

Case No. _____

In the Supreme Court of Nevada

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

Petitioners,

vs.

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

Respondents,

and

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

Real Parties in Interest.

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**PETITIONERS' APPENDIX
VOLUME 1
PAGES 1-250**

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65	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 11 of 18 (FILED UNDER SEAL)	12/24/21	24 25	5810–5817 5818–5953
66	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 12 of 18 (FILED UNDER SEAL)	12/24/21	25 26	5954–6067 6068–6199
67	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 13 of 18 (FILED UNDER SEAL)	12/24/21	26 27	6200–6317 6318–6418
68	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 14 of 18 (FILED UNDER SEAL)	12/24/21	27 28	6419–6567 6568–6579
69	Supplemental Appendix of Exhibits to	12/24/21	28	6580–6737

	Motion to Seal Certain Confidential Trial Exhibits – Volume 15 of 18 (FILED UNDER SEAL)			
70	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 16 of 18 (FILED UNDER SEAL)	12/24/21	28 29	6738–6817 6818–6854
71	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 17 of 18 (FILED UNDER SEAL)	12/24/21	29	6855–7024
72	Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits – Volume 18 of 18 (FILED UNDER SEAL)	12/24/21	29 30	7025–7067 7068–7160
82	Transcript of Hearing Regarding Unsealing Record (FILED UNDER SEAL)	10/05/22	33	7825–7845
75	Transcript of Proceedings Re: Motions (FILED UNDER SEAL)	01/12/22	31	7403–7498
76	Transcript of Proceedings Re: Motions (FILED UNDER SEAL)	01/20/22	31	7499–7552
77	Transcript of Proceedings Re: Motions (FILED UNDER SEAL)	01/27/22	31	7553–7563
79	Transcript of Proceedings Re: Motions Hearing (FILED UNDER SEAL)	02/10/22	32	7575–7695
80	Transcript of Proceedings Re: Motions Hearing (FILED UNDER SEAL)	02/16/22	32	7696–7789
83	Transcript of Status Check (FILED UNDER SEAL)	10/06/22	33	7846–7855
98	Transcript of Status Check (FILED UNDER SEAL)	10/11/22	46	11,150–11,160

CERTIFICATE OF SERVICE

I certify that on November 15, 2022, I submitted the foregoing
“Petitioners’ Appendix” for filing *via* the Court’s eFlex electronic filing
system. Electronic notification will be sent to the following:

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

Attorneys for Real Parties in Interest

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

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

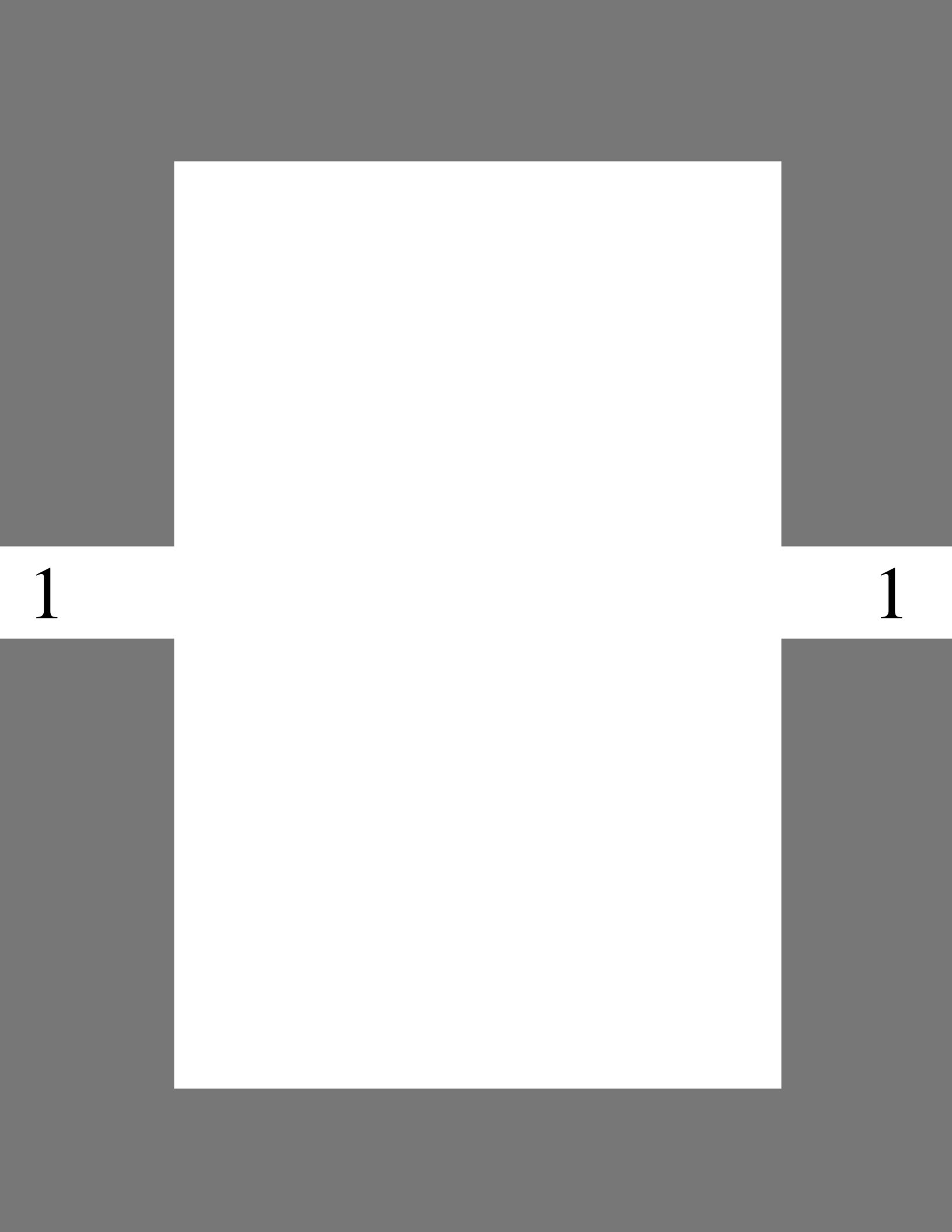
Respondent

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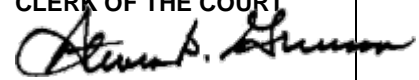
*Attorneys for Real Parties in
Interest*

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



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1



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 STIPULATED
CONFIDENTIALITY AND
PROTECTIVE ORDER**

McDONALD CARANO

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

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

DATED this 24th day of June, 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 24th day of June, 2020, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF STIPULATED CONFIDENTIALITY AND PROTECTIVE ORDER** to be served via this Court's Electronic Filing system in the above-captioned case, upon the following:

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Brittany Llewellyn, Esq.
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Attorneys for Defendants

/s/ Marianne Carter
An employee of McDonald Carano LLP

Heather S. Smith
CLERK OF THE COURT

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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

**STIPULATED CONFIDENTIALITY AND
PROTECTIVE ORDER**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12. Qualified Persons. “Qualified Persons” means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED this 23rd day of June, 2020.

McDONALD CARANO LLP

WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC

By: /s/ Kristen T. Gallagher

By: /s/ Colby L. Balkenbush

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bllewellyn@wwhgd.com

Attorneys for Plaintiffs

Attorneys for Defendants

ORDER

IT IS SO ORDERED.

Dated this 24th day of June, 2020

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

Nancy Allif

Submitted by:

McDONALD CARANO LLP

By: /s/ Kristen T. Gallagher

Pat Lundvall (NSBN 3761)

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Attorneys for Plaintiffs

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PHONE 702.873.4100 • FAX 702.873.9966

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

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

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

Plaintiffs,

vs.

UNITEDHEALTH GROUP, INC., et al.,

Defendants.

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

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

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

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

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

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

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

Dated this ____ day of _____, 20__.

Signature: _____

Name (printed): _____

Title/Position: _____

Employer: _____

Address: _____

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

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

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

Plaintiffs,

vs.

UNITEDHEALTH GROUP, INC., et al.,

Defendants.

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

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

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

By: _____

Name: _____
(Please print)

Date: _____

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

Kristy,

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



Colby Balkenbush, Attorney
Weinberg Wheeler Hudgins Gunn & Dial
 6385 South Rainbow Blvd. | Suite 400 | Las Vegas, NV
 89118
 D: 702.938.3821 | F: 702.938.3864
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From: Kristen T. Gallagher [mailto:kgallagher@mcdonaldcarano.com]
Sent: Saturday, June 20, 2020 11:27 AM
To: Balkenbush, Colby; Roberts, Lee; Llewellyn, Brittany M.
Cc: Pat Lundvall; Amanda Perach
Subject: Fremont Emergency Services (Mandavia) Ltd vs. UnitedHealth Group et al. - protective order

This Message originated outside your organization.

Colby -

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

Thanks,
 Kristy

Kristen T. Gallagher | Partner

McDONALD CARANO

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

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

CASE NO: A-19-792978-B

vs.

DEPT. NO. Department 27

United Healthcare Insurance
Company, Defendant(s)

AUTOMATED CERTIFICATE OF SERVICE

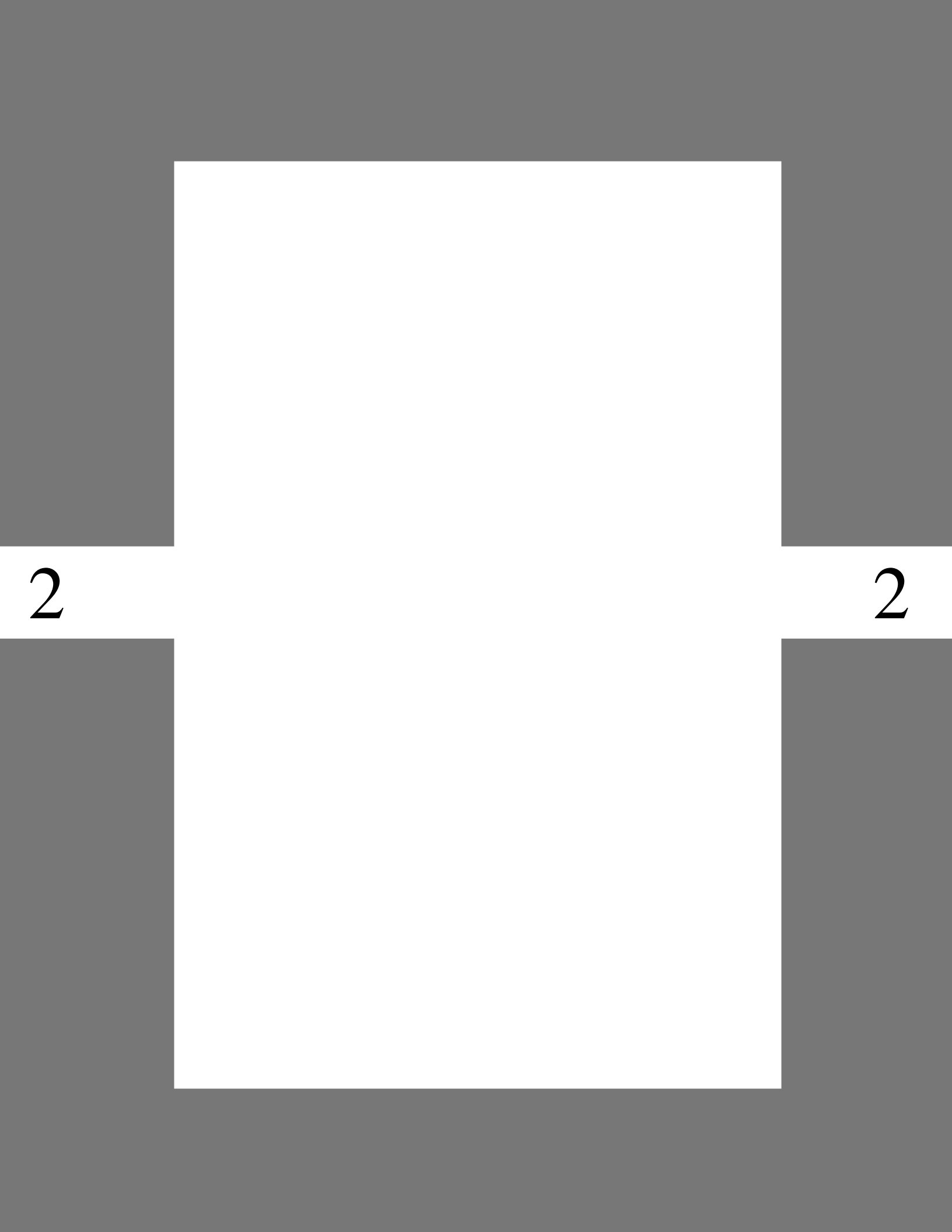
This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Stipulated Protective Order was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

Service Date: 6/24/2020

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2

2

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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.

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

Defendants

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

SECOND AMENDED COMPLAINT

Jury Trial Demanded

1 Plaintiffs Fremont Emergency Services (Mandavia), Ltd. (“Fremont”); Team Physicians
2 of Nevada-Mandavia, P.C. (“Team Physicians”); Crum, Stefanko and Jones, Ltd. dba Ruby
3 Crest Emergency Medicine (“Ruby Crest” and collectively the “Health Care Providers”) as and
4 for their First Amended Complaint against defendants United Healthcare Insurance Company
5 (“UHCIC”) United Health Care Services Inc. dba UnitedHealthcare (“UHC Services”); UMR,
6 Inc. dba United Medical Resources (“UMR”); (together with UHC Services and UMR, and with
7 UHCIC, the “UH Parties”); Sierra Health and Life Insurance Company, Inc. (“Sierra Health”);
8 Health Plan of Nevada, Inc. (“HPN”) (collectively “Defendants”) hereby complain and allege as
9 follows:

10 NATURE OF THIS ACTION

11 1. This action arises out of a dispute concerning the rate at which Defendants
12 reimburse the Health Care Providers for the emergency medicine services they have already
13 provided, and continue to provide, to patients covered under the health plans underwritten,
14 operated, and/or administered by Defendants (the “Health Plans”) (Health Plan beneficiaries for
15 whom the Health Care Providers performed covered services that were not reimbursed correctly
16 shall be referred to as “Patients” or “Members”).¹ Collectively, Defendants have manipulated ad
17 are continuing to manipulate their third party payment rates to deny them reasonable payment
18 for their services. Defendants have reaped millions of dollars from their illegal, coercive, unfair,
19 fraudulent conduct and will reap millions more if their conduct is not stopped.

20 PARTIES

21 2. Plaintiff Fremont Emergency Services (Mandavia), Ltd. (“Fremont”) is a
22 professional emergency medicine services group practice that staffs the emergency departments
23 at ER at Aliante; ER at The Lakes; Mountainview Hospital; Dignity Health – St. Rose

24 _____
25 ¹ The Health Care Providers do not assert any causes of action with respect to any Patient whose
26 health insurance was issued under Medicare Part C (Medicare Advantage) or is provided under
27 the Federal Employee Health Benefits Act (FEHBA). The Health Care Providers also do not
28 assert any claims relating to Defendants’ managed Medicaid business or with respect to the right
to payment under any ERISA plan. Finally, the Health Care Providers do not assert claims that
are dependent on the existence of an assignment of benefits (“AOB”) from any of Defendants’
Members. Thus, there is – and was – no basis to remove this lawsuit to federal court under
federal question jurisdiction.

1 Dominican Hospitals, Rose de Lima Campus; Dignity Health – St. Rose Dominican Hospitals,
2 San Martin Campus; Dignity Health – St. Rose Dominican Hospitals, Siena Campus; Southern
3 Hills Hospital and Medical Center; and Sunrise Hospital and Medical Center located throughout
4 Clark County, Nevada. Fremont is part of the TeamHealth Holdings, Inc. (“TeamHealth”)
5 organization.

6 3. Plaintiff Team Physicians of Nevada-Mandavia, P.C. ("Team Physicians") is a
7 professional emergency medicine services group practice that staffs the emergency department
8 at Banner Churchill Community Hospital in Fallon, Nevada.

9 4. Plaintiff Crum, Stefanko And Jones, Ltd. dba Ruby Crest Emergency Medicine
10 ("Ruby Crest") is a professional emergency medicine services group practice that staffs the
11 emergency department at Northeastern Nevada Regional Hospital in Elko, Nevada.

12 5. Defendant United HealthCare Insurance Company (“UHCIC”) is a Connecticut
13 corporation with its principal place of business in Connecticut. UHCIC is responsible for
14 administering and/or paying for certain emergency medical services at issue in the litigation. On
15 information and belief, United HealthCare Insurance Company is a licensed Nevada health and
16 life insurance company.

17 6. Defendant United HealthCare Services, Inc. dba UnitedHealthcare (“UHC
18 Services”) is a Minnesota corporation with its principal place of business in Connecticut and
19 affiliate of UHCIC. UHC Services is responsible for administering and/or paying for certain
20 emergency medical services at issue in the litigation. On information and belief, United
21 HealthCare Services, Inc. is a licensed Nevada health insurance company.

22 7. Defendant UMR, Inc. dba United Medical Resources (“UMR”) is a Delaware
23 corporation with its principal place of business in Connecticut and affiliate of UHCIC. UMR is
24 responsible for administering and/or paying for certain emergency medical services at issue in
25 the litigation. On information and belief, UMR is a licensed Nevada health insurance company.

26 8. Defendant Sierra Health and Life Insurance Company, Inc. is a Nevada
27 corporation and affiliate of UHCIC. Sierra Health is responsible for administering and/or
28 paying for certain emergency medical services at issue in the litigation. On information and

1 belief, Sierra Health is a licensed Nevada health insurance company.

2 9. Defendant Health Plan of Nevada, Inc. ("HPN") is a Nevada corporation and
3 affiliate of UHCIC. HPN is responsible for administering and/or paying for certain emergency
4 medical services at issue in the litigation. On information and belief, HPN is a licensed Nevada
5 Health Maintenance Organization ("HMO").

6 JURISDICTION AND VENUE

7 10. The amount in controversy exceeds the sum of fifteen thousand dollars
8 (\$15,000.00), exclusive of interest, attorneys' fees and costs.

9 11. The Eighth Judicial District Court, Clark County, has subject matter jurisdiction
10 over the matters alleged herein since only state law claims have been asserted and no diversity of
11 citizenship exists. Venue is proper in Clark County, Nevada.

12 FACTS COMMON TO ALL CAUSES OF ACTION

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

14 12. The Health Care Providers are professional practice groups of emergency
15 medicine physicians and healthcare providers that provides emergency medicine services 24
16 hours per day, 7 days per week to patients presenting to the emergency departments at hospitals
17 and other facilities in Nevada staffed by the Health Care Providers. The Health Care Providers
18 provide emergency department services throughout the State of Nevada.

19 13. The Health Care Providers and the hospitals whose emergency departments they
20 staff are obligated by both federal and Nevada law to examine any individual visiting the
21 emergency department and to provide stabilizing treatment to any such individual with an
22 emergency medical condition, regardless of the individual's insurance coverage or ability to pay.
23 *See* Emergency Medical Treatment and Active Labor Act (EMTALA), 42 U.S.C. § 1395dd;
24 NRS 439B.410. The Health Care Providers fulfill this obligation for the hospitals which they
25 staff. In this role, the Health Care Providers' physicians provide emergency medicine services
26 to all patients, regardless of insurance coverage or ability to pay, including to Patients with
27 insurance coverage issued, administered and/or underwritten by Defendants.

28 14. Upon information and belief, Defendants operate as an HMO under NRS Chapter

1 695C, and is an insurer under NRS Chapters 679A, 689A (Individual Health Insurance), 689B
2 (Group and Blanket Health Insurance), 689C (Health Insurance for Small Employers) and 695G
3 (Managed Care Organization). Defendants provide, either directly or through arrangements with
4 providers such as hospitals and the Health Care Providers, healthcare benefits to its members.

5 15. There is no written agreement between Defendants and the Health Care Providers
6 for the healthcare claims at issue in this litigation; the Health Care Providers are therefore
7 designated as a “non-participating” or “out-of-network” provider for all of the claims at issue.

8 16. Because federal and state law requires that emergency services be provided to
9 individuals by the Health Care Providers without regard to insurance status or ability to pay, the
10 law protects emergency service providers -- like Fremont here -- from the kind of conduct in
11 which Defendants have engaged leading to this dispute. If the law did not do so, emergency
12 service providers would be at the mercy of such payors. the Health Care Providers would be
13 forced to accept payment at any rate dictated by insurers under threat of receiving no payment.,
14 The Health Care Providers are protected by law, which requires that for the claims at issue, the
15 insurer must reimburse the Health Care Providers at a reasonable rate or the usual and customary
16 rate for services they provide.

17 17. The Health Care Providers regularly provide emergency services to Defendants’
18 Patients.

19 18. Defendants are contractually and legally responsible for ensuring that Patients
20 receive emergency services without obtaining prior approval and without regard to the “in
21 network” or “out-of-network” status of the emergency services provider.

22 19. Relevant to this action:

23 a. From July 1, 2017 through the present, Fremont has provided emergency
24 medicine services to Defendants’ Members as an out-of-network provider of emergency services
25 as follows: ER at Aliante (approximately July 2017-present); ER at The Lakes (approximately
26 July 2017-present); Mountainview Hospital (approximately July 2017-present); Dignity Health –
27 St. Rose Dominican Hospitals, Rose de Lima Campus (approximately July 2017-October 2018);
28 Dignity Health – St. Rose Dominican Hospitals, San Martin Campus approximately (July 2017-

1 October 2018); Dignity Health – St. Rose Dominican Hospitals, Siena Campus (approximately
2 July 2017-October 2018); Southern Hills Hospital and Medical Center (approximately July
3 2017-present); and Sunrise Hospital and Medical Center (approximately July 2017-present).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Defendants Paid the Health Care Providers Unreasonable Rates

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

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

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

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

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

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

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

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

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

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

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

8 ***Defendants' Prior Manipulation of Reimbursement Rates***

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

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

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

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

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

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

1 00-2800 (S.D.N.Y.).

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

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

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

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

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

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

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

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

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

27
28

FIRST CLAIM FOR RELIEF**(Breach of Implied-in-Fact Contract)**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 **SECOND CLAIM FOR RELIEF**

11 **(Alternative Claim for Unjust Enrichment)**

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

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

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

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

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

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

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

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

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

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

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

18 **THIRD CLAIM FOR RELIEF**

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

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

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

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

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

1 for emergency care provided to Defendants' members. By failing to pay the Health Care
2 Providers' medical professionals the usual and customary rate Defendants have violated NRS
3 686A.310(1)(e) and committed an unfair settlement practice.

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

7 95. The Health Care Providers are entitled to damages in an amount in excess of
8 \$15,000.00, exclusive of interest, costs and attorneys' fees, the exact amount of which will be
9 proven at the time of trial.

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

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

17 **FOURTH CLAIM FOR RELIEF**

18 **(Violations of Nevada Prompt Pay Statutes & Regulations)**

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

21 99. The Nevada Insurance Code requires an HMO, MCO or other health insurer to
22 pay a healthcare provider's claim within 30 days of receipt of a claim. NRS 683A.0879 (third
23 party administrator), NRS 689A.410 (Individual Health Insurance), NRS 689B.255 (Group and
24 Blanket Health Insurance), NRS 689C.485 (Health Insurance for Small Employers), NRS
25 695C.185 (HMO), NAC 686A.675 (all insurers) (collectively, the "NV Prompt Pay Laws").
26 Thus, for all submitted claims, Defendants were obligated to pay the Health Care Providers the
27 usual and customary rate within 30 days of receipt of the claim.

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

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

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

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

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

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

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

19 REQUEST FOR RELIEF

20 WHEREFORE, the Health Care Providers request the following relief:

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

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

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

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

27 E. The Health Care Providers costs and reasonable attorneys' fees pursuant to NRS
28 207.470;

- 1 F. Reasonable attorneys' fees and court costs;
2 G. Pre-judgment and post-judgment interest at the highest rates permitted by law;
3 and
4 H. Such other and further relief as the Court may deem just and proper.

5 JURY DEMAND

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

7 DATED this 4th day of October, 2021.

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

10 By: /s/ P. Kevin Leyendecker

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CERTIFICATE OF SERVICE

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

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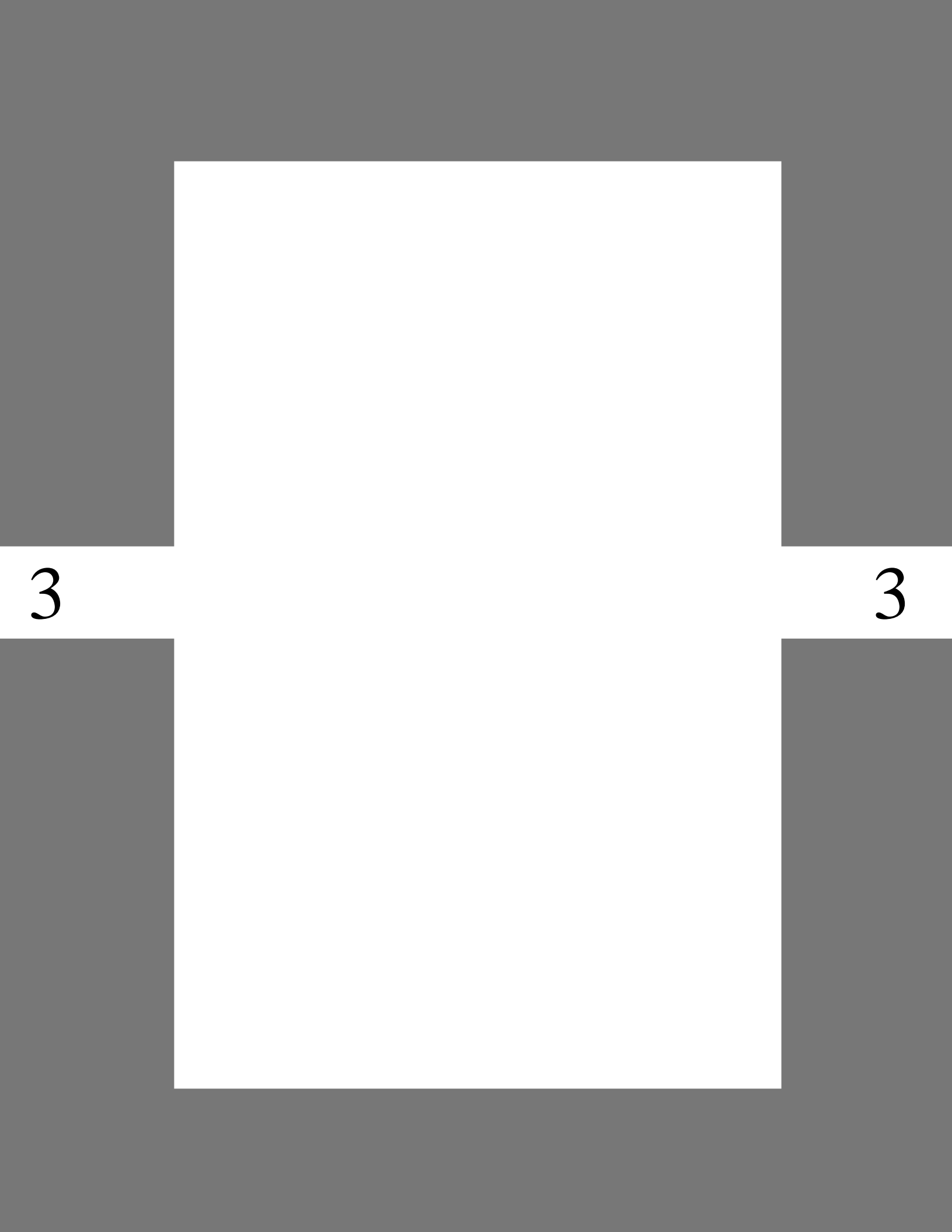
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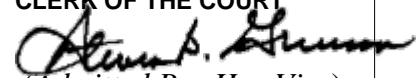
/s/ Beau Nelson

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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.

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

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



1 UNITED HEALTHCARE INSURANCE
 2 COMPANY, a Connecticut corporation;
 3 UNITED HEALTH CARE SERVICES INC.,
 4 dba UNITEDHEALTHCARE, a Minnesota
 5 corporation; UMR, INC., dba UNITED
 6 MEDICAL RESOURCES, a Delaware
 7 corporation; SIERRA HEALTH AND LIFE
 8 INSURANCE COMPANY, INC., a Nevada
 9 corporation; HEALTH PLAN OF NEVADA,
 10 INC., a Nevada corporation,

11 Defendants.

12 **ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT**

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

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

28 **AFFIRMATIVE DEFENSES**

FIRST AFFIRMATIVE DEFENSE

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

///



1 **SECOND AFFIRMATIVE DEFENSE**

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

6 **THIRD AFFIRMATIVE DEFENSE**

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

10 **FOURTH AFFIRMATIVE DEFENSE**

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

15 **FIFTH AFFIRMATIVE DEFENSE**

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

18 **SIXTH AFFIRMATIVE DEFENSE**

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

22 **SEVENTH AFFIRMATIVE DEFENSE**

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

25 **EIGHTH AFFIRMATIVE DEFENSE**

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



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

5 **NINTH AFFIRMATIVE DEFENSE**

6 TeamHealth Plaintiffs lack standing to pursue claims against Defendants.

7 **TENTH AFFIRMATIVE DEFENSE**

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

11 **ELEVENTH AFFIRMATIVE DEFENSE**

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

14 **TWELFTH AFFIRMATIVE DEFENSE**

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

18 **THIRTEENTH AFFIRMATIVE DEFENSE**

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

21 **FOURTEENTH AFFIRMATIVE DEFENSE**

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

25 **FIFTEENTH AFFIRMATIVE DEFENSE**

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

28 ///



SIXTEENTH AFFIRMATIVE DEFENSE

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

SEVENTEENTH AFFIRMATIVE DEFENSE

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

EIGHTEENTH AFFIRMATIVE DEFENSE

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

NINETEENTH AFFIRMATIVE DEFENSE

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

TWENTIETH AFFIRMATIVE DEFENSE

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

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

///



1 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

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

5 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

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

13 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

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

19 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

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

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

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



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

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

Dated this 8th day of October, 2021.

/s/ Colby L. Balkenbush

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Times Square Tower, Seven Times Square
New York, NY 10036



CERTIFICATE OF SERVICE

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

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aperach@mcdonaldcarano.com

Judge David Wall, Special Master
Attention:
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JAMS
3800 Howard Hughes Parkway, 11th Floor
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msatterthwaite@jamsadr.com
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druffner@lashgoldberg.com

Attorneys for Plaintiffs

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



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Hannah S. Sammon
CLERK OF THE COURT

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

Freemont Emergency Services

PLAINTIFF

-VS-

UnitedHealth

DEFENDANT

CASE NO: A-19-792978-B

DEPT. NO: 27

**MEDIA REQUEST AND ORDER ALLOWING
CAMERA ACCESS TO COURT PROCEEDINGS**

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

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

hereby requests permission to broadcast, record, photograph or televise proceedings in the above-entitled case in

Dept. No. 27, the Honorable Judge Nancy Alf Presiding, on the 25th day of
October, 2021.

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

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

Dated this 15th day of October, 2021.

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

IT IS HEREBY ORDERED THAT:

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

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

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

[] **OTHER:** _____

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

Dated this 18th day of October, 2021

Dated this 18th day of October, 2021.

Nancy L Alf
DISTRICT COURT JUDGE

TW

109 380 7B7E 4775
Nancy Alf
District Court Judge

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

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

vs.

United Healthcare Insurance
Company, Defendant(s)

CASE NO: A-19-792978-B

DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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

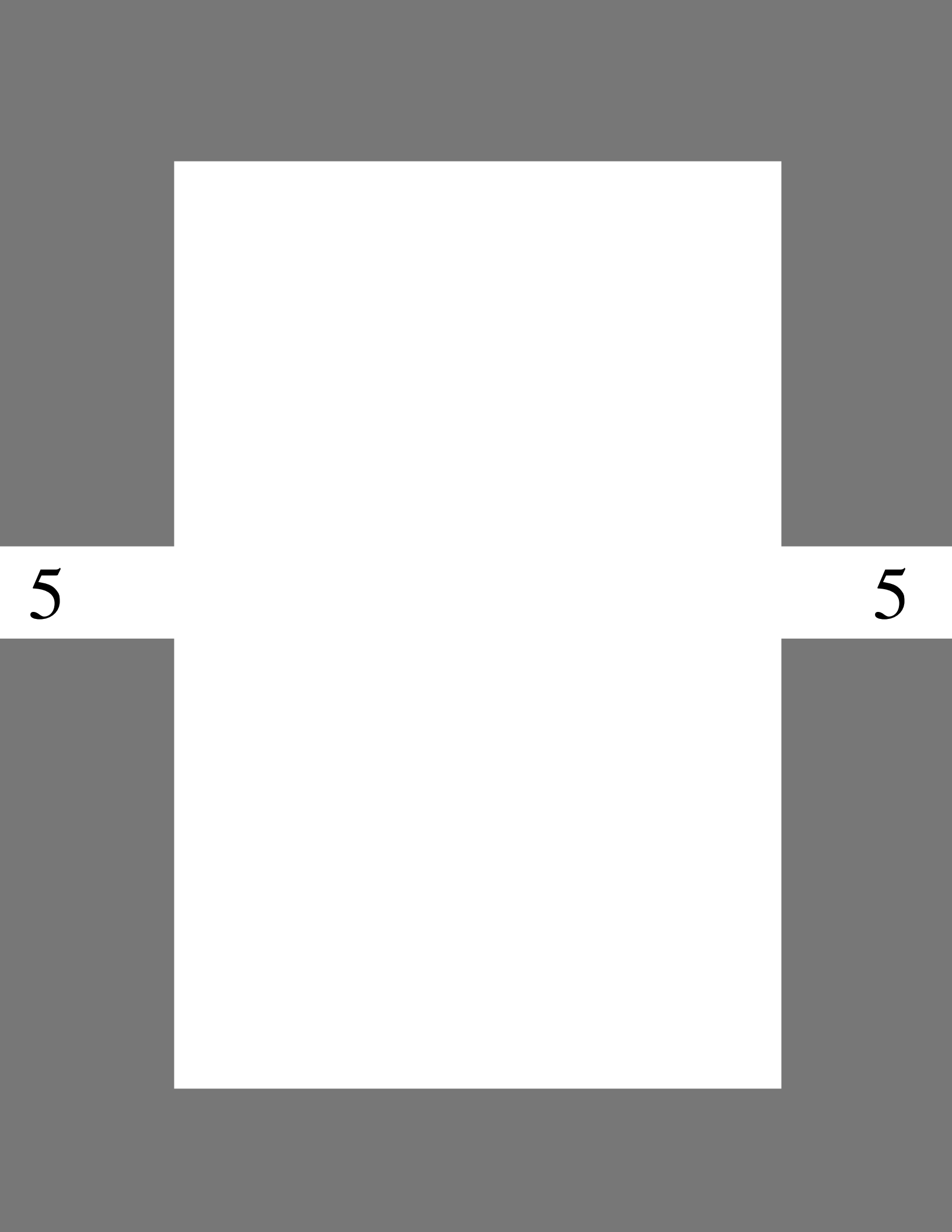
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EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

Heather S. Smith
CLERK OF THE COURT

State of Nevada

PLAINTIFF

-VS-

United Health Care Insurance Co. / UNITED NY

DEFENDANT

CASE NO: A-19-792978-B

DEPT. NO: XXVII

**MEDIA REQUEST AND ORDER ALLOWING
CAMERA ACCESS TO COURT PROCEEDINGS**

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

Carter McCormack (name), of Dolcefino Communications, LLC (media organization),

hereby requests permission to broadcast, record, photograph or televise proceedings in the above-entitled case in

Dept. No. XXVII, the Honorable Judge Nancy Allf Presiding, on the 1-23 day of
November, 2021.

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

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

Dated this 26th day of October, 2021

SIGNATURE:

Carter McCormack

PHONE: 713-898-6591

IT IS HEREBY ORDERED THAT:

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

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

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

[] **OTHER:** _____

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

Dated this 28th day of October, 2021

Dated this 28th day of October, 2021

Nancy L Allf
DISTRICT COURT JUDGE

TW

0AB F5D CB3C AA9E
Nancy Allf
District Court Judge

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

State of Nevada

PLAINTIFF

-VS-

United Health Care Insurance Co. / UNITED NY

DEFENDANT

CASE NO: A-19-792978-B

DEPT. NO: XXVII

**MEDIA REQUEST AND ORDER ALLOWING
CAMERA ACCESS TO COURT PROCEEDINGS**

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

Wayne Dolcefino (name), of Dolcefino Communications, LLC (media organization),

hereby requests permission to broadcast, record, photograph or televise proceedings in the above-entitled case in

Dept. No. XXVII, the Honorable Judge Nancy Allf Presiding, on the 1-23 day of
November, 2021.

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

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

Dated this 26th day of October, 2021.

SIGNATURE: Wayne Dolcefino

PHONE: 713-389-0810

IT IS HEREBY ORDERED THAT:

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

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

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

[] **OTHER:** _____

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

Dated this _____ day of _____, 20____.

DISTRICT COURT JUDGE

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

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

vs.

United Healthcare Insurance
Company, Defendant(s)

CASE NO: A-19-792978-B

DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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Errol KIng	errol.King@phelps.com

6

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10/28/2021 12:17 PM

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

H. S. Smith
CLERK OF THE COURT

FREMONT EMERGENCY SERVICES, LTD.

PLAINTIFF

-VS-

UnitedHealth Group, Inc

DEFENDANT

CASE NO: A-19-792978-BDEPT. NO: XXVII

**MEDIA REQUEST AND ORDER ALLOWING
CAMERA ACCESS TO COURT PROCEEDINGS**

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

Wayne Dolcefino (name), of Dolcefino Communications, LLC (media organization),

hereby requests permission to broadcast, record, photograph or televise proceedings in the above-entitled case in

Dept. No. XXVII, the Honorable Judge Nancy Ailf Presiding, on the 1st day of
November, 2021.

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

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

Dated this 28th day of October, 2021.

SIGNATURE: PHONE: 7133896810

IT IS HEREBY ORDERED THAT:

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

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

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

[] **OTHER:** _____

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

Dated this 28th day of October, 2021

Dated this 28th day of October, 2021.

Nancy L Ailf
DISTRICT COURT JUDGE TW

42A 1C9 D052 E9FB
Nancy Ailf
District Court Judge

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

FREMONT EMERGENCY SERVICES, LTD.

PLAINTIFF

-VS-

UnitedHealth Group, Inc

DEFENDANT

CASE NO: A-19-792978-BDEPT. NO: XXVII

**MEDIA REQUEST AND ORDER ALLOWING
CAMERA ACCESS TO COURT PROCEEDINGS**

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

Carter McCormack (name), of Dolcefino Communications, LLC (media organization),

hereby requests permission to broadcast, record, photograph or televise proceedings in the above-entitled case in

Dept. No. XXVII, the Honorable Judge Nancy Ailf Presiding, on the 1st day of
November, 2021.

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

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

Dated this 28th day of October, 2021.

SIGNATURE:



PHONE:

713-898-6591

IT IS HEREBY ORDERED THAT:

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

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

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

[] **OTHER:** _____

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

Dated this _____ day of _____, 20____.

DISTRICT COURT JUDGE

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

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

vs.

United Healthcare Insurance
Company, Defendant(s)

CASE NO: A-19-792978-B

DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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

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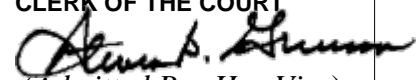
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DISTRICT COURT

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.

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

**DEFENDANTS' OBJECTION TO
MEDIA REQUESTS**



1 UNITED HEALTHCARE INSURANCE
 2 COMPANY, a Connecticut corporation; UNITED
 3 HEALTH CARE SERVICES INC., dba
 4 UNITEDHEALTHCARE, a Minnesota
 5 corporation; UMR, INC., dba UNITED
 6 MEDICAL RESOURCES, a Delaware
 7 corporation; SIERRA HEALTH AND LIFE
 8 INSURANCE COMPANY, INC., a Nevada
 9 corporation; HEALTH PLAN OF NEVADA,
 10 INC., a Nevada corporation,

11 Defendants.

12 Defendants UnitedHealthcare Insurance Company (“UHIC”), United HealthCare
 13 Services, Inc. (“UHS”), UMR, Inc. (“UMR”), Sierra Health and Life Insurance Co., Inc. (“SHL”),
 14 and Health Plan of Nevada, Inc. (“HPN”) (collectively “Defendants”), by and through their
 15 attorneys, object to the October 18, 2021 and October 28, 2021 media requests for permission to
 16 “broadcast, record, photograph or televise proceedings in the above-entitled case” filed by Legal
 17 Newline and Dolcefino Communications, LLC. This Opposition is made pursuant to Supreme
 18 Court Rules 229 through 249, and is based upon the following Memorandum of Points and
 19 Authorities, the pleadings and papers on file herein, and any oral argument this Court may allow
 20 on this matter.

21 Dated this 28th day of October, 2021.

22 /s/ Colby L. Balkenbush

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

On October 18, 2021 and October 28, 2021, Defendants received a “Media Request and Order Allowing Camera Access to Court Proceedings” for permission to “broadcast, record, photograph or televise proceedings in the above-entitled case” filed by Legal Newsline and Dolcefino Communications, LLC (“Media Requests”). The Media Requests must be denied in their current form as this case has a Protective Order that protects certain information, materials, and testimony covered by a Confidentiality Agreement as they are Defendants’ trade secrets. In reliance on the Protective Order, Defendants have disclosed, among other things, the rates they pay to other third-party providers, both in Nevada and nationwide, Defendants’ internal processes and strategies regarding rates of reimbursement, the inner workings of Defendants’ out-of-network cost management programs, various negotiation parameters, and contracts with self-funded employer group customers.

If media coverage of the trial is permitted the Protective Order will essentially become meaningless and other providers will be able to tune in and use Defendants’ market data and negotiation parameters against them in future negotiations, to Defendants’ severe financial detriment. In addition, Defendants’ competitors – other insurers and claim administrators – will be able to obtain confidential, proprietary, and trade secret information about Defendants’ contracted rates, out-of-network reimbursements, and contracts with self-funded employer group customers. This will allow Defendants’ competitors to gain a competitive advantage vis-à-vis Defendants in both negotiations with providers and with self-funded employer group customers.

To be clear, Defendants do not oppose media access as a general principle. However, the Protective Order specifically contemplates that its protections will run through trial and the



1 Court should therefore enforce the Order and deny the Media Requests as currently submitted.
 2 In the alternative, this Court should grant the Media Requests only to the portions of the trial
 3 where documentary and testimonial evidence that are *not* Defendants' confidential, proprietary,
 4 and trade secret information are being presented.

5 ARGUMENT AND CITATION OF AUTHORITY

6 **A. This Case Involves a Confidentiality Agreement and Stipulated** 7 **Protective Order that Protects the At-Issue Confidential Information** 8 **from Disclosure to the Public by the Media**

8 At the outset of this case, the parties recognized and appreciated that certain information,
 9 materials and testimony regarding payment amounts, pricing and negotiations ("Confidential
 10 Information") was confidential and needed to be protected for a variety of reasons. The parties
 11 agreed that information regarding the Confidential Information should not get out to competitors,
 12 the media and public. Defendants agreed to produce Confidential Information and testify
 13 regarding confidential issues only based on the parties' agreement to enter the Confidentiality
 14 Agreement. Recognizing the sensitive nature of this information, this Court entered the
 15 Stipulated Confidentiality and Protective Order on June 24, 2020 ("Protective Order").¹

16 The Protective Order provided that only the "Qualified Persons" listed in the Order are
 17 permitted to see information that has been designated "confidential" and/or "attorneys' eyes
 18 only." Protective Order at ¶ 10(c). In general, "confidential" information may be shown to the
 19 Court and Court personnel, counsel of record, party employees, witnesses during testimony, and
 20 retained experts and consultants, but may not be shared outside the litigation. *Id.* at ¶ 12.
 21 "Attorneys' eyes only" information may not be shown to party employees except for two
 22 designated in-house counsel for each party who have no involvement in rate and contract
 23 negotiations. *Id.* at ¶¶ 11(b), 12(b). Critically, nothing in the Protective Order indicates that
 24 these protections expire upon the commencement of trial. Rather, the Protective Order provides
 25

26 ¹ Prior to this case being remanded, the Nevada Federal District Court also entered a nearly identical
 27 protective order that protected the Confidential Information. *See Fremont Emergency Services*
 28 *(Mandavia) Ltd. v. United Healthcare Insurance Company, et al.*, Case No. 2:19-cv-00832-JAD-VCF,
 ECF No. 30 (Oct. 21, 2019).



1 that during trial, if a party anticipates using another party's Confidential Information, it must
2 give at least three business days' notice prior to using the Confidential Information. *Id.* at ¶ 20.
3 The Protective Order further provides that during trial "[t]he Court may take such measures, as it
4 deems appropriate, to protect the claimed confidential nature of the document or information
5 sought to be admitted and to protect the Confidential Information from disclosure to persons
6 other than the [Qualified Persons]." *Id.*

7 Relying on the Confidentiality Agreement and its promise of ongoing protection,
8 Defendants produced Confidential Information on, among other things, (1) their in-network rates
9 and contracts with other providers, (2) the out-of-network rates paid to other providers, (3) the
10 providers with highest and lowest appeal rates, (4) the providers with the highest and lowest rates
11 of reimbursement, (5) documents showing Defendants' internal processes and strategies
12 regarding rates of reimbursement for in- and out-of-network providers, (6) negotiation
13 parameters for resolving inquiries from out-of-network providers, (7) the inner-workings of
14 Defendants' out-of-network cost management programs, and (8) contracts with self-funded
15 employer group customers. Moreover, the above highly sensitive market data was not limited to
16 Nevada, but also included national market data from all 50 states. Defendants also provided
17 significant deposition testimony on these topics that was then designated "confidential" or
18 "attorneys' eyes only" under the Protective Order. Although this alone merits denying the Media
19 Requests, the Court should at a minimum enforce the Protective Order by closing the trial
20 proceedings to the media and public only when Defendants' trade secret and other confidential or
21 proprietary information is being used or discussed.

22 Nevada law recognizes that courts should protect trade secrets or other confidential
23 information by reasonable means, including allowing parties to file documents containing such
24 information under seal and having closed proceedings. *See* SRCR 3(4)(g); Nev. R. Civ. P.
25 26(c)(7) and (8) (a court may enter an order "that a trade secret or other confidential research,
26 development, or commercial information not be revealed or be revealed only in a designated
27 way," including under seal).

28 The Nevada Supreme Court has acknowledged "the obvious and equally well-





established principle . . . that courts do have the inherent power to close their proceedings and records when justified by the circumstances,” including “when necessary to (a) comply with established public policy set forth in the constitution, statutes, rules, or case law [and] (b) to protect trade secrets.” *Whitehead v. Commission on Judicial Discipline*, 111 Nev. 70, 120, 839 P.2d 866, 897 (1995). As an example, the Nevada Supreme Court has previously canceled the live streaming of oral arguments to protect against the disclosure of trade secrets. **Exhibit 1** (Order Precluding Live Streaming of Argument, *Cox v. Copperfield et al.*, No. 76422 (Sept. 15, 2020)).² Likewise, the United States Supreme Court asserted that “[e]very court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes.” *Nixon v. Warner Communications, Inc.*, 435 U.S. 589, 598-99 (1978).

B. This Court Should Make Particular Findings To Deny the Media Requests

When determining whether to allow electronic coverage of a trial, the Judge "shall make particularized findings on the record [and]...shall consider the following factors:"

- a) The impact of coverage upon the right of any party to a fair trial;
- b) The impact of coverage upon the right of privacy of any party or witness;
- c) The impact of coverage upon the safety and well-being of any party, witness or juror;
- d) The likelihood that coverage would distract participants or would detract from the dignity of the proceedings;
- e) The adequacy of the physical facilities of the court for coverage; and
- f) Any other factor affecting the fair administration of justice.

² As context for the Nevada Supreme Court’s order denying live streaming of the oral argument, the Nevada Court of Appeals had previously reversed the trial judge and found that it was appropriate to close certain portions of the trial of the underlying matter to the public to protect against the disclosure of trade secrets. Like here, the parties to that case had also signed confidentiality agreements during discovery to protect the trade secrets from disclosure. *David Copperfield's Disappearing, Inc. v. Eighth Jud. Dist. Ct. in & for Cty. of Clark*, 134 Nev. 928 (Nev. App. 2018).

1 S.C.R. 230(2).

2 Here, these factors weigh in favor of denying the Media Requests. First, media coverage
3 of this trial will destroy Defendants' right keep their sensitive market data and related
4 information private under the Court's existing Protective Order (factor b). Defendants relied on
5 the Protective Order in producing the Confidential Information. Allowing the Media Requests
6 would nullify the spirit and letter of the Protective Order.

7 Second, allowing the Media Requests would harm Defendants' well-being (factor c).
8 Without relief from this Court, other emergency providers would be able to watch the
9 proceedings, discover the rates Defendants pay, Defendants' negotiation strategies and the inner
10 workings of Defendants' cost management programs. Other emergency providers could then use
11 this information against Defendants' in future negotiations—the exact thing the Protective Order
12 was designed to prevent. As but one example, this case will involve discussions of the
13 negotiation parameters Defendants asked MultiPlan to use during its negotiations with out-of-
14 network providers. If other providers learn these parameters, they will know exactly how far
15 they need to push in negotiations to maximize payments by Defendants to them.

16 As another example, Defendants' competitors – other insurers and claim administrators –
17 will be able to gain access to information regarding Defendants' in-network and out-of-network
18 reimbursement rates. They may be able to use this information to gain a competitive advantage
19 over Defendants both in negotiations with providers, but also in negotiations with the self-funded
20 employer group customers. The latter concern issue is all the more salient, given that
21 Defendants' competitors would also be able to obtain copies of Defendants' contracts with those
22 self-funded employer group customers and obtain sensitive information contained therein.

23 Finally, allowing media coverage would also result in an unfair administration of justice
24 (factor f). Based on the Court's current *in limine* rulings, Defendants stand to be harmed much
25 more than Plaintiffs if the Protective Order is cast aside in favor of media coverage of the trial.
26 The Court precluded Defendants from introducing evidence of the rates Plaintiffs' agreed to
27 accept for their in-network contracts but permitted Plaintiffs to introduce evidence of
28 Defendants' in-network rates. *See* Rulings on Defendants' Motion in Limine Nos. 1 and 2.



1 Similarly, the Court precluded Defendants from introducing evidence on how Plaintiffs' set their
 2 billed charges but permitted Plaintiffs to introduce evidence on how Defendants' determine their
 3 rates of reimbursement. *See* Rulings on Defendants' Motion in Limine Nos. 3 and 4. In light of
 4 this, allowing media coverage would be fundamentally unfair to Defendants and the Court
 5 should be skeptical of any opposition by Plaintiffs to this Objection. Thus, this Court should find
 6 that allowing the Media Requests will impact Defendants' trade secrets and proprietary rights and
 7 deny the Media Requests.

8 **C. This Case Involves Defendants' Trade Secrets**

9 Defendants are seeking to protect the information subject to the Confidentiality
 10 Agreement and Protective Order as it is clearly Defendants' trade secrets and proprietary
 11 information. Nevada's Uniform Trade Secrets Act defines a trade secret in NRS 600A.030 (5)(a)
 12 and (b) as follows:

13 "Trade secret" means information, including, without limitation, a formula, pattern,
 14 compilation, program, device, method, technique, product, system, process, design,
 15 prototype, procedure, computer programming instruction or code that:

16 (a) Derives independent economic value, actual or potential, from not being
 17 generally known to, and not being readily ascertainable by proper means
 18 by the public or any other persons who can obtain commercial or
 19 economic value from its disclosure or use;

20 and

21 (b) Is the subject of efforts that are reasonable under the circumstances
 22 to maintain its secrecy.

23 Here, the trade secret information the Defendants are attempting to protect meets both
 24 requirements outlined in NRS 600A.030(5)(a) and (b). Specifically, the Confidential Information
 25 falls under several of the categories outlined in NRS 600A.030(5)(a) as the rates Defendants' pay
 26 to other providers, Defendants' methods of negotiating out-of-network charges and Defendants'
 27 negotiation parameters all derive independent economic value from the fact that they are not
 28 known to other providers. If other emergency providers know the top rates Defendants are
 willing to pay and Defendants' negotiation methods and parameters, they will be able to use this
 information against Defendants in future negotiations. This is classic trade secret information



1 that has been traditionally protected by courts. *Allied Waste Servs. of N. Am., LLC v. Tibble*, 177
2 F. Supp. 3d 1103, 1112 (N.D. Ill. 2016) (“Trade secrets include . . . pricing, distribution, and
3 marketing plans, and sales data and market analysis information.”); *DF Inst., LLC v. Dalton*
4 *Educ., LLC*, No. 19-CV-452-JDP, 2020 WL 4597122, at *5 (W.D. Wis. Aug. 11, 2020) (noting
5 that market data spreadsheets were a protected trade secret); *Brubaker Kitchens, Inc. v. Brown*,
6 No. CIV.A. 05-6756, 2006 WL 1193223, at *2 (E.D. Pa. May 3, 2006) “(market data may be
7 protected as trade secrets...)”).

8 Defendants also have made reasonable efforts to maintain the secrecy of the trade secrets,
9 including by entering into the Confidentiality Agreement with Plaintiffs and requiring that a
10 Protective Order be issued in this matter prior to providing any information with respect to their
11 trade secrets. Defendants have also regularly filed Confidential Information under seal with this
12 Court. Therefore, the Confidential Information meets the requirements of Nevada's Uniform
13 Trade Secrets Act and contains trade secret information. As such, these trade secrets must be
14 protected by closing the court proceedings related to the same from the media and general public.

15 Courts have held that the presumption of openness in judicial proceedings may be
16 overcome by an interest in safeguarding a trade secret and is the kind of confidential
17 commercial information that courts have traditionally protected. *Publiker Industries, Inc. v.*
18 *Cohen*, 733 F.2d at 1073 citing *Zenith Radio Corp. v. Matsushita Electric Industrial Co.*, 529
19 F.Supp. at 890, n. 42. Good cause exists to issue an order to close certain court proceedings,
20 including the opening statement and closing argument, to protect Defendants' interests in the
21 trade secret information revealing the amounts they pay to other providers, their negotiation
22 methods, strategies and parameters and the inner workings of their out-of-network cost
23 management programs. It is beyond dispute that the publication of the amounts Defendants pay
24 to other providers and Defendants' negotiation parameters would cause Defendants to suffer
25 serious financial injury as it would severely harm their ability to negotiate favorable rates with
26 other providers and to manage spiraling out-of-network costs. To allow an open courtroom
27 during any proceedings wherein this Confidential Information is discussed would be severely
28 prejudicial to Defendants' business and trade.



D. Defendants and Witnesses Do Not Consent

S.C.R. 240 provides that, although permission is not required, the Court may in its discretion “prohibit the filming or photographing of any participant who does not consent to being filmed or photographed.” Defendants, for themselves and on behalf of their employees, agents, officers, directors, counsel, and witnesses *do not* consent to recording or photographs, except during portions of the trial where their Confidential Information is not being used or discussed. Accordingly, for this additional reason, the Court should deny or limit the Media Requests.

CONCLUSION

For the reasons stated herein, Defendants request that this Court deny or limit the Media Requests and enforce the Protective Order.

Dated this 28th day of October, 2021.

/s/ Colby L. Balkenbush

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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of October, 2021, a true and correct copy of the foregoing **DEFENDANTS' OBJECTION TO MEDIA REQUESTS** was electronically filed/served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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7 /s/ Cynthia S. Bowman

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11 HUDGINS GUNN & DIAL



EXHIBIT 1

EXHIBIT 1

IN THE SUPREME COURT OF THE STATE OF NEVADA

GAVIN COX; AND MIHN-HAHN COX,
HUSBAND AND WIFE,

Appellants,

vs.

DAVID COPPERFIELD, A/K/A DAVID
S. KOTKIN, MGM GRAND HOTEL,
LLC; BACKSTAGE EMPLOYMENT
AND REFERRAL, INC.; DAVID
COPPERFIELD'S DISAPPEARING,
INC.; AND TEAM CONSTRUCTION
MANAGEMENT, INC.,

Respondents.

No. 76422

FILED

SEP 15 2020

ELIZABETH A. GROWN
CLERK OF SUPREME COURT
BY 
CHIEF DEPUTY CLERK

O R D E R

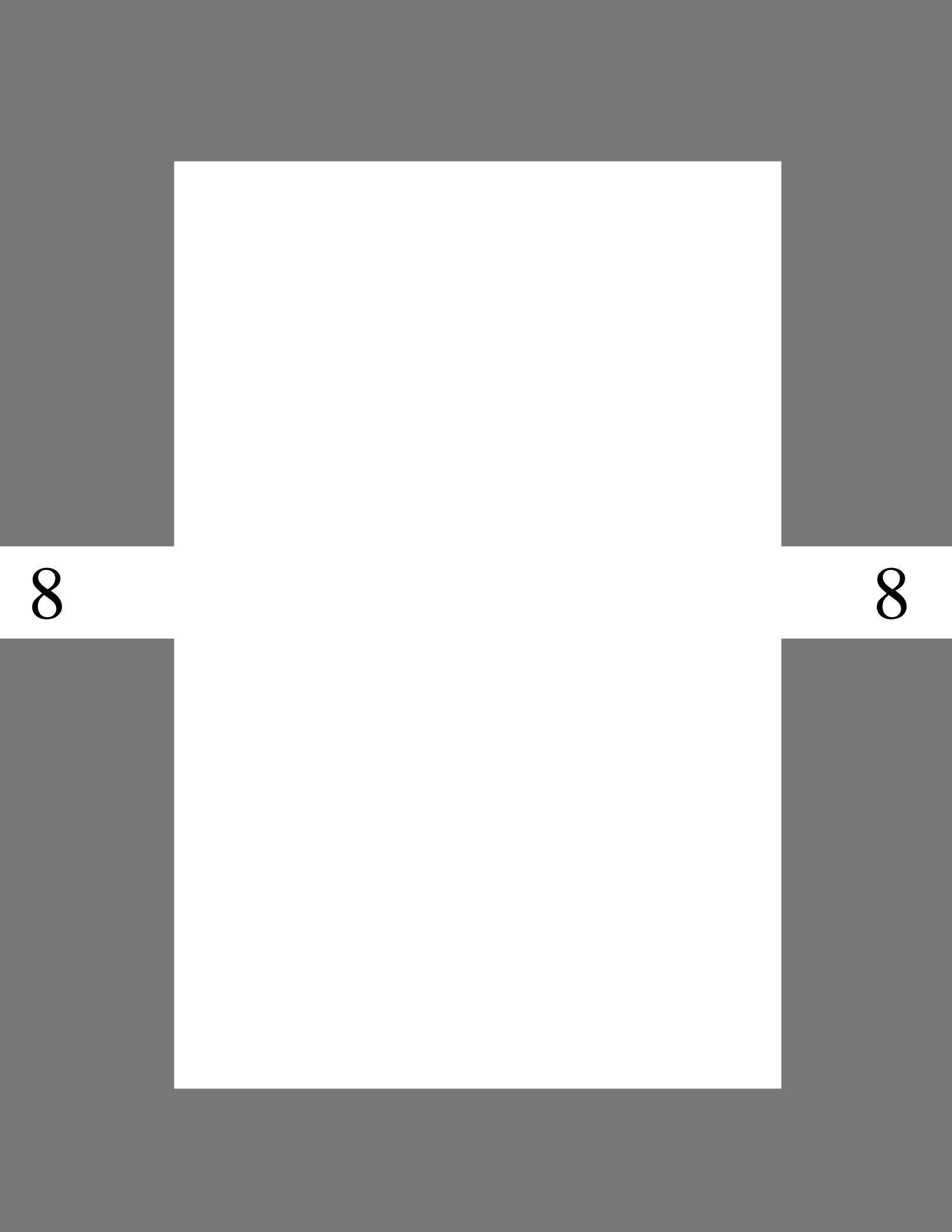
Respondents filed a notice requesting this court to take measures to protect against disclosure of trade secrets during oral argument of this matter, currently scheduled for September 16, 2020. Appellants oppose the notice. Having considered the pleadings, the oral argument in this matter will not be webcast (live-streamed). The oral argument will be recorded, as is the court's practice. Respondents shall have until 5:00 p.m. on September 18, 2020, to notify this court whether they will seek redactions to the oral argument recording prior to the posting of the oral argument on the court's website.

It is so ORDERED.

, A.C.J.
Gibbons

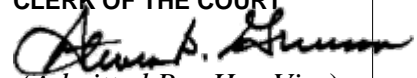
cc: Morelli Law Firm PLLC
Harris & Harris, Injury Lawyers
Lewis Roca Rothgerber Christie LLP/Las Vegas
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
Selman Breitman, LLP/Las Vegas
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DISTRICT COURT

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.

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

**SUPPLEMENT TO DEFENDANTS'
OBJECTION TO MEDIA REQUESTS**



1 UNITED HEALTHCARE INSURANCE
2 COMPANY, a Connecticut corporation; UNITED
3 HEALTH CARE SERVICES INC., dba
4 UNITEDHEALTHCARE, a Minnesota
5 corporation; UMR, INC., dba UNITED
6 MEDICAL RESOURCES, a Delaware
7 corporation; SIERRA HEALTH AND LIFE
8 INSURANCE COMPANY, INC., a Nevada
9 corporation; HEALTH PLAN OF NEVADA,
10 INC., a Nevada corporation,
11
12 Defendants.

13 Defendants UnitedHealthcare Insurance Company (“UHIC”), United HealthCare
14 Services, Inc. (“UHS”), UMR, Inc. (“UMR”), Sierra Health and Life Insurance Co., Inc. (“SHL”),
15 and Health Plan of Nevada, Inc. (“HPN”) (collectively “Defendants”), by and through their
16 attorneys, hereby file this supplement to their October 28, 2021 Objection to Media Requests.

17 Defendants request that the Court consider the following attached documents in
18 conjunction with Defendants’ Objection to Media Requests. Defendants intend to reference
19 these documents during the November 1, 2021 hearing on the Objection.

- 20 • Attached as **Exhibit 1** to the Supplement is an October 29, 2021 press release by
21 TeamHealth on the Yahoo Finance website. In particular, Defendants intend to
22 reference the paragraph on the last page of Exhibit 1 that reads: “*The Nevada trial
23 should be the most significant view behind the managed care curtain in recent
24 history—all of which has been largely attorneys’ eyes only going into the trial.*”

25 ///

26 ///

27 ///

28 ///



- Attached as **Exhibit 2** to the Supplement is an excerpt from the October 28, 2021 voir dire transcript that includes comments by several of jurors in regard to media presence in the courtroom.

Dated this 31st day of October, 2021.

/s/ Colby L. Balkenbush

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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of October, 2021, a true and correct copy of the foregoing **SUPPLEMENT TO DEFENDANTS' OBJECTION TO MEDIA REQUESTS** was electronically filed/served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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WEINBERG WHEELER
HUDGINS GUNN & DIAL



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EXHIBIT 1

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Retirement Portfolio Tips

How to choose the right mix of investments for your retirement portfolio.

S&P 500

4,605.38

+8.96 (+0.19%)

Dow 30

35,819.56

+89.08 (+0.25%)

Nasdaq

15,498.39

+50.27 (+0.33%)

Russell 2000

2,297.19

-0.79 (-0.03%)

Crude Oil

83.22

+0.41 (+0.50%)

U.S. markets closed

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TeamHealth Provider Groups Continue Nevada Fight for Justice for Patients and Clinicians



TeamHealth
Fri, October 29, 2021, 2:43 PM · 4 min read

LAS VEGAS, Oct. 29, 2021 (GLOBE NEWSWIRE) -- Jury selection is scheduled to enter its fifth day Monday in the long-anticipated showdown between insurance behemoth United and three groups of Nevada emergency department clinicians. The clinicians, who filed their case in Clark County, Nevada district court in April 2019, seek \$10.5 million in compensatory damages, plus punitive damages.

At issue is whether or not United has paid the appropriate rate for more than eleven thousand claims that arose when the clinicians provided emergency care to United insureds. The clinicians allege gross underpayments which pose grave financial harm to them in light of their commitment never to balance bill patients. Ironically, it is this commitment that emboldened United to kick emergency providers across the country out of network in 2019 and perniciously start lowering reimbursement payments.

TeamHealth has ten cases pending against United regarding these gross underpayments, seeking tens of millions of dollars.

Quote Lookup

TRENDING

- American Airlines cancels flights due to staff shortages, bad weather
- UPDATE 1-CDC says unvaccinated young foreign travelers do not need to quarantine
- Japan votes in test for new PM Kishida, political stability
- G20 leaders face tough climate talks on second day of summit
- How an accidental phone answer exposed 'coup plan' at Canada's Rogers Communications

the nature of the scheme is as yet unknown to United's stakeholders but is expected to be revealed in the course of the looming trial.



United's profits come from United's so-called "Shared Savings Program," which provides United a percentage of the "savings" the company achieves by systematically underpaying out-of-network providers. United bases its administrative fee on the difference between undiscounted billed charges and the amount that the company actually pays - not on the smaller difference between prior contracted rates or rates historically accessed from rental networks. The administrative fee routinely exceeds the amount allowed the provider. United recognizes the terrible optics that creates – but proceeds anyway because this scheme generates billions of dollars.

United anticipated at the outset of its Shared Savings scheme that its members would be exposed to balance bills. To reduce that potential exposure, United launched a nefarious multi-part plan to get balance billing outlawed. First, United recruited "independent" academic researchers to advance a narrative that private equity backed physician groups were terminating contracts and seeking payment of billed charges. This became the Yale Study authored by Zack Cooper. Cooper's paper blames physicians – not United – for surprise billing, but by his own admission states, "Unfortunately, there is no systemic evidence on the frequency that patients are balance billed or exposed to the full costs of an episode of care."

With its "independent" study in hand, United lobbied Congress to ban balance billing and advanced a formula that allowed

the courtroom and keep the evidence out of the public eye – and away from the Congressmen they misled with their tainted and biased “study.” Nonetheless, our legal team has successfully fought to shine the light on United’s nefarious conduct, and beginning Tuesday, those facts will finally be in the public arena.

The Nevada trial should be the most significant view behind the managed care curtain in recent history – all of which has been largely attorneys’ eyes only going into the trial.

About TeamHealth

At [TeamHealth](#), our purpose is to perfect the practice of medicine, every day, in everything we do. We are proud to be the leading physician practice in the U.S., driven by our commitment to quality and safety and supported by our world-class operating team. To improve the experience of our physicians and advanced practice clinicians, we empower clinicians to act on what they believe is right, free clinicians from distractions so they can focus on patient care, invest in learning and development to promote growth in the clinical field and foster an environment where continuous improvement is a shared priority. Through our more than 15,000 affiliated healthcare professionals and advanced practice clinicians, TeamHealth offers emergency medicine, hospital medicine, critical care, anesthesiology, orthopedic surgery, general surgery, obstetrics, ambulatory care, post-acute care and medical call center solutions to approximately 2,900 acute and post-acute facilities and physician groups nationwide. [Join our team](#); we value and empower clinicians. [Partner with us](#); we deliver on our promises. [Learn more at www.teamhealth.com](#).

The term “TeamHealth” as used throughout this release includes Team Health Holdings, Inc., its subsidiaries, affiliates, affiliated medical groups and providers, all of which are part of the TeamHealth organization. “Providers” are physicians, advanced practice clinicians and other healthcare providers who are employed by or contract with subsidiaries or affiliated entities of Team Health Holdings, Inc. All such providers exercise independent clinical judgment when providing patient care. Team Health Holdings, Inc., does not have any

EXHIBIT 2

RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

FREMONT EMERGENCY SERVICES
(MANDAVIS) LTD., ET AL.,

Plaintiffs,

vs.

UNITED HEALTHCARE
INSURANCE COMPANY, ET AL.,

Defendants.

CASE#: A-19-792978-B

DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF
DISTRICT COURT JUDGE
THURSDAY, OCTOBER 28, 2021

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 4

APPEARANCES:

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JOHN ZAVITSANOS, ESQ.
JASON S. MCMANIS, ESQ.
JOSEPH Y. AHMAD, ESQ.
KEVIN LEYENDECKER, ESQ.
JANE ROBINSON, ESQ.

For the Defendants:

D. LEE ROBERTS, JR., ESQ.
K. LEE BLALACK, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

1 know, these are the same questions I asked you all. But if any of you
2 have changed your mind about any of this, please raise your hand and
3 let me know. Okay? Thank you. Oh, you raised your hand. Okay. Go
4 ahead.

5 PROSPECTIVE JUROR 313: 313.

6 MR. ZAVITSANOS: Yes, sir?

7 PROSPECTIVE JUROR 313: The issue that I'm kind of
8 struggling with, with preponderance of the evidence has to do with my
9 job as a human resource manager for on-site. We do deal with contracts
10 and such. And as such, my concern and what might be in the back of my
11 mind is that if a \$10 million settlement, and you had mentioned punitive
12 damages --

13 MR. ZAVITSANOS: Yeah. I haven't gotten there yet. But,
14 yes.

15 PROSPECTIVE JUROR 313: -- and such, if that were awarded,
16 my thought would be how would my 76 people who are employed by --
17 employed with their contract, when their contract gets reviewed, would
18 that be an issue? Would it be an issue with Dignity Health when they're
19 looking to renew contracts, right? Inadvertently, we're putting 76 people
20 out of a job then by not renewing their -- having their contract renewed.

21 MR. ZAVITSANOS: Okay. So -- okay. So just to couple of
22 clarifying points, and then I'm going to add one more little variable onto
23 the next and see if it makes you even more uncomfortable. Okay?

24 So here's the -- here -- here's the issue. So Dignity Health,
25 there will be some discussion about them, but they don't really have any

1 skin in the game here one way or another. In other words, they're not --
2 nothing about that organization or that institution is -- they're not making
3 a claim, they're not being sued here. But there's going to be evidence
4 about that. Now, let me add another little wrinkle into the mix to follow
5 up on what you just said. There's some possibility that there will be
6 members of the press here, and that this case will be covered in the
7 news. Okay?

8 Now, if that happens and you see the reporters and the
9 room, okay, is this a situation where you're thinking, oh, man, I've -- I
10 can't award ten-and-a-half million dollars and have the risk of my name
11 -- you know, some reporter shoving a microphone in my face after the
12 trial, given the job that I do, that's just not real comfortable. I have to go
13 back and explain to the person X, Y, and Z about why I did this. And I'm
14 going to be on the defensive. And is that going to -- and none of this has
15 anything to do with the evidence in the case right now that I'm asking
16 you, right?

17 MR. ROBERTS: May we approach, Your Honor?

18 THE COURT: You may.

19 MR. ROBERTS: Thank you.

20 [Sidebar at 11:47 a.m., ending at 11:50 a.m., not transcribed]

21 THE COURT: Okay. Court will come back to order, please.
22 All right. So for the purpose of the record, I overruled the objection, but I
23 want to make it clear to you guys that if there is media for the trial, the
24 media will never focus on you guys, ever. Okay?

25 MR. ZAVITSANOS: In the courtroom.

1 THE COURT: In the courtroom.

2 MR. ZAVITSANOS: Yes.

3 THE COURT: Do you have a question?

4 PROSPECTIVE JUROR 593: 593. Why in the -- why does he
5 wait until the fourth day? Like --

6 THE COURT RECORDER: Can we have a microphone,
7 please?

8 THE COURT: You know, Mr. Nesci, I'm really sorry that it just
9 came up today. But there was a media request this morning.

10 PROSPECTIVE JUROR 593: Okay. I don't -- I just personally
11 feel it wasn't full disclosure, so.

12 THE COURT: The -- if there is media they will -- they never
13 take pictures of anyone on the jury. But after the trial, it's possible that
14 someone might try to talk to you. Just --

15 PROSPECTIVE JUROR 593: Well, I'm a -- Your Honor, I'm a
16 private citizen, with the emphasis on private. And this makes me feel
17 very uncomfortable.

18 THE COURT: Thank you for letting us know.

19 PROSPECTIVE JUROR 593: Thank you.

20 MR. ZAVITSANOS: Okay. And so I'm going to follow-up
21 with you. So you obviously are privileged not to speak with anyone.

22 PROSPECTIVE JUROR 593: Correct.

23 MR. ZAVITSANOS: If you end up on the jury --

24 PROSPECTIVE JUROR 593: Correct.

25 MR. ZAVITSANOS: Okay? So I am not suggesting in any

1 way, shape, or form that you are obligated to speak to them. I was
2 simply following up with this gentleman that if there's media in the
3 courtroom, and they're reporting on the case, is that going to affect, you
4 know, his thinking and evaluating the evidence, which is something
5 that's not part of the evidence, okay?

6 Now, I can tell you because of the way the process operates
7 in Nevada, where, you know, we've been doing this kind of musical
8 chairs thing where you keep moving, this is a topic I was going to get to.
9 But because a number of people have been excused, justifiably so over
10 the last few days, I didn't get to this topic until now. I was hoping to get
11 to it a couple of days ago. I did not anticipate we were going to have this
12 many motions. That's why. So my apologies to you for not raising this
13 sooner, okay?

14 PROSPECTIVE JUROR 593: Well, your term was somebody
15 could be shoving a microphone in your face; was it not?

16 MR. ZAVITSANOS: After the trial. That's correct. I cannot
17 control what the media does. And if there are reporters outside the
18 courtroom, and they approach you, and they come up to you, I cannot
19 control that.

20 THE COURT: Well, you know --

21 MR. ZAVITSANOS: Yeah.

22 THE COURT: Hang on. Let me control this situation a little
23 bit. For anyone, if you are selected for the jury, we can make sure that
24 you are escorted out the back door. You know, we'll take precautions,
25 too. I don't want you guys to be worried about the possibility that this

1 might be in the news. I'm going to try to allay your fears as much as
2 possible. The marshal knows the secret entrances and exits to this
3 building. Okay? We would do everything we could to accommodate
4 everyone's concerns so that you could actually do your job as jurors. I
5 don't want you to be sidetracked by that.

6 MR. ZAVITSANOS: May I proceed, Your Honor?

7 THE COURT: Please.

8 MR. ZAVITSANOS: Okay. All right. So getting back to my
9 question, okay? So you've heard the exchange and all that. So given
10 what I -- given what we just discussed, is this the kind of situation that
11 makes you uncomfortable to the point that it may impact what you do
12 because of what you'd have to explain to your employer later or because
13 there might be news coverage or no coverage. I mean, I don't know.
14 There might be a little bit, there may be a lot. I have no idea. Okay? I'm
15 just -- I just need to know if this is going to impact you as a juror even
16 just a little bit. Okay?

17 PROSPECTIVE JUROR 313: 313. In all honestly, I think it
18 would. If something like that were to come up, I'd end up having to fly
19 out to Nashville and talk to our CEO.

20 MR. ZAVITSANOS: Okay. And I gather what that means is,
21 let me put a finer point on it if I can, if the verdict was zero, you wouldn't
22 have to fly out there, right? But if the verdict was over ten million plus
23 punitives, that's what causes you concerns.

24 PROSPECTIVE JUROR 313: Correct.

25 MR. ZAVITSANOS: Right?

1 PROSPECTIVE JUROR 313: Correct.

2 MR. ZAVITSANOS: Okay. And that's the kind of thing that
3 you think would put pressure on you to get the zero rather than the 10.5,
4 because of the concerns you'd have around your career and around your
5 employment.

6 PROSPECTIVE JUROR 313: Correct.

7 MR. ZAVITSANOS: Right?

8 PROSPECTIVE JUROR 313: I'd have to be brutally honest
9 with you.

10 MR. ZAVITSANOS: Yeah. We got you. Hey, listen, that is
11 what we want. That's what we want, okay? So -- okay. So given that,
12 and of course, that's something happening outside of the witness box or
13 the exhibits that the Court admits or the instructions that the Court gives.
14 The Court is not going to give any instructions concerning the media
15 other than you shouldn't talk to them, and you shouldn't be on social
16 media and read articles and things like that. There will be a long
17 instruction on that.

18 But other than that, though, if there's reporting on this, if
19 there's even a possibility of that, just me saying that, what you're telling
20 us is you don't think you could be a completely even-levelled juror
21 because of the potential consequences to you?

22 PROSPECTIVE JUROR 313: Correct.

23 MR. ZAVITSANOS: Okay. And therefore, you'd have a
24 difficult time following the Court's instructions, given what I've just said.

25 PROSPECTIVE JUROR 313: Correct.

1 MR. ZAVITSANOS: Okay. All right. How about the rest of
2 you all here in the front row? And then I'm going to get to the other folks
3 in the back because that is a new question.

4 PROSPECTIVE JUROR 014: Punitives is, like --

5 THE CLERK: Badge number, please.

6 PROSPECTIVE JUROR 014: I'm sorry. 014. Can you explain
7 punitives a little bit? I --

8 MR. ZAVITSANOS: Yeah. Right now --

9 PROSPECTIVE JUROR 014: Is that where you're at?

10 MR. ZAVITSANOS: Yes. Can I -- can you indulge me and do
11 me a favor? I promise I'm going to get to that with you all.

12 PROSPECTIVE JUROR 014: Okay.

13 MR. ZAVITSANOS: Right now, I'm just asking about if there
14 are members of the press in the courtroom --

15 PROSPECTIVE JUROR 014: Okay.

16 MR. ZAVITSANOS: -- is that -- is that going to affect the way
17 you listen to the evidence or make your decision. That's really the issue.

18 PROSPECTIVE JUROR 014: For me, no.

19 MR. ZAVITSANOS: Okay.

20 PROSPECTIVE JUROR 014: I mean, if you deserve it. If you
21 don't deserve it, you don't.

22 MR. ZAVITSANOS: Okay. Thank you. All right. Juror,
23 please? Number.

24 PROSPECTIVE JUROR 015: Juror 015. I don't have any
25 problem with the media, but I also feel like this gentleman back here said

1 if I'm outside of the courtroom, and I'm, you know, shoving a
2 microphone and everything, I'm going to be uncomfortable with that
3 myself.

4 MR. ZAVITSANOS: Got it. Got it. And so I'm -- I don't want
5 to speak for the Court, but I do understand that arrangements can be
6 made so that if that's an issue, that the Court will take steps to minimize
7 that.

8 PROSPECTIVE JUROR 015: Thank you, sir.

9 MR. ZAVITSANOS: Okay. Okay. And Juror number?

10 PROSPECTIVE JUROR 020: I'm not going to have an issue.

11 MR. ZAVITSANOS: You don't have an issue?

12 PROSPECTIVE JUROR 020: No.

13 MR. ZAVITSANOS: Okay. All right. Now, for the rest of the
14 folks, let me start on the back row. What I just said regarding potentially,
15 members of the media being in the courtroom or reporting on the case,
16 would that affect either the way you evaluate the evidence or how you
17 make a decision? Anybody in the back row?

18 Okay. How about the second row? Okay. The third row?
19 Yes, sir. Let's pass that microphone.

20 PROSPECTIVE JUROR 593: If there will be guarantees --

21 THE CLERK: Badge number, please.

22 PROSPECTIVE JUROR 593: 593. If there will be guarantees
23 that I don't have to deal with the media and I can walk safely to my car
24 and back, I have no issue.

25 MR. ZAVITSANOS: Okay.

1 PROSPECTIVE JUROR 593: If there's guarantees.

2 MR. ZAVITSANOS: I am not -- it's a very dangerous thing for
3 me to speak for the Court, so I'm not going to do it. Okay? I heard what
4 Her Honor said, and I understood it. I think you understood it. But I will
5 let --

6 THE COURT: Yeah. I'll confer with court security over the
7 lunch break, and I can get back to you on that.

8 PROSPECTIVE JUROR 593: Thank you.

9 MR. ZAVITSANOS: Okay. Thank you, sir. And by the way,
10 while you're holding the mic, anything else of what I just said that would
11 impact you one way or another on that?

12 PROSPECTIVE JUROR 593: Of the media issue?

13 MR. ZAVITSANOS: Yeah, yeah, yeah. In other words, is it
14 going to --

15 PROSPECTIVE JUROR 593: No.

16 MR. ZAVITSANOS: Is it going to affect the way either you
17 listen to the evidence or how you make a decision?

18 PROSPECTIVE JUROR 593: No.

19 MR. ZAVITSANOS: Or what kind of decision you make?

20 PROSPECTIVE JUROR 593: No.

21 MR. ZAVITSANOS: Okay. All right. Next row, the second
22 row. Yes? We've got to get juror number, and if you could speak into
23 the microphone.

24 PROSPECTIVE JUROR 082: 082, and it's not really about the
25 media.

1 Don't speculate with regard to the issues, the lawyers, or the parties. Do
2 not talk, do not post on social media that you are in jury selection. Don't
3 text, tweet, Google issues or conduct any other type of book or computer
4 research with regard to any issue, party, witness, or an attorney involved
5 in the case. Most importantly, do not form or express any opinion on
6 any subject connected with the trial until the jury is selected and the jury
7 deliberates.

8 You've been great this week. Thank you for not throwing a
9 fit about having to come back Monday. Have a good three days off and
10 see you then.

11 THE MARSHAL: All rise for the jury.

12 [Prospective jurors out at 4:42 p.m.]

13 THE COURT: Okay, everybody. Room is clear. Plaintiff, do
14 you have anything for the record?

15 MR. ZAVITSANOS: Not on the record, Your Honor.

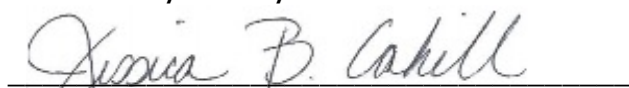
16 THE COURT: Defendant, anything for the record?

17 MR. ROBERTS: Nothing for the record from the Defendants,
18 Your Honor.

19 THE COURT: Okay.

20 [Proceedings concluded at 4:43 p.m.]

21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-visual recording of the proceeding in the above entitled case to the
23 best of my ability.

24 

25 Maukele Transcribers, LLC

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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.

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

Defendants.

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

**PLAINTIFFS' RESPONSE TO
DEFENDANTS' OBJECTION TO
MEDIA REQUESTS**

1 Fremont Emergency Services (Mandavia), Ltd.; Team Physicians of Nevada-Mandavia,
2 P.C.; Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine (collectively the
3 “Health Care Providers”) oppose UnitedHealthcare Insurance Company; United HealthCare
4 Services, Inc.; UMR, Inc.; Sierra Health and Life Insurance Co., Inc.; and Health Plan of Nevada,
5 Inc. (collectively, “United”)’s Objection to Media Requests.

6 United’s Objection is unfounded. Unless otherwise provided **by law**, the “sitting of every
7 court of justice shall be public.” NRS 1.090. “Every trial on the merits must be conducted in open
8 court.” NRCP 77(b). “[O]pen court proceedings assure that proceedings are conducted fairly and
9 discourage perjury, misconduct by participants, and biased decision making.” *Del Papa v. Steffen*,
10 112 Nev. 369, 374, 915 P.2d 245, 249 (1996). “At trial, the witnesses’ testimony must be taken
11 in open court unless provided otherwise by applicable law.” NRCP 43(a).

12 Thus, the presumption is that this trial will be open to the public. That presumption shall
13 only be overcome if United can (1) prove an overriding interest that is likely to be prejudiced; (2)
14 propose a closure that is no broader than required to protect that overriding interest; and (3)
15 demonstrate that there are no reasonable alternatives to closing the proceeding. And, if public, the
16 presumption is that electronic coverage will be allowed. SCR 230.2. Importantly, a party’s
17 consent to media coverage is not required. SCR 240.1.

18 United has not made the required showing. Despite the purported confidentiality concern,
19 every motion in limine was argued in a public proceeding, including recitations of evidence
20 subject to the motions—it was all broadcast on the internet for all eyes to see. Clearly, United’s
21 newfound “confidentiality concern” has been manufactured for trial so that United might be able
22 to shield its wrongdoing from public scrutiny. But United has offered no compelling reason to
23 ignore the Rules and shroud this trial in secrecy. For these reasons, and as further set forth herein,
24 the Court should overrule United’s objection.

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

28 . . .

1 DATED this 1st day of November, 2021.

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POINTS AND AUTHORITIES

I. LEGAL STANDARD

Under otherwise set forth by Nevada law, the “sitting of every court of justice shall be public.” NRS 1.090. This principle is reflected in the Nevada Rules of Civil Procedure, which provide that “[e]very trial on the merits must be conducted in open court.” NRCP 77(b). “At trial, the witnesses’ testimony must be taken in open court unless provided otherwise by applicable law.” NRCP 43(a). This is, in part, because “open court proceedings assure that proceedings are conducted fairly and discourage perjury, misconduct by participants, and biased decision making.”¹ *Del Papa v. Steffen*, 112 Nev. 369, 374, 915 P.2d 245, 249 (1996). Before a party can close proceedings to the public, the following must occur (1) the party seeking to close the proceeding must advance an overriding interest that is likely to be prejudiced; (2) the requested closure must be shown to be no broader than necessary to protect that interest; (3) a trial court must consider reasonable alternatives; and (4) a trial court must make findings adequate to support the closure. *Feazell v. State*, 111 Nev. 1446, 906 P.2d 727, 729 (1995).

In furtherance of the presumption of a public trial, the Nevada Supreme Court has issued rules governing Electronic Coverage of Court Proceedings. SCR 229–246. Specifically, “[u]nder these rules, there is a presumption that all courtroom proceedings that are open to the public are subject to electronic coverage.” SCR 230. In other words, if the proceedings are open to the public, they are generally subject to electronic coverage. “The consent of participants to coverage is not required.” SCR 240.1. Six factors govern whether, in a public proceeding, electronic coverage should be denied: (1) the impact of coverage upon the right of any party to a fair trial; (2) the impact of coverage upon the right of privacy of any party or witness; (3) the impact of coverage upon the safety and well-being of any party, witness or juror; (4) the likelihood that coverage would distract participants or would detract from the dignity of the proceedings; (5)

¹ “This tradition of openness is no quirk of history; rather it has long been recognized as an indispensable attribute of an Anglo–American trial.” *Perry v. City & Cty. of San Francisco*, No. 10-16696, 2011 WL 2419868, at *18 (9th Cir. Apr. 27, 2011).

the adequacy of the physical facilities of the court for coverage; and (6) any other factor affecting the fair administration of justice. SCR 230.2(a)–(f).

II. ARGUMENT

A. United uses its objection as a means to seal the trial and prevent public access.

Throughout its Objection, United repeatedly asks the Court to close the entire courtroom to the public. *See, e.g.*, Objection at 5 (requesting “at a minimum . . . closing the trial proceedings to the media and public”); *id.* at 6 (pointing out a court’s power to “close their proceedings”); *id.* at 9 (arguing trade secrets require protection “by closing the court proceedings”); *id.* (arguing against “allow[ing] an open courtroom during any proceedings”). Indeed, United actually requests to “close certain court proceedings” entirely, “*including the opening statement and closing argument.*” *Id.* at 9 (emphasis added).

But in making this request, United does not even cite to—let alone meet—Nevada’s particular requirements for overcoming the open courts presumption. Instead, United baldly asserts that the trial will involve its trade secret information, without any showing as to whether any information actually rises to the level of a trade secret.² United’s vaguely refers to purported trade secrets such as revenues and profits. But United is a publicly traded company that reports this information for anyone to see. And as to its pricing and other information, the majority of the documents on both parties’ exhibit lists are from many years ago and any information, even if it had been confidential then, is long ago stale.

On top of that, the Health Care Providers have offered, on more than one occasion, to confer with United to understand what specific documents United is concerned about, in an effort to develop an agreed procedure for handling those documents. To date, United has refused that request and has not identified even a single document. How can United ask the Court to seal the entire courtroom and prevent public access to pening, closing, and unidentified portions of

² The primary case relied upon by United deals with a starkly different issue. *See David Copperfield’s Disappearing, Inc. v. Eighth Judicial Dist. Ct. in & for Cty. of Clark*, 134 Nev. 928 (Nev. App. 2018). In *Copperfield*, the issue concerned disclosure of the method of performing illusions. Public disclosure necessarily would have destroyed the illusions. *Id.* Here, United has not articulated any similar type of specific harm that may result from a public trial.

1 witness testimony when United will not bother to tell the Health Care Providers its real concern?

2 In the end, other than citing to the Protective Order (which is addressed below), United
3 provides no substance to meet the four-factor test for closing court proceedings from public view.
4 It has identified no specific harm that might occur if the trial proceeds in open court, instead
5 speculating that unnamed competitors may view the trial and “may be able to use” this
6 unidentified information to United’s detriment. Obj. at 7. This is hardly an overriding interest and
7 certainly does not provide the Court with facts sufficient to allow the Court to consider reasonable
8 alternatives, narrowly tailor any requested closure, and, ultimately, make findings adequate to
9 support closure of the court for trial. *Feazