHCARE INSURANCE COMPANY; UNITED HEALTHCARE
SERVICES, INC. D/B/A UNITEDHEALTHCARE; UMR, INC. D/B/A UNITED
MEDICAL RESOURCES; SIERRA HEALTH AND LIFE INSURANCE
COMPANY, INC.; AND HEALTH PLAN OF NEVADA, INC.,

Appellants/Petitioners,

vs.

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.

Respondents/Real Parties in Interest.

Appeal from the Eighth Judicial District Court, Clark County
District Court Case No. A-19-792978
Hon. Nancy L. Allf, District Judge

APPENDIX OF EXHIBITS TO RESPONDENTS' ANSWERING BRIEF

VOLUME 1 OF 13

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APPENDIX OF EXHIBITS TO RESPONDENTS' ANSWERING BRIEF

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CERTIFICATE OF SERVICE

I certify that I am an employee of BAILEY ❖ KENNEDY and that on the 28th day of August, 2023, service of the foregoing **Appendix of Exhibits to Respondents' Answering Brief – Volume 1 of 13** was made by electronic service through Nevada Supreme Court's electronic filing system and/or by depositing a true and correct copy in the U.S. Mail, first class postage prepaid, and addressed to the following at their last known address:

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EXHIBIT 1

EXHIBIT 1

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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

Plaintiff,

vs.

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

Defendants.

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

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

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure plaintiff Fremont
Emergency Services (Mandavia), Ltd. ("Fremont") serves the following First Set of Requests for
Production of Documents ("Document Requests") to defendants United HealthCare Insurance
Company ("UHCIC"), United HealthCare Services, Inc. ("UHC Services"), UMR, Inc. ("UMR"),
Oxford Health Plans, Inc. ("Oxford" and collectively the "UH Parties"), Sierra Health and Life

RA000001

Insurance Company, Inc. (“Sierra”), Sierra Health-Care Options, Inc. (“Sierra Options”) and Health Plan of Nevada, Inc. (“HPN” and with “Sierra and Sierra Options, the “Sierra Affiliates” and collectively with the UH Parties, “United HealthCare”) and asks that United HealthCare respond in writing within thirty (30) days of the date of service, to McDonald Carano LLP, 2300 West Sahara Avenue, Suite 1200, Las Vegas, Nevada 89102. These Document Requests are continuing in nature and Defendant must timely supplement the answers to them under Fed. R. Civ. P. 26(e) whenever a response is in some material respect incomplete or incorrect.

DEFINITIONS

1. “Communicate” means every manner or means of disclosure or transfer or exchange of information whether orally, by document or otherwise, and whether face to face, in a meeting, by telephone or other electronic media, mail, personal delivery or otherwise.

2. “Communication” means the transfer of information from a person or entity, place, location, format, or medium to another person or entity, place, location, format, or medium, without regard to the means employed to accomplish such transfer of information, but including without limitation oral, written and electronic information transfers. Each such information transfer, if interrupted or otherwise separated in time, is a separate communication.

3. “Document” is defined to be synonymous in meaning and equal or exceeding in scope to the usage of this term in Fed. R. Civ. P. 34(a). It includes images, words and symbols that are electronically stored and which, if printed on paper, would be the text of a document, as well as metadata contained within particular electronic files. It also means all written or graphic matter of every kind or description however produced or reproduced whether in draft, in final, original or reproduction, signed or unsigned, whether or not now in existence, and regardless of whether approved, sent, received, redrafted or executed, and includes without limiting the generality of its meaning all correspondence, telegrams, notes, e-mail, video or sound recordings of any type of communication(s), conversation(s), meeting(s), or conference(s), minutes of meetings, memoranda, interoffice communications, intra office communications, notations, correspondence, diaries, desk calendars, appointment books, reports, studies, analyses, summaries, results of investigations or tests, reviews, contracts, agreements, working papers, tax

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returns, statistical records, ledgers, books of account, vouchers, bank checks, bank statements, invoices, receipts, records, business records, photographs, tape or sound recordings, maps, charts, photographs, plats, drawings or other graphic representations, logs, investigators' reports, stenographers' notebooks, manuals, directives, bulletins, computer data, computer records, or data compilations of any type or kind of material similar to any of the foregoing however denominated and to whomever addressed. "Document" shall include but is not limited to any electronically stored data on magnetic or optical storage media as an "active" file (readily readable by one or more computer applications or forensic software); any "deleted" but recoverable electronic files on said media; any electronic file fragments (files that have been deleted and partially overwritten with new data); and slack (data fragments stored randomly from random access memory on a hard drive during the normal operation of a computer [RAM slack] or residual data left on the hard drive after new data has overwritten some but not all of the previously stored data. "Document" shall exclude exact duplicates when originals are available but shall include all copies made different from originals by virtue of any writings, notations, symbols, characters, impressions or any marks thereon.

4. Data iSight is the trademark of an analytics service owned by National Care Network, LLC. Data iSight and National Care Network, LLC are collectively referred to as "Data iSight."

5. "Fremont" shall mean and refer to Fremont Emergency Services (Mandavia), Ltd. and/or any past or present agents, representatives, employees, partners, principals, members, assigns, predecessors-in-interest, successors-in-interest, affiliates and every person acting or purporting to act, or who has ever acted or purported to act, on its behalf.

6. "Defendants," "You," or "Your" shall mean and refer to Defendants United HealthCare Insurance Company, United HealthCare Services, Inc., UMR, Inc., Oxford Health Plans, Inc., Sierra Health and Life Insurance Company, Inc., Sierra Health-Care Options, Inc. and Health Plan of Nevada, Inc. and/or any past or present agents, representatives, employees, partners, principals, members, assigns, predecessors-in-interest, successors-in-interest, and every person acting or purporting to act, or who has ever acted or purported to act, on their behalf.

RA000003

7. “UH Parties” means and refers to defendants United HealthCare Insurance Company, United HealthCare Services, Inc., UMR, Inc. and Oxford Health Plans, Inc.

8. “Sierra Affiliates” means and refers to defendants Sierra Health and Life Insurance Company, Inc., Sierra Health-Care Options, Inc., and Health Plan of Nevada, Inc.

9. “Lawsuit” shall mean and refer to the lawsuit styled *Fremont Emergency Services (Mandavia), Ltd. v. United HealthCare Insurance Company, et al.* filed in the Eighth Judicial District Court, Clark County, Nevada, Case No. A-19-792978-B and removed to the United States District Court, D. Nevada, Case No. 2:19-cv-00832-JAD-VCF.

10. A “claim” means any billing instrument or request for reimbursement by a Provider for medical services provided.

11. “CLAIM” or “CLAIMS” means those claims for reimbursement for Emergency Services and Care or Nonemergency Services and Care provided by Fremont to Your Plan Members for dates of service on or after July 1, 2017 (UH Parties) and on or after March 1, 2019 (Sierra Affiliates).

12. “Emergency Services and Care” means medical screening, examination, and evaluation by a physician or, to the extent permitted by applicable law, by other appropriate personnel under the supervision of a physician, to determine if an emergency medical condition exists, and if the physician or personnel determines that it does exist, the care, treatment, or surgery for a covered service by a physician necessary to relieve or eliminate the emergency medical condition within the service capability of a hospital.

13. “Emergency Medicine Services” shall mean and refer to evaluation and management services (described by CPT codes 99281-99285), critical care services (described by CPT codes 99291-92) and the associated procedures performed by Fremont in the State of Nevada.

14. “Emergency Medicine Group” shall mean and refer to any or all groups of physicians, mid-level practitioners and other healthcare providers that staff hospital emergency departments, observations units and urgent care clinics in the State of Nevada, whether the group is structured as a professional corporation, a limited liability corporation, partnership, or otherwise.

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15. “Emergency Department Services” shall mean all services performed in the emergency department of a hospital in the State of Nevada by a hospital, physicians of any specialty (not limited to emergency medicine physicians), nurses or any healthcare providers.

16. “Nonemergency Services and Care” means medical services and care which are not Emergency Services and Care.

17. “Non-Participating Provider” or “Non-Network Provider” means a healthcare provider who has not been designated by You as a “participating” or “network” provider.

18. “Participating Provider” or “Network Provider” means a healthcare provider who has an agreement with You as an independent contractor or otherwise, or who has been designated by You, to provide services to Plan Members.

19. “Plan” means any health benefit product or program, including but not limited to an HMO, an Exclusive Provider Organization (“EPO”) or Preferred Provider Organization (“PPO”) product or program, issued, administered, or serviced by You.

20. “Plan Member” means an individual covered by or enrolled in a Plan.

21. “Provider” means any physician, hospital, or other institution, organization, or person that furnishes health care services and is licensed to do so in the state where those services are furnished.

INSTRUCTIONS

1. These Document Requests seek all requested documents that are in Defendant’s possession, custody, and/or control, including without limitation, any records depositories or archives.

2. Copies of requested documents that differ from other copies of the document by reason of alterations, margin notes, comments, attached materials, or otherwise shall be considered separate documents and shall be produced separately.

3. Documents that are physically attached to, segregated and/or separated from other documents, whether by inclusion in binders, files, sub files, or by use of dividers, tabs, or any other method, shall be left so attached, segregated, and/or separated when produced, and shall be retained in the order in which they are maintained, in the file where they are found.

RA000005

4. If you contend that any document requested to be produced, or any part thereof, is protected from discovery by the attorney-client privilege, work product doctrine, or some other ground or privilege or immunity, as required under Rule 26(b)(5) of the Federal Rules of Civil Procedure, produce a log that identifies each document withheld and provides at a minimum the following information:

- a. the place, date, and manner of preparation or other recording of the document;
- b. the title and subject matter of the document;
- c. the identity and position of the author, the addressee, and all recipients of the document; and
- d. a statement of (i) the nature of the legal privilege claimed or other reason for withholding the document and (ii) the factual basis for that claim of privilege or other reason for withholding, including the facts establishing any claim of privilege, the facts showing that the privilege has not been waived, the status of the person claiming the privilege, and a statement as to whether the contents of the document are limited to legal advice or contain other subject matter.

5. For each document from which portions were withheld pursuant to instruction 4, identify and produce all other portions of the document not so withheld.

6. Scope of Answers. In answering these Document Requests, you are requested to furnish all information available to you, however obtained, including hearsay, information known by you or in your possession or appearing in your records, information in the possession of your attorneys, your investigators, and all persons acting on your behalf, and not merely the information known of your own personal knowledge.

7. Qualification of Answers. If your answer is in any way qualified, please state the exact nature and extent of the qualification.

8. If additional information or documents become known to Defendant regarding any of these Document Requests following the initial response and submission to Plaintiff, supplementation of the response with such information is required.

9. For each document produced, identify the specific document request number or numbers to which the document is responsive.

10. All documents are to be produced as they are kept in the usual course of business including any labels, file markings, or similar identifying features, or shall be organized and

RA000006

1 labeled to correspond to the categories requested herein. If there are no documents in response to
2 a particular request, or if you withhold any responsive documents or categories of documents
3 based on any objections, You shall state so in writing.

4 11. Where a request seeks the production of electronically stored information ("ESI"),
5 that information must be produced in its native format with corresponding load files containing
6 the document's text and all available metadata. For purposes of these discovery requests, "native
7 format" means a file saved in the format designated by the original application used to create it.

8 12. If you object to any Request in part, you shall respond fully to the extent not
9 objected to, and set forth specifically the grounds upon which the objection is based.

10 13. If you cannot answer a Request fully after exercising due diligence to secure the
11 documents requested, so state and respond to the extent possible, specifying your inability to
12 respond to the remainder, the reasons therefore, the steps taken to secure the documents that were
13 not produced, and stating whatever information or knowledge you have concerning the missing
14 documents. Please also identify the person you believe to have possession of the missing
15 documents, and the facts upon which you base your response.

16 **RULES OF CONSTRUCTION**

17 1. The terms "relate to," "related to," "relating to," "relative to," and "in relation to,"
18 include without limitation "refer to," "summarize," "reflect," "constitute," "concern," "contain,"
19 "embody," "mention," "show," "comprise," "evidence," "discuss," "describe," or "pertaining to."

20 2. The term "concerning" means and includes without limitation "regarding,"
21 "pertaining to," "reflecting," "referring to," "relating to," "containing," "embodying,"
22 "mentioning," "evidencing," "constituting," or "describing."

23 3. The use of the masculine gender, as used herein, also means the feminine, or neuter,
24 whichever makes a discovery interrogatory more inclusive.

25 4. The words "and" and "or" shall be construed conjunctively or disjunctively,
26 whichever makes a discovery interrogatory more inclusive.

27 5. The use of the singular form of any word includes the plural and vice versa.

28 6. The terms "person or entity" and "persons or entities" mean any individual, firm,

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corporation, joint venture, partnership, association, fund, other organization, or any collection or combination thereof.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

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

REQUEST FOR PRODUCTION NO. 2:

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

REQUEST FOR PRODUCTION NO. 3:

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

REQUEST FOR PRODUCTION NO. 4:

Produce all Documents and/or Communications regarding Your adjudication and/or payment of each CLAIMS that Fremont submitted to You for payment between July 1, 2017, and the present.

REQUEST FOR PRODUCTION NO. 5:

Produce any and all Documents and/or Communications relating to Your determination and/or calculation of the allowed amount and reimbursement for any of the CLAIMS, including the following: (i) the method by which the allowed amount and reimbursement for the Claim was calculated; (ii) the total amount You allowed and agreed to pay; (iii) any contractual or other allowance taken; and (iv) the method, date, and final amount of payment.

REQUEST FOR PRODUCTION NO. 6:

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

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REQUEST FOR PRODUCTION NO. 7:

Produce any and all Documents and/or Communications supporting or relating to Your contention or belief that You are entitled to pay or allow less than Fremont's full billed charges for any of the CLAIMS.

REQUEST FOR PRODUCTION NO. 8:

If you contend that any course of prior business dealing(s) by and between You and Fremont entitle(s) You to pay less than Fremont's full billed charges for any of the CLAIMS, or is otherwise relevant to the amounts paid for any of the CLAIMS, produce any Documents and/or Communications relating to any such prior course of business dealing(s).

REQUEST FOR PRODUCTION NO. 9:

If you contend that any agreement(s) by and between You and Fremont entitles You to pay less than Fremont's full billed charges for any of the CLAIMS, or is otherwise relevant to the amounts paid for any of the CLAIMS, produce any Documents and/or Communications relating to any such agreement(s).

REQUEST FOR PRODUCTION NO. 10:

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

REQUEST FOR PRODUCTION NO. 11:

Produce all Documents and/or Communications between You and any third-party, including but not limited to Data iSight, relating to (a) any claim for payment for medical services rendered by Fremont to any Plan Member, or (b) any medical services rendered by Fremont to any Plan Member.

REQUEST FOR PRODUCTION NO. 12:

Produce all Documents identifying and describing all products or services Data iSight, provides to You with respect to Your Health Plans issued in Nevada or any other state, including without limitation repricing services provided to You, whether You adjudicated and paid any

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claims in accordance with re-pricing information recommended by Data iSight, and the appeals administration services provided to You.

REQUEST FOR PRODUCTION NO. 13:

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

REQUEST FOR PRODUCTION NO. 14:

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

REQUEST FOR PRODUCTION NO. 15:

Produce all Documents and/or Communications, reflecting, analyzing, or discussing the methodology you used to calculate or determine Non-Participating Provider reimbursement rates for Emergency Services in Nevada, including, but not limited to, any documents and/or communications you used or created in the process of calculating and/or determining the prevailing charges, the reasonable and customary charges, the usual and customary charges, the average area charges, the reasonable value, and/or the fair market value for Emergency Services in Clark County.

REQUEST FOR PRODUCTION NO. 16:

Produce all Documents that refer, relate or otherwise reflect shared savings programs in Nevada for Fremont's out-of-network claims from July 1, 2017 to present. This request includes, without limitation, contracts with third parties regarding Your shared savings program, amounts invoiced by You to third parties for the shared savings program for Fremont's out-of-network claims, amount You were compensated for the shared savings program for Fremont's out-of-network claims.

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REQUEST FOR PRODUCTION NO. 17:

All Communications between You and any third-party, relating to (a) any CLAIM for payment for medical services rendered by Fremont to any Plan Member, or (b) any medical services rendered by Fremont to any Plan Member.

REQUEST FOR PRODUCTION NO. 18:

All documents and/or communications regarding the rational, basis, or justification for the reduced rates for emergency services proposed to Fremont in or around 2017 to Present.

REQUEST FOR PRODUCTION NO. 19:

All documents regarding the Provider charges and/or reimbursement rates that You have paid to Participating or Non-Participating Providers from July 1, 2017, to the present in Nevada. Without waiving any right to seek further categories of documentation, at this juncture, Fremont is willing to accept, in lieu of contractual documents, data which is blinded or redacted and/or aggregated or summarized form.

REQUEST FOR PRODUCTION NO. 20:

All Documents relied on for the determination of the recommended rate of reimbursement for any CLAIM by Fremont for payment for services rendered to any Plan Member. This request includes, without limitation, all cost data, reimbursement data, and other data and Documents upon which such recommended rates are based.

REQUEST FOR PRODUCTION NO. 21:

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

REQUEST FOR PRODUCTION NO. 22:

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

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REQUEST FOR PRODUCTION NO. 23:

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

REQUEST FOR PRODUCTION NO. 24:

Produce any and all Documents and/or Communications relating to any analysis of Nevada statutes with regard to the payment of the CLAIMS.

REQUEST FOR PRODUCTION NO. 25:

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

REQUEST FOR PRODUCTION NO. 26:

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

REQUEST FOR PRODUCTION NO. 27:

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

REQUEST FOR PRODUCTION NO. 28:

Produce any and All Documents and/or Communications concerning, evidencing, or relating to any negotiations or discussions concerning non-participating provider reimbursement rates between the Sierra Affiliates and Fremont, including negotiations or discussions leading up to any participation agreements or contracts with Fremont in effect prior to March 1, 2019.

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REQUEST FOR PRODUCTION NO. 29:

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

REQUEST FOR PRODUCTION NO. 30:

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

REQUEST FOR PRODUCTION NO. 31:

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

REQUEST FOR PRODUCTION NO. 32:

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

REQUEST FOR PRODUCTION NO. 33:

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

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REQUEST FOR PRODUCTION NO. 34:

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

REQUEST FOR PRODUCTION NO. 35:

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

REQUEST FOR PRODUCTION NO. 36:

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

REQUEST FOR PRODUCTION NO. 37:

Produce any and all Documents and/or Communications concerning Emergency Medicine Services and/or Emergency Department Services You published, provided or made available to either Emergency Medicine Groups or Your Plan Members in Nevada from 2016 to the present concerning Your reimbursement of out-of-network services.

REQUEST FOR PRODUCTION NO. 38:

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

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REQUEST FOR PRODUCTION NO. 39:

Produce any and all Documents and/or Communications reflecting any policies, procedures, and/or protocols that You contend governs the appeal of Your adjudication and/or payment decision with respect to one or more of the CLAIMS.

REQUEST FOR PRODUCTION NO. 40:

Produce any and all Documents and/or Communications regarding any appeals of adverse determinations, disputes of payment, or any submission of clinical information concerning the CLAIMS.

REQUEST FOR PRODUCTION NO. 41:

Produce any and all Documents and/or Communications regarding any challenges by any other non-participating Emergency Medicine Group and/or any non-participating hospital or other non-participating provider of Emergency Department Services of the appropriateness of the reimbursement rates paid by You for Emergency Medicine Services and/or Emergency Department Services rendered to Your Plan Members from January 1, 2016, to the present.

REQUEST FOR PRODUCTION NO. 42:

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

REQUEST FOR PRODUCTION NO. 43:

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

REQUEST FOR PRODUCTION NO. 44:

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

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REQUEST FOR PRODUCTION NO. 45:

Produce any and all Documents and/or Communications supporting, refuting, or relating to Your affirmative defenses identified in Your Answers to Fremont's First Set of Interrogatories to Defendants.

DATED this 9th day of December, 2019.

McDONALD CARANO LLP

By: /s/ Kristen T. Gallagher

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

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 9th day of December, 2019, I caused a true and correct copy of the foregoing **FREMONT EMERGENCY SERVICES (MANDAVIA), LTD.'S FIRST SET OF REQUESTS FOR PRODUCTION TO DEFENDANTS** to be served via hand delivery as follows:

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Josephine E. Groh, Esq.
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*Attorneys for Defendants UnitedHealthcare
Insurance Company, United HealthCare
Services, Inc., UMR, Inc., Oxford Health
Plans, Inc., Sierra Health and Life Insurance
Co., Inc., Sierra Health-Care Options, Inc.,
and Health Plan of Nevada, Inc.*

/s/ Marianne Carter
An employee of McDonald Carano LLP

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EXHIBIT 2

EXHIBIT 2

PAT LUNDVALL (NSBN 3761)
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*Attorneys for Plaintiff Fremont Emergency
Services (Mandavia), Ltd.*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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

Plaintiff,

vs.

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

Defendants.

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

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

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, plaintiff Fremont
Emergency Services (Mandavia), Ltd. ("Fremont") serves the following Interrogatories to
defendants United HealthCare Insurance Company ("UHCIC"), United HealthCare Services, Inc.
("UHC Services"), UMR, Inc. ("UMR"), Oxford Health Plans, Inc. ("Oxford") (collectively the
"UH, Sierra Health and Life Insurance Company, Inc. ("Sierra"), Sierra Health-Care Options, Inc.
("Sierra Options") and Health Plan of Nevada, Inc. ("HPN") ("HPN" and with "Sierra and Sierra

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Options, the “Sierra Affiliates” and collectively with the UH Parties, “United HealthCare”) and asks that Defendants respond in writing within thirty (30) days of the date of service, to McDonald Carano LLP, 2300 West Sahara Avenue, Suite 1200, Las Vegas, Nevada 89102. These Interrogatories are continuing in nature and Defendant must timely supplement the answers to them under Fed. R. Civ. P. 26(e) whenever a response is in some material respect incomplete or incorrect.

DEFINITIONS

1. “Communicate” means every manner or means of disclosure or transfer or exchange of information whether orally, by document or otherwise, and whether face to face, in a meeting, by telephone or other electronic media, mail, personal delivery or otherwise.

2. “Communication” means the transfer of information from a person or entity, place, location, format, or medium to another person or entity, place, location, format, or medium, without regard to the means employed to accomplish such transfer of information, but including without limitation oral, written and electronic information transfers. Each such information transfer, if interrupted or otherwise separated in time, is a separate communication.

3. “Document” is defined to be synonymous in meaning and equal or exceeding in scope to the usage of this term in Federal Rule of Civil Procedure 34(a). It includes images, words and symbols that are electronically stored and which, if printed on paper, would be the text of a document, as well as metadata contained within particular electronic files. It also means all written or graphic matter of every kind or description however produced or reproduced whether in draft, in final, original or reproduction, signed or unsigned, whether or not now in existence, and regardless of whether approved, sent, received, redrafted or executed, and includes without limiting the generality of its meaning all correspondence, telegrams, notes, e-mail, video or sound recordings of any type of communication(s), conversation(s), meeting(s), or conference(s), minutes of meetings, memoranda, interoffice communications, intra office communications, notations, correspondence, diaries, desk calendars, appointment books, reports, studies, analyses, summaries, results of investigations or tests, reviews, contracts, agreements, working papers, tax returns, statistical records, ledgers, books of account, vouchers, bank checks, bank statements,

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1 invoices, receipts, records, business records, photographs, tape or sound recordings, maps, charts,
2 photographs, plats, drawings or other graphic representations, logs, investigators' reports,
3 stenographers' notebooks, manuals, directives, bulletins, computer data, computer records, or data
4 compilations of any type or kind of material similar to any of the foregoing however denominated
5 and to whomever addressed. "Document" shall include but is not limited to any electronically
6 stored data on magnetic or optical storage media as an "active" file (readily readable by one or
7 more computer applications or forensic software); any "deleted" but recoverable electronic files
8 on said media; any electronic file fragments (files that have been deleted and partially overwritten
9 with new data); and slack (data fragments stored randomly from random access memory on a hard
10 drive during the normal operation of a computer [RAM slack] or residual data left on the hard
11 drive after new data has overwritten some but not all of the previously stored data. "Document"
12 shall exclude exact duplicates when originals are available but shall include all copies made
13 different from originals by virtue of any writings, notations, symbols, characters, impressions or
14 any marks thereon.

15 4. The term "ESI" means and refers to information created, manipulated,
16 communicated, stored (on-site and/or off-site), and best utilized in electronic, digital, and/or native
17 form, including, without limitation, the following: data; metadata; e-mail; word-processing
18 documents; spreadsheets; presentation documents; graphics; animations; images; audio, video,
19 and audiovisual recordings; voicemail; text messages; and the like (including attachments to any
20 of the foregoing) stored on databases, networks, computers, computer systems, servers, archives,
21 backup or data recovery systems, discs, CDs, diskettes, drives, tapes, cartridges, printers, the
22 internet, personal digital assistants, handheld wireless devices, cellular phones, smart phones,
23 pagers, facsimile machines, telephone systems, voicemail systems, and/or other storage media,
24 requiring the use of computer hardware and software.

25 5. "Plaintiff" and "Fremont" shall mean and refer to Fremont Emergency Services
26 (Mandavia), Ltd. and/or any past or present agents, representatives, employees, partners,
27 principals, members, assigns, predecessors-in-interest, successors-in-interest, affiliates, and every
28 person acting or purporting to act, or who has ever acted or purported to act, on their behalf.

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6. “Defendants,” “You,” or “Your” shall mean and refer to Defendants United HealthCare Insurance Company, United HealthCare Services, Inc., UMR, Inc., Oxford Health Plans, Inc., Sierra Health and Life Insurance Company, Inc., Sierra Health-Care Options, Inc. and Health Plan of Nevada, Inc. and/or any past or present agents, representatives, employees, partners, principals, members, assigns, predecessors-in-interest, successors-in-interest, and every person acting or purporting to act, or who has ever acted or purported to act, on their behalf.

7. “UH Parties” means and refers to defendants United HealthCare Insurance Company, United HealthCare Services, Inc., UMR, Inc. and Oxford Health Plans, Inc.

8. “Sierra Affiliates” means and refers to defendants Sierra Health and Life Insurance Company, Inc., Sierra Health-Care Options, Inc., and Health Plan of Nevada, Inc.

9. “Lawsuit” shall mean and refer to the lawsuit styled *Fremont Emergency Services (Mandavia), Ltd. v. United HealthCare Insurance Company, et al.* filed in the Eighth Judicial District Court, Clark County, Nevada, Case No. A-19-792978-B and removed to the United States District Court, D. Nevada, Case No. 2:19-cv-00832-JAD-VCF.

10. A “claim” means any billing instrument or request for reimbursement by a Provider for medical services provided.

11. “CLAIM” or “CLAIMS” means those claims for reimbursement for Emergency Services and Care or Nonemergency Services and Care provided by Fremont to Your Plan Members for dates of service on or after July 1, 2017 (UH Parties) and on or after March 1, 2019 (Sierra Affiliates).

12. “Clark County Market” means the geographic market located in Clark County, Nevada.

13. “Emergency Services and Care” means medical screening, examination, and evaluation by a physician or, to the extent permitted by applicable law, by other appropriate personnel under the supervision of a physician, to determine if an emergency medical condition exists, and if the physician or personnel determines that it does exist, the care, treatment, or surgery for a covered service by a physician necessary to relieve or eliminate the emergency medical condition within the service capability of a hospital.

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14. “Emergency Medicine Services” shall mean and refer to evaluation and management services (described by CPT codes 99281-99285), critical care services (described by CPT codes 99291-92) and the associated procedures performed by Fremont in the State of Nevada.

15. “Emergency Medicine Group” shall mean and refer to any or all groups of physicians, mid-level practitioners and other healthcare providers that staff hospital emergency departments, observations units and urgent care clinics in the State of Nevada, whether the group is structured as a professional corporation, a limited liability corporation, partnership, or otherwise.

16. “Emergency Department Services” shall mean all services performed in the emergency department of a hospital in the State of Nevada by a hospital, physicians of any specialty (not limited to emergency medicine physicians), nurses or any healthcare providers.

17. “HMO” means a health maintenance organization pursuant to NRS Chapter 695C.

18. “Nonemergency Services and Care” means medical services and care which are not Emergency Services and Care.

19. “Non-Participating Provider” or “Non-Network Provider” means a healthcare provider who has not been designated by You as a “participating” or “network” provider.

20. “Participating Provider” or “Network Provider” means a healthcare provider who has an agreement with You as an independent contractor or otherwise, or who has been designated by You, to provide services to Plan Members.

21. “Plan” means any health benefit product or program, including but not limited to an HMO, an Exclusive Provider Organization (“EPO”) or Preferred Provider Organization (“PPO”) product or program, issued, administered, or serviced by You.

22. “Plan Member” means an individual covered by or enrolled in a Plan.

23. “Provider” means any physician, hospital, or other institution, organization, or person that furnishes health care services and is licensed to do so in the state where those services are furnished.

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INSTRUCTIONS

1. The terms “identify,” “identity,” or “identification,” when used in reference to a natural person, mean to give, to the extent known, the person's full name, present or last known address and telephone number, the present or last known business affiliation, including business address and telephone number, and their prior or current connection, interest or association with any Party to this litigation. Once a person has been identified in accordance with this paragraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

2. The terms “identify,” “identity,” or “identification,” when used in reference to an entity that is not a natural person, mean to state the entity’s name and describe its form of business organization (e.g., a Nevada limited liability company), the present or last known address and telephone number of its principal place of business, its resident agent in Nevada, if any, the identity of all persons affiliated with the organization having knowledge or documents concerning this lawsuit, and the entity’s prior or current connection, interest or association with any Party to this litigation, including without limitation any account names and numbers. Once an entity has been identified in accordance with this paragraph, only the name of that entity need be listed in response to subsequent discovery requesting the identification of that entity.

3. The terms “identify,” “identity,” or “identification,” when used in reference to a document, mean to state (a) its title and subject matter; (b) its form (e.g., “canceled check,” “payment voucher,” “e-mail message,” “letter,” etc.); (c) its date of preparation; (d) the date appearing thereon, if any; (e) the number of pages comprising the writing; (f) the identity of each person who wrote, dictated or otherwise participated in the preparation or creation of the document; (g) the identity of each person who signed, initialed or otherwise marked the document; (h) the identity of each person to whom the document was addressed; (i) the identity of each person who received the document or reviewed it; (j) the location of the document; and (k) the identity of each person having custody of the document. Documents to be identified shall include both documents in your possession, custody, or control, and all other documents of which you have knowledge. If you at any time had possession or control of a document called for identification

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1 under this Set of Interrogatories and if such document has been lost, destroyed, purged, or is not
2 presently in your possession or control, you shall describe the writing, the date of its loss,
3 destruction, purge or separation from possession or control, the circumstances surrounding its loss,
4 destruction, purge or separation from possession or control, and identify each person or entity that
5 may have possession or control of a copy or the original of such document.

6 4. These interrogatories reach all documents that are known and/or believed by you
7 to exist. If you have knowledge of the existence of documents responsive to these interrogatories
8 but contend that they are not within your possession, custody and/or control, please provide the
9 following information:

- 10 a. A description of the documents, including in your description as much detail as
11 possible;
12 b. The identity of the person or entity, including his, her or its address, believed by
13 you to have possession or custody of the document or any copies of them at this
14 time; and
15 c. A description of the efforts, if any, you have made to obtain possession or custody
16 of the documents.

17 5. If you contend that any document requested to be identified or produced, or any
18 part thereof, is protected from discovery by the attorney-client privilege, work product doctrine,
19 or some other ground or privilege or immunity, each such document shall be identified with at
20 least the following information:

- 21 a. A description of the nature of the document, *e.g.*, "letter," "memorandum,"
22 "report," "miscellaneous note," etc., and the number of pages it comprises;
23 b. The date, and if no date appears thereon, the identification shall so state and
24 shall give the date or approximate date such document was prepared;
25 c. A brief description of the subject matter;
26 d. The location of the document, including the name, address and
27 organizational affiliation of its custodian;
28 e. The name and address of each person who signed, initialed or otherwise
marked on such document and the organization, if any, with which each such person was then
affiliated;
f. The name and address of each person who asked that the document be
prepared and the organization, if any, with which each such person was then affiliated;

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1 g. The name and address of each person who prepared or participated in the
2 preparation of such document and the organization, if any, with which each such person was then
affiliated;

3 h. The name and address of each recipient of such document and the
4 organization, if any, with which each such person was then affiliated;

5 i. The name and address of all other distributees or persons who have seen
6 the document and the organization, if any, with which each such person was then affiliated;

7 j. All attorneys involved in the preparation or receipt of such document, if the
attorney-client privilege or work product protection is claimed as to such document;

8 k. A statement of the grounds for refusal to produce such documents.

9 6. Whenever you are asked to identify or describe an oral communication, or when
10 an answer to an interrogatory refers to one, with respect to the oral communication:

11 a. Provide the date and place of the communication and whether it was in
12 person or by telephone;

13 b. Identify all persons who participated in and/or heard any part of it,
sufficient to allow for service of process on such individuals;

14 c. The organization, if any, with which each participant was then connected;

15 d. Describe the substance of what each person said in the course of it; and

16 e. Identify all documents related to such communication.

17 7. If you contend that any oral communication requested to be identified is protected
18 from discovery by the attorney-client privilege, work product doctrine, or some other ground or
19 privilege or immunity, each such communication shall be identified with at least the following:

20 a. Provide the date and place of the communication and whether it was in
21 person or by telephone;

22 b. Identify all persons who participated in and/or heard any part of it,
sufficient to allow for service of process on such individuals;

23 c. The organization, if any, with which each participant was then connected;

24 d. A brief description of the nature/subject matter of the communication;

25 e. Identify all documents related to such communication; and

26 f. A statement of the grounds for refusal to disclose the specifics of the
27 communication.
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1 8. These interrogatories shall be deemed to be continuing, and any additional
2 information and/or documents relating in any way to these interrogatories or your original
3 responses that are acquired subsequent to the date of responding to these interrogatories, up to and
4 including the time of trial, shall be furnished to Plaintiff promptly after such information or
5 documents are acquired as supplemental responses to these interrogatories.

6 9. These interrogatories call for all information (including information contained in
7 documents) known or reasonably available to you, your attorneys, investigators, representatives,
8 agents or others acting on your behalf or under your direction or control, not merely such
9 information as is known of your own personal knowledge. Each answer must be as complete and
10 straightforward as the information reasonably available to you permits. If an interrogatory cannot
11 be answered completely, answer it to the fullest extent possible.

12 10. If you cannot answer an interrogatory fully after exercising due diligence to secure
13 the information requested, so state and answer the interrogatory to the extent possible, specifying
14 your inability to answer the remainder, the reasons therefor, the steps taken to secure the answers
15 to the unanswered portions, and stating whatever information or knowledge you have concerning
16 the unanswered portions. Please also identify the person you believe to have such knowledge,
17 what you believe to be the correct answer, and the facts upon which you base your answers or
18 beliefs.

19 11. If you consult any persons or entities or documents in answering these
20 interrogatories, identify in regard to each such interrogatory the persons and/or entities and/or
21 document consulted.

22 12. Where your answer or a portion thereof is given upon information and belief, other
23 than personal knowledge, please so state and describe and/or identify the sources of such
24 information and belief.

25 13. All other requirements of Rules 26, 33, and 34 of the Federal Rules of Civil
26 Procedure are hereby incorporated by reference.

27 ...

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RULES OF CONSTRUCTION

1. The terms “relate to,” “related to,” “relating to,” “relative to,” and “in relation to,” include without limitation “refer to,” “summarize,” “reflect,” “constitute,” “concern,” “contain,” “embody,” “mention,” “show,” “comprise,” “evidence,” “discuss,” “describe,” or “pertaining to.”

2. The term “concerning” means and includes without limitation “regarding,” “pertaining to,” “reflecting,” “referring to,” “relating to,” “containing,” “embodying,” “mentioning,” “evidencing,” “constituting,” or “describing.”

3. The use of the masculine gender, as used herein, also means the feminine, or neuter, whichever makes a discovery interrogatory more inclusive.

4. The words “and” and “or” shall be construed conjunctively or disjunctively, whichever makes a discovery interrogatory more inclusive.

5. The use of the singular form of any word includes the plural and vice versa.

INTERROGATORIES

Unless otherwise indicated, the timeframe for these Interrogatories is July 1, 2017 through the present and continuing.

INTERROGATORY NO. 1:

Once You determine Fremont’s CLAIMS are covered and payable under Your Plan, explain why You do not reimburse Fremont for the CLAIMS at the full billed amount.

INTERROGATORY NO. 2:

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

...

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INTERROGATORY NO. 3:

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

INTERROGATORY NO. 4:

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

INTERROGATORY NO. 5:

If You contend that any agreement(s) by and between You and Fremont entitles or entitled You to pay less than Fremont's full billed charges for any of the CLAIMS, or is otherwise relevant to the amounts paid for any of the CLAIMS, identify that agreement, specifying the portion(s) thereof that You contend entitles or entitled You to pay less than Fremont's full billed charges.

INTERROGATORY NO. 6:

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

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INTERROGATORY NO. 7:

If You rely in whole or in part on the rates from any agreement(s) with any other provider in determining the amount of reimbursement for the CLAIMS, describe in detail such agreement(s), including the rates of reimbursement and other payment scales under those agreements, and any provisions regarding the directing or steorage of Plan Members to those providers.

INTERROGATORY NO. 8:

Identify all persons with knowledge of the following subject areas, identifying for each person their name, address, phone number, employer, title, and the subject matter(s) of their knowledge:

(a) The development of the methodology, the materials considered in developing the methodology, and the methodology itself You used to calculate the allowed amount and the amount of Your alleged payment obligations for the CLAIMS in the Clark County Market;

(b) Communications with Fremont regarding the CLAIMS;

(c) To the extent that You contend or rely on provider charges by other providers to determine Your alleged payment obligation for the CLAIMS, the identity of those other providers, the amount of their charges, and any agreement(s) with those providers regarding those charges.

INTERROGATORY NO. 9:

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

INTERROGATORY NO. 10:

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

...

INTERROGATORY NO. 11:

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

INTERROGATORY NO. 12:

Identify all companies that You have entered into an agreement, contract, subscription or other arrangement by which You receive information regarding usual and customary fees or rates for Emergency Medicine Services provided by Non-Participating Providers or Non-Network Providers in Clark County, Nevada.

INTERROGATORY NO. 13:

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

INTERROGATORY NO. 14:

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

DATED this 9th day of December, 2019.

McDONALD CARANO LLP

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RA000030

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 9th day of December, 2019, I caused a true and correct copy of the foregoing **FREMONT EMERGENCY SERVICES (MANDAVIA), LTD.'S FIRST SET OF INTERROGATORIES TO DEFENDANTS** to be served via hand delivery upon the following:

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and Health Plan of Nevada, Inc.*

/s/ Marianne Carter
An employee of McDonald Carano LLP

EXHIBIT 3

EXHIBIT 3

IN THE SUPREME COURT OF THE STATE OF NEVADA

**Supreme Court Case No.
District Court Case No. A-19-792978**

UnitedHealth Group, Inc., United Healthcare Insurance Company, United Health
Care Services, Inc., UMR, Inc., Oxford Health Plans, Inc., Sierra Health and Life
Insurance Company, Inc., Sierra Health-Care Options, Inc., Health Plan of Nevada,
Inc.,
Petitioners

Electronically Filed
Aug 25 2020 01:24 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

v.

The Eighth Judicial District Court, State of Nevada, Clark County, and
the Honorable Nancy L. Allf, District Court Judge,
Respondent

and

Fremont Emergency Services (Mandavia), Ltd., Team Physicians of Nevada-
Mandavia, P.C., Crum Stefanko and Jones, Ltd.,
Real Parties in Interest.

**PETITION FOR WRIT OF PROHIBITION, OR,
ALTERNATIVELY, MANDAMUS**

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RA000032

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following is an entity as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Petitioner UnitedHealth Group Incorporated is the ultimate parent corporation of Petitioners United Healthcare Insurance Company, United Health Care Services, Inc., UMR, Inc., Oxford Health Plans, LLC (incorrectly named in District Court Complaint as Oxford Health Plans, Inc.), Sierra Health and Life Insurance Company, Inc., Sierra Health-Care Options, Inc., and Health Plan of Nevada, Inc. UnitedHealth Group Incorporated is a publicly held company and directly and/or indirectly owns 10% or more of these Petitioners' stock. Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC is the only law firm that has appeared on behalf of Petitioners in this case or is expected to appear on behalf of Petitioners in this Court.

Dated: August 21st, 2020



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RA000033

ROUTING STATEMENT

This matter is assigned to the Nevada Supreme Court because the case originated in business court. *See* NRAP 17(a)(9). In addition, the issues raised herein regarding the application of preemption under the Employee Retirement Income Security Act of 1974 (“ERISA”) to a health care provider’s state law claims against an insurer/plan administrator constitute questions of first impression on the scope of ERISA preemption of state common law claims arising out of ERISA plans which the Supreme Court may wish to address. *See* NRAP 17(a)(11). And all issues presented raise a question of statewide public importance. *See* NRAP 17(a)(12).

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I. ISSUES PRESENTED AND RELIEF SOUGHT

Plaintiffs are for profit, private-equity backed out-of-network medical providers based in Nevada who are affiliated with TeamHealth Holdings, Inc., one of the largest national physician management companies in the United States (“TeamHealth Providers” or “Plaintiffs”). Defendants are affiliates and subsidiaries of UnitedHealth Group Incorporated (“United” or “Defendants”). Defendants administer health plans whose members have received medical treatment from the TeamHealth Providers. Plaintiffs allege that the health plans have underpaid Plaintiffs for medical services rendered to plan members, and seek to compel the controlling plans to pay Plaintiffs at what they suggest is the “usual and customary rate”—without any regard to the explicit terms of the plans. To achieve the goal of forcing all of the plans (which contain varying terms) to pay the same inflated amounts regardless of their terms, the Plaintiffs have brought a host of state law claims. However, all of Plaintiffs’ claims are subject to dismissal because they suffer from the same defect—they are preempted by ERISA.

This petition arises out of the district court’s June 24, 2020 denial of Defendants’ Motion to Dismiss Plaintiffs’ First Amended Complaint (“Motion to Dismiss”). By denying Defendants’ Motion to Dismiss, the district court erred with respect to three significant issues and is now acting in contravention of both federal law and Nevada law governing the issue of ERISA preemption.

Allowing Plaintiffs' state law claims to proceed would directly undermine the congressional intent behind ERISA—creating a uniform national administrative scheme that guides the processing of claims and disbursement of benefits for employee health plans. ERISA expressly requires that an employee health plan (1) “specify the basis on which payments are made to and from the plan,” 29 U.S.C. § 1102(b)(4), and (2) that the fiduciary shall administer the plan “in accordance with the documents and instruments governing the plan,” 29 U.S.C. § 1104(a)(1)(D) (emphasis added). The health plans implicated by Plaintiffs' claims contain payment terms—generally selected by plan sponsors—specifying the amount of reimbursement owed to out-of-network providers like Plaintiffs when those providers treat a plan member. By bringing state law claims that ask a court/jury to force the health plans to pay out-of-network providers at a higher rate than their plan terms require, the Plaintiffs are seeking a remedy that directly conflicts with ERISA's requirements and thus their state law claims are preempted.

Defendants have no plain, speedy, and adequate remedy at the conclusion of this action and principles of judicial economy favor entertaining this petition on the merits. This case is more similar to a suit by 1000-plus separate plaintiffs, each with their own multi-faceted claim, than a suit by just three plaintiffs, as the caption would make it appear. Plaintiffs have received assignments of benefits from all of the plan members they treated, which have allowed them to bring

15,210 separate claims of underpayment against the Defendants. With 15,210 claims at issue, Defendants estimate it would take 30,420 hours just to pull the administrative records for each claim. Based on the foregoing, it would take a team of four people working full-time on nothing other than gathering documents for this case over 3 years to pull the applicable administrative records. Moreover, this does not even take into account the substantial discovery from outside the administrative record that Plaintiffs are seeking based on state law claims that are unquestionably preempted.

Now is the appropriate time to remedy these legal errors, which, if allowed to run their natural course, will lead to years of burdensome discovery and extraordinary expense that will be rendered completely unnecessary if, on appeal, this Court finds that Plaintiffs' claims are preempted. Without writ relief, the real parties in interest will be rewarded for artfully pleading state law claims that are, at bottom, claims for additional benefits from ERISA plans and thus subject to ERISA's broad preemption provisions. Writ relief is necessary to avoid such manifest injustice.

In addition, the Nevada Supreme Court has never addressed the scope of ERISA preemption as applied to an out-of-network provider's claims against an insurer/plan administrator. This issue is currently being litigated around the country by TeamHealth-affiliated providers and addressing this issue now (as

opposed to three years from now after an appeal) will provide needed guidance to not only the Parties, but also numerous other Nevada medical providers and insurers who face this issue. Indeed, the United States District Court for the District of Arizona recently dismissed a complaint filed by Plaintiffs' affiliates asserting nearly identical factual allegations against United. *Emergency Group of Arizona Professional Corporation, et al. v. United Healthcare Incorporated, et al.*, No. CV-19-04687-PHX-MTL, Dkt. 85 at 13 (D. Az. filed Mar. 25, 2020). And in a similar action filed by TeamHealth affiliates in Texas, the federal court found that certain of the providers' claims were completely preempted by ERISA. *ACS Primary Care Physicians Southwest, P.A., et al v. UnitedHealthcare Insurance Company, et al.*, No. 4:20-CV-1282, Dkt. 38 (S.D. Tex. filed Aug. 17, 2020).

There are two types of preemption under ERISA—conflict preemption and complete preemption. Under conflict preemption, a state law claim is subject to dismissal if it “relates to” an employee benefit plan governed by ERISA. Under complete preemption, on the other hand, a state law claim is subject to dismissal if the plaintiff (1) could have brought a federal claim under ERISA and (2) no independent legal duty is implicated by the defendant's actions. In their Motion to Dismiss, Defendants argued that both types of preemption apply here and are fatal to Plaintiffs' state law claims.

The district court denied Defendants' Motion to Dismiss because it found that ERISA preemption was only intended to apply to disputes between a plan and its members, and was not intended to cover rate of payment disputes between a medical provider and an insurer. The district court further erroneously found that Plaintiffs' state law claims satisfied NRCP 12(b)(5)'s requirements and adequately alleged the violation of a legal duty independent of ERISA that brought the claims outside the broad scope of ERISA preemption.¹ The district court's decision gives rise to the following three issues:

First Issue: Did the district court err by finding that conflict preemption under ERISA can never apply to an out-of-network medical provider's claims against an insurer/plan administrator for additional reimbursement and, if so, did the district court err by refusing to dismiss Plaintiffs' claims on the basis of conflict preemption?

Second Issue: Did the district court err by finding that a state court can never dismiss state law claims on the basis of complete preemption under ERISA

¹ The District Court's decision to allow Plaintiffs to maintain their fourth cause of action, for Violation of NRS 686A.020 and 686A.310, is exemplary of this clear error. The Nevada Supreme Court has already unequivocally found that claims under the Nevada Unfair Trade Practices Act are preempted by ERISA. *Villescas v. CNA Ins. Companies*, 109 Nev. 1075, 1084, 864 P.2d 288, 294 (1993). ("We add Nevada's voice to the growing body of case law holding state unfair insurance practice claims to be preempted by ERISA and conclude that Chapter 686A of the Nevada Insurance Code is preempted by ERISA when applied to a valid ERISA plan.").

and, if so, did the district court err by refusing to dismiss Plaintiffs' claims on the basis of complete preemption?

Third Issue: Did the district court err by finding that Plaintiffs had adequately alleged claims for relief under NRCP 12(b)(5) for (1) Breach of Implied-in Fact Contract, (2) Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing, (3) Unjust Enrichment, (4) Violation of NRS 686A.020 and NRS 686A.310, (5) Violations of Nevada's Consumer Fraud and Deceptive Trade Practices Acts, and (6) Violation of NRS 207.350, et seq. (Nevada's RICO Act)? If so, did the district court also err by finding that Plaintiffs have adequately alleged the violation of a legal duty independent of ERISA that brings these state law claims outside the broad scope of ERISA preemption?

Based on these issues, *Defendants seek the following relief.* As to the first issue, Defendants seek a writ of prohibition or alternatively a writ of mandamus compelling the district court to vacate its order and hold that Plaintiffs' claims are subject to conflict preemption under ERISA.

As to the second issue, Defendants seek a writ of prohibition or alternatively a writ of mandamus compelling the district court to vacate its order and hold that Plaintiffs' claims are subject to complete preemption under ERISA.

As to the third issue, Defendants seek a writ of prohibition or alternatively a writ of mandamus compelling the district court to vacate its order and hold that

Plaintiffs have failed to state a cognizable claim for relief under NRCP 12(b)(5) and that, based on the allegations in the First Amended Complaint (“FAC”), the only legal duties owed by Defendants to Plaintiffs are those that arise based on the terms of the health plans and the assignments of benefits Plaintiffs received from Defendants’ plan members.

This writ petition should be granted and the district court instructed to dismiss Plaintiffs’ state law claims with prejudice, except that Plaintiffs should be permitted to amend their Complaint to assert a federal statutory cause of action under 29 U.S.C. § 1132(a)(1)(B) of ERISA, subject to any defenses Defendants may have to such a claim.

II. STATEMENT OF PERTINENT FACTS

A. Background

Plaintiffs allege that the Defendants have underpaid Plaintiffs for out-of-network medical services rendered to Defendants’ plan members, and seek to be reimbursed at either the “reasonable rate” or the “usual and customary rate” for the medical services they provided to Defendants’ plan members. 2 PA 97 (FAC ¶ 21).² Plaintiffs allege that the reasonable rate of reimbursement is 75-90% of their unilaterally set billed charges. 2 PA 101 (FAC ¶ 46). Plaintiffs are challenging the

² “PA” refers to the Petitioners’ Appendix submitted in conjunction with this writ petition. The number preceding PA indicates the volume number. The number following the PA indicates the bates number.

amount that they received on 15,210 separate health benefit claims they submitted to Defendants for payment after receiving an assignment of benefits from Defendants' plan members. *See* 1 PA 77-84 (showing number of claims at issue); 2-3 PA 172-273 (showing Plaintiffs received assignments). The dispute between the Parties involves medical services that were provided from approximately July 2017 to present. 2 PA 98. Defendants contend that each health plan is an employer sponsored plan governed by ERISA and thus all of Plaintiffs' state law claims are preempted by ERISA. 2 PA 143-145.

B. Relevant Procedural History

1. Plaintiffs File Suit in State Court, Defendants Remove to Federal Court, and the Case is Remanded

Plaintiffs filed their original Complaint on April 15, 2019 in the Eighth Judicial District Court. 1 PA 1-17. Defendants removed this case to Nevada Federal District Court on May 14, 2019. 1 PA 18-76. On February 20, 2020, the Nevada Federal District Court remanded this case back to the Eighth Judicial District Court. 1 PA 85-90.

2. After Remand, Defendants Move to Dismiss the FAC in its Entirety Based on Conflict Preemption and Complete Preemption Under ERISA

On May 15, 2020, by mutual agreement of the Parties, Plaintiffs filed the FAC in the Eighth Judicial District Court. 2 PA 91-139. The FAC asserted the

following eight causes of action: (1) Breach of Implied-in-Fact Contract, (2) Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing, (3) Unjust Enrichment, (4) Violation of NRS 686A.020 and 686A.310, (5) Violation of Nevada's Prompt Pay Statutes and Regulations, (6) Violation of Nevada's Consumer Fraud & Deceptive Trade Practices Acts, (7) Declaratory Judgment and (8) Violation of Nevada's RICO statute (NRS 207.350 *et. seq.*).

Defendants moved to dismiss the FAC on the basis that all eight claims were preempted by ERISA. 2-3 PA 140-285. Defendants' Motion to Dismiss argued that (1) Plaintiffs' claims were conflict preempted (2 PA 145-150), (2) Plaintiffs' claims were completely preempted (2 PA 150-153) and (3) that Plaintiffs had failed to state a claim under NRCP 12(b)(5)³ and thus, by extension, had not alleged a violation of a duty independent of ERISA that would allow their state law claims to escape preemption. 2 PA 155-169.

³ This third argument was also important for the less than 10% of Plaintiffs' claims that relate to individual Affordable Care Act plans and were thus not subject to ERISA preemption. Defendants argued that those claims would still have to be dismissed under NRCP 12(b)(5) for failure to state a claim. Thus, if granted, the Motion to Dismiss would have resulted in the dismissal of all eight of Plaintiffs' claims. 2 PA 143.

3. The Clark County District Court Improperly Denies Defendants' Motion to Dismiss and Finds that None of the TeamHealth Providers' Claims Are Preempted by ERISA

The district court heard oral argument on Defendants' Motion to Dismiss on June 5 and June 9. 5 PA 463-497, 500-589, 498-499. On June 9, the Court denied the Motion for the following reasons:

- (1) The Court concluded that both conflict preemption and complete preemption under ERISA are only meant to apply to disputes between a plan and its members, not between a provider and an insurer, which is the relationship between Plaintiffs and Defendants. 5 PA 561 (hearing transcript at 62:15-24);
- (2) The Court concluded that the *Davila* test for complete preemption did not apply, and that the federal court's remand order finding that complete preemption did not apply was very persuasive. 5 PA 561-562 (hearing transcript at 62:25 – 63:1-8);
- (3) The Court concluded that each of Plaintiffs' eight causes of action had been adequately pled and that the claims that needed to be pled with particularity were pled with sufficient particularity. 5 PA 562-563 (hearing transcript at 63:9-22; 64:3-5).

The Court directed the Plaintiffs to prepare an order that was consistent with the Court's June 9 ruling and also with Plaintiffs' Opposition papers. 5 PA 563.

On June 24, 2020, the Court entered a 40 page order submitted by Plaintiffs. 5 PA 587-628. The primary argument adopted by the Court's written order (in addition to those set forth above) is that provider claims involving the "rate of payment" are not preempted by ERISA because such claims do not require a court/jury to consult the plan terms to resolve the dispute and thus do not "relate to" a plan governed by ERISA. *See e.g.*, 5 PA 599-601. The written order also held that a state district court cannot dismiss state law claims on the basis of complete preemption because complete preemption is a jurisdictional doctrine that only applies when a case is in federal court. 5 PA 598-599.

C. Undisputed Facts Outside the First Amended Complaint that Support a Finding of Conflict Preemption and Complete Preemption Under ERISA

When considering a motion to dismiss, the general rule is that a court is limited to reviewing the allegations in the complaint and should not consider outside evidence. However, there is an exception to this rule where the defendant raises a defense of federal preemption. In that circumstance, the court may consider evidence outside the complaint showing that the claims relate to employee benefit plans governed by ERISA.⁴ The purpose of this exception to the general rule is to prevent plaintiffs, like the TeamHealth-affiliated provider Plaintiffs here,

⁴ *Densmore v. Mission Linen Supply*, 164 F. Supp. 3d 1180, 1188, n. 2 (E.D. Cal. 2016).

from attempting to thwart the congressional intent that ERISA provide the exclusive remedy for these types of claims through artful pleading.

Plaintiffs' FAC fails to identify any of the specific claims at issue, including failing to identify who was treated, on what date, and pursuant to which health plan. Despite this, as demonstrated below, Defendants have determined that nearly all of the at-issue claims relate to ERISA-governed employee benefit plans and are thus both conflict preempted and completely preempted.

During the time frames alleged in the Complaint, Plaintiffs made claims/requests for payment to the following Defendants: UHIC, UHS, UMR, Oxford, SHL, HPN, and SHO. For the tens of thousands of claims that Plaintiffs submitted to UHIC, UHS and UMR, all but one of the claims were made against ERISA-governed plans.⁵ For the claims made against Oxford and SHO, all of the claims were made against ERISA governed plans.⁶ For the claims made against SHL, approximately 72% of the claims were made against ERISA-governed plans.⁷ For the claims made against HPN, approximately 84% of the claims were made against ERISA-governed plans.⁸ In sum, over 90% of Plaintiffs' claims in

⁵ 2 PA 172-175 (UHIC, UHS and UMR Declaration ¶ 7).

⁶ 2 PA 176-179 (Oxford Declaration ¶ 7); 2 PA 180-183 (SHO Declaration ¶ 7).

⁷ 2 PA 184-187 (SHL and HPN Declaration ¶ 7).

⁸ *Id.* (SHL and HPN Declaration ¶ 8).

the relevant period were for services provided to members of ERISA-governed plans. Plaintiffs never disputed this factual issue in the Motion to Dismiss briefing. *See generally* 4 PA 301-406.

Furthermore, for all of the claims that Plaintiffs are asserting in this litigation, Plaintiffs represented that they received assignments of benefits from their patients that would allow Plaintiffs to sue under ERISA by standing in the shoes of each patient and asserting claims for benefits seeking additional reimbursement under the terms of the plans.⁹ As discussed in more detail below, these assignments of benefits are critical because they render Plaintiffs the type of party, under the *Davila* test discussed in Section III(B)(3), that can assert a claim under ERISA § 502(a)(1)(B), ERISA’s civil enforcement statute, causing Plaintiffs’ state law claims to be completely preempted. Plaintiffs never disputed the existence or validity of the assignments of benefits from Defendants’ plan

⁹ *See* 2 PA 172-175 (UHIC, UHS and UMR Declarations ¶¶ 7); 2 PA 184-187 (SHL and HPN Declaration ¶¶ 7–8); 2 PA 176-179 (Oxford Declaration ¶ 7); 2 PA 180-183 (SHO Declaration ¶ 7); *see also* 3 PA 188-233 (sample claims forms to UMR during the 2017-2019 time period showing Box 27 “Accept Assignment” checked “YES”); 3 PA 234-273 (sample claim forms to SHO during the same time period). Defendants have reviewed claim forms and related data for the claims that were made under plans issued or administered by the other United entities named as defendants in this lawsuit and confirmed that Plaintiffs also received an assignment of benefits for those claims but have not attached those claim forms to avoid overburdening the Court. Those claim forms can be produced if necessary, however.

members in the Motion to Dismiss briefing. 4 PA 301-406.

III. STATEMENT OF REASONS WHY THE WRIT SHOULD ISSUE

A. This writ petition should be entertained on the merits.

“A writ of mandamus is available to compel the performance of an act that the law requires as a duty resulting from an office, trust, or station or to control an arbitrary or capricious exercise of discretion.” *Int’l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008) (citing NRS 34.160). Conversely, a writ of prohibition is available to arrest proceedings where a district court has acted in excess of its jurisdiction. NRS 34.320; *Las Vegas Sands v. Eighth Judicial Dist. Court*, 130 Nev. 643, 649, 331 P.3d 905, 909 (2014).

This Court has discretion whether to entertain a writ petition on its merits and issue a writ of mandamus or prohibition. *See Okada v. Eighth Judicial Dist. Court*, 408 P.3d 566, 569 (Nev. 2018). Nevada courts must entertain writ petitions when a plain, speedy, and adequate remedy in the ordinary course of law does not exist. *See* NRS 34.170; NRS 34.330. A right to direct appeal is generally considered a plain, speedy, and adequate remedy in the ordinary course of law. *See Rawson v. Ninth Judicial Dist. Court*, 396 P.3d 842, 847 (Nev. 2017). But, despite the availability of a direct appeal, Nevada courts consider writ petitions under a variety of circumstances. Here, this writ petition should be entertained on the merits for the following reasons.

- 1. This writ petition features all of the considerations that have previously motivated the Court to entertain writ petitions under similar circumstances despite the availability of a direct appeal.**

Despite the availability of a direct appeal, writ petitions are entertained where all or some of the following considerations are present: (i) there are no factual disputes, (ii) the district court acted contrary to clear authority, (iii) an important issue of law needs clarification, (iv) the petition gives the Court an opportunity to define the parameters of a statute, (v) public policy will be served by the Court's invocation of its original jurisdiction, and (vi) sound judicial economy and administration favor entertaining the petition. *See, e.g., Okada*, 408 P.3d at 569; *Nevada Yellow Cab Corp. v. Eighth Judicial Dist. Court*, 383 P.3d 246, 248 (Nev. 2016); *International Game Technology*, 124 Nev. at 197, 179 P.3d at 559.

The Nevada Supreme Court has relied upon these considerations to entertain writ petitions challenging the denial of a motion to dismiss. *See Otak Nevada, LLC v. Eighth Judicial Dist. Court*, 127 Nev. 593, 597, 260 P.3d 408, 410 (2011); *International Game Technology*, 124 Nev. at 198, 179 P.3d at 559; *Smith v. Eighth Judicial Dist. Court*, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997). In *Otak*, the Court entertained a writ petition challenging whether a pleading was void because the determination of the issue was “not fact-bound and [involved] an unsettled question of law that [was] likely to recur, and because [the] case [was] in the early

stages of litigation and resolving [the] question now [would] promote[] judicial economy.” 127 Nev. at 597, 260 P.3d at 410.

Critically, whether ERISA preempts state law has been previously considered to be of such importance that the Nevada Supreme Court will consider a writ petition challenging the denial of a motion to dismiss on the merits. *See W. Cab Co. v. Eighth Judicial Dist. Court of State in & for Cty. of Clark*, 133 Nev. 65, 68, 390 P.3d 662, 667 (2017) (“The instant petition seeks reversal of a denial of a motion to dismiss. Although we typically deny such petitions, considering this petition would serve judicial economy and clarify an important issue of law.”) (addressing ERISA preemption of the Minimum Wage Amendment); *see also Tallman v. Eighth Jud. Dist. Ct.*, 131 Nev. 713, 725, 359 P.3d 113, 121 (2015) (addressing petition on the merits dealing with federal preemption under the Federal Arbitration Act and National Labor Relations Act). As shown below, all of the above considerations favor entertaining this writ petition on the merits.

a. This petition concerns ERISA preemption of a medical provider’s state law claims which is an important and novel issue in Nevada that is likely to recur

Here, the core issue presented by this writ petition is whether ERISA preempts Plaintiffs’ eight state law claims, which this Court has already previously found can constitute an important issue of law. Further, while this Court has addressed ERISA preemption in a past decision involving state law claims brought

by a *plan member* against an insurer/plan administrator,¹⁰ it has never had an opportunity to address ERISA preemption in the context of an out-of-network *medical provider's claims* against an insurer/plan administrator. Disputes over the appropriate rate of reimbursement for medical services between out-of-network providers and plan administrators are bound to continue to arise and thus this factor favors considering this writ petition on the merits.

b. Judicial economy, administration and public policy favor entertaining the petition on the merits

Although this case was filed on April 15, 2019, it remains in its infancy. Defendants' Motion to Dismiss was not decided until June 9, 2020 and Defendants filed their Answer on July 8, 2020. 5 PA 587-628; 5 PA 629-678. Further, very little discovery has taken place to date. Plaintiffs have served only one set of written discovery, relatively few documents have been produced and no depositions have been noticed.

However, discovery is about to begin in earnest and is likely to be extraordinarily expensive. Plaintiffs are asserting 15,210 claims for additional reimbursement for medical services. 1 PA 78 (Way Declaration at 2:10-12). In a burden declaration attached to their responses to Plaintiffs' requests for production, Defendants demonstrated that it would take, on average, 2 hours just to pull the

¹⁰ See *Villescas*, 109 Nev. 1075, 1083, 864 P.2d 288, 293 (1993) (finding that an insured's state law claims against his insurer were preempted by ERISA).

administrative record for a single claim. 1 PA 82 (Way Declaration at 6:3-11). With 15,210 claims at issue, this means that it would take 30,420 hours just to pull the administrative records for each claim. *Id.* Based on the foregoing, it would take a team of four people working full-time on nothing other than gathering documents for this case over 3 years to pull the applicable administrative records. *Id.* Moreover, this does not take into account the additional discovery which will be needed to probe the merits of Plaintiffs' other state law claims, such as their RICO claim. 2 PA 133-135. The Parties should not be forced to incur substantial discovery costs only for the district court to potentially be reversed on appeal because all of the Plaintiffs' state law claims are subject to preemption under ERISA. This is especially so given that the Nevada Supreme Court has never set forth its position on the scope of ERISA preemption as applied to an out-of-network provider's claims against an insurer/plan administrator.

c. The district court acted contrary to clear authority in declining to find ERISA preemption applied.

As will be set forth more fully below, the district court acted contrary to clear legal authority by finding that ERISA preemption only applies to disputes between plan members and insurers. 5 PA 561 (hearing transcript). While Nevada state courts have not yet addressed this issue, federal courts all over the country, including the Ninth Circuit, have expressly held that once a medical provider accepts an assignment of benefits from a plan member and asserts a claim for

reimbursement to the insurer, that provider stands in the shoes of the plan member and its state law claims are just as susceptible to preemption under ERISA as a plan member's state law claims.¹¹

Moreover, by accepting Plaintiffs' "rate of payment vs. right to payment" argument, the district court misapprehended the fundamental difference between in-network providers and out-of-network providers. In-network providers have a written contract with the insurer/plan administrator that sets forth the rate of reimbursement. Thus, for in-network provider claims, a court only need look to the parties' contract to determine whether additional reimbursement is owed by the insurer and does not need to look at the terms of the ERISA governed plan.¹² However, for out-of-network providers with no written provider agreement, the only document setting forth the applicable rate of payment is the patient's health plan.¹³ Here, since the Plaintiffs admit they are out-of-network providers that lack a written contract with Defendants (FAC ¶ 20, 2 PA 97), the court will have to consult the members' ERISA plans to determine the appropriate rate of payment

¹¹ See e.g., *Melamed v. Blue Cross of California*, 557 F. App'x 659, 661 (9th Cir. 2014); *In Re Managed Care Litig.*, 298 F. Supp. 2d 1259, 1292 (S.D. Fla. 2003).

¹² See e.g., *Blue Cross of California v. Anesthesia Care Assocs. Med. Grp., Inc.*, 187 F.3d 1045, 1051 (9th Cir. 1999) (provider's state law claims were not preempted because the provider had a written agreement with the insurer that specified the rate of payment owed for medical services).

¹³ See e.g., n. 11, *supra*.

and thus a finding of preemption is required.¹⁴ For these, and the other reasons set forth below, the district court's decision was clear error and the writ should be entertained on the merits.

d. The Court does not need to resolve any factual disputes to decide this writ petition

Since this writ petition challenges a district court's denial of a motion to dismiss, the majority of the analysis involves simply applying the case law to the allegations in the FAC. The only factual issues outside the FAC implicated by this writ are (1) whether the patients treated by Plaintiffs had employer sponsored health plans governed by ERISA and (2) whether Plaintiffs accepted an assignment of benefits from those patients.¹⁵ However, there was no dispute over these factual issues at the district court level. Defendants submitted evidence with their Motion to Dismiss demonstrating (1) that over 90% of Plaintiffs' claims were for services provided to members of ERISA-governed plans and (2) that Plaintiffs received an assignment of benefits from the patients for all of the claims at issue. 2 PA 143-146. Plaintiffs never contested these facts but instead argued they were irrelevant to the district court's analysis. 4 PA 311-312. Thus, deciding this writ petition will not require this Court to resolve any factual disputes between the Parties.

¹⁴ See Section III(B)(2), *infra*, for a thorough explanation of why Plaintiffs' rate of payment argument fails.

¹⁵ See n. 4, *supra*, for case law showing that facts outside the pleadings may be considered at the motion to dismiss stage if a defense of ERISA preemption is raised.

2. Given the stage and nature of this litigation, appeal does not constitute an adequate and speedy remedy.

Under certain circumstances, the Nevada Supreme Court has held that “the availability of a direct appeal from a final judgment may not always be an adequate and speedy remedy.” *Okada*, 408 P.3d at 569. “Whether a future appeal is sufficiently adequate and speedy necessarily turns on the underlying proceedings’ status, the types of issues raised in the writ petition, and whether a future appeal will permit this court to meaningfully review the issues presented.” *D.R. Horton, Inc. v. Eighth Judicial Dist. Court*, 123 Nev. 468, 475, 168 P.3d 731, 736 (2007). In fact, in *International Game Technology*, the Court, in entertaining a writ petition challenging the denial of a motion to dismiss, noted that “an appeal is not an adequate and speedy remedy, given the early stages of litigation and policies of judicial administration.” 124 Nev. at 198, 179 P.3d at 559. *See also G. & M. Properties*, 95 Nev. at 303–04, 594 P.2d at 715–16 (internal citations omitted).

Given the early stage of this litigation, the enormous burden that discovery on 15,210 separate claims for reimbursement will impose on the Defendants, and the important issues presented by this writ petition, the potential availability of a direct appeal on the issues does not, as found in *International Game Technology*, actually constitute “an adequate and speedy remedy.”

B. This Court should issue a writ of prohibition, or, of mandamus to correct the district court's improper denial of the Motion to Dismiss

1. Standard of Review

The Nevada Supreme Court has long held that, in the context of a writ petition, questions of law, such as questions of statutory interpretation are reviewed de novo. *See Helfstein v. Eighth Judicial Dist. Court*, 131 Nev. Adv. Op. 91, 362 P.3d 91, 94 (2015). Here, all of the issues raised in this writ petition involve issues of law and should thus be reviewed de novo by this Court.

2. The district court erred by concluding that Plaintiffs' claims were not subject to conflict preemption under ERISA

a. Explanation of the ERISA Preemption Clause, Saving Clause and Deemer Clause

ERISA is a federal legislative scheme that “comprehensively regulates” employee benefit plans that provide medical care for employees. 29 U.S.C. §§ 1001(b), 1002(1); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 44 (1987). To ensure that plans and plan administrators would be subject to a uniform body of benefit laws, Congress capped off ERISA with three provisions setting forth the preemptive effect of the federal legislation, which are known as (1) the preemption clause,¹⁶ (2) the saving clause,¹⁷ and (3) the deemer clause.¹⁸ These clauses work

¹⁶ 29 U.S.C. § 1144(a). In cases discussing conflict preemption, this section is also commonly referred to as § 514(a) of ERISA.

¹⁷ 29 U.S.C. § 1144(b)(2)(A).

together as follows: First, if a state law “relates to” an employee benefit plan, it is preempted. Second, even if a state law relates to an employee benefit plan, the ERISA saving clause exempts laws that “regulate insurance” from preemption. Third, even if a state law regulates insurance and is therefore “saved” from preemption, the ERISA deemer clause prohibits a state from deeming a self-insured¹⁹ employee benefit plan to be an insurer and enforcing such a law against it. *Pilot Life Ins. Co.*, 481 U.S. at 45.

b. Plaintiffs’ Claims “relate to” ERISA plans because they conflict with the payment terms in the plan documents and would require the Court to essentially rewrite those terms.

The Ninth Circuit has repeatedly stated that ERISA’s preemption clause is “one of the broadest preemption clauses ever enacted by Congress.” *Evans v. Safeco Life Ins. Co.*, 916 F.2d 1437, 1439 (9th Cir. 1990). “[A] state law ‘relate[s] to’ a benefit plan in the normal sense of the phrase, if it has a connection with or reference to such a plan.” *Pilot Life Ins. Co.*, 481 U.S. at 47. In elaborating further on this principle, the U.S. Supreme Court has stated that two categories of state laws²⁰ are subject to conflict preemption: (1) state laws that have an explicit

¹⁸ 29 U.S.C. § 1144(b)(2)(B).

¹⁹ A self-funded plan is defined as a plan that does “not purchase an insurance policy from any insurance company in order to satisfy its obligations to its participants.” Rather, it pays claims out of its own funds. *FMC Corp. v. Holliday*, 498 U.S. 52, 54 (1990).

²⁰ Under ERISA, the term “state law” is defined as “all laws, decisions, rules, regulations, or other State action having the effect of law, of any State.” 29 U.S.C.

“reference to” ERISA plans such that the existence of ERISA plans is essential to the law’s operation and (2) state laws that “govern a central matter of plan administration or interfere[] with nationally uniform plan administration.” *Gobeille v. Liberty Mut. Ins. Co.*, 136 S. Ct. 936, 943 (2016) (emphasis added). Here, Plaintiffs’ eight state law claims fall into the second category of conflict preemption described in *Gobeille* as they impact a central matter of plan administration—the amount of reimbursement owed for out-of-network services that plan members receive.

ERISA commands that a plan shall “specify the basis on which payments are made to and from the plan,” 29 U.S.C. § 1102(b)(4), and that the fiduciary shall administer the plan “in accordance with the documents and instruments governing the plan,” 29 U.S.C. § 1104(a)(1)(D) (emphasis added). Thus, any state law claim that would run counter to these ERISA requirements by, for example, requiring a plan administrator to make payments that are different than the payments required to be paid pursuant to the plan documents, is preempted. *Egelhoff v. Egelhoff*, 532 U.S. 141, 147.

Here, that is exactly what Plaintiffs’ state law claims attempt to do. Through their first cause of action for Breach of Implied-in-Fact Contract, Plaintiffs are

§ 1144(c)(1). Thus, ERISA preempts not only state statutes but also the common law of each state.

attempting to compel thousands of different ERISA-governed plans administered by the Defendants to pay Plaintiffs an inflated “usual and customary rate” without regard to the specific benefit rates established by the terms of each controlling health plan, and without any of the plans ever having agreed to pay anything other than what their terms afford. *See e.g.*, 2 PA 125 (FAC ¶ 199). The Ninth Circuit has repeatedly found that plaintiffs cannot plead around ERISA preemption by asserting an implied-in-fact contract claim. *See Aetna Life Ins. Co. v. Bayona*, 223 F.3d 1030, 1034 (9th Cir. 2000); *Parlanti v. MGM Mirage*, No. 2:05-CV-1259-ECR-RJJ, 2006 WL 8442532, at *6 (D. Nev. Feb. 15, 2006) (same). Plaintiffs’ Implied-in-Fact Contract Claim is conflict preempted.

In regard to Plaintiffs’ second cause of action for Tortious Breach of the Covenant of Good Faith and Fair Dealing, the U.S. Supreme Court found in *Pilot Life* that this claim is subject to conflict preemption under ERISA’s “relates to” preemption clause. *Pilot Life*, 481 U.S. at 48–49. There is no reason for this Court to deviate from the reasoning in that case.²¹

Plaintiffs’ third cause of action for Unjust Enrichment “relates to” employee benefit plans because to determine the appropriate benefit rate, the Court would

²¹ *See also Thrall v. Prudential Insurance Company of America*, 2005 WL 8161321, at *2 (D. Nev. Aug. 11, 2005) (finding claim for breach of duty of good faith and fair dealing preempted under ERISA).

need to refer to the payment terms in the plans at issue. Notably, Plaintiffs' allegations supporting their unjust enrichment claim specifically reference health plans. 2 PA 127 (FAC ¶ 220). Courts regularly find such claims to be preempted. *Hill v. Opus Corp.*, 841 F. Supp. 2d 1070, 1086 (C.D. Cal. 2011); *Plastic Surgery Ctr., P.A. v. Aetna Life Ins. Co.*, 2020 WL 4033125, at *16 (3d Cir. July 17, 2020).

Plaintiffs' fourth cause of action is for Violation of NRS 686A.020 and 686A.310 (the Nevada Unfair Trade Practices Act). However, the Nevada Supreme Court has already found that claims under the Nevada Unfair Trade Practices Act are preempted by ERISA. *Villescas v. CNA Ins. Companies*, 109 Nev. 1075, 1084, 864 P.2d 288, 294 (1993). The district court inexplicably ignored the *Villescas* decision and allowed this claim to stand.

Plaintiffs' fifth cause of action alleges that Defendants violated Nevada's Prompt Pay Statutes by failing to adequately reimburse Plaintiffs within 30 days of Plaintiffs' requests for payment. 2 PA 130. This claim is unquestionably preempted as, to determine whether the challenged plan benefit payments violated the statute, the Court would have to reference the ERISA plans at issue to determine whether or not Defendants complied with the rate of payment terms for out-of-network providers. Moreover, state prompt pay claims improperly duplicate the injunction remedy already available under ERISA. *Pryzbowski v. U.S. Healthcare, Inc.*, 245 F.3d 266, 272 (3d Cir. 2001) (claims related to delay in

processing claims were preempted, as a plan participant or beneficiary can accelerate the plan's approval of a claim by seeking an injunction under 29 U.S.C. § 1132(a)(1)(B) to enforce the benefits to which they are entitled.). This claim should be dismissed as conflict preempted. *See e.g., N. Jersey Brain & Spine Ctr. v. CIGNA Healthcare of NJ, Inc.*, No. CV 09-2630 (JAG), 2010 WL 11594901, at *6 (D.N.J. Jan. 12, 2010) (out-of-network providers' New Jersey prompt pay statute claims found to be conflict preempted); *Am.'s Health Ins. Plans v. Hudgens*, 915 F. Supp. 2d 1340, 1359–60 (N.D. Ga. 2012) (Georgia prompt pay statute found to be conflict preempted since it “interfere[d] with nationally uniform administration of ERISA plans.”).

Plaintiffs' sixth cause of action for violation of the Nevada Deceptive Trade Practices Act seeks to hold Defendants liable for making false representations and engaging in coercion, duress or intimidation in relation to Defendants' processing of claims on employee benefit plans. 2 PA 130-131. As part of this claim, Plaintiffs allege that Defendants are refusing to pay for “covered emergency services.” 2 PA 131 (FAC ¶ 246). Therefore, this claim is conflict preempted because the Court would need to reference the ERISA plans at issue to determine whether the services Plaintiffs provided were in fact “covered,” as well as whether any misrepresentations were made regarding the plan payment terms. The district court should not have deviated from other courts' decisions on this issue. *Pachuta*

v. Unumprovident Corp., 242 F. Supp. 2d 752, 764 (D. Hawaii, March 19, 2002) (holding that plaintiff's Hawaii Deceptive Trade Practices Act claim "related to" an ERISA plan and did not fall within the ERISA saving clause); *Pilot Life Ins. Co.*, 481 U.S. at 57 (finding fraud claims based on the improper processing of a benefits claim were conflict preempted); *Davidian v. S. Cal. Meat Cutters Union*, 859 F.2d 134, 135 (9th Cir. 1988) (claims against an ERISA plan for bad faith, fraud, deceit and breach of fiduciary duty were conflict preempted).

Plaintiffs' seventh cause of action for Declaratory Judgment seeks a judicial declaration requiring Defendants to cause the plans they administer to pay Plaintiffs amounts of reimbursement set without regard to the terms of the plans. 2 PA 133 (FAC ¶¶ 257-259). But it would be impossible for the district court to determine the correct amount of reimbursement for Plaintiffs' medical services without referring to and interpreting the terms and conditions of the members' ERISA plans. Moreover, this claim directly conflicts with and duplicates the declaratory judgment claim available under ERISA. 29 U.S.C. § 1132(a)(1)(B); *see also Franchise Tax Board of California v. Construction Laborers Vacation Trust for S. California*, 463 U.S. 1, 27 n.31 (1983) ("ERISA has been interpreted as creating a cause of action for a declaratory judgment."). Therefore, Plaintiffs' Declaratory Judgment claim is also preempted. *See, e.g., Brandner v. UNUM Life Ins. Co. of Am.*, 152 F. Supp. 2d 1219, 1225 (D. Nev. 2001) (declaratory relief

claim related to an ERISA plan, did not fall within ERISA saving clause and was preempted); *Bland v. Fiatallis N. Am., Inc.*, No. 02 C 0069, 2003 WL 1895429, at *2 (N.D. Ill. Apr. 15, 2003) (stating “ERISA preempts state claims for declaratory relief that relate to an ERISA benefits plan”).

Finally, Plaintiff’s eighth cause of action for violation of Nevada’s RICO statute cannot survive preemption either. In a highly similar case, a plaintiff tried to escape preemption by arguing that the insurer had engaged in an elaborate fraudulent scheme to avoid paying benefits and that the existence of such a scheme meant that even if plaintiff’s other state law claims were preempted, the state law RICO claim was not. The court rejected this argument and found that the RICO claim was conflict preempted because it was intertwined with a dispute over a refusal to pay benefits. *Moorman v. UnumProvident Corp.*, No. CIV.A. 104CV2075BBM, 2007 WL 4984162, at *3 (N.D. Ga. Oct. 30, 2007) (“As the court understands the current state of law, a federal RICO claim is not preempted by ERISA, but a state RICO claim is.”) (emphasis added) (internal citation omitted). The result should be the same here. The district court erred by not finding that this claim was conflict preempted.

c. Plaintiffs’ State Law Claims Do Not Fall Within ERISA’s Saving Clause

Once it is determined that a state law claim “relates to” a benefit plan, which all of Plaintiffs’ claims do, the next question is whether the state laws at issue

“regulate insurance.” If they do, they are exempted from ERISA preemption under the ERISA saving clause. 29 U.S.C. § 1144(b)(2)(A).

The U.S. Supreme Court has held that two criteria should be considered in determining whether a state law falls within ERISA’s saving clause. First, a court should consider whether, as a matter of “common sense,” the state law is one that “regulates insurance.” *Pilot Life Ins. Co.*, 481 U.S. at 48-49. Second, a court should use the McCarran-Ferguson²² test to determine whether the state law (1) is limited to the insurance industry, (2) has the effect of transferring or spreading a policyholder’s risk, and (3) involves an integral part of the relationship between the insurer and the insured. *Id.* The Nevada Supreme Court has adopted the U.S. Supreme Court’s framework for assessing whether the ERISA saving clause applies and held that all three elements of the McCarran-Ferguson test must be met for the ERISA saving clause to apply. *See Villescas*, 109 Nev. at 1082, 864 P.2d at 293.

Here, none of Plaintiffs’ state law claims fall within the ERISA saving clause. As to Plaintiffs’ common law claims for (1) Breach of Implied-in-Fact Contract, (2) Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing, and (3) Unjust Enrichment, none of these claims can be said to regulate

²² The McCarran-Ferguson Act generally permits states to regulate the “business of insurance.” 15 U.S.C. § 1012(a). In determining what constitutes the “business of insurance,” courts have come up with the three part McCarran-Ferguson test.

insurance or to be “limited to the insurance industry.” Rather, such claims are applicable to a wide variety of non-insurance related commercial disputes. *See e.g., Pilot Life Ins. Co.*, 481 U.S. at 48–49 (1987) (holding that a claim for tortious breach of contract and the Mississippi law of bad faith did not “regulate insurance” and was thus preempted because “[a]ny breach of contract, and not merely breach of an insurance contract, may lead to liability for punitive damages.”).

With respect to Plaintiffs’ statutory claims for (1) Violation of NRS 686A.020 and 686A.310 (Nevada Unfair Trade Practices Act), (2) Violation of Nevada Prompt Pay Statutes, (3) Violation of Consumer Fraud and Deceptive Trade Practices Acts, (4) Declaratory Judgment, and (5) Violation of NRS 207.350, *et. seq.* (Nevada’s RICO statute), all of these claims fail the McCarran-Ferguson test. While the Nevada Unfair Trade Practices Act is specifically aimed at insurance companies, the Nevada Supreme Court has found that the law does not have the effect of spreading a policyholder’s risk and thus does not fall within ERISA’s saving clause. *Villescas*, 109 Nev. at 1083, 864 P.2d at 293.

The Nevada Prompt Pay Act does not fall under the saving clause for the same reason. “Riskspreading . . . is the pooling or averaging of policyholder’s risks.” *Id.* at 1082, 864 P.2d at 293; *see also* BLACK’S LAW DICTIONARY (11th ed. 2019) (defining “Risk” in the insurance context as “[t]he chance or degree of probability of loss to the subject matter of an insurance policy.”). The Prompt Pay

Act simply subjects an insurer to fines by the Nevada Insurance Commissioner if the insurer does not process/pay claims within a specified time frame. NRS 683A.0879(8). This does nothing to pool or average a policyholder's risks.

Finally, Nevada's Deceptive Trade Practices Act, Uniform Declaratory Judgments Act, and RICO statute are laws of general applicability and not limited to the insurance industry. *See* NRS 598.0915 (stating that any "person" with a "business or occupation" can be liable under the Deceptive Trade Practices Act); NRS 30.040 (allowing a declaratory judgment claim to be brought for any "deed, written contract or other writings constituting a contract."); NRS 207.380 (stating that a criminal "Enterprise" may consist of "any natural person, sole proprietorship, partnership, corporation, business trust or other legal entity."). Thus, these claims also do not fall under the ERISA saving clause and, as a result, are conflict preempted.

d. In the Alternative, ERISA's Deemer Clause also Bars Plaintiffs' State Law Claims

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

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

e. The district court erred when it found that ERISA preemption can never apply to an out-of-network medical provider's claims

The district court accepted the flawed argument that, while ERISA regularly preempts a *plan member's* state law claims against the plan administrator, it does not preempt a *medical provider's* identical state law claims. 5 PA 561. This finding was an error of law as there is no distinction between a plan member's state law claims and a medical provider's state law claims if there has been an assignment of benefits from the plan member to the medical provider. Here, it is undisputed that Plaintiffs accepted a written assignment of benefits from Defendants' plan members for all of the claims they are asserting in this suit. 2-3

PA 172-273. Thus, Plaintiffs stand in exactly the same position as a plan member making a claim for benefits against their insurer.

The *In Re Managed Care* case shows the crucial importance of an assignment of benefits in determining whether ERISA preemption applies. There, the court found that the state law claims of out-of-network providers who *had* received an assignment of benefits were preempted. Conversely, the state law claims of the out-of-network providers who *had not* received an assignment of benefits were not preempted. *In Re Managed Care Litig.*, 298 F. Supp. 2d 1259, 1292 (S.D. Fla. 2003); *see also Torrent & Ramos, M.D., P.A. v. Neighborhood Health Partnerships, Inc.*, No. 04-20858-CIV, 2004 WL 7320735, at *4 (S.D. Fla. July 1, 2004) (out-of-network provider's acceptance of assignment of benefits from patients it treated meant that its state law claims were preempted by ERISA since it now stood in the shoes of the plan members); *Misic v. Bldg. Serv. Employees Health & Welfare Tr.*, 789 F.2d 1374, 1379 (9th Cir. 1986) (same). Since Plaintiffs do not dispute that they accepted an assignment of benefits for all claims asserted in this action, those claims are subject to ERISA preemption.

f. The district court erred by adopting Plaintiffs' flawed "rate of payment vs. right to payment" argument

Plaintiffs also argued that, even if out-of-network providers' claims can,

under certain circumstances, be subject to ERISA conflict preemption,²³ Plaintiffs' claims may escape preemption because they involve a dispute over the *rate* of payment, not the *right* to payment. Not so. As a threshold matter, Plaintiffs' "rate of payment" argument arises from a superficial and erroneous analysis of the case law. Courts have held that the "rate" versus "right" distinction does not apply where the plaintiff-provider is out-of-network (like Plaintiffs here), and further does not apply in conflict preemption cases. *See North Cypress Med. Ctr. Operating Co. v. Cigna Healthcare*, 781 F.3d 182, 201 (5th Cir. 2015) (finding rate versus right distinction inapposite in out-of-network provider context); *Emergency Group of Ariz. Prof. Corp. v. United Healthcare Inc.*, 2020 WL 1451464, at *5 (D. Az. Mar. 25, 2020) (same); *Surgery Ctr. of Viera, LLC v. UnitedHealthcare Ins. Co., et al.*, Case No. 6:20-cv-668-Orl-37DCI, Doc. 44 at 7 (M.D. Fla. July 28, 2020) ("[T]he rate/right distinction only applies in complete preemption cases when jurisdiction is at issue [Conflict] preemption is a separate and distinct issue") (internal citations omitted).

Furthermore, in all of the so-called "rate of payment" cases cited in the district court's order,²⁴ preemption did not apply because the payment terms of a

²³ Defendants address Plaintiffs' "rate of payment" argument here in the context of whether it defeats conflict preemption. However, Plaintiffs' rate of payment argument fails to defeat complete preemption for the same reasons.

²⁴ 5 PA 599-600 (order denying motion to dismiss).

written provider agreement, an oral promise to pay, or a state statute requiring insurers to pay out-of-network providers at a particular rate governed the appropriate rate of payment such that the terms of the ERISA plans did not come into play.

For example, if the provider has a written in-network provider agreement that sets forth the applicable rate of payment, this saves its claims from preemption because the contract governs whether additional reimbursement is due, not the terms of the ERISA plan. *See e.g., Blue Cross of California v. Anesthesia Care Assocs. Med. Grp., Inc.*, 187 F.3d 1045, 1052 (9th Cir. 1999) (express written provider agreement with the insurer created duties independent of the employee benefit plan and thus state law claims were not preempted); *Windisch v. Hometown Health Plan, Inc.*, No. 308-CV-00664-RJC-RAM, 2010 WL 786518, at *1 (D. Nev. Mar. 5, 2010) (same).

In other cases, an oral rate of payment promise by the insurer will save the out-of-network provider's claims from preemption. In *California Spine*, a federal district court found that preemption did not apply because the provider alleged that the insurer promised during a pre-surgery phone call that it would pay 100% of the usual, customary and reasonable charges for the service. *California Spine & Neurosurgery Inst. v. Bos. Sci. Corp.*, No. 18-CV-07610-LHK, 2019 WL 1974901, at *4 (N.D. Cal. May 3, 2019). Thus, the terms of the ERISA plan did not come

into play. *Id.* Rather, the court only needed to look to the independent oral promise by the insurer to determine the appropriate rate of payment and therefore preemption did not apply. *Id.*; *See also Marin Gen. Hosp. v. Modesto & Empire Traction Co.*, 581 F.3d 941, 950–51 (9th Cir. 2009) (no ERISA preemption because provider alleged that the insurer orally promised to pay 90% of the billed medical expenses).

Finally, a provider's state law claims may also escape preemption if a duty to pay an out-of-network provider at a particular rate is created by a state rate of payment statute. *See e.g., Med. & Chirurgical Faculty of State of Maryland v. Aetna U.S. Healthcare, Inc.*, 221 F. Supp. 2d 618, 619, 621 (D. Md. 2002) (citing "Maryland statutes that require HMOs to pay non-contracting physicians according to certain formulas" to find that provider-plaintiff's claims were not preempted by ERISA).

Here, Plaintiffs admit in the FAC that they are out-of-network providers that lack a written agreement with the Defendants that would govern the rate of payment. 2 PA 97 (FAC ¶ 20). Moreover, Plaintiffs' FAC does not allege that Defendants orally promised to pay Plaintiffs at a particular rate. Finally, unlike some other states, Nevada does not have a rate of payment statute requiring

insurers to pay out-of-network providers at any particular rate.²⁵ Cf. Fla. Stat. §§ 641.513(5), 627.64194(4). Thus, the only documents setting forth the required rate of payment to out-of-network providers like Plaintiffs are the ERISA governed health plans. Indeed, but for the existence of the health plans, Defendants would have no duty to pay Plaintiffs *anything*.

Plaintiffs try to get around this issue with vague allegations that an implied-in-fact contract was created by Defendants' payments for past services rendered to their plan members. 2 PA 123-126. However, as set forth more fully in Section III(B)(4)(a), *infra*, Nevada law is clear that such past payments do not create an implied-in-fact contract.

Moreover, in cases similar to this one where providers (1) received an assignment of benefits from the patient, (2) lacked a written contract, (3) lacked an oral promise to pay and (4) lacked a state rate of payment statute, courts have found that ERISA preemption applies because the only document governing the rate of payment to the out-of-network providers is the ERISA plan. *See e.g., Torrent & Ramos, M.D., P.A.*, 2004 WL 7320735, at *4; *Melamed*, 557 F. App'x at 661; *In Re Managed Care Litig.*, 298 F. Supp. 2d at 1292. In short, where a dispute

²⁵ A special statutory rate of payment scheme did pass in the 2019 Nevada Legislative Session, but the scheme did not go into effect until January 1, 2020 and is not retroactively applicable to this case. *See* AB 469 at § 29(2) (2019 Nevada Legislative Session) (stating that law does not go into effect until January 1, 2020).

relates to the amount owed under the terms of a plan—as this dispute plainly does—the claim is preempted and must be pursued under ERISA’s exclusive remedial scheme.

- g. The Nevada federal district court’s remand order has no bearing on whether Plaintiffs’ claims are conflict preempted and is an outlier decision whose reasoning has been rejected by other federal courts**

Plaintiffs and the district court placed great weight on the reasoning in the federal court’s February 20, 2020 remand order. 5 PA 561-562 (hearing transcript). However, the remand order should be given little weight by this Court. First, the remand order only analyzed whether Plaintiffs’ implied-in-fact contract claim was completely preempted. The federal court did not perform a complete preemption analysis for Plaintiffs’ seven other claims as it should have done, *cf. Gaming Corp. of Am. v. Dorsey & Whitney*, 88 F.3d 536, 543 (8th Cir. 1996); *Emergency Grp. of Arizona Prof’l Corp.*, 2020 WL 1451464, at *7, nor did the federal court analyze whether conflict preemption applied to any of Plaintiffs’ claims. The defense of conflict preemption under § 514(a) of ERISA is “much broader” than complete preemption and thus even more likely to apply to Plaintiffs’ state law claims. *Jass v. Prudential Health Care Plan, Inc.*, 88 F.3d 1482, 1492 (7th Cir. 1996). Therefore, at the outset, the remand order has no persuasive value in the context of determining whether conflict preemption applies.

Second, the remand order is an outlier decision that adopted Plaintiffs' flawed "rate of payment" argument. In two recent cases brought by TeamHealth affiliates against United with nearly identical state law claims, two federal district courts expressly rejected the same rate of payment argument that the Nevada Federal District Court accepted and found that the providers' state law claims were preempted by ERISA. *See Emergency Grp. of Arizona Profl Corp.*, 2020 WL 1451464, at *7;²⁶ *Hill Country Emergency Medical Associates, P.A., et al. v. United HealthCare Insurance Company, et al.*, Civil Action No. 19-cv-00548-RP, Dkt. No. 18 (W.D. Tex. Dec. 10, 2019).²⁷

Third, courts have repeatedly held that a federal district court's ruling on complete preemption is not entitled to deference once the matter is remanded to state court because the federal court's ruling is not subject to appellate review. *See Whitman v. Raley's Inc.*, 886 F.2d 1177, 1181 (9th Cir. 1989); *AT&T Commc'ns, Inc. v. Superior Court*, 21 Cal. App. 4th 1673, 1680, 26 Cal. Rptr. 2d 802, 806 (1994) (holding that federal district court's finding that ERISA complete preemption did not apply in a remand order was "not persuasive," did not dictate the result in state court, and electing to dismiss the complaint on grounds of complete preemption).

²⁶ The TeamHealth affiliates in the Arizona case were also represented by the same counsel that represents Plaintiffs in this case.

²⁷ A copy of the *Hill Country* order is attached hereto at 3 PA 274-285.

For all the above reasons, this Court should not defer to the complete preemption analysis in the federal court's remand order and should assess the Parties' competing preemption arguments *de novo* and on the merits.

3. The district court erred by concluding that Plaintiffs' claims were not subject to complete preemption under ERISA

a. The district court erred by finding that complete preemption can never be used to obtain dismissal of state law claims

The district court found that complete preemption under § 502 of ERISA is a jurisdictional doctrine that cannot be used to obtain dismissal of a state law claim. Order at 12:16-28 – 13:1-6, 5 PA 597-598. This finding was clear error as the Nevada Supreme Court has already rejected this argument. In *Marcoz*, the district court dismissed a state law wrongful discharge claim not only on the basis of conflict preemption under 29 U.S.C. § 1144, but also on the basis of complete preemption pursuant to 29 U.S.C. § 1132. *Marcoz v. Summa Corp.*, 106 Nev. 737, 742, 801 P.2d 1346, 1350 (1990) (“Here, the district court primarily based its decision on its interpretation of 29 U.S.C. §§ 1144(a), 1140, **and 1132.**”) (emphasis added). In affirming the district court's dismissal, the Nevada Supreme Court stated as follows:

Marcoz attempts to avoid complete preemption of some of his claims by alleging compensable losses of non-ERISA benefits. Under the narrow confines of *K Mart*, Marcoz has not stated a viable cause of action for other employment benefits after the ERISA preemption of the retirement benefits issues. Our ruling

in *K Mart* has no application to claims involving ERISA benefits. **The reasoning of the court below is sound and we perceive no error in its decision on this aspect of the case.**

Id. at 749, 801 P.2d at 1354 (emphasis added). The district court's decision directly contravenes *Marcoz* and therefore writ relief is warranted.

b. Plaintiffs' state law claims are completely preempted

i. The doctrine of complete preemption and the consequences of a finding of complete preemption

The doctrine of complete preemption applies when a federal statute so completely dominates a particular area that any state law claims are converted into an action arising under federal law. *See Metro. Life Ins. Co. v. Taylor*, 481 U.S. 58, 63–64 (1987). This doctrine applies in the context of claims for reimbursement made against employee benefit plans. *Aetna Health Inc. v. Davila*, 542 U.S. 200, 209 (2004).

As part of ERISA's comprehensive scheme, Congress created a special civil enforcement mechanism to deal with all claims that relate to employee benefit plans. That mechanism is set forth in 29 U.S.C. § 1132(a)²⁸ and permits a "participant or beneficiary" to bring a statutory claim for benefits owed pursuant to the terms of the plan under ERISA. The U.S. Supreme Court has found that this statute evidences congressional intent to completely preempt state law claims that relate to ERISA plans.

²⁸ This section is also commonly referred to as § 502(a) of ERISA.

A finding of complete preemption means that a plaintiff's state law claims are barred and subject to dismissal, as the plaintiff will only be permitted to assert a statutory cause of action under 29 U.S.C. § 1132(a)(1)(B). *See Davila*, 542 U.S. at 209.

ii. Pursuant to the *Davila* Test, Plaintiffs' state law claims are completely preempted

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

Both prongs of the *Davila* test are met. The first element is met because Plaintiffs obtained assignments that gave them standing to bring a statutory ERISA claim. *Misic*, 789 F.2d at 1377-79 (finding that provider's acceptance of an assignment of benefits from patient gave him the right to assert a statutory ERISA claim against the plan administrator because he now stood in the shoes of the plan member.); *In Re Managed Care Litig.*, 298 F. Supp. 2d at 1292 (same). The fact that Plaintiffs now self-servingly disclaim that they are suing as the assignee of Defendants' plan members is not relevant to a *Davila* analysis. Indeed, a driving

force behind the creation of the doctrine of complete preemption was to defeat attempts by plaintiffs to subvert ERISA's comprehensive national scheme through artfully pled state law claims.²⁹ The only question is whether Plaintiffs "*could*" have brought an ERISA claim, and Plaintiffs clearly could have done so.

Prong two of the *Davila* test is met because Plaintiffs are out-of-network providers who lack a written contract with Defendants that sets forth negotiated payment terms. 2 PA 97 (FAC ¶ 20). Thus, the only legal duties owed to Plaintiffs flow from the terms of the applicable ERISA plans and all of Plaintiffs' claims are completely preempted and should have been dismissed.

4. The district court erred by concluding that Plaintiffs had stated a claim under NRCP 12(b)(5)

Whether the Plaintiffs have stated any claim for relief under NRCP 12(b)(5) is partially intertwined with the issue of whether Plaintiffs' claims are subject to conflict preemption and complete preemption under ERISA given that sufficiently alleging the violation of a legal duty independent of ERISA can defeat preemption.³⁰ And, as explained previously, whether ERISA preemption applies is an issue this Court has previously found to be of sufficient importance to warrant

²⁹ *Cleghorn v. Blue Shield of California*, 408 F.3d 1222, 1226 (9th Cir. 2005) ("Artful pleading does not alter the potential for this suit to frustrate the objectives of ERISA.").

³⁰ See e.g., *Davila*, 542 U.S. at 210-214 (discussing the importance of examining each state law claim to determine whether a "violation of a legal duty independent of ERISA" has been adequately alleged such that the state law claim can escape preemption).

entertaining a writ petition on the merits. Therefore, it is appropriate for this Court to review not only the district court's ERISA preemption analysis de novo, but also its finding that the Plaintiffs have adequately alleged state law claims upon which relief can be granted. For the reasons set forth below, Plaintiffs have failed to state cognizable claims for relief under Nevada law³¹ and thus, by extension, have failed to allege a violation of a legal duty independent of ERISA.

a. Plaintiffs failed to state an implied-in-fact contract claim

An implied-in-fact contract exists where the conduct of the parties demonstrates that they (1) intended to contract, (2) exchanged bargained-for promises, and (3) the terms of the bargain are sufficiently clear. *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 379–80, 283 P.3d 250, 256 (2012).

Plaintiffs have not sufficiently alleged any of the above three elements. Nowhere in the FAC is there an allegation that the Defendants “intended to contract” with Plaintiffs. On the contrary, Plaintiffs allege that contract negotiations failed because the parties *could not agree on rates*, thus foreclosing any argument that an implied-in-fact contract was created. 2 PA 107-109. Nor is there any explanation of what “promises” were exchanged between the Parties and what the terms of those promises were. Reading the FAC in the light most

³¹ In regard to Plaintiffs' fifth and seventh causes of action for Violation of Nevada's Prompt Pay Act and Declaratory Judgment, an NRCP 12(b)(5) analysis would be superfluous as both claims clearly duplicate relief permitted under ERISA and are thus preempted. *See* Section III(B)(2)(b), *supra*.

favorable to Plaintiffs, there is instead an allegation that (1) Plaintiffs provided medical services to members of Defendants' health plans, (2) Plaintiffs requested full reimbursement for these services from Defendants and (3) on some occasions Defendants obliged, and on other occasions Defendants did not. 2 PA 123-125. In essence, Plaintiffs argue that payments for some past services constitute a promise by Defendants to pay for all future services at the same rate. *Id.*

The Nevada Supreme Court's decision in *Recrion Corp.* forecloses such a theory. There the Court refused to find an implied-in-fact contract where an employee provided unsolicited services to a hotel prior to having a discussion about compensation. The Court noted that its ruling would have been the same even if, after the services were provided, the hotel had promised the employee compensation. The Court held that "[p]ast consideration is the legal equivalent to no consideration" and that services cannot be subject to an implied-in-fact contract unless the contract was created "before" the services were provided." *Smith v. Recrion Corp.*, 91 Nev. 666, 669, 541 P.2d 663, 665 (1975) (emphasis added).

Here, just like in *Recrion Corp.*, Plaintiffs are attempting to force the Defendants to compensate them for unsolicited³² services that were provided without any contract in place. Further, Plaintiffs rely only on the past consideration of prior payments to create the alleged implied-in-fact contract—a

³² The FAC does not allege that the Defendants did anything to solicit or induce Plaintiffs to provide emergency medical services to their plan members.

theory that *Recrion Corp* expressly disapproved. Thus, Plaintiffs have failed to state a claim for implied-in-fact contract and this claim should be dismissed.

b. Plaintiffs failed to state a tortious breach of the implied covenant of good faith and fair dealing claim

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

Critically, the Nevada Supreme Court has refused to expand this tort to contracts between sophisticated parties in the commercial realm. *Aluevich v. Harrah's*, 99 Nev. 215, 216, 660 P.2d 986, 986 (1983) (holding that claim for tortious breach of the implied covenant of good faith and fair dealing does not extend to commercial leases between two sophisticated parties). The tort is only meant for situations where there is a “special relationship” between the parties, such as in the insured-insurer or employer-employee context. *Id.* Here, this litigation involves a dispute between two sophisticated parties (a national physician practice and a large insurer/plan administrator) who do not even have an express

written contractual relationship and therefore this claim fails.

c. Plaintiffs failed to state an unjust enrichment claim

“Unjust enrichment exists when the plaintiff [1] confers a benefit on the defendant, [2] the defendant appreciates such benefit, and there is [3] acceptance and retention by the defendant of such benefit under circumstances such that it would be inequitable for him to retain the benefit without payment of the value thereof.” *Certified Fire Prot. Inc.*, 128 Nev. at 381, 283 P.3d at 257.

Here, while the Nevada Supreme Court has not yet weighed in on this issue, Plaintiffs’ claim fails as courts around the country routinely hold that providing medical services to a plan member does not benefit the insurer/administrator. Rather, courts have found that the medical provider is providing a benefit only to the patient (i.e. the insured/plan member). *See e.g., Peacock Med. Lab, LLC v. UnitedHealth Grp., Inc.*, No. 14-81271-CV, 2015 WL 2198470, at *5 (S.D. Fla. May 11, 2015) (“a healthcare provider who provides services to an insured does not benefit the insurer.”); *Encompass Office Solutions, Inc. v. Ingenix, Inc.*, 775 F.Supp.2d 938, 966 n. 11 (E.D. Tex. 2011) (same); *Travelers Indem. Co. of Connecticut v. Losco Grp., Inc.*, 150 F. Supp. 2d 556, 563 (S.D.N.Y. 2001) (same); *Joseph M. Still Burn Ctrs., Inc. v. AmFed Nat’l Ins. Co.*, 702 F.Supp.2d 1371, 1377 (S.D. Ga. 2010) (same); *Sinai Med. Ctr. v. Mid–West Nat. Life Ins. Co. of Tenn.*, 118 F.Supp.2d 1002, 1013 (C.D.Cal. 2000) (same).

The district court found the above case law inapplicable because Nevada law permits recovery for unjust enrichment even if the benefit provided is “indirect.” 5 PA 611-612 (order). The district court erred because Plaintiffs’ treatment of Defendants’ plan members was neither a “direct” nor an “indirect” benefit to Defendants—it was no benefit at all, as the above case law makes clear. This claim fails as a matter of law and should be dismissed.

d. Plaintiffs’ failed to state a claim for violation of NRS 686A.020 and 686A.310

Plaintiffs assert that the Defendants violated the Nevada Unfair Insurance Practices Act by not paying more on Plaintiffs’ claims. 2 PA 128-129. Plaintiffs’ claim fails as a matter of law because the Act only gives a private right of action to “insureds,” not to third party claimants like Plaintiffs. NRS 686A.310(2) (“In addition to any rights or remedies available to the Commissioner, an insurer is liable to its insured for any damages sustained by the insured as a result of the commission of any act set forth in subsection 1 as an unfair practice.”) (emphasis added). Indeed, the Nevada Supreme Court has specifically held on multiple occasions that the Act does not create a private right of action against insurers in favor of third party claimants like Plaintiffs. *Gunny v. Allstate Ins. Co.*, 108 Nev. 344, 346, 830 P.2d 1335, 1336 (1992) (“we conclude that [plaintiff] has no private right of action as a third-party claimant under NRS 686A.310.”).

Case law out of the Nevada federal district court is in accord. *See Tweet v.*

Webster, 614 F. Supp. 1190, 1195 (D. Nev. 1985) (“we do not find any facts or evidence presented by plaintiffs to persuade us that a Nevada court would grant a third party claimant a cause of action directly against an insurer for bad faith refusal to settle a reasonably clear claim, based on statute, implied contract, or common law tort, under Nevada law as it stands today.”); *Crystal Bay Gen. Imp. Dist. v. Aetna Cas. & Sur. Co.*, 713 F. Supp. 1371, 1376 (D. Nev. 1989) (same).

Here, Plaintiffs are not “insureds” but rather third party medical providers with no contractual relationship with Defendants. 2 PA 96-97. Therefore, this claim should be dismissed, as Plaintiffs lack standing to bring it.

e. Plaintiffs failed to state a claim for violations of Nevada’s Consumer Fraud and Deceptive Trade Practices Acts

An action under the Nevada Deceptive Trade Practices Act may be brought by any person who is a “victim” of consumer fraud. NRS 41.600(1). The term “victim” in NRS 41.600 is not defined, and the Nevada Supreme Court has not yet offered a definition. Nonetheless, the Nevada Supreme Court has defined “victim” as that term is used in NRS 176.033(c), which authorizes restitution for a crime victim. The court addressed the issue in *Igbinoia v. State*, 111 Nev. 699, 895 P.2d 1304 (1995) and found that “the word ‘victim’ has commonly-understood notions of passivity, where the harm or loss suffered is generally unexpected and occurs without the voluntary participation of the person suffering the harm or loss.” *Id.* at 706, 895 P.2d at 1308.

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

Here, Plaintiffs’ claim fails as they admit in the FAC that they are not passive victims of Defendants’ alleged scheme, but rather were active and knowing participants in the events in dispute. Plaintiffs admit that they entered into contract negotiations with Defendants beginning in 2017, that Defendants fully informed

Plaintiffs during those negotiations of the rates they should expect to be paid for all future services rendered, and that Plaintiffs nonetheless thereafter willingly provided medical services to the Defendants' members. 2 PA 97-98, 107, 131 (FAC at ¶¶ 22, 25–26, 90–109, 246). As such, Plaintiffs do not qualify as passive “victims” under NRS 41.600 and lack standing to bring this claim.

f. Plaintiffs failed to state a Nevada RICO claim

To state a RICO claim, Plaintiffs must adequately plead, among other things, that Defendants engaged in at least two of the thirty-seven predicate RICO crimes listed in NRS 207.360. The FAC purports to identify three predicate RICO crimes:

- “[O]btaining possession of money or property valued at \$650 or more,” NRS 207.390, 207.360(28);
- “[M]ultiple transactions involving fraud or deceit in [the] course of [an] enterprise or occupation,” NRS 205.377, NRS 207.360(35); and
- “[I]nvoluntary servitude,” NRS 207.360(36).

2 PA 110, 112, 134.

i. Plaintiffs have failed to plead “but for” cause and proximate cause as required by RICO.

In addition to alleging at least two predicate RICO acts, a plaintiff must allege that those RICO acts were both the “but for” cause and the proximate cause of its injuries. *Holmes v. Sec. Inv'r Prot. Corp.*, 503 U.S. 258, 268 (1992); *Allum v. Valley Bank of Nevada*, 109 Nev. 280, 282, 849 P.2d 297, 299 (1993) (“[F]or a

plaintiff to recover under Nevada RICO . . . the plaintiff's injury must flow from the defendant's violation of a predicate Nevada RICO act . . .”).

In the FAC, Plaintiffs contend that the Defendants violated RICO by using websites and other communications to make false representations to providers concerning the transparency and objectivity of the Data iSight claim pricing service that Defendants used to assist them in determining plan payment rates. 2 PA 121 (FAC ¶¶ 177–78). The FAC specifically identifies Plaintiffs' asserted injury as the alleged underpayment of various health claims that they submitted to Defendants for payment. 2 PA 134-135. Plaintiffs' inescapable problem, however, is that the FAC makes clear that the alleged misrepresentations played no role in causing Plaintiffs' asserted underpayment injuries; Plaintiffs would have rendered the same services, and received the same alleged underpayments, if the asserted misrepresentations on Data iSight's website had never been made. This is a textbook case of lack of causation.

The FAC states that “federal and state law requires that emergency services be provided to individuals by the Health Care Providers.” 2 PA 97. It further acknowledges that Plaintiffs accordingly are legally obligated to—and do—provide services to patients “without regard to insurance status or ability to pay.” *Id.* These admissions make plain that no representation that Defendants or Data iSight may have made concerning their payment rates or methodologies could have

had any effect on Plaintiffs' provision of services, because Plaintiffs were legally obligated to provide those services without regard to any understandings they may have had about what the associated payment rates would be. Even if the health claims at issue were underpaid under the terms of the relevant plans, that alleged underpayment injury would bear no causal connection to any of the alleged misrepresentations identified in the FAC.

Plaintiffs also cannot establish the required causation for the separate reason that the FAC admits Defendants provided advance notice to Plaintiffs that their out-of-network payment rates were expected to drop. 2 PA 107-108. This frank disclosure—assertedly made by Defendants on at least three separate occasions—breaks any conceivable causal chain connecting Plaintiffs' purported underpayment injuries to the asserted misrepresentations on Data iSight's website.

In the district court briefing, Plaintiffs offered no coherent legal argument supporting RICO causation. The district court then side-stepped this issue and held that, based on *Yamaha Motor*, proximate cause is a factual issue that may not be addressed in a motion to dismiss. 5 PA 620 (order at 34:21–22); *Yamaha Motor Co., U.S.A. v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661, 665 (1998). However, *Yamaha Motor* is inapplicable, as it was a personal injury case dealing with negligence and strict liability claims. *Id.* The Nevada Supreme Court has expressly held that a district court *can* and *should* dismiss a Nevada RICO claim at

the pleading stage for failure to adequately plead causation. *See Allum v. Valley Bank of Nevada*, 109 Nev. 280, 286, 849 P.2d 297, 301 (1993) (affirming the district court's granting of a motion to dismiss a Nevada RICO claim because the plaintiff had failed to plead proximate cause). Thus, contrary to the district court's conclusion, a court is required to dismiss a Nevada RICO claim at the pleading stage, if the plaintiff has failed to adequately plead causation like Plaintiffs here. Because Plaintiffs have not alleged a direct causal connection between the injury asserted and the injurious conduct alleged, Plaintiffs' RICO claim fails as a matter of law and must be dismissed.

ii. Plaintiffs have failed to allege reliance and intent to deceive for the two fraud based RICO predicate crimes

The first two crimes, NRS 207.360(28) (obtaining money by false pretenses) and NRS 207.360(35) (transaction involving fraud or deceit), are fraud-based,³³ and therefore must meet the heightened pleading standard of NRCP 9(b). *See Hale v. Burkhardt*, 104 Nev. 632, 637, 764 P.2d 866, 869 (1988). Both crimes require that a plaintiff allege (1) reliance on a false representation and (2) intent to deceive. *Barron*, 783 P.2d at 449 (discussing elements of an NRS 207.360(28) violation); *Mendoza v. Amalgamated Transit Union Int'l*, 2019 WL 4221078, at *6 (D. Nev. Sept. 5, 2019) (discussing the elements of an NRS 206.360(35) violation and

³³ Nevada false pretenses law requires, among other things, an "intent to defraud," and that "the victim be defrauded." *Barron v. State*, 783 P.2d 444, 449 (Nev. 1989).

dismissing the RICO claim based on plaintiff's failure to allege detrimental reliance).

Plaintiffs have failed to plead the elements of reliance and intent to deceive for either of these crimes for the same reason they have failed to plead causation. Namely, Plaintiffs admit that they were required by state and federal law to provide the medical services in question without regard to the rates Defendants would pay. 2 PA 97. Plaintiffs further expressly admit that they do in fact provide medical services "to all patients, regardless of insurance coverage or ability to pay, including to Patients with insurance coverage issued, administered and/or underwritten by Defendants." 2 PA 96. These admissions definitively establish that Plaintiffs never relied on any representations concerning Defendants' payment rates in deciding whether to render services to patients. Nor can Plaintiffs establish intent to deceive: Plaintiffs admit that Defendants expressly notified them well in advance of the very reimbursement reductions about which they now complain, 2 PA 107-108, 109, defeating any suggestion of deception. Therefore, Plaintiffs have failed to adequately plead at least two RICO predicate crimes and the RICO claim must be dismissed.

iii. Plaintiffs do not properly plead a predicate crime of involuntary servitude.

Plaintiffs' attempt to invoke involuntary servitude under NRS 207.360(36) is novel and entirely specious. The Nevada statutes describe involuntary servitude as

“knowingly subject[ing], or attempt[ing] to subject, another person to *forced labor or services*” by certain enumerated means, and “[a]ssuming rights of ownership over another person; purchase or sale of person.” See NRS 200.463, 200.464, and 200.465. Unsurprisingly, the few Nevada cases that have addressed involuntary servitude have understood it to deal with crimes involving physical harm, forced labor, or abuse. See e.g., *Bonanza Beverage Co. v. MillerCoors, LLC*, 2018 WL 6729776, at *8 n.87 (D. Nev. Dec. 21, 2018) (dismissing as “hyperbolic” a claim that plaintiff would “suffer irreparable harm akin to involuntary servitude” if it was “forced to sell and work for” defendant); see generally *Zavala v. Wal Mart Stores Inc.*, 691 F.3d 527, 540–41 (3d Cir. 2012) (affirming dismissal of RICO claim predicated on involuntary servitude and stating, “[T]he phrase ‘involuntary servitude’ was intended . . . ‘to cover those forms of compulsory labor akin to African slavery’” and noting that “[m]odern day examples of involuntary servitude have been limited to labor camps, isolated religious sects, or forced confinement.”) (citations omitted). Plaintiffs do not allege any such conduct here. Indeed, to the extent anything was responsible for “forcing” Plaintiffs to provide the services at issue, the FAC makes clear that federal and state law did so, not Defendants. See 2 PA 97. What is more, Plaintiffs acknowledge that the relevant plans paid each and every one of the claims at issue; they simply contend that the plans should have

paid more. *See e.g.*, 2 PA 98, 100. This does not come close to meeting the standard for alleging involuntary servitude under Nevada law.

IV. CONCLUSION

Based on the foregoing, this Court should entertain this petition on the merits and issue the relief requested herein. The district court's erroneous denial of Defendants' Motion to Dismiss should be corrected. The district court is acting in contravention of both federal and Nevada law governing ERISA preemption of state law claims. Now is the appropriate time to remedy these errors. Writ relief is warranted.

Dated: August 21, 2020



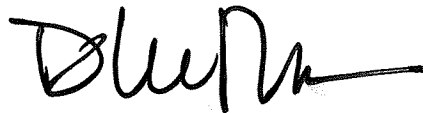
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VERIFICATION

1. I, the undersigned, declare as follows:
2. I am a lawyer duly admitted to practice before the courts of this State and I represent Petitioners in this proceeding.
3. I verify that I have read the foregoing Petition for Writ of Prohibition, or, Alternatively, of Mandamus and that the same is true to my own knowledge, except for those matters stated on information and belief, and as to those matters, I believe them to be true.

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

Dated: August 21, 2020



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CERTIFICATE OF COMPLIANCE

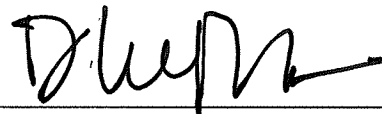
1. Pursuant to NRAP 21(e), I hereby certify that this petition complies with the formatting requirements of NRAP 21(d), including the fact that this brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14 point Times New Roman type style.

2. I further certify that Petitioners' brief exceeds the type-volume limitations of NRAP 21(d) because it contains 13,993 words and a petition may not exceed 7,000 words unless the Court grants leave to file a longer petition.

3. Petitioner is filing a motion to exceed word length contemporaneously with this petition.

4. I further certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, and I understand that I may be subject to sanctions in the event that the accompanying petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED: August 21, 2020



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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that I am an employee of Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC and that on August 21, 2020, I filed a Petition for Writ of Prohibition, or, Alternatively, Mandamus with the Clerk of the Nevada Supreme Court and served a copy of the Writ to the addresses shown below (in the manner indicated below). The accompanying Five Volume Appendix will be electronically filed in the court under NRAP 30(f)(2).

VIA U.S. MAIL:

The Honorable Judge Nancy L. Allf
Eighth Judicial District Court
Department No. 27
Regional Justice Center
200 Lewis Ave.,
Las Vegas, Nevada 89155

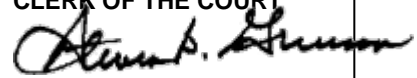
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EXHIBIT 4

EXHIBIT 4



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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-19-792978-B

Dept. No.: XXVII

**NOTICE OF ENTRY OF ORDER
DENYING DEFENDANTS' MOTION
FOR PROTECTIVE ORDER
REGARDING ELECTRONIC
DISCOVERY AND TO COMPEL THE
ENTRY OF A PROTOCOL FOR
RETRIEVAL AND PRODUCTION OF
ELECTRONIC MAIL**

McDONALD CARANO

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RA000107

PLEASE TAKE NOTICE that an Order Denying Defendants' Motion for Protective Order Regarding Electronic Discovery and to Compel the Entry of a Protocol for Retrieval and Production of Electronic Mail was entered on September 28, 2020, a copy of which is attached hereto.

DATED this 28th day of September, 2020.

McDONALD CARANO LLP

By: /s/ Kristen Gallagher

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 28th day of September, 2020, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' MOTION FOR PROTECTIVE ORDER REGARDING ELECTRONIC DISCOVERY AND TO COMPEL THE ENTRY OF A PROTOCOL FOR RETRIEVAL AND PRODUCTION OF ELECTRONIC MAIL** to be served via this Court's Electronic Filing system in the above-captioned case, upon the following:

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-19-792978-B

Dept. No.: XXVII

**ORDER DENYING DEFENDANTS'
MOTION FOR PROTECTIVE ORDER
REGARDING ELECTRONIC
DISCOVERY AND TO COMPEL THE
ENTRY OF A PROTOCOL FOR
RETRIEVAL AND PRODUCTION OF
ELECTRONIC MAIL**

This matter came before the Court on September 9, 2020 on defendants UnitedHealth
Group, Inc.; UnitedHealthcare Insurance Company; United HealthCare Services, Inc.; UMR,

RA000110

1 Inc.; Oxford Health Plans, Inc.; Sierra Health and Life Insurance Co., Inc.; Sierra Health-Care
2 Options, Inc.; and Health Plan of Nevada, Inc.'s (collectively, "United") Motion for Protective
3 Order Regarding Electronic Discovery and to Compel the Entry of a Protocol for Retrieval and
4 Production of Electronic Mail (the "Motion"). Pat Lundvall and Amanda M. Perach, McDonald
5 Carano LLP, appeared on behalf of Plaintiffs Fremont Emergency Services (Mandavia), Ltd.
6 ("Fremont"); Team Physicians of Nevada-Mandavia, P.C. ("Team Physicians"); Crum, Stefanko
7 and Jones, Ltd. dba Ruby Crest Emergency Medicine ("Ruby Crest" and collectively the "Health
8 Care Providers"). Lee Roberts and Colby L. Balkenbush, Weinberg, Wheeler, Hudgins, Gunn
9 & Dial, LLC, appeared on behalf of United.

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

13 1. The Health Care Providers propounded their First Set of Requests for Production
14 of Documents ("RFPs") on United on or around December 9, 2019.

15 2. The Health Care Providers issued two specific requests which were aimed at
16 obtaining, among other things, email communications relating to United's negotiations and
17 discussions about out-of-network reimbursement rates:

18 **Request for Production No. 13:** Produce all Documents and/or
19 Communications concerning, evidencing, or relating to any
20 negotiations or discussions concerning Non-Participating Provider
21 reimbursement rates between You and Fremont, including, without
22 limitation, documents and/or communications relating to the
meeting in or around December 2017 between You, including, but
not limited to, Dan Rosenthal, John Haben, and Greg Dosedel, and
Fremont, where Defendants proposed new benchmark pricing
program and new contractual rates.

23 **Request for Production No. 27:** Produce any and All Documents
24 and/or Communications concerning, evidencing, or relating to any
25 negotiations or discussions concerning non-participating provider
26 reimbursement rates between the UH Parties and Fremont,
including negotiations or discussions leading up to any participation
agreements or contracts with Fremont in effect prior to July 1, 2017.

27 3. The responses to the RFPs were originally due on January 8, 2020.

28 4. In response to RFP No. 13, United responded as follows:

Subject to and without waiving Defendants' objections, including Defendants' specific objections to Plaintiffs Definitions, Instructions and Rules of Construction, Defendants state as follows: Defendants object that this Request is unduly burdensome and seeks information that is not proportional to the needs of the case. Fremont has asserted 15,210 claims where it alleges that Defendants did not reimburse Fremont for the full amount billed. To produce the documents and communications that relate to any discussions or negotiations over the reimbursement rates on those claims, Defendants would, among other things, have to pull the administrative record for each of the 15,210 individual claims, review the records for privileged/protected information and then produce them. As explained more fully in the burden declaration attached as Exhibit 1, this would be unduly burdensome as Defendants believe it will take 2 hours to pull each individual claim file for a total of 30,420 hours of employee labor.

Moreover, all documents and communications exchanged between Defendants and Fremont would necessarily be possessed by Fremont. There is no justification for imposing the burden on Defendants to identify, collect, review, and produce such documents when Fremont already possesses the same. Defendants further respond by referring Fremont to the following bates numbered documents produced with these responses that relate to negotiations between Fremont and the Sierra Defendants: DEF000114 - DEF000156. Defendants are in the process of collecting responsive document that relate to negotiations between Fremont and the other Defendants will produce those documents by February 26, 2020.

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

5. In response to RFP No. 27, United responded as follows:

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

Moreover, all documents and communications exchanged between Defendants and Fremont would necessarily be possessed by Fremont. There is no justification for imposing the burden on Defendants to identify, collect, review, and produce such documents when Fremont already possesses the same.

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

NLA

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NLA

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1 same manner as would discovery from paper sources....No special request must be made, and no
2 special standards apply.”).

3 ~~12. In addition, even if ^{NLA}United had made a showing that the requested documents are~~
4 ~~not readily accessible to it and that there existed an undue burden or cost, the Health Care~~
5 ~~Providers have established that good cause exists for the production of documents responsive to~~
6 ~~the At Issue RFPs. There is no basis for the Court to limit the discovery with respect to the At-~~
7 ~~Issue RFPs under NRCP 26(b)(2)(C) because (1) the discovery sought is not unreasonably~~
8 ~~cumulative or duplicative, and cannot be obtained from a source other than United, much less~~
9 ~~from another source that is more convenient, less burdensome, or less expensive; (2) the Health~~
10 ~~Care Providers have not had ample opportunity to obtain the information by discovery in the~~
11 ~~action; and (3) the proposed discovery is not outside the scope permitted by Rule 26(b)(1).~~

12 13. When weighing the factors set forth in *Venetian Casino Resort et al. v. Eighth Jud.*
13 *Dist. et al.*, United has failed to establish that good cause exists for the issuance of a protective
14 order. 136 Nev. Ad. Op. No. 26 (2020). The Court finds that (1) no particularized harm would
15 occur due to the disclosure of documents responsive to the At-Issue RFPs (2) when balancing the
16 public and private interests, a protective order need not issue because the public’s interest in
17 disclosure is not outweighed by any privacy, proprietary and business interests raised by United
18 and (3) because of the existing Stipulated Confidentiality and Protective Order in place which
19 allows for the redaction of certain information, this measure will properly allow for the disclosure
20 of information while protecting the any important confidentiality interests.

21 ~~14. The Court further finds that the discovery sought pursuant to the At-Issue RFPs is~~
22 ~~proportional to the needs of this case considering the importance of the issues at stake in the action,~~
23 ~~the amount in controversy, the parties’ relative access to relevant information, the parties’~~
24 ~~resources, the importance of the discovery in resolving the issues, and whether the burden or~~
25 ~~expense of the proposed discovery outweighs its likely benefit.~~

26 15. The Court further finds that the protocol proposed by United in its Motion would
27 unreasonably hamper the Health Care Providers from obtaining information with regard to the
28 identity of custodians and information which would otherwise be discoverable.

Accordingly, good cause appearing, therefor,

ORDER

IT IS HEREBY ORDERED that United's Motion for Protective Order Regarding Electronic Discovery and to Compel the Entry of a Protocol for Retrieval and Production of Electronic Mail is DENIED.

~~**IT IS FURTHER ORDERED** that United's objections based on undue burden for the At-Issue RFPs are hereby OVERRULED.~~

~~**IT IS FURTHER ORDERED** that United shall be required to produce all documents, including ESI and hard copies, that is has failed to search for, retrieve and produce to date, including, but not limited to, documents (ESI and hard copies) responsive to the Health Care Providers' Request for Production Nos. 13 and 27, within 14 days of entry of this order.~~

IT IS FURTHER ORDERED that, in advance of the court-ordered September 30, 2020 status check, counsel for United and the Health Care Providers shall meet and confer and negotiate, in good faith, a comprehensive ESI Protocol.

IT IS FURTHER ORDERED that discovery shall not be stayed pending completion of an ESI Protocol and all parties must comply with their discovery obligations during the pendency of negotiations concerning an ESI Protocol.

IT IS SO ORDERED.

Dated this 28th day of September, 2020


DISTRICT COURT JUDGE

7BA 67B ECFC 5977
Nancy Alf
District Court Judge

RA000115

Case No.: A-19-792978-B

***Order Denying Defendants' Motion for
Protective Order Regarding Electronic Discovery
and to Compel the Entry of a Protocol for
Retrieval and Production of Electronic Mail***

Submitted by:

McDONALD CARANO LLP

By: /s/ Amanda Perach

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Attorneys for Plaintiffs

Approved as to form and content:

WEINBERG, WHEELER, HUDGINS,
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By: /s/

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Attorneys for Defendants

RA000116

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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

CASE NO: A-19-792978-B

8 vs.

DEPT. NO. Department 27

9 United Healthcare Insurance
10 Company, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

15 Service Date: 9/28/2020

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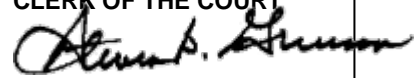
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EXHIBIT 5

EXHIBIT 5



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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

**NOTICE OF ENTRY OF ORDER
GRANTING PLAINTIFFS' MOTION
TO COMPEL DEFENDANTS' LIST OF
WITNESSES, PRODUCTION OF
DOCUMENTS AND ANSWERS TO
INTERROGATORIES ON ORDER
SHORTENING TIME**

RA000119

PLEASE TAKE NOTICE that an Order Granting Plaintiffs' Motion to Compel Defendants List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time was entered on October 27, 2020, a copy of which is attached hereto.

DATED this 27th day of October, 2020.

McDONALD CARANO LLP

By: /s/ Kristen T. Gallagher

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CERTIFICATE OF SERVICE

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

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/s/ Marianne Carter
An employee of McDonald Carano LLP

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

**ORDER GRANTING PLAINTIFFS'
MOTION TO COMPEL DEFENDANTS'
LIST OF WITNESSES, PRODUCTION
OF DOCUMENTS AND ANSWERS TO
INTERROGATORIES ON ORDER
SHORTENING TIME**

This matter came before the Court on October 8, 2020 on the Motion to Compel
Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on

RA000122

Order Shortening Time (the “Motion”) filed by 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”). Pat Lundvall, Kristen T. Gallagher and Amanda M. Perach, McDonald Carano LLP, appeared on behalf of the Health Care Providers. Lee Roberts and Colby L. Balkenbush, Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, appeared on behalf of 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”).

The Court, having considered the Motion, United’s opposition, and the argument of counsel at the hearing on this matter and good cause appearing therefor, makes the following findings and Order:

FINDINGS OF FACT

1. On August 9, 2019, prior to remand to this Court, United made its initial disclosures pursuant to FRCP 26(a). On August 13, 2020 and August 31, 2020, United served its first and second supplement to initial disclosures. United’s initial list of witnesses (detailed in the Joint Case Conference Report) did not include a single United representative. After the Health Care Providers pointed this out, United supplemented, listing only three United representatives on its Second Supplement to NRCP 16.1 list of witnesses. United identified one additional United witness in its Third Supplement to NRCP 16.1 list of witnesses.

2. On December 9, 2019, the Health Care Providers propounded their First Set of Interrogatories (“Interrogatories”) and First Set of Requests for Production of Documents (“RFPs”) on United.

3. On January 29, 2020, United served its objections and responses to the Health Care Providers’ RFPs and answers to Interrogatories. On July 10, 2020, United served its Third Supplemental Responses to RFPs.

1 4. As set forth in the Motion, the Health Care Providers discharged their meet and
2 confer obligations pursuant to EDCR 2.34.

3 5. The scope of permissible discovery is broad. NRCP 26 permits parties to “obtain
4 discovery regarding any nonprivileged matter that is relevant to any party’s claims or defenses
5 and proportional to the needs of the case....” *See* NRCP 26(b)(1). A party may move to compel
6 disclosure of documents and electronically stored information and if a party fails to produce
7 documents responsive to a request made pursuant to NRCP 34; as well as an answer to
8 interrogatories. NRCP 37(a)(3)(B)(iii)-(iv). Furthermore, “an evasive or incomplete disclosure,
9 answer, or response must be treated as a failure to disclose, answer, or respond” NRCP 37(a)(4).

10 6. The Health Care Providers moved to compel United to identify witnesses, as well
11 as answer interrogatories and produce documents in connection with the following categories of
12 information:

- 13 • The identity of United representatives and other third parties that have
14 information about the allegations in the First Amended Complaint (NRCP
15 16.1 and Interrogatory No. 8);
- 16 • Market and reimbursement data related to out-of-network reimbursement
17 rates and related documents and analyses (Interrogatory Nos. 12; RFP Nos.
18 14, 19, 20, 22, 23, 24, 33, 34, 35, 38,¹ 43);
- 19 • Methodology and sources of information used to determine amount to pay
20 emergency services and care for out-of-network providers and use of the
21 FAIR Health Database (Interrogatory Nos. 2, 3, 4, 10, 12; RFP Nos. 5, 8,
22 10, 15, 36, 38);
- 23 • Documents related to United’s decision making and strategy in connection
24 with its out-of-network reimbursement rates and implementation thereof
25 (RFP Nos. 6, 7, 18, 32);
- 26 • Documents related to United’s decision making and strategy in connection
27 with its in-network reimbursement rates and implementation thereof (RFP
28 Nos. 31);
- Rental, wrap, shared savings program or any other agreement that United
 contends allows it to pay less than full billed charges (Interrogatory Nos. 5,
 7; RFP Nos. 9, 16);
- Market and reimbursement data related to in-network reimbursement rates
 and related documents and analyses (RFP Nos. 25, 26, 29, 30);

¹ RFP No. 38 is listed twice because it seeks documents concerning for both out-of-network and in-network adjudication of emergency services.

- Documents related to United's relationship with Data iSight and/or other third parties (Interrogatory Nos. 9; RFP Nos. 11, 12 and 21);
- Documents and communications about the at-issue claims (RFP Nos. 3, 17);
- Documents regarding negotiations between United and the Health Care Providers' representatives (RFP No. 13, 27, 28);
- Documents regarding challenges from other out-of-network emergency medicine groups regarding reimbursement rates paid (RFP No. 41);
- Documents reflecting United's failure to effectuate a prompt settlement of any of the at-issue claims (RFP No. 42); and
- Documents relating to United's affirmative defenses (RFP No. 45).

7. For the reasons set forth in the Motion and at the hearing, the Court finds that the Health Care Providers have established grounds to compel United to supplement its list of witnesses, answers to Interrogatories, responses to RFPs and production of documents as requested in the Motion and set forth herein.

8. United's objections set forth in its Opposition and at the hearing are overruled in their entirety.

9. The Court finds that United has not participated in discovery with sufficient effort and has not taken a rational approach to its discovery obligations.

10. In the event that United does not meet the deadlines of the Court, the Court will have no choice but to make negative inferences.

Accordingly, good cause appearing, therefor,

ORDER

IT IS HEREBY ORDERED that the Health Care Providers' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time is GRANTED IN ITS ENTIRETY.

IT IS FURTHER ORDERED that United is hereby compelled to fully and completely supplement its list of witnesses, provide full and complete supplemental answers to Interrogatories and responses to Requests for Production of Documents and produce documents, as follows:

- The identity of United representatives and other third parties that have information about the allegations in the First Amended Complaint (NRCP 16.1 and Interrogatory No. 8);
- Market and reimbursement data related to out-of-network reimbursement rates and related documents and analyses (Interrogatory Nos. 12; RFP Nos. 14, 19, 20, 22, 23, 24, 33, 34, 35, 38,² 43);
- Methodology and sources of information used to determine amount to pay emergency services and care for out-of-network providers and use of the FAIR Health Database (Interrogatory Nos. 2, 3, 4, 10, 12; RFP Nos. 5, 8, 10, 15, 36, 38);
- Documents related to United's decision making and strategy in connection with its out-of-network reimbursement rates and implementation thereof (RFP Nos. 6, 7, 18, 32);
- Documents related to United's decision making and strategy in connection with its in-network reimbursement rates and implementation thereof (RFP Nos. 31);
- Rental, wrap, shared savings program or any other agreement that United contends allows it to pay less than full billed charges (Interrogatory Nos. 5, 7; RFP Nos. 9, 16);
- Market and reimbursement data related to in-network reimbursement rates and related documents and analyses (RFP Nos. 25, 26, 29, 30);
- Documents related to United's relationship with Data iSight and/or other third parties (Interrogatory Nos. 9; RFP Nos. 11, 12 and 21);
- Documents and communications about the at-issue claims (RFP Nos. 3, 17);
- Documents regarding negotiations between United and the Health Care Providers' representatives (RFP No. 13, 27, 28);
- Documents regarding challenges from other out-of-network emergency medicine groups regarding reimbursement rates paid (RFP No. 41);
- Documents reflecting United's failure to effectuate a prompt settlement of any of the at-issue claims (RFP No. 42); and
- Documents relating to United's affirmative defenses (RFP No. 45).

IT IS FURTHER ORDERED that United's Objections, both written and oral, to each of the foregoing interrogatories, requests for production of documents and initial disclosure obligations are **OVERRULED** in their entirety.

² RFP No. 38 is listed twice because it seeks documents concerning for both out-of-network and in-network adjudication of emergency services.

1 **IT IS FURTHER ORDERED** that United shall produce documents identified in, and
2 committed to, in its Opposition to the Motion on the following schedule:

- 3 • Market and reimbursement data for out-of-network and in-network providers for
4 the Las Vegas, Nevada market by October 26, 2020 and for all other responsive Nevada and
5 national level market and reimbursement data as set by the Court at the October 22, 2020 status
6 check;
- 7 • Documents in support of United's affirmative defenses by November 6, 2020;
8 and
- 9 • Data iSight closure reports by October 23, 2020.

10 **IT IS FURTHER ORDERED** that, by October 13, 2020, the Health Care Providers
11 shall provide United a prioritization schedule of the remaining categories of information and
12 documents subject to this Order; and by October 20, 2020, United shall respond with proposed
13 dates of production and an explanation for same.

14 **IT IS FURTHER ORDERED** that the Court will hold a status check on October 22,
15 2020 at 10:00 a.m. to discuss United's compliance with this Order, the Health Care Provider's
16 prioritization schedule and to set deadlines by which United shall supplement and produce the
17 following:

- 18 • The identity of United representatives and other third parties that have
19 information about the allegations in the First Amended Complaint (NRCP
16.1 and Interrogatory No. 8);
- 20 • Market and reimbursement data related to out-of-network reimbursement
21 rates and related documents and analyses (Interrogatory Nos. 12; RFP Nos.
22 14, 19, 20, 22, 23, 24, 33, 34, 35, 38, 43);
- 23 • Methodology and sources of information used to determine amount to pay
24 emergency services and care for out-of-network providers and use of the
25 FAIR Health Database (Interrogatory Nos. 2, 3, 4, 10, 12; RFP Nos. 5, 8,
26 10, 15, 36, 38);
- 27 • Documents related to United's decision making and strategy in connection
28 with its out-of-network reimbursement rates and implementation thereof
(RFP Nos. 6, 7, 18, 32);
- Documents related to United's decision making and strategy in connection
with its in-network reimbursement rates and implementation thereof (RFP
Nos. 31);

- Rental, wrap, shared savings program or any other agreement that United contends allows it to pay less than full billed charges (Interrogatory Nos. 5, 7; RFP Nos. 9, 16);
- Market and reimbursement data related to in-network reimbursement rates and related documents and analyses (RFP Nos. 25, 26, 29, 30);
- Documents related to United's relationship with Data iSight and/or other third parties (Interrogatory Nos. 9; RFP Nos. 11, 12 and 21);
- Documents and communications about the at-issue claims (RFP Nos. 3, 17);
- Documents regarding negotiations between United and the Health Care Providers' representatives (RFP No. 13, 27, 28);
- Documents regarding challenges from other out-of-network emergency medicine groups regarding reimbursement rates paid (RFP No. 41); and
- Documents reflecting United's failure to effectuate a prompt settlement of any of the at-issue claims (RFP No. 42).

IT IS SO ORDERED.

Dated this 27th day of October, 2020

Nancy L Allf
DISTRICT COURT JUDGE

Submitted by:

McDONALD CARANO LLP

32A 40D 89AE 2AC4
Nancy Allf
District Court Judge

By: /s/ Kristen T. Gallagher
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Kristen T. Gallagher (NSBN 9561)
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Attorneys for Plaintiffs

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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

CASE NO: A-19-792978-B

8 vs.

DEPT. NO. Department 27

9 United Healthcare Insurance
10 Company, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Granting 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:

15 Service Date: 10/27/2020

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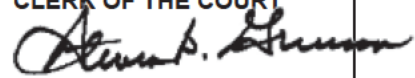
RA000129

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EXHIBIT 6

EXHIBIT 6



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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-19-792978-B

Dept. No.: XXVII

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

RA000131

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

DATED this 9th day of November, 2020.

McDONALD CARANO LLP

By: /s/ Kristen T. Gallagher

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

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

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Attorneys for Defendants

/s/ Marianne Carter
An employee of McDonald Carano LLP

Heather S. Linn

CLERK OF THE COURT

ORDER

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-19-792978-B

Dept. No.: XXVII

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

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

RA000134

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

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

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

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

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

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

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

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

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

2. October 26, 2020:

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

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

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

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

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

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

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

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

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

...

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

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

4 5. October 26, 2020:

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

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

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

14
15 **IT IS SO ORDERED.**

16 November 9, 2020

17 Dated this 9th day of November, 2020

18 
19

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

23 NB

Submitted by:

McDONALD CARANO LLP

By: /s/ Kristen T. Gallagher

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Attorneys for Plaintiffs

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3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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

CASE NO: A-19-792978-B

8 vs.

DEPT. NO. Department 27

9 United Healthcare Insurance
10 Company, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 11/9/2020

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RA000140

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EXHIBIT 7

EXHIBIT 7

WEINBERG WHEELER
HUDGINS GUNN & DIAL



RSPN

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-19-792978-B

Dept. No.: 27

**UNITEDHEALTH GROUP, INC.'S
RESPONSES TO PLAINTIFFS' FIRST
SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS**

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RA000142



Defendant UnitedHealth Group, Incorporated, by and through their attorneys of the law firm of Weinberg Wheeler Hudgins Gunn & Dial, LLC, hereby submit these responses to Plaintiffs' ("Plaintiffs") First Set of Requests for Production of Documents to UnitedHealth Group, Inc. ("Requests") as follows:

PRELIMINARY STATEMENT

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

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

Any documents produced in conjunction with these responses are being produced subject to the terms of Confidentiality and Protective Order entered on June 24, 2020.

Defendant is limiting its responses to the Requests to the reasonable time-frame of July 1, 2017 to present ("Relevant Period") and object to the Requests to the extent that Plaintiffs fails to limit the Requests to a specific time period.

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

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

RA000143



2. Defendant objects to the “Instructions,” “Definitions,” and “Rules of Construction” to the extent they purport to require the production of Protected Health Information or other confidential or proprietary information without confidentiality protections sufficient to protect such information from disclosure, such as those found in the Confidentiality and Protective Order entered on June 24, 2020.

3. Defendant objects to the definition of “Claim” or “Claims” as vague, not described with reasonable particularity, overbroad, unduly burdensome, not relevant to the claims or defenses in this case, and not proportional to the needs of this case to the extent they (1) include claims not specifically identified by Plaintiffs in FESM000344, or (2) relate to claims, patients, or health benefits plans for which Defendant is not responsible for the at-issue claims administration.

4. Defendant objects to the definition of “Data iSight” as vague, not described with reasonable particularity, overbroad, unduly burdensome, not relevant to the claims or defenses in this case, and not proportional to the needs of this case. Defendant contends that Plaintiffs do not fully or accurately describe Data iSight, which is a service offered by MultiPlan, Inc. that provides pricing information concerning medical claims.

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

6. Defendant objects to the definition of the terms “Defendant,” “Defendants,” “UH parties,” and “Sierra Affiliates” as used in the context of the Requests, and “You,” and/or “Your” as vague, not described with reasonable particularity, overbroad, unduly burdensome, not proportional to the needs of the case, and seeking information that is not relevant to the outcome of any claims or defenses in this litigation. Plaintiffs’ definition

RA000144



1 includes, for example, “predecessors-in-interest,” “partners,” “any past or present agents,”
2 and “every person acting or purporting to act, or who has ever acted or purported to act, on
3 their behalf,” which suggests that Plaintiffs seek materials beyond Defendant’s possession,
4 custody, or control. Defendant will not search for or produce materials beyond their
5 possession, custody, or control. Defendant has answered the Requests only based upon
6 Defendant’s knowledge, materials and information in Defendant’s possession, and belief
7 formed after reasonable inquiry.

8 7. Defendant objects to the definition of “Plaintiffs” as vague, not described
9 with reasonable particularity, overbroad, unduly burdensome, not proportional to the needs
10 of the case, and seeking information that is not relevant to the outcome of any claims or
11 defenses in this litigation. Plaintiff’s definition includes, for example, “any past or present
12 agents,” “representatives,” “partners,” “predecessors-in-interest,” “affiliates,” and “every
13 person acting or purporting to act, or who has ever acted or purported to act, on their behalf”
14 without identifying these entities or persons with reasonable particularity, and creating an
15 undue burden by requiring Defendant to identify them. In responding to the Requests,
16 Defendant will construe “Plaintiffs” to refer to those parties who were known to have been
17 affiliated with Fremont Emergency Services (Mandavia), Ltd., Team Physicians of Nevada-
18 Mandavia, P.C., and Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine
19 during the Relevant Period.

20 8. Defendant objects to the definition of “Emergency Medicine Group,”
21 “Emergency Services and Care,” “Emergency Medicine Services,” and “Emergency
22 Department Services” as vague, not described with reasonable particularity, overbroad,
23 unduly burdensome, not relevant to the claims or defenses in this case, and not proportional to
24 the needs of this case to the extent they (1) include any medical services not related to the at-
25 issue claims, or (2) relate to any medical services for claims, patients, or health benefits plans for
26 which Defendant is not responsible for the at-issue claims administration.

27 9. Defendant objects to the definition of “Nonemergency Services and Care” as
28 vague, not described with reasonable particularity, overbroad, unduly burdensome, not

RA000145



relevant to the claims or defenses in this case, and not proportional to the needs of this case to the extent it (1) includes services by not related to the at-issue claims, or (2) relates to the services for claims, patients, or health benefits plans for which Defendant is not responsible for the at-issue claims administration.

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

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

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

13. Defendant objects to Instruction No. 1 as vague and not described with reasonable particularity, as it uses the term “United,” but has otherwise only addressed this set of Requests to UnitedHealth Group, Inc. Defendant also objects to Instruction No. 1 to the extent it seeks to impose obligations and/or penalties on Defendants beyond what is contemplated by the Nevada Rules of Civil Procedure or applicable local rules.



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

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

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

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

RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1:

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

RESPONSE:

Subject to and without waiving Defendant’s objections, including Defendant’s specific objections to Plaintiffs’ Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

///

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REQUEST FOR PRODUCTION NO. 2:

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

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 3:

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

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 4:

Produce all Documents and/or Communications regarding Your adjudication and/or payment of each CLAIMS that Fremont submitted to You for payment between July 1, 2017, and the present.

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 5:

Produce any and all Documents and/or Communications relating to Your determination and/or calculation of the allowed amount and reimbursement for any of the CLAIMS, including

RA000148



the following: (i) the method by which the allowed amount and reimbursement for the Claim was calculated; (ii) the total amount You allowed and agreed to pay; (iii) any contractual or other allowance taken; and (iv) the method, date, and final amount of payment.

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 6:

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

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 7:

Produce any and all Documents and/or Communications supporting or relating to Your contention or belief that You are entitled to pay or allow less than Fremont's full billed charges for any of the CLAIMS.

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 8:

If you contend that any course of prior business dealing(s) by and between You and Fremont entitle(s) You to pay less than Fremont's full billed charges for any of the CLAIMS, or

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1 is otherwise relevant to the amounts paid for any of the CLAIMS, produce any Documents
2 and/or Communications relating to any such prior course of business dealing(s).

3 **RESPONSE:**

4 Subject to and without waiving Defendant's objections, including Defendant's specific
5 objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as
6 follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not
7 have any documents responsive to this request.

8 **REQUEST FOR PRODUCTION NO. 9:**

9 If you contend that any agreement(s) by and between You and Fremont entitles You to
10 pay less than Fremont's full billed charges for any of the CLAIMS, or is otherwise relevant to
11 the amounts paid for any of the CLAIMS, produce any Documents and/or Communications
12 relating to any such agreement(s).

13 **RESPONSE:**

14 Subject to and without waiving Defendant's objections, including Defendant's specific
15 objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as
16 follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not
17 have any documents responsive to this request.

18 **REQUEST FOR PRODUCTION NO. 10:**

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

23 **RESPONSE:**

24 Subject to and without waiving Defendant's objections, including Defendant's specific
25 objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as
26 follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not
27 have any documents responsive to this request.

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REQUEST FOR PRODUCTION NO. 11:

Produce all Documents and/or Communications between You and any third-party, including but not limited to Data iSight, relating to (a) any claim for payment for medical services rendered by Fremont to any Plan Member, or (b) any medical services rendered by Fremont to any Plan Member.

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 12:

Produce all Documents identifying and describing all products or services Data iSight, provides to You with respect to Your Health Plans issued in Nevada or any other state, including without limitation repricing services provided to You, whether You adjudicated and paid any claims in accordance with re-pricing information recommended by Data iSight, and the appeals administration services provided to You.

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 13:

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

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RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 14:

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

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 15:

Produce all Documents and/or Communications, reflecting, analyzing, or discussing the methodology you used to calculate or determine Non-Participating Provider reimbursement rates for Emergency Services in Nevada, including, but not limited to, any documents and/or communications you used or created in the process of calculating and/or determining the prevailing charges, the reasonable and customary charges, the usual and customary charges, the average area charges, the reasonable value, and/or the fair market value for Emergency Services in Clark County.

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

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REQUEST FOR PRODUCTION NO. 16:

Produce all Documents that refer, relate or otherwise reflect shared savings programs in Nevada for Fremont's out-of-network claims from July 1, 2017 to present. This request includes, without limitation, contracts with third parties regarding Your shared savings program, amounts invoiced by You to third parties for the shared savings program for Fremont's out-of-network claims, amount You were compensated for the shared savings program for Fremont's out-of-network claims.

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 17:

All Communications between You and any third-party, relating to (a) any CLAIM for payment for medical services rendered by Fremont to any Plan Member, or (b) any medical services rendered by Fremont to any Plan Member.

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request..

REQUEST FOR PRODUCTION NO. 18:

All documents and/or communications regarding the rationale, basis, or justification for the reduced rates for emergency services proposed to Fremont in or around 2017 to Present.

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not

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1 have any documents responsive to this request.

2 **REQUEST FOR PRODUCTION NO. 19:**

3 All documents regarding the Provider charges and/or reimbursement rates that You have
4 paid to Participating or Non-Participating Providers from July 1, 2017, to the present in Nevada.
5 Without waiving any right to seek further categories of documentation, at this juncture, Fremont
6 is willing to accept, in lieu of contractual documents, data which is blinded or redacted and/or
7 aggregated or summarized form.

8 **RESPONSE:**

9 Subject to and without waiving Defendant's objections, including Defendant's specific
10 objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as
11 follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not
12 have any documents responsive to this request.

13 **REQUEST FOR PRODUCTION NO. 20:**

14 All Documents relied on for the determination of the recommended rate of reimbursement
15 for any CLAIM by Fremont for payment for services rendered to any Plan Member. This request
16 includes, without limitation, all cost data, reimbursement data, and other data and Documents
17 upon which such recommended rates are based.

18 **RESPONSE:**

19 Subject to and without waiving Defendant's objections, including Defendant's specific
20 objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as
21 follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not
22 have any documents responsive to this request.

23 **REQUEST FOR PRODUCTION NO. 21:**

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

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1 **RESPONSE:**

2 Subject to and without waiving Defendant's objections, including Defendant's specific
3 objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as
4 follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not
5 have any documents responsive to this request.

6 **REQUEST FOR PRODUCTION NO. 22:**

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

10 **RESPONSE:**

11 Subject to and without waiving Defendant's objections, including Defendant's specific
12 objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as
13 follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not
14 have any documents responsive to this request.

15 **REQUEST FOR PRODUCTION NO. 23:**

16 Produce any and all Documents and/or Communications relating to any analysis of any
17 Nevada statutes or guidelines You currently use, or used during calendar or Plan years 2016,
18 2017, 2018 and/or 2019, to determine and/or calculate Your reimbursement of Non-Participating
19 Providers in Nevada for Emergency Medicine Services.

20 **RESPONSE:**

21 Subject to and without waiving Defendant's objections, including Defendant's specific
22 objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as
23 follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not
24 have any documents responsive to this request.

25 **REQUEST FOR PRODUCTION NO. 24:**

26 Produce any and all Documents and/or Communications relating to any analysis of
27 Nevada statutes with regard to the payment of the CLAIMS.

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RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 25:

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

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 26:

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

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 27:

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

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any participation agreements or contracts with Fremont in effect prior to July 1, 2017.

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 28:

Produce any and All Documents and/or Communications concerning, evidencing, or relating to any negotiations or discussions concerning non-participating provider reimbursement rates between the Sierra Affiliates and Fremont, including negotiations or discussions leading up to any participation agreements or contracts with Fremont in effect prior to March 1, 2019.

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 29:

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

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

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REQUEST FOR PRODUCTION NO. 30:

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

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 31:

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

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 32:

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

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific

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1 objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as
2 follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not
3 have any documents responsive to this request.

4 **REQUEST FOR PRODUCTION NO. 33:**

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

9 **RESPONSE:**

10 Subject to and without waiving Defendant's objections, including Defendant's specific
11 objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as
12 follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not
13 have any documents responsive to this request.

14 **REQUEST FOR PRODUCTION NO. 34:**

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

19 **RESPONSE:**

20 Subject to and without waiving Defendant's objections, including Defendant's specific
21 objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as
22 follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not
23 have any documents responsive to this request.

24 **REQUEST FOR PRODUCTION NO. 35:**

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

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RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 36:

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

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 37:

Produce any and all Documents and/or Communications concerning Emergency Medicine Services and/or Emergency Department Services You published, provided or made available to either Emergency Medicine Groups or Your Plan Members in Nevada from 2016 to the present concerning Your reimbursement of out-of-network services.

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 38:

Produce any and all Documents and/or Communications concerning ~~Reimbursement~~ **KA000160**



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

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 39:

Produce any and all Documents and/or Communications reflecting any policies, procedures, and/or protocols that You contend governs the appeal of Your adjudication and/or payment decision with respect to one or more of the CLAIMS.

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 40:

Produce any and all Documents and/or Communications regarding any appeals of adverse determinations, disputes of payment, or any submission of clinical information concerning the CLAIMS.

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

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REQUEST FOR PRODUCTION NO. 41:

Produce any and all Documents and/or Communications regarding any challenges by any other non-participating Emergency Medicine Group and/or any non-participating hospital or other non-participating provider of Emergency Department Services of the appropriateness of the reimbursement rates paid by You for Emergency Medicine Services and/or Emergency Department Services rendered to Your Plan Members from January 1, 2016, to the present.

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 42:

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

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 43:

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

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not

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have any documents responsive to this request.

REQUEST FOR PRODUCTION NO. 44:

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

RESPONSE:

Subject to and without waiving Defendant's objections, including Defendant's specific objections to Plaintiffs' Definitions, Instructions and Rules of Construction, Defendant states as follows: UnitedHealth Group, Incorporated is a publicly-traded holding company and does not have any documents responsive to this request.

Dated this 7th day of December, 2020.

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



CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of December, 2020, a true and correct copy of the foregoing **UNITEDHEALTH GROUP, INC.'S RESPONSES TO PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS** was electronically 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
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aperach@mcdonaldcarano.com
Attorneys for Plaintiffs

/s/ Cynthia S. Bowman

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

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EXHIBIT 8

EXHIBIT 8

Heather S. Linn
CLERK OF THE COURT

1 **OST**

D. Lee Roberts, Jr., Esq.

2 Nevada Bar No. 8877

lroberts@wwhgd.com

3 Colby L. Balkenbush, Esq.

Nevada Bar No. 13066

4 *cbalkenbush@wwhgd.com*

Brittany M. Llewellyn, Esq.

5 Nevada Bar No. 13527

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6 WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC

7 6385 South Rainbow Blvd., Suite 400

Las Vegas, Nevada 89118

8 Telephone: (702) 938-3838

Facsimile: (702) 938-3864

9 *Attorneys for Defendants*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

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

17 Plaintiffs,

18 vs.

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

26 Defendants.

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ENTERED kl

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

HEARING REQUESTED

**DEFENDANTS' MOTION TO CLARIFY
THE COURT'S OCTOBER 27, 2020
ORDER ON ORDER SHORTENING
TIME**

RA000165





Defendants UnitedHealth Group, Inc.; UnitedHealthcare Insurance Company; United HealthCare Services, Inc.; UMR, Inc.; Oxford Health Plans LLC (incorrectly named as “Oxford Health Plans, Inc.”); Sierra Health and Life Insurance Company, Inc.; Sierra Health-Care Options, Inc. and Health Plan of Nevada, Inc. (collectively, “United” or “Defendants”), , hereby submits the following Motion to Clarify the Court’s October 27, 2020 Order (“Motion”). This Motion is made and based upon the papers and pleadings on file herein, the Declaration of Counsel, the following memorandum of points and authorities, and any arguments made by counsel at the time of the hearing.

Dated this 9th day of December, 2020.

/s/ Colby L. Balkenbush

D. Lee Roberts, Jr., Esq.

Colby L. Balkenbush, Esq.

Brittany M. Llewellyn, Esq.

WEINBERG, WHEELER, HUDGINS,
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Natasha S. Fedder, Esq.

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400 S. Hope St., 18th Floor

Los Angeles, CA 90071

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admitted pro hac vice

Attorneys for 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.



**DECLARATION OF COLBY L. BALKENBUSH IN SUPPORT
OF HEARING MOTION ON ORDER SHORTENING TIME**

1. I am an attorney licensed to practice law in the State of Nevada, an attorney at Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, counsel for Defendants in the above-captioned matter.

2. This Declaration is submitted in support of Defendants' Motion to Clarify the Court's October 27, 2020 Order on Order Shortening Time. I have personal knowledge of the matters set forth herein and, unless otherwise stated, am competent to testify to the same if called upon to do so.

3. Plaintiffs have falsely and repeatedly accused Defendants of attempting to delay the discovery process in this litigation. To ensure that there can be no accusation of delay by Plaintiffs in regard to the filing of this Motion and the production of the documents at issue, Defendants request that this Motion be heard on shortened time. Good cause exists to hear the Motion on shortened time as the discovery cut-off in this action is currently December 30, 2020.

4. I declare that the foregoing is true and correct under the penalty of perjury under the laws of the state of Nevada.

DATED: December 9, 2020.

/s/ Colby L. Balkenbush
Colby L. Balkenbush, Esq.



ORDER SHORTENING TIME

Good cause appearing therefor, IT IS HEREBY ORDERED that the hearing on **DEFENDANTS' MOTION TO CLARIFY THE COURT'S OCTOBER 27, 2020 ORDER ON ORDER SHORTENING TIME** shall be shortened and heard before the above-entitled Court in Department XXVII on the 23rd day of December, 2020, at 9:30 a.m. a.m./p.m., or as soon thereafter as counsel may be heard; that Plaintiffs' opposition, if any, shall be electronically filed and served on or before the _____ day of _____, 2020.

Dated this 10th day of December, 2020

Nancy L Alf
DISTRICT COURT JUDGE

38B A06 C5EC 0F5D
Nancy Alf
District Court Judge

Submitted by:

/s/ Colby L. Balkenbush
D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Brittany M. Llewellyn, Esq.
WEINBERG, WHEELER, HUDGINS,
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Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Attorneys for Defendants



MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The purpose of this Motion is to clarify certain aspects of the Court's recent order to continue to move discovery forward in an efficient manner. For each point of clarification sought herein, Defendants' positions are based on Plaintiffs' own allegations in their First Amended Complaint ("FAC"), the specific claims for emergency medical services Plaintiffs' have placed at issue, and/or other discovery requests and representations by Plaintiffs.

On October 27, 2020, this Court entered an order granting Plaintiffs' Motion to Compel responses to certain requests for production of documents and interrogatories. **Exhibit 1.** United requests clarification of certain aspects of the order to ensure there can be no dispute regarding United's continuing compliance.

First, United seeks clarification regarding the relevant time period for the at-issue requests. While most of Plaintiffs' requests for production included a time limitation of July 1, 2017 to present, a handful of Plaintiffs' requests¹ do not include any specific time limitation, despite the limited time frame for the claims Plaintiffs placed at issue in this action. What is more, the outer time limit of "to present" is unworkable because it suggests that the endpoint for United's discovery obligations is a moving target. Therefore, United seeks clarification that the relevant time period for production of responsive, non-privileged documents is July 1, 2017 to January 31, 2020, which aligns with the time frame for the claims asserted in Plaintiffs' First Amended Complaint ("FAC"). FAC at ¶ 25(a).²

Second, while most of Plaintiffs' requests limit the geographic scope of the requests to Nevada, two of the requests³ do not contain a geographic limitation. United seeks clarification that the relevant geographic scope for production of responsive, non-privileged documents is Nevada, which is where Plaintiffs allege the services underlying the at-issue claims for

¹ **Exhibit 2** at RFP Nos. 11, 12, 15, 21, 22, 25, 33, 43.

² January 31, 2020 is the most recent date of service listed in Plaintiffs' claim spreadsheet (FESM000344).

³ *Id.* at RFP Nos. 12, 21.



1 emergency medical services were rendered. FAC at ¶¶ 17, 25.

2 Third, while most of Plaintiffs' discovery requests are expressly limited to seeking
3 information related to emergency medical services, two requests⁴ do not contain this limitation.
4 United seeks clarification that it is not required to produce information related to non-emergency
5 medical services, given that Plaintiffs allege in the FAC that the at-issue claims relate only to
6 underpayment for emergency medical services. FAC at ¶¶ 1, 17-18, 25. This requested
7 clarification would appropriately tailor the requests to the relevant issues in the case.

8 Fourth, two of Plaintiffs' requests express willingness to accept blinded data⁵—i.e., data
9 that blinds or redacts the names of non-party health care providers. The use of blinded data
10 makes sense for multiple reasons. These non-party providers are Plaintiffs' competitors and
11 other entities with whom Plaintiffs may contract. Absent blinding the data, Plaintiffs would have
12 a competitive advantage over their competitors because they would know exactly what amounts
13 those competitors charge and accept for medical services. In addition, United has contracts with
14 a number of these non-party providers that contain confidentiality clauses. Therefore, in an
15 effort to be consistent with Plaintiffs' previous representations, to avoid the above issues, and to
16 maintain compliance with the Court's order, United seeks clarification that it may blind or redact
17 the names of non-party health care providers, as well as other payers, from responsive
18 documents.

19 To ensure prompt productions, United has brought this Motion on an order shortening
20 time and submitted for *in-camera* review a representative sample of responsive documents it has
21 located to date that contain (1) pre-July 2017 information, (2) information related to states other
22 than Nevada, (3) information related to non-emergency medical services, and (4) information
23 related to other health care providers. Some of the documents submitted for *in-camera* review
24 contain non-Nevada information and non-emergency medical services information mixed with
25 Nevada and emergency services related information. For those documents, United seeks to

26
27 ⁴ *Id.*

28 ⁵ *Id.* at RFP Nos. 19 and 26.



redact the non-Nevada and non-emergency services information in full and to blind the names of non-party Nevada providers of emergency services. United has included an example in the documents it has submitted for *in-camera* review.⁶

II. DEFENDANTS' REQUESTS FOR CLARIFICATION

A. Defendants Seek Clarification Concerning Plaintiffs' Requests for Production Where No Time Frame Was Specified And/Or Where No End Date Was Given

Many of Plaintiffs' discovery requests are limited to a specific time period, and most of those are limited to July 1, 2017 to present. *See e.g.*, **Exhibit 2** at RFP No. 19 (Plaintiffs' First Set of Requests for Production); **Exhibit 2** at p. 10 (stating that "unless otherwise indicated, the timeframe for these interrogatories is July 1, 2017 through the present and continuing.") (Plaintiffs' First Set of Interrogatories). However, the following discovery requests from Plaintiffs contain no time limitation: RFP Nos. 11, 12, 15, 21, 22, 25, 33, 43. **Exhibit 2**. For example, RFP No. 22 requests "*all Documents and/or Communications relating to any analysis of the usual and customary provider charges for similar services in Nevada for Emergency Medicine Services.*" *Id.* Similarly, RFP No. 33 seeks all "*complaints about Your level of payment for Emergency Medicine Services and/or Emergency Department Services⁷ received from out-of-network providers.*" *Id.* As written, these requests could be interpreted as purporting to require United to produce documents outside the time period relevant to the at-issue health benefit claims (i.e., July 1, 2017 to January 31, 2020). Therefore, United seeks clarification that the relevant time period for production of responsive, non-privileged documents is July 1, 2017 to January 31, 2020, which is consistent with Plaintiffs' FAC. FAC at ¶ 25(a). This time period is also consistent with the time limitation Plaintiffs placed on other requests for production (*see e.g.*, **Exhibit 2** at RFP No. 19) and the limitation Plaintiffs imposed on all of

⁶ To date, United has fully complied with the Court's order to the best of its ability. To the extent that documents and information are discovered based on the Court's clarification of the order and United's own continued diligence, United will supplement its discovery responses and productions. *See* NRCP 26(e).

⁷ Plaintiffs' define "Emergency Medicine Services" and "Emergency Department Services" to be limited to emergency services provided in Nevada. **Exhibit 2** at pp. 4-5. However, these terms are not time limited.



1 their interrogatories. **Exhibit 2** at p. 10.

2 Further, RFP Nos. 4, 14, 16, 18, 19, 26, 29, 30, 31, 32, 34, 35, 36, 37, 38, and 41 seek
3 documents from a particular starting date (i.e. July 1, 2017) “*to present.*” The Court should
4 clarify that United is required only to produce documents up to January 31, 2020, which is the
5 most recent date of service listed in Plaintiffs’ claim spreadsheet (FESM000344). An outer limit
6 is necessary for both parties to complete discovery without having to continuously supplement
7 productions as, for example, health benefits claims are presumably being continuously submitted
8 by Plaintiffs to Defendants as Defendants’ members receive services from Plaintiffs.

9 **B. Defendants Seek Clarification Concerning Plaintiffs’ Requests for**
10 **Production Where No Geographic Scope Was Specified or Where the**
11 **Geographic Scope is Nationwide**

12 Plaintiffs specifically limited the geographic scope of many of their discovery requests to
13 Nevada. *See e.g., Exhibit 2* at RFP No. 22; *Exhibit 3* at ROG No. 10. However, the following
14 requests contain no geographic limitation or purport to request nationwide data: RFP Nos. 12,
15 21. **Exhibit 2.** RFP No. 12 seeks “*all Documents identifying and describing all products or*
16 *services Data iSight provides to You with respect to Your Health Plans issued in Nevada or any*
17 *other state...*” *Id.* (emphasis added). Similarly, RFP No. 21 seeks “[a]ll Documents relating to .
18 . . the services performed by Data iSight.” *Id.* United seeks clarification that it is not required to
19 produce documents or information that relate to services provided *outside* of Nevada, given that
20 Plaintiffs’ FAC makes clear that the at-issue claims arise only out of emergency medical services
21 provided *in Nevada*. FAC at ¶¶ 17, 25. United also proposes to redact information for states
22 other than Nevada. This clarification and approach is consistent with this Court’s recent order
23 where it struck from the Plaintiffs’ proposed order language that would have required United to
24 produce national level market data, but retained language requiring production of Nevada market
25 data. *See Exhibit 4* at 3:8 and 5:5 (November 9, 2020 Order Setting Defendants’ Production &
26 Response Schedule).

26 **C. Defendants Seek Clarification Concerning Responsive Documents that**
27 **Include Information Related to Non-Emergency Medical Services**

28 Many of Plaintiffs’ discovery requests are limited to seeking information related to

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emergency medical services. *See e.g.*, **Exhibit 2** at RFP No. 22; **Exhibit 3** at ROG No. 12. However, the following discovery requests do not contain this limitation: RFP Nos. 12, 21. **Exhibit 2.** United seeks clarification that such discovery requests not be construed to require the production of documents or information that relate to non-emergency medical services, given that Plaintiffs' FAC is clear that "[t]his action arises out of a dispute concerning the rate at which Defendants reimburse the Health Care Providers for the emergency medicine services they have already provided." FAC at ¶ 1; *see also* FAC at ¶¶ 17-18, 25. United also proposes to redact information that relates to non-emergency services, as it is irrelevant to the Parties' dispute.⁸ This clarification would tailor RFP Nos. 12 and 21 to Plaintiffs' claims and allegations in the FAC, which pertain only to emergency medical services. *Id.*

D. Defendants Seek Clarification Concerning Responsive Documents that Include the Names of Non-Party Providers and Payers

Certain documents responsive to Plaintiffs' discovery requests include the names of non-party providers and payers. United seeks clarification that it may redact the names of all non-party providers and payers that appear in these documents. Such a clarification is appropriate because (1) in RFP Nos. 19 and 26 Plaintiffs agreed to permit Defendants to produce responsive documents with non-party provider names redacted (*see Exhibit 2*), (2) the names of the non-party providers and payers are irrelevant to the dispute before the Court, and (3) these non-party providers are Plaintiffs' competitors and entities with whom Plaintiffs may contract. Plaintiffs would be given a significant competitive advantage if they had access to the amounts charged and accepted by their competitors.⁹ Under United's proposed clarification, the data related to the

⁸ For example, on certain Data iSight Specialty Reports which have been submitted with this Motion for *in-camera* review, there are rows of data for "ER - Inpatient," "ER - Outpatient" and "Emergency Room," but there are also fields of data for "Anesthesia," "Dialysis" and "Home Health," among others. United seeks clarification that it may redact all rows of data other than the rows that relate to emergency medical services.

⁹ As a practical matter, United's agreements with providers generally contain confidentiality provisions such that United would need to obtain non-party provider consent to any production subject to such provisions, which would complicate and prolong the discovery process. In addition, as Plaintiffs know, United may at times enter into separate non-disclosure agreements with providers that may restrict production of information of the type requested by Plaintiffs.



party providers and payers would remain unredacted.

III. RESERVATION OF RIGHTS

In an effort to reduce the burden on the Court, United limited this Motion to address—in United’s view—current discovery issues where Plaintiffs have overreached based on the Court’s October 27, 2020 order. United reserves its rights to seek further clarification of the Court’s order if new and/or related disputes arise with Plaintiffs concerning competing interpretations and arguments regarding the scope of the Court’s October 27, 2020.

IV. CONCLUSION

United requests that the Court clarify the October 27, 2020 order as follows:

(1) Clarify that for RFP Nos. 11, 12, 15, 21, 22, 25, 33 and 43, United is required to produce responsive documents for the time period of July 1, 2017 to January 31, 2020 only;

(2) Clarify that for RFP Nos. 4, 14, 16, 18, 19, 26, 29, 30, 31, 32, 34, 35, 36, 37, 38, and 41, which request documents from a particular starting date “to present,” United only has to produce documents from the starting date to January 31, 2020.

(3) Clarify that for RFP Nos. 12 and 21, United is not required to produce any documents that relate to information from states other than Nevada;

(4) Clarify that for RFP Nos. 12 and 21, United is not required to produce any documents that relate to information for non-emergency medical services.

(5) Clarify that where non-Nevada and non-emergency medical services related information is mixed with Nevada and emergency medical services related information, United shall produce the responsive documents but may redact the non-Nevada and non-emergency medical services information.

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(6) Clarify that United may redact the names of non-party providers and payers in any documents it produces.

Dated this 9th day of December, 2020.

/s/ Colby L. Balkenbush

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Sierra Health and Life Insurance Co., Inc.,

Sierra Health-Care Options, Inc., and

Health Plan of Nevada, Inc.



CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of December, 2020, a true and correct copy of the foregoing **DEFENDANTS' MOTION TO CLARIFY THE COURT'S OCTOBER 27, 2020 ORDER ON ORDER SHORTENING TIME** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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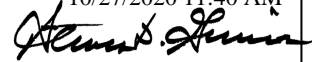
/s/ Kelly L. Pierce

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EXHIBIT 1

EXHIBIT 1


CLERK OF THE COURT

OGM

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

**ORDER GRANTING PLAINTIFFS'
MOTION TO COMPEL DEFENDANTS'
LIST OF WITNESSES, PRODUCTION
OF DOCUMENTS AND ANSWERS TO
INTERROGATORIES ON ORDER
SHORTENING TIME**

This matter came before the Court on October 8, 2020 on the Motion to Compel
Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on

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Order Shortening Time (the “Motion”) filed by 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”). Pat Lundvall, Kristen T. Gallagher and Amanda M. Perach, McDonald Carano LLP, appeared on behalf of the Health Care Providers. Lee Roberts and Colby L. Balkenbush, Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, appeared on behalf of 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”).

The Court, having considered the Motion, United’s opposition, and the argument of counsel at the hearing on this matter and good cause appearing therefor, makes the following findings and Order:

FINDINGS OF FACT

1. On August 9, 2019, prior to remand to this Court, United made its initial disclosures pursuant to FRCP 26(a). On August 13, 2020 and August 31, 2020, United served its first and second supplement to initial disclosures. United’s initial list of witnesses (detailed in the Joint Case Conference Report) did not include a single United representative. After the Health Care Providers pointed this out, United supplemented, listing only three United representatives on its Second Supplement to NRCP 16.1 list of witnesses. United identified one additional United witness in its Third Supplement to NRCP 16.1 list of witnesses.

2. On December 9, 2019, the Health Care Providers propounded their First Set of Interrogatories (“Interrogatories”) and First Set of Requests for Production of Documents (“RFPs”) on United.

3. On January 29, 2020, United served its objections and responses to the Health Care Providers’ RFPs and answers to Interrogatories. On July 10, 2020, United served its Third Supplemental Responses to RFPs.

1 4. As set forth in the Motion, the Health Care Providers discharged their meet and
2 confer obligations pursuant to EDCR 2.34.

3 5. The scope of permissible discovery is broad. NRCP 26 permits parties to “obtain
4 discovery regarding any nonprivileged matter that is relevant to any party’s claims or defenses
5 and proportional to the needs of the case....” *See* NRCP 26(b)(1). A party may move to compel
6 disclosure of documents and electronically stored information and if a party fails to produce
7 documents responsive to a request made pursuant to NRCP 34; as well as an answer to
8 interrogatories. NRCP 37(a)(3)(B)(iii)-(iv). Furthermore, “an evasive or incomplete disclosure,
9 answer, or response must be treated as a failure to disclose, answer, or respond” NRCP 37(a)(4).

10 6. The Health Care Providers moved to compel United to identify witnesses, as well
11 as answer interrogatories and produce documents in connection with the following categories of
12 information:

- 13 • The identity of United representatives and other third parties that have
14 information about the allegations in the First Amended Complaint (NRCP
15 16.1 and Interrogatory No. 8);
- 16 • Market and reimbursement data related to out-of-network reimbursement
17 rates and related documents and analyses (Interrogatory Nos. 12; RFP Nos.
18 14, 19, 20, 22, 23, 24, 33, 34, 35, 38,¹ 43);
- 19 • Methodology and sources of information used to determine amount to pay
20 emergency services and care for out-of-network providers and use of the
21 FAIR Health Database (Interrogatory Nos. 2, 3, 4, 10, 12; RFP Nos. 5, 8,
22 10, 15, 36, 38);
- 23 • Documents related to United’s decision making and strategy in connection
24 with its out-of-network reimbursement rates and implementation thereof
25 (RFP Nos. 6, 7, 18, 32);
- 26 • Documents related to United’s decision making and strategy in connection
27 with its in-network reimbursement rates and implementation thereof (RFP
28 Nos. 31);
- Rental, wrap, shared savings program or any other agreement that United
 contends allows it to pay less than full billed charges (Interrogatory Nos. 5,
 7; RFP Nos. 9, 16);
- Market and reimbursement data related to in-network reimbursement rates
 and related documents and analyses (RFP Nos. 25, 26, 29, 30);

¹ RFP No. 38 is listed twice because it seeks documents concerning for both out-of-network and
in-network adjudication of emergency services.

- Documents related to United's relationship with Data iSight and/or other third parties (Interrogatory Nos. 9; RFP Nos. 11, 12 and 21);
- Documents and communications about the at-issue claims (RFP Nos. 3, 17);
- Documents regarding negotiations between United and the Health Care Providers' representatives (RFP No. 13, 27, 28);
- Documents regarding challenges from other out-of-network emergency medicine groups regarding reimbursement rates paid (RFP No. 41);
- Documents reflecting United's failure to effectuate a prompt settlement of any of the at-issue claims (RFP No. 42); and
- Documents relating to United's affirmative defenses (RFP No. 45).

7. For the reasons set forth in the Motion and at the hearing, the Court finds that the Health Care Providers have established grounds to compel United to supplement its list of witnesses, answers to Interrogatories, responses to RFPs and production of documents as requested in the Motion and set forth herein.

8. United's objections set forth in its Opposition and at the hearing are overruled in their entirety.

9. The Court finds that United has not participated in discovery with sufficient effort and has not taken a rational approach to its discovery obligations.

10. In the event that United does not meet the deadlines of the Court, the Court will have no choice but to make negative inferences.

Accordingly, good cause appearing, therefor,

ORDER

IT IS HEREBY ORDERED that the Health Care Providers' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time is GRANTED IN ITS ENTIRETY.

IT IS FURTHER ORDERED that United is hereby compelled to fully and completely supplement its list of witnesses, provide full and complete supplemental answers to Interrogatories and responses to Requests for Production of Documents and produce documents, as follows:

- The identity of United representatives and other third parties that have information about the allegations in the First Amended Complaint (NRCP 16.1 and Interrogatory No. 8);
- Market and reimbursement data related to out-of-network reimbursement rates and related documents and analyses (Interrogatory Nos. 12; RFP Nos. 14, 19, 20, 22, 23, 24, 33, 34, 35, 38,² 43);
- Methodology and sources of information used to determine amount to pay emergency services and care for out-of-network providers and use of the FAIR Health Database (Interrogatory Nos. 2, 3, 4, 10, 12; RFP Nos. 5, 8, 10, 15, 36, 38);
- Documents related to United's decision making and strategy in connection with its out-of-network reimbursement rates and implementation thereof (RFP Nos. 6, 7, 18, 32);
- Documents related to United's decision making and strategy in connection with its in-network reimbursement rates and implementation thereof (RFP Nos. 31);
- Rental, wrap, shared savings program or any other agreement that United contends allows it to pay less than full billed charges (Interrogatory Nos. 5, 7; RFP Nos. 9, 16);
- Market and reimbursement data related to in-network reimbursement rates and related documents and analyses (RFP Nos. 25, 26, 29, 30);
- Documents related to United's relationship with Data iSight and/or other third parties (Interrogatory Nos. 9; RFP Nos. 11, 12 and 21);
- Documents and communications about the at-issue claims (RFP Nos. 3, 17);
- Documents regarding negotiations between United and the Health Care Providers' representatives (RFP No. 13, 27, 28);
- Documents regarding challenges from other out-of-network emergency medicine groups regarding reimbursement rates paid (RFP No. 41);
- Documents reflecting United's failure to effectuate a prompt settlement of any of the at-issue claims (RFP No. 42); and
- Documents relating to United's affirmative defenses (RFP No. 45).

IT IS FURTHER ORDERED that United's Objections, both written and oral, to each of the foregoing interrogatories, requests for production of documents and initial disclosure obligations are **OVERRULED** in their entirety.

² RFP No. 38 is listed twice because it seeks documents concerning for both out-of-network and in-network adjudication of emergency services.

1 **IT IS FURTHER ORDERED** that United shall produce documents identified in, and
2 committed to, in its Opposition to the Motion on the following schedule:

- 3 • Market and reimbursement data for out-of-network and in-network providers for
4 the Las Vegas, Nevada market by October 26, 2020 and for all other responsive Nevada and
5 national level market and reimbursement data as set by the Court at the October 22, 2020 status
6 check;
- 7 • Documents in support of United's affirmative defenses by November 6, 2020;
8 and
- 9 • Data iSight closure reports by October 23, 2020.

10 **IT IS FURTHER ORDERED** that, by October 13, 2020, the Health Care Providers
11 shall provide United a prioritization schedule of the remaining categories of information and
12 documents subject to this Order; and by October 20, 2020, United shall respond with proposed
13 dates of production and an explanation for same.

14 **IT IS FURTHER ORDERED** that the Court will hold a status check on October 22,
15 2020 at 10:00 a.m. to discuss United's compliance with this Order, the Health Care Provider's
16 prioritization schedule and to set deadlines by which United shall supplement and produce the
17 following:

- 18 • The identity of United representatives and other third parties that have
19 information about the allegations in the First Amended Complaint (NRCP
16.1 and Interrogatory No. 8);
- 20 • Market and reimbursement data related to out-of-network reimbursement
21 rates and related documents and analyses (Interrogatory Nos. 12; RFP Nos.
22 14, 19, 20, 22, 23, 24, 33, 34, 35, 38, 43);
- 23 • Methodology and sources of information used to determine amount to pay
24 emergency services and care for out-of-network providers and use of the
25 FAIR Health Database (Interrogatory Nos. 2, 3, 4, 10, 12; RFP Nos. 5, 8,
26 10, 15, 36, 38);
- 27 • Documents related to United's decision making and strategy in connection
28 with its out-of-network reimbursement rates and implementation thereof
(RFP Nos. 6, 7, 18, 32);
- Documents related to United's decision making and strategy in connection
with its in-network reimbursement rates and implementation thereof (RFP
Nos. 31);

- Rental, wrap, shared savings program or any other agreement that United contends allows it to pay less than full billed charges (Interrogatory Nos. 5, 7; RFP Nos. 9, 16);
- Market and reimbursement data related to in-network reimbursement rates and related documents and analyses (RFP Nos. 25, 26, 29, 30);
- Documents related to United's relationship with Data iSight and/or other third parties (Interrogatory Nos. 9; RFP Nos. 11, 12 and 21);
- Documents and communications about the at-issue claims (RFP Nos. 3, 17);
- Documents regarding negotiations between United and the Health Care Providers' representatives (RFP No. 13, 27, 28);
- Documents regarding challenges from other out-of-network emergency medicine groups regarding reimbursement rates paid (RFP No. 41); and
- Documents reflecting United's failure to effectuate a prompt settlement of any of the at-issue claims (RFP No. 42).

IT IS SO ORDERED.

Dated this 27th day of October, 2020

Nancy L Allf
DISTRICT COURT JUDGE

Submitted by:

McDONALD CARANO LLP

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Nancy Allf
District Court Judge

By: /s/ Kristen T. Gallagher
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2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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

CASE NO: A-19-792978-B

8 vs.

DEPT. NO. Department 27

9 United Healthcare Insurance
10 Company, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
13 This automated certificate of service was generated by the Eighth Judicial District
14 Court. The foregoing Order Granting 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:

15 Service Date: 10/27/2020

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EXHIBIT 2

EXHIBIT 2

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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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

Plaintiff,

vs.

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

Defendants.

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

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

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure plaintiff Fremont
Emergency Services (Mandavia), Ltd. ("Fremont") serves the following First Set of Requests for
Production of Documents ("Document Requests") to defendants United HealthCare Insurance
Company ("UHCIC"), United HealthCare Services, Inc. ("UHC Services"), UMR, Inc. ("UMR"),
Oxford Health Plans, Inc. ("Oxford" and collectively the "UH Parties"), Sierra Health and Life

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Insurance Company, Inc. (“Sierra”), Sierra Health-Care Options, Inc. (“Sierra Options”) and Health Plan of Nevada, Inc. (“HPN” and with “Sierra and Sierra Options, the “Sierra Affiliates” and collectively with the UH Parties, “United HealthCare”) and asks that United HealthCare respond in writing within thirty (30) days of the date of service, to McDonald Carano LLP, 2300 West Sahara Avenue, Suite 1200, Las Vegas, Nevada 89102. These Document Requests are continuing in nature and Defendant must timely supplement the answers to them under Fed. R. Civ. P. 26(e) whenever a response is in some material respect incomplete or incorrect.

DEFINITIONS

1. “Communicate” means every manner or means of disclosure or transfer or exchange of information whether orally, by document or otherwise, and whether face to face, in a meeting, by telephone or other electronic media, mail, personal delivery or otherwise.

2. “Communication” means the transfer of information from a person or entity, place, location, format, or medium to another person or entity, place, location, format, or medium, without regard to the means employed to accomplish such transfer of information, but including without limitation oral, written and electronic information transfers. Each such information transfer, if interrupted or otherwise separated in time, is a separate communication.

3. “Document” is defined to be synonymous in meaning and equal or exceeding in scope to the usage of this term in Fed. R. Civ. P. 34(a). It includes images, words and symbols that are electronically stored and which, if printed on paper, would be the text of a document, as well as metadata contained within particular electronic files. It also means all written or graphic matter of every kind or description however produced or reproduced whether in draft, in final, original or reproduction, signed or unsigned, whether or not now in existence, and regardless of whether approved, sent, received, redrafted or executed, and includes without limiting the generality of its meaning all correspondence, telegrams, notes, e-mail, video or sound recordings of any type of communication(s), conversation(s), meeting(s), or conference(s), minutes of meetings, memoranda, interoffice communications, intra office communications, notations, correspondence, diaries, desk calendars, appointment books, reports, studies, analyses, summaries, results of investigations or tests, reviews, contracts, agreements, working papers, tax

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returns, statistical records, ledgers, books of account, vouchers, bank checks, bank statements, invoices, receipts, records, business records, photographs, tape or sound recordings, maps, charts, photographs, plats, drawings or other graphic representations, logs, investigators' reports, stenographers' notebooks, manuals, directives, bulletins, computer data, computer records, or data compilations of any type or kind of material similar to any of the foregoing however denominated and to whomever addressed. "Document" shall include but is not limited to any electronically stored data on magnetic or optical storage media as an "active" file (readily readable by one or more computer applications or forensic software); any "deleted" but recoverable electronic files on said media; any electronic file fragments (files that have been deleted and partially overwritten with new data); and slack (data fragments stored randomly from random access memory on a hard drive during the normal operation of a computer [RAM slack] or residual data left on the hard drive after new data has overwritten some but not all of the previously stored data. "Document" shall exclude exact duplicates when originals are available but shall include all copies made different from originals by virtue of any writings, notations, symbols, characters, impressions or any marks thereon.

4. Data iSight is the trademark of an analytics service owned by National Care Network, LLC. Data iSight and National Care Network, LLC are collectively referred to as "Data iSight."

5. "Fremont" shall mean and refer to Fremont Emergency Services (Mandavia), Ltd. and/or any past or present agents, representatives, employees, partners, principals, members, assigns, predecessors-in-interest, successors-in-interest, affiliates and every person acting or purporting to act, or who has ever acted or purported to act, on its behalf.

6. "Defendants," "You," or "Your" shall mean and refer to Defendants United HealthCare Insurance Company, United HealthCare Services, Inc., UMR, Inc., Oxford Health Plans, Inc., Sierra Health and Life Insurance Company, Inc., Sierra Health-Care Options, Inc. and Health Plan of Nevada, Inc. and/or any past or present agents, representatives, employees, partners, principals, members, assigns, predecessors-in-interest, successors-in-interest, and every person acting or purporting to act, or who has ever acted or purported to act, on their behalf.

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7. “UH Parties” means and refers to defendants United HealthCare Insurance Company, United HealthCare Services, Inc., UMR, Inc. and Oxford Health Plans, Inc.

8. “Sierra Affiliates” means and refers to defendants Sierra Health and Life Insurance Company, Inc., Sierra Health-Care Options, Inc., and Health Plan of Nevada, Inc.

9. “Lawsuit” shall mean and refer to the lawsuit styled *Fremont Emergency Services (Mandavia), Ltd. v. United HealthCare Insurance Company, et al.* filed in the Eighth Judicial District Court, Clark County, Nevada, Case No. A-19-792978-B and removed to the United States District Court, D. Nevada, Case No. 2:19-cv-00832-JAD-VCF.

10. A “claim” means any billing instrument or request for reimbursement by a Provider for medical services provided.

11. “CLAIM” or “CLAIMS” means those claims for reimbursement for Emergency Services and Care or Nonemergency Services and Care provided by Fremont to Your Plan Members for dates of service on or after July 1, 2017 (UH Parties) and on or after March 1, 2019 (Sierra Affiliates).

12. “Emergency Services and Care” means medical screening, examination, and evaluation by a physician or, to the extent permitted by applicable law, by other appropriate personnel under the supervision of a physician, to determine if an emergency medical condition exists, and if the physician or personnel determines that it does exist, the care, treatment, or surgery for a covered service by a physician necessary to relieve or eliminate the emergency medical condition within the service capability of a hospital.

13. “Emergency Medicine Services” shall mean and refer to evaluation and management services (described by CPT codes 99281-99285), critical care services (described by CPT codes 99291-92) and the associated procedures performed by Fremont in the State of Nevada.

14. “Emergency Medicine Group” shall mean and refer to any or all groups of physicians, mid-level practitioners and other healthcare providers that staff hospital emergency departments, observations units and urgent care clinics in the State of Nevada, whether the group is structured as a professional corporation, a limited liability corporation, partnership, or otherwise.

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15. "Emergency Department Services" shall mean all services performed in the emergency department of a hospital in the State of Nevada by a hospital, physicians of any specialty (not limited to emergency medicine physicians), nurses or any healthcare providers.

16. "Nonemergency Services and Care" means medical services and care which are not Emergency Services and Care.

17. "Non-Participating Provider" or "Non-Network Provider" means a healthcare provider who has not been designated by You as a "participating" or "network" provider.

18. "Participating Provider" or "Network Provider" means a healthcare provider who has an agreement with You as an independent contractor or otherwise, or who has been designated by You, to provide services to Plan Members.

19. "Plan" means any health benefit product or program, including but not limited to an HMO, an Exclusive Provider Organization ("EPO") or Preferred Provider Organization ("PPO") product or program, issued, administered, or serviced by You.

20. "Plan Member" means an individual covered by or enrolled in a Plan.

21. "Provider" means any physician, hospital, or other institution, organization, or person that furnishes health care services and is licensed to do so in the state where those services are furnished.

INSTRUCTIONS

1. These Document Requests seek all requested documents that are in Defendant's possession, custody, and/or control, including without limitation, any records depositories or archives.

2. Copies of requested documents that differ from other copies of the document by reason of alterations, margin notes, comments, attached materials, or otherwise shall be considered separate documents and shall be produced separately.

3. Documents that are physically attached to, segregated and/or separated from other documents, whether by inclusion in binders, files, sub files, or by use of dividers, tabs, or any other method, shall be left so attached, segregated, and/or separated when produced, and shall be retained in the order in which they are maintained, in the file where they are found.

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4. If you contend that any document requested to be produced, or any part thereof, is protected from discovery by the attorney-client privilege, work product doctrine, or some other ground or privilege or immunity, as required under Rule 26(b)(5) of the Federal Rules of Civil Procedure, produce a log that identifies each document withheld and provides at a minimum the following information:

- a. the place, date, and manner of preparation or other recording of the document;
- b. the title and subject matter of the document;
- c. the identity and position of the author, the addressee, and all recipients of the document; and
- d. a statement of (i) the nature of the legal privilege claimed or other reason for withholding the document and (ii) the factual basis for that claim of privilege or other reason for withholding, including the facts establishing any claim of privilege, the facts showing that the privilege has not been waived, the status of the person claiming the privilege, and a statement as to whether the contents of the document are limited to legal advice or contain other subject matter.

5. For each document from which portions were withheld pursuant to instruction 4, identify and produce all other portions of the document not so withheld.

6. Scope of Answers. In answering these Document Requests, you are requested to furnish all information available to you, however obtained, including hearsay, information known by you or in your possession or appearing in your records, information in the possession of your attorneys, your investigators, and all persons acting on your behalf, and not merely the information known of your own personal knowledge.

7. Qualification of Answers. If your answer is in any way qualified, please state the exact nature and extent of the qualification.

8. If additional information or documents become known to Defendant regarding any of these Document Requests following the initial response and submission to Plaintiff, supplementation of the response with such information is required.

9. For each document produced, identify the specific document request number or numbers to which the document is responsive.

10. All documents are to be produced as they are kept in the usual course of business including any labels, file markings, or similar identifying features, or shall be organized and

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1 labeled to correspond to the categories requested herein. If there are no documents in response to
2 a particular request, or if you withhold any responsive documents or categories of documents
3 based on any objections, You shall state so in writing.

4 11. Where a request seeks the production of electronically stored information ("ESI"),
5 that information must be produced in its native format with corresponding load files containing
6 the document's text and all available metadata. For purposes of these discovery requests, "native
7 format" means a file saved in the format designated by the original application used to create it.

8 12. If you object to any Request in part, you shall respond fully to the extent not
9 objected to, and set forth specifically the grounds upon which the objection is based.

10 13. If you cannot answer a Request fully after exercising due diligence to secure the
11 documents requested, so state and respond to the extent possible, specifying your inability to
12 respond to the remainder, the reasons therefore, the steps taken to secure the documents that were
13 not produced, and stating whatever information or knowledge you have concerning the missing
14 documents. Please also identify the person you believe to have possession of the missing
15 documents, and the facts upon which you base your response.

16 **RULES OF CONSTRUCTION**

17 1. The terms "relate to," "related to," "relating to," "relative to," and "in relation to,"
18 include without limitation "refer to," "summarize," "reflect," "constitute," "concern," "contain,"
19 "embody," "mention," "show," "comprise," "evidence," "discuss," "describe," or "pertaining to."

20 2. The term "concerning" means and includes without limitation "regarding,"
21 "pertaining to," "reflecting," "referring to," "relating to," "containing," "embodying,"
22 "mentioning," "evidencing," "constituting," or "describing."

23 3. The use of the masculine gender, as used herein, also means the feminine, or neuter,
24 whichever makes a discovery interrogatory more inclusive.

25 4. The words "and" and "or" shall be construed conjunctively or disjunctively,
26 whichever makes a discovery interrogatory more inclusive.

27 5. The use of the singular form of any word includes the plural and vice versa.

28 6. The terms "person or entity" and "persons or entities" mean any individual, firm,

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1 corporation, joint venture, partnership, association, fund, other organization, or any collection or
2 combination thereof.

3 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

4 **REQUEST FOR PRODUCTION NO. 1:**

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

7 **REQUEST FOR PRODUCTION NO. 2:**

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

10 **REQUEST FOR PRODUCTION NO. 3:**

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

13 **REQUEST FOR PRODUCTION NO. 4:**

14 Produce all Documents and/or Communications regarding Your adjudication and/or
15 payment of each CLAIMS that Fremont submitted to You for payment between July 1, 2017, and
16 the present.

17 **REQUEST FOR PRODUCTION NO. 5:**

18 Produce any and all Documents and/or Communications relating to Your determination
19 and/or calculation of the allowed amount and reimbursement for any of the CLAIMS, including
20 the following: (i) the method by which the allowed amount and reimbursement for the Claim was
21 calculated; (ii) the total amount You allowed and agreed to pay; (iii) any contractual or other
22 allowance taken; and (iv) the method, date, and final amount of payment.

23 **REQUEST FOR PRODUCTION NO. 6:**

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

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REQUEST FOR PRODUCTION NO. 7:

Produce any and all Documents and/or Communications supporting or relating to Your contention or belief that You are entitled to pay or allow less than Fremont's full billed charges for any of the CLAIMS.

REQUEST FOR PRODUCTION NO. 8:

If you contend that any course of prior business dealing(s) by and between You and Fremont entitle(s) You to pay less than Fremont's full billed charges for any of the CLAIMS, or is otherwise relevant to the amounts paid for any of the CLAIMS, produce any Documents and/or Communications relating to any such prior course of business dealing(s).

REQUEST FOR PRODUCTION NO. 9:

If you contend that any agreement(s) by and between You and Fremont entitles You to pay less than Fremont's full billed charges for any of the CLAIMS, or is otherwise relevant to the amounts paid for any of the CLAIMS, produce any Documents and/or Communications relating to any such agreement(s).

REQUEST FOR PRODUCTION NO. 10:

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

REQUEST FOR PRODUCTION NO. 11:

Produce all Documents and/or Communications between You and any third-party, including but not limited to Data iSight, relating to (a) any claim for payment for medical services rendered by Fremont to any Plan Member, or (b) any medical services rendered by Fremont to any Plan Member.

REQUEST FOR PRODUCTION NO. 12:

Produce all Documents identifying and describing all products or services Data iSight, provides to You with respect to Your Health Plans issued in Nevada or any other state, including without limitation repricing services provided to You, whether You adjudicated and paid any

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claims in accordance with re-pricing information recommended by Data iSight, and the appeals administration services provided to You.

REQUEST FOR PRODUCTION NO. 13:

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

REQUEST FOR PRODUCTION NO. 14:

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

REQUEST FOR PRODUCTION NO. 15:

Produce all Documents and/or Communications, reflecting, analyzing, or discussing the methodology you used to calculate or determine Non-Participating Provider reimbursement rates for Emergency Services in Nevada, including, but not limited to, any documents and/or communications you used or created in the process of calculating and/or determining the prevailing charges, the reasonable and customary charges, the usual and customary charges, the average area charges, the reasonable value, and/or the fair market value for Emergency Services in Clark County.

REQUEST FOR PRODUCTION NO. 16:

Produce all Documents that refer, relate or otherwise reflect shared savings programs in Nevada for Fremont's out-of-network claims from July 1, 2017 to present. This request includes, without limitation, contracts with third parties regarding Your shared savings program, amounts invoiced by You to third parties for the shared savings program for Fremont's out-of-network claims, amount You were compensated for the shared savings program for Fremont's out-of-network claims.

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REQUEST FOR PRODUCTION NO. 17:

All Communications between You and any third-party, relating to (a) any CLAIM for payment for medical services rendered by Fremont to any Plan Member, or (b) any medical services rendered by Fremont to any Plan Member.

REQUEST FOR PRODUCTION NO. 18:

All documents and/or communications regarding the rational, basis, or justification for the reduced rates for emergency services proposed to Fremont in or around 2017 to Present.

REQUEST FOR PRODUCTION NO. 19:

All documents regarding the Provider charges and/or reimbursement rates that You have paid to Participating or Non-Participating Providers from July 1, 2017, to the present in Nevada. Without waiving any right to seek further categories of documentation, at this juncture, Fremont is willing to accept, in lieu of contractual documents, data which is blinded or redacted and/or aggregated or summarized form.

REQUEST FOR PRODUCTION NO. 20:

All Documents relied on for the determination of the recommended rate of reimbursement for any CLAIM by Fremont for payment for services rendered to any Plan Member. This request includes, without limitation, all cost data, reimbursement data, and other data and Documents upon which such recommended rates are based.

REQUEST FOR PRODUCTION NO. 21:

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

REQUEST FOR PRODUCTION NO. 22:

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

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REQUEST FOR PRODUCTION NO. 23:

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

REQUEST FOR PRODUCTION NO. 24:

Produce any and all Documents and/or Communications relating to any analysis of Nevada statutes with regard to the payment of the CLAIMS.

REQUEST FOR PRODUCTION NO. 25:

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

REQUEST FOR PRODUCTION NO. 26:

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

REQUEST FOR PRODUCTION NO. 27:

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

REQUEST FOR PRODUCTION NO. 28:

Produce any and All Documents and/or Communications concerning, evidencing, or relating to any negotiations or discussions concerning non-participating provider reimbursement rates between the Sierra Affiliates and Fremont, including negotiations or discussions leading up to any participation agreements or contracts with Fremont in effect prior to March 1, 2019.

REQUEST FOR PRODUCTION NO. 29:

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

REQUEST FOR PRODUCTION NO. 30:

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

REQUEST FOR PRODUCTION NO. 31:

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

REQUEST FOR PRODUCTION NO. 32:

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

REQUEST FOR PRODUCTION NO. 33:

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

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REQUEST FOR PRODUCTION NO. 34:

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

REQUEST FOR PRODUCTION NO. 35:

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

REQUEST FOR PRODUCTION NO. 36:

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

REQUEST FOR PRODUCTION NO. 37:

Produce any and all Documents and/or Communications concerning Emergency Medicine Services and/or Emergency Department Services You published, provided or made available to either Emergency Medicine Groups or Your Plan Members in Nevada from 2016 to the present concerning Your reimbursement of out-of-network services.

REQUEST FOR PRODUCTION NO. 38:

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

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REQUEST FOR PRODUCTION NO. 39:

Produce any and all Documents and/or Communications reflecting any policies, procedures, and/or protocols that You contend governs the appeal of Your adjudication and/or payment decision with respect to one or more of the CLAIMS.

REQUEST FOR PRODUCTION NO. 40:

Produce any and all Documents and/or Communications regarding any appeals of adverse determinations, disputes of payment, or any submission of clinical information concerning the CLAIMS.

REQUEST FOR PRODUCTION NO. 41:

Produce any and all Documents and/or Communications regarding any challenges by any other non-participating Emergency Medicine Group and/or any non-participating hospital or other non-participating provider of Emergency Department Services of the appropriateness of the reimbursement rates paid by You for Emergency Medicine Services and/or Emergency Department Services rendered to Your Plan Members from January 1, 2016, to the present.

REQUEST FOR PRODUCTION NO. 42:

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

REQUEST FOR PRODUCTION NO. 43:

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

REQUEST FOR PRODUCTION NO. 44:

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

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REQUEST FOR PRODUCTION NO. 45:

Produce any and all Documents and/or Communications supporting, refuting, or relating to Your affirmative defenses identified in Your Answers to Fremont's First Set of Interrogatories to Defendants.

DATED this 9th day of December, 2019.

McDONALD CARANO LLP

By: /s/ Kristen T. Gallagher

Pat Lundvall (NSBN 3761)
Kristen T. Gallagher (NSBN 9561)
Amanda M. Perach (NSBN 12399)
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aperach@mcdonaldcarano.com

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

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 9th day of December, 2019, I caused a true and correct copy of the foregoing **FREMONT EMERGENCY SERVICES (MANDAVIA), LTD.'S FIRST SET OF REQUESTS FOR PRODUCTION TO DEFENDANTS** to be served via hand delivery as follows:

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Josephine E. Groh, Esq.
WEINBERG, WHEELER, HUDGINS,
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*Attorneys for Defendants UnitedHealthcare
Insurance Company, United HealthCare
Services, Inc., UMR, Inc., Oxford Health
Plans, Inc., Sierra Health and Life Insurance
Co., Inc., Sierra Health-Care Options, Inc.,
and Health Plan of Nevada, Inc.*

/s/ Marianne Carter
An employee of McDonald Carano LLP

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EXHIBIT 3

EXHIBIT 3

PAT LUNDVALL (NSBN 3761)
KRISTEN T. GALLAGHER (NSBN 9561)
AMANDA M. PERACH (NSBN 12399)
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*Attorneys for Plaintiff Fremont Emergency
Services (Mandavia), Ltd.*

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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

Plaintiff,

vs.

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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.,
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NEVADA, INC., a Nevada corporation;
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Defendants.

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

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

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("UHC Services"), UMR, Inc. ("UMR"), Oxford Health Plans, Inc. ("Oxford") (collectively the
"UH, Sierra Health and Life Insurance Company, Inc. ("Sierra"), Sierra Health-Care Options, Inc.
("Sierra Options") and Health Plan of Nevada, Inc. ("HPN") ("HPN" and with "Sierra and Sierra

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Options, the “Sierra Affiliates” and collectively with the UH Parties, “United HealthCare”) and asks that Defendants respond in writing within thirty (30) days of the date of service, to McDonald Carano LLP, 2300 West Sahara Avenue, Suite 1200, Las Vegas, Nevada 89102. These Interrogatories are continuing in nature and Defendant must timely supplement the answers to them under Fed. R. Civ. P. 26(e) whenever a response is in some material respect incomplete or incorrect.

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1. “Communicate” means every manner or means of disclosure or transfer or exchange of information whether orally, by document or otherwise, and whether face to face, in a meeting, by telephone or other electronic media, mail, personal delivery or otherwise.

2. “Communication” means the transfer of information from a person or entity, place, location, format, or medium to another person or entity, place, location, format, or medium, without regard to the means employed to accomplish such transfer of information, but including without limitation oral, written and electronic information transfers. Each such information transfer, if interrupted or otherwise separated in time, is a separate communication.

3. “Document” is defined to be synonymous in meaning and equal or exceeding in scope to the usage of this term in Federal Rule of Civil Procedure 34(a). It includes images, words and symbols that are electronically stored and which, if printed on paper, would be the text of a document, as well as metadata contained within particular electronic files. It also means all written or graphic matter of every kind or description however produced or reproduced whether in draft, in final, original or reproduction, signed or unsigned, whether or not now in existence, and regardless of whether approved, sent, received, redrafted or executed, and includes without limiting the generality of its meaning all correspondence, telegrams, notes, e-mail, video or sound recordings of any type of communication(s), conversation(s), meeting(s), or conference(s), minutes of meetings, memoranda, interoffice communications, intra office communications, notations, correspondence, diaries, desk calendars, appointment books, reports, studies, analyses, summaries, results of investigations or tests, reviews, contracts, agreements, working papers, tax returns, statistical records, ledgers, books of account, vouchers, bank checks, bank statements,

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1 invoices, receipts, records, business records, photographs, tape or sound recordings, maps, charts,
2 photographs, plats, drawings or other graphic representations, logs, investigators' reports,
3 stenographers' notebooks, manuals, directives, bulletins, computer data, computer records, or data
4 compilations of any type or kind of material similar to any of the foregoing however denominated
5 and to whomever addressed. "Document" shall include but is not limited to any electronically
6 stored data on magnetic or optical storage media as an "active" file (readily readable by one or
7 more computer applications or forensic software); any "deleted" but recoverable electronic files
8 on said media; any electronic file fragments (files that have been deleted and partially overwritten
9 with new data); and slack (data fragments stored randomly from random access memory on a hard
10 drive during the normal operation of a computer [RAM slack] or residual data left on the hard
11 drive after new data has overwritten some but not all of the previously stored data. "Document"
12 shall exclude exact duplicates when originals are available but shall include all copies made
13 different from originals by virtue of any writings, notations, symbols, characters, impressions or
14 any marks thereon.

15 4. The term "ESI" means and refers to information created, manipulated,
16 communicated, stored (on-site and/or off-site), and best utilized in electronic, digital, and/or native
17 form, including, without limitation, the following: data; metadata; e-mail; word-processing
18 documents; spreadsheets; presentation documents; graphics; animations; images; audio, video,
19 and audiovisual recordings; voicemail; text messages; and the like (including attachments to any
20 of the foregoing) stored on databases, networks, computers, computer systems, servers, archives,
21 backup or data recovery systems, discs, CDs, diskettes, drives, tapes, cartridges, printers, the
22 internet, personal digital assistants, handheld wireless devices, cellular phones, smart phones,
23 pagers, facsimile machines, telephone systems, voicemail systems, and/or other storage media,
24 requiring the use of computer hardware and software.

25 5. "Plaintiff" and "Fremont" shall mean and refer to Fremont Emergency Services
26 (Mandavia), Ltd. and/or any past or present agents, representatives, employees, partners,
27 principals, members, assigns, predecessors-in-interest, successors-in-interest, affiliates, and every
28 person acting or purporting to act, or who has ever acted or purported to act, on their behalf.

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6. “Defendants,” “You,” or “Your” shall mean and refer to Defendants United HealthCare Insurance Company, United HealthCare Services, Inc., UMR, Inc., Oxford Health Plans, Inc., Sierra Health and Life Insurance Company, Inc., Sierra Health-Care Options, Inc. and Health Plan of Nevada, Inc. and/or any past or present agents, representatives, employees, partners, principals, members, assigns, predecessors-in-interest, successors-in-interest, and every person acting or purporting to act, or who has ever acted or purported to act, on their behalf.

7. “UH Parties” means and refers to defendants United HealthCare Insurance Company, United HealthCare Services, Inc., UMR, Inc. and Oxford Health Plans, Inc.

8. “Sierra Affiliates” means and refers to defendants Sierra Health and Life Insurance Company, Inc., Sierra Health-Care Options, Inc., and Health Plan of Nevada, Inc.

9. “Lawsuit” shall mean and refer to the lawsuit styled *Fremont Emergency Services (Mandavia), Ltd. v. United HealthCare Insurance Company, et al.* filed in the Eighth Judicial District Court, Clark County, Nevada, Case No. A-19-792978-B and removed to the United States District Court, D. Nevada, Case No. 2:19-cv-00832-JAD-VCF.

10. A “claim” means any billing instrument or request for reimbursement by a Provider for medical services provided.

11. “CLAIM” or “CLAIMS” means those claims for reimbursement for Emergency Services and Care or Nonemergency Services and Care provided by Fremont to Your Plan Members for dates of service on or after July 1, 2017 (UH Parties) and on or after March 1, 2019 (Sierra Affiliates).

12. “Clark County Market” means the geographic market located in Clark County, Nevada.

13. “Emergency Services and Care” means medical screening, examination, and evaluation by a physician or, to the extent permitted by applicable law, by other appropriate personnel under the supervision of a physician, to determine if an emergency medical condition exists, and if the physician or personnel determines that it does exist, the care, treatment, or surgery for a covered service by a physician necessary to relieve or eliminate the emergency medical condition within the service capability of a hospital.

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14. “Emergency Medicine Services” shall mean and refer to evaluation and management services (described by CPT codes 99281-99285), critical care services (described by CPT codes 99291-92) and the associated procedures performed by Fremont in the State of Nevada.

15. “Emergency Medicine Group” shall mean and refer to any or all groups of physicians, mid-level practitioners and other healthcare providers that staff hospital emergency departments, observations units and urgent care clinics in the State of Nevada, whether the group is structured as a professional corporation, a limited liability corporation, partnership, or otherwise.

16. “Emergency Department Services” shall mean all services performed in the emergency department of a hospital in the State of Nevada by a hospital, physicians of any specialty (not limited to emergency medicine physicians), nurses or any healthcare providers.

17. “HMO” means a health maintenance organization pursuant to NRS Chapter 695C.

18. “Nonemergency Services and Care” means medical services and care which are not Emergency Services and Care.

19. “Non-Participating Provider” or “Non-Network Provider” means a healthcare provider who has not been designated by You as a “participating” or “network” provider.

20. “Participating Provider” or “Network Provider” means a healthcare provider who has an agreement with You as an independent contractor or otherwise, or who has been designated by You, to provide services to Plan Members.

21. “Plan” means any health benefit product or program, including but not limited to an HMO, an Exclusive Provider Organization (“EPO”) or Preferred Provider Organization (“PPO”) product or program, issued, administered, or serviced by You.

22. “Plan Member” means an individual covered by or enrolled in a Plan.

23. “Provider” means any physician, hospital, or other institution, organization, or person that furnishes health care services and is licensed to do so in the state where those services are furnished.

...

...

RA000210

INSTRUCTIONS

1. The terms “identify,” “identity,” or “identification,” when used in reference to a natural person, mean to give, to the extent known, the person's full name, present or last known address and telephone number, the present or last known business affiliation, including business address and telephone number, and their prior or current connection, interest or association with any Party to this litigation. Once a person has been identified in accordance with this paragraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

2. The terms “identify,” “identity,” or “identification,” when used in reference to an entity that is not a natural person, mean to state the entity’s name and describe its form of business organization (e.g., a Nevada limited liability company), the present or last known address and telephone number of its principal place of business, its resident agent in Nevada, if any, the identity of all persons affiliated with the organization having knowledge or documents concerning this lawsuit, and the entity’s prior or current connection, interest or association with any Party to this litigation, including without limitation any account names and numbers. Once an entity has been identified in accordance with this paragraph, only the name of that entity need be listed in response to subsequent discovery requesting the identification of that entity.

3. The terms “identify,” “identity,” or “identification,” when used in reference to a document, mean to state (a) its title and subject matter; (b) its form (e.g., “canceled check,” “payment voucher,” “e-mail message,” “letter,” etc.); (c) its date of preparation; (d) the date appearing thereon, if any; (e) the number of pages comprising the writing; (f) the identity of each person who wrote, dictated or otherwise participated in the preparation or creation of the document; (g) the identity of each person who signed, initialed or otherwise marked the document; (h) the identity of each person to whom the document was addressed; (i) the identity of each person who received the document or reviewed it; (j) the location of the document; and (k) the identity of each person having custody of the document. Documents to be identified shall include both documents in your possession, custody, or control, and all other documents of which you have knowledge. If you at any time had possession or control of a document called for identification

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1 under this Set of Interrogatories and if such document has been lost, destroyed, purged, or is not
2 presently in your possession or control, you shall describe the writing, the date of its loss,
3 destruction, purge or separation from possession or control, the circumstances surrounding its loss,
4 destruction, purge or separation from possession or control, and identify each person or entity that
5 may have possession or control of a copy or the original of such document.

6 4. These interrogatories reach all documents that are known and/or believed by you
7 to exist. If you have knowledge of the existence of documents responsive to these interrogatories
8 but contend that they are not within your possession, custody and/or control, please provide the
9 following information:

- 10 a. A description of the documents, including in your description as much detail as
11 possible;
12 b. The identity of the person or entity, including his, her or its address, believed by
13 you to have possession or custody of the document or any copies of them at this
14 time; and
15 c. A description of the efforts, if any, you have made to obtain possession or custody
16 of the documents.

15 5. If you contend that any document requested to be identified or produced, or any
16 part thereof, is protected from discovery by the attorney-client privilege, work product doctrine,
17 or some other ground or privilege or immunity, each such document shall be identified with at
18 least the following information:

- 19 a. A description of the nature of the document, *e.g.*, "letter," "memorandum,"
20 "report," "miscellaneous note," etc., and the number of pages it comprises;
21 b. The date, and if no date appears thereon, the identification shall so state and
22 shall give the date or approximate date such document was prepared;
23 c. A brief description of the subject matter;
24 d. The location of the document, including the name, address and
25 organizational affiliation of its custodian;
26 e. The name and address of each person who signed, initialed or otherwise
27 marked on such document and the organization, if any, with which each such person was then
28 affiliated;
f. The name and address of each person who asked that the document be
prepared and the organization, if any, with which each such person was then affiliated;

1 g. The name and address of each person who prepared or participated in the
2 preparation of such document and the organization, if any, with which each such person was then
3 affiliated;

4 h. The name and address of each recipient of such document and the
5 organization, if any, with which each such person was then affiliated;

6 i. The name and address of all other distributees or persons who have seen
7 the document and the organization, if any, with which each such person was then affiliated;

8 j. All attorneys involved in the preparation or receipt of such document, if the
9 attorney-client privilege or work product protection is claimed as to such document;

10 k. A statement of the grounds for refusal to produce such documents.

11 6. Whenever you are asked to identify or describe an oral communication, or when
12 an answer to an interrogatory refers to one, with respect to the oral communication:

13 a. Provide the date and place of the communication and whether it was in
14 person or by telephone;

15 b. Identify all persons who participated in and/or heard any part of it,
16 sufficient to allow for service of process on such individuals;

17 c. The organization, if any, with which each participant was then connected;

18 d. Describe the substance of what each person said in the course of it; and

19 e. Identify all documents related to such communication.

20 7. If you contend that any oral communication requested to be identified is protected
21 from discovery by the attorney-client privilege, work product doctrine, or some other ground or
22 privilege or immunity, each such communication shall be identified with at least the following:

23 a. Provide the date and place of the communication and whether it was in
24 person or by telephone;

25 b. Identify all persons who participated in and/or heard any part of it,
26 sufficient to allow for service of process on such individuals;

27 c. The organization, if any, with which each participant was then connected;

28 d. A brief description of the nature/subject matter of the communication;

e. Identify all documents related to such communication; and

f. A statement of the grounds for refusal to disclose the specifics of the
communication.

1 8. These interrogatories shall be deemed to be continuing, and any additional
2 information and/or documents relating in any way to these interrogatories or your original
3 responses that are acquired subsequent to the date of responding to these interrogatories, up to and
4 including the time of trial, shall be furnished to Plaintiff promptly after such information or
5 documents are acquired as supplemental responses to these interrogatories.

6 9. These interrogatories call for all information (including information contained in
7 documents) known or reasonably available to you, your attorneys, investigators, representatives,
8 agents or others acting on your behalf or under your direction or control, not merely such
9 information as is known of your own personal knowledge. Each answer must be as complete and
10 straightforward as the information reasonably available to you permits. If an interrogatory cannot
11 be answered completely, answer it to the fullest extent possible.

12 10. If you cannot answer an interrogatory fully after exercising due diligence to secure
13 the information requested, so state and answer the interrogatory to the extent possible, specifying
14 your inability to answer the remainder, the reasons therefor, the steps taken to secure the answers
15 to the unanswered portions, and stating whatever information or knowledge you have concerning
16 the unanswered portions. Please also identify the person you believe to have such knowledge,
17 what you believe to be the correct answer, and the facts upon which you base your answers or
18 beliefs.

19 11. If you consult any persons or entities or documents in answering these
20 interrogatories, identify in regard to each such interrogatory the persons and/or entities and/or
21 document consulted.

22 12. Where your answer or a portion thereof is given upon information and belief, other
23 than personal knowledge, please so state and describe and/or identify the sources of such
24 information and belief.

25 13. All other requirements of Rules 26, 33, and 34 of the Federal Rules of Civil
26 Procedure are hereby incorporated by reference.

27 ...

28 ...

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RULES OF CONSTRUCTION

1. The terms “relate to,” “related to,” “relating to,” “relative to,” and “in relation to,” include without limitation “refer to,” “summarize,” “reflect,” “constitute,” “concern,” “contain,” “embody,” “mention,” “show,” “comprise,” “evidence,” “discuss,” “describe,” or “pertaining to.”

2. The term “concerning” means and includes without limitation “regarding,” “pertaining to,” “reflecting,” “referring to,” “relating to,” “containing,” “embodying,” “mentioning,” “evidencing,” “constituting,” or “describing.”

3. The use of the masculine gender, as used herein, also means the feminine, or neuter, whichever makes a discovery interrogatory more inclusive.

4. The words “and” and “or” shall be construed conjunctively or disjunctively, whichever makes a discovery interrogatory more inclusive.

5. The use of the singular form of any word includes the plural and vice versa.

INTERROGATORIES

Unless otherwise indicated, the timeframe for these Interrogatories is July 1, 2017 through the present and continuing.

INTERROGATORY NO. 1:

Once You determine Fremont’s CLAIMS are covered and payable under Your Plan, explain why You do not reimburse Fremont for the CLAIMS at the full billed amount.

INTERROGATORY NO. 2:

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

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INTERROGATORY NO. 3:

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

INTERROGATORY NO. 4:

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

INTERROGATORY NO. 5:

If You contend that any agreement(s) by and between You and Fremont entitles or entitled You to pay less than Fremont's full billed charges for any of the CLAIMS, or is otherwise relevant to the amounts paid for any of the CLAIMS, identify that agreement, specifying the portion(s) thereof that You contend entitles or entitled You to pay less than Fremont's full billed charges.

INTERROGATORY NO. 6:

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

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INTERROGATORY NO. 7:

If You rely in whole or in part on the rates from any agreement(s) with any other provider in determining the amount of reimbursement for the CLAIMS, describe in detail such agreement(s), including the rates of reimbursement and other payment scales under those agreements, and any provisions regarding the directing or steorage of Plan Members to those providers.

INTERROGATORY NO. 8:

Identify all persons with knowledge of the following subject areas, identifying for each person their name, address, phone number, employer, title, and the subject matter(s) of their knowledge:

(a) The development of the methodology, the materials considered in developing the methodology, and the methodology itself You used to calculate the allowed amount and the amount of Your alleged payment obligations for the CLAIMS in the Clark County Market;

(b) Communications with Fremont regarding the CLAIMS;

(c) To the extent that You contend or rely on provider charges by other providers to determine Your alleged payment obligation for the CLAIMS, the identity of those other providers, the amount of their charges, and any agreement(s) with those providers regarding those charges.

INTERROGATORY NO. 9:

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

INTERROGATORY NO. 10:

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

...

INTERROGATORY NO. 11:

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

INTERROGATORY NO. 12:

Identify all companies that You have entered into an agreement, contract, subscription or other arrangement by which You receive information regarding usual and customary fees or rates for Emergency Medicine Services provided by Non-Participating Providers or Non-Network Providers in Clark County, Nevada.

INTERROGATORY NO. 13:

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

INTERROGATORY NO. 14:

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

DATED this 9th day of December, 2019.

McDONALD CARANO LLP

By: /s/ Kristen T. Gallagher
Pat Lundvall (NSBN 3761)
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*Attorneys for Plaintiff Fremont Emergency
Services (Mandavia), Ltd.*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 9th day of December, 2019, I caused a true and correct copy of the foregoing **FREMONT EMERGENCY SERVICES (MANDAVIA), LTD.'S FIRST SET OF INTERROGATORIES TO DEFENDANTS** to be served via hand delivery upon the following:

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Josephine E. Groh, Esq.
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
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*Attorneys for Defendants UnitedHealthcare
Insurance Company, United HealthCare
Services, Inc., UMR, Inc., Oxford Health
Plans, Inc., Sierra Health and Life Insurance
Co., Inc., Sierra Health-Care Options, Inc.,
and Health Plan of Nevada, Inc.*

/s/ Marianne Carter
An employee of McDonald Carano LLP

EXHIBIT 4

EXHIBIT 4

Heather S. Linn
CLERK OF THE COURT

ORDER

Pat Lundvall (NSBN 3761)
Kristen T. Gallagher (NSBN 9561)
Amanda M. Perach (NSBN 12399)
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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

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

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

RA000221

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

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

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

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

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

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

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

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

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

2. October 26, 2020:

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

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

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

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

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

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

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

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

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

...

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

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

4 5. October 26, 2020:

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

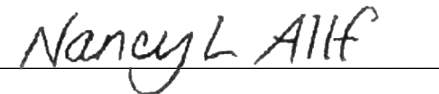
10 **IT IS FURTHER ORDERED** that in connection with the Court's September 28 Order
11 the parties shall comply with the following claims data matching protocol:

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

14
15 **IT IS SO ORDERED.**

16 November 9, 2020

17 Dated this 9th day of November, 2020

18 

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

22 NB

23
24
25
26
27
28 **RA000225**

Submitted by:

McDONALD CARANO LLP

By: /s/ Kristen T. Gallagher

Pat Lundvall (NSBN 3761)

Kristen T. Gallagher (NSBN 9561)

Amanda M. Perach (NSBN 12399)

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Attorneys for Plaintiffs

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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

CASE NO: A-19-792978-B

8 vs.

DEPT. NO. Department 27

9 United Healthcare Insurance
10 Company, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12
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14 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 11/9/2020

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1 **CSERV**

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3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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

CASE NO: A-19-792978-B

8 vs.

DEPT. NO. Department 27

9 United Healthcare Insurance
10 Company, Defendant(s)

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15 Service Date: 12/10/2020

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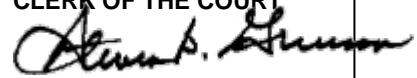
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EXHIBIT 9

EXHIBIT 9



NEOJ

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-19-792978-B

Dept. No.: XXVII

NOTICE OF ENTRY OF ORDER:

**GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO CLARIFY THE
COURT'S OCTOBER 27, 2020 ORDER
ON ORDER SHORTENING TIME**

AND

**ORDER DENYING
COUNTERMOTION FOR ORDER TO
SHOW CAUSE WHY DEFENDANTS
SHOULD NOT BE HELD IN
CONTEMPT AND FOR SANCTIONS
WITHOUT PREJUDICE**

RA000231

PLEASE TAKE NOTICE that an Order Granting in Part and Denying in Part Defendants' Motion to Clarify the Court's October 27, 2020 Order on Order Shortening Time And Order Denying Countermotion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions Without Prejudice was entered on January 20, 2021, a copy of which is attached hereto.

DATED this 21st day of January, 2021.

McDONALD CARANO LLP

By: /s/ Kristen T. Gallagher

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Attorneys for Plaintiffs

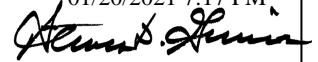
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 21st day of January, 2021, I caused a true and correct copy of the foregoing **NOTICE OF ORDER ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO CLARIFY THE COURT'S OCTOBER 27, 2020 ORDER ON ORDER SHORTENING TIME AND ORDER DENYING COUNTERMOTION FOR ORDER TO SHOW CAUSE WHY DEFENDANTS SHOULD NOT BE HELD IN CONTEMPT AND FOR SANCTIONS WITHOUT PREJUDICE** to be served via this Court's Electronic Filing system in the above-captioned case, upon the following:

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Colby L. Balkenbush, Esq.
Brittany Llewellyn, Esq.
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GUNN & DIAL, LLC
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Attorneys for Defendants

/s/ Marianne Carter
An employee of McDonald Carano LLP


CLERK OF THE COURT

ORDER

Pat Lundvall (NSBN 3761)
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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-19-792978-B

Dept. No.: XXVII

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO CLARIFY THE COURT'S
OCTOBER 27, 2020 ORDER ON
ORDER SHORTENING TIME**

AND

**ORDER DENYING
COUNTERMOTION FOR ORDER TO
SHOW CAUSE WHY DEFENDANTS
SHOULD NOT BE HELD IN
CONTEMPT AND FOR SANCTIONS
WITHOUT PREJUDICE**

Hearing Date: December 23, 2020

Hearing Time: 9:30 a.m.

This matter came before the Court on December 23, 2020 on defendants UnitedHealth
Group, Inc.; UnitedHealthcare Insurance Company; United HealthCare Services, Inc.; UMR,

RA000234

1 Inc.; Oxford Health Plans, Inc.; Sierra Health and Life Insurance Co., Inc.; Sierra Health-Care
2 Options, Inc.; and Health Plan of Nevada, Inc.'s (collectively, "United") Motion for Protective
3 Order Regarding Confidentiality Designations (the "Motion"). Colby Balkenbush and Brittany
4 Llewellyn, Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, and Natasha S. Fedder, O'Melveny
5 & Myers LLP, appeared on behalf of United. Pat Lundvall, Kristen T. Gallagher and Amanda
6 M. Perach, McDonald Carano LLP, appeared on behalf of plaintiffs Fremont Emergency
7 Services (Mandavia), Ltd. ("Fremont"); Team Physicians of Nevada-Mandavia, P.C. ("Team
8 Physicians"); Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine ("Ruby
9 Crest" and collectively the "Health Care Providers").

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

13 **ORDER**

14 **IT IS HEREBY ORDERED** that United's Motion to Clarify is GRANTED IN PART
15 as follows:

16 (1) In connection with Fremont's First Set of Requests for Production of
17 Documents, the time period for Request Nos. 4, 11, 12, 14, 15, 16, 18, 19, 21, 22, 25, 26, 29, 30,
18 31, 32, 33, 34, 35, 36, 37, 38, 41 and 43 shall be through January 31, 2020; and

19 (2) United may redact the names of non-party providers in documents it
20 produces as long as any redaction is appropriate under applicable legal standards; however, the
21 Court does not grant United's request to redact non-party providers for all purposes. In the event
22 United inappropriately redacts non-party provider information, the Health Care Providers may
23 move to compel.

24 **IT IS FURTHER ORDERED** that United's Motion to Clarify is DENIED in all other
25 respects as follows:

26 (1) United shall not impose a geography limitation in connection with its
27 responses to Request Nos. 12 and 21 of Fremont's First Set of Requests for Production of
28 Documents;

(2) United shall produce documents relating to emergency and non-emergency medical services in connection with its responses to Request Nos. 12 and 21 of Fremont's First Set of Requests for Production of Documents; and

(3) United shall not be entitled to redact non-Nevada and non-emergency medical services information; and

(4) United shall not be entitled to redact payer information.

IT IS FURTHER ORDERED that the Health Care Providers' Countermotion for order to show cause and for sanctions is DENIED without prejudice and the Health Care Providers may renew the request in the event there is not an immediate response to United by the issues raised in the Countermotion.

January 20, 2021

Dated this 20th day of January, 2021

Nancy L Alf

9CB 8D6 D3B9 90C9

NB

Nancy Alf
District Court Judge

Submitted by:

[Approved] [Disapproved] as to content:

McDONALD CARANO LLP

WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC

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[disapproved]
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Attorneys for Defendants

1 **CSERV**

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3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

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

CASE NO: A-19-792978-B

8 vs.

DEPT. NO. Department 27

9 United Healthcare Insurance
10 Company, Defendant(s)

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| Natasha Fedder | nfedder@omm.com |

EXHIBIT 10

EXHIBIT 10

IN THE SUPREME COURT OF THE STATE OF NEVADA

UNITED HEALTHCARE INSURANCE
COMPANY; UNITED HEALTH CARE
SERVICES, INC.; UMR, INC.; OXFORD
HEALTH PLANS, INC.; SIERRA
HEALTH AND LIFE INSURANCE
COMPANY, INC.; SIERRA HEALTH-
CARE OPTIONS, INC.; HEALTH PLAN
OF NEVADA, INC.; AND
UNITEDHEALTH GROUP, 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,

and

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

No. 81680

FILED

JUL 01 2021

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER DENYING PETITION

This is an original petition for a writ of mandamus challenging a district court order denying a motion to dismiss.

The real parties in interest, Fremont Emergency Services (Mandavia), Ltd., Team Physicians of Nevada-Mandavia, P.C., and Crum Stefanko and Jones, Ltd. (collectively, the providers), performed emergency

medical services for health plan members of United Healthcare Insurance Company, United Health Care Services, Inc., UMR, Inc., Oxford Health Plans, Inc., Sierra Health and Life Insurance Company, Inc., Sierra Health-Care Options, Inc., Health Plan of Nevada, Inc., and UnitedHealth Group, Inc. (collectively, United), as required by federal law, without an express provider agreement. The providers assert that they submitted the claims to United, United accepted the claims for payment, but then United underpaid for their services.

The providers filed suit, pleading the existence of an implied-in-fact contract and unjust enrichment, among other theories. United then removed the case to federal court, on the basis that the Employee Retirement Income Security Act of 1974 ("ERISA") "completely preempted" the claims pursuant to 29 U.S.C. § 1132. The United States District Court disagreed, remanding the case to state court. United next moved to dismiss the complaint, renewing its complete preemption argument, and arguing that conflict preemption pursuant to 29 U.S.C. § 1144(a) (codifying § 514 of ERISA), required dismissal because the providers' claims "related to" an employee benefit plan. United also argued that the providers failed to state a claim pursuant to NRCP 12(b)(5). The district court denied the motion, and then this petition, seeking a writ of mandamus directing the district court to grant the motion, followed.

Mandamus is a purely discretionary, and extraordinary, remedy. *State, Dep't of Transp. v. Thompson*, 99 Nev. 358, 360, 662 P.2d 1338, 1339 (1983). This court will grant a petition for mandamus only where "it is clearly the [legal] duty of [the district court] judge to do the act sought to be coerced," Thomas Carl Spelling, *A Treatise on Injunctions and*

Other Extraordinary Remedies 1230 (2d ed. 1901), cited with approval in *Walker v. Second Judicial Dist. Court*, 136 Nev., Adv. Op. 80, 476 P.3d 1194, 1196 (2020), and no adequate legal remedy at law exists, *Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004). Judicial economy is the lodestar. *Smith v. Eighth Judicial Dist. Court*, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997). This petition does not meet these demanding criteria.

First, neither theory of ERISA preemption established a legal duty to dismiss the complaint. To support its complete preemption argument, United relies on a federal district court case, *Emergency Grp. of Ariz. Pro. Corp. v. United Healthcare, Inc.*, 2020 WL 1451464 (D. Ariz. Mar. 25, 2020), *rev'd*, 2021 WL 816071 (9th Cir. Mar. 3, 2021) (unpublished), in which it *initially* prevailed under near-identical facts, before the Ninth Circuit reversed the district court's decision. Otherwise, the providers have alleged their own implied-in-fact contract with United establishing a *rate* of payment, separate from any assignments from health plan members or *right* to benefits from United—pleading a relationship and claim not directly “relating to” ERISA, such that conflict preemption does not apply in this case. *Mem'l Hosp. Sys. v. Northbrook Life Ins. Co.*, 904 F.2d 236, 245-249 (5th Cir. 1990) (holding that ERISA preempts state law claims if (1) the claims address areas of exclusive federal concern; and (2) the claims directly affect the relationship among the traditional ERISA entities); see *Rutledge v. Pharm. Care Mgmt. Ass'n*, 141 S. Ct. 474, 480, (2020) (“ERISA does not pre-empt state *rate regulations* that merely increase costs or alter incentives for ERISA plans” (emphasis added)).

Second, United has not established that the law clearly obligated the district court to dismiss the entirety of the providers' complaint for failure to state a claim pursuant to NRCP 12(b)(5). The district court was required to accept the providers' allegations as true and draw all inferences in favor of the providers. *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 227-28, 181 P.3d 670, 672 (2008). The providers alleged an implied-in-fact contract to provide emergency medical services to United's plan members in exchange for payment at a usual and customary rate, and that United breached this contract by not doing so. As the theory suggests, these determinations are factually intensive and ill-suited for a motion to dismiss or writ proceeding. *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 379, 283 P.3d 250, 256 (2012) ("[T]he *fact-finder* must conclude that the parties intended to contract and promises were exchanged" (emphasis added)); *James Hardie Gypsum (Nev.) Inc. v. Inquipco*, 112 Nev. 1397, 1401, 929 P.2d 903, 906 (1996) *disapproved of on other grounds* *Sandy Valley Assocs. v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 35 P.3d 964 (2001) ("Intent to make an offer or an acceptance is a question of fact.").

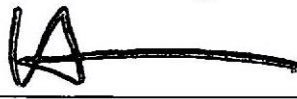
Finally, though some of the providers' claims appear questionable, United can renew its arguments in a motion for summary judgment and on appeal after development of the factual record—adequate remedies in the ordinary course of law. *See Rawson v. Ninth Judicial Dist. Court*, 133 Nev. 309, 316, 396 P.3d 842, 847 (2017). Because the case must continue, at least partially, judicial economy is not well served by considering the writ. In other words, it is appropriate to leave further legal and factual development to "the judicial body best poised to do so and

[thereby not] unnecessarily limit[] the record[] for this court's [eventual] appellate review." *Walker*, 476 P.3d at 1199.

Therefore, we ORDER the petition DENIED.


_____, J.
Cadish


_____, J.
Pickering


_____, J.
Herndon

cc: Hon. Nancy L. Alf, District Judge
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
McDonald Carano LLP/Las Vegas
Eighth District Court Clerk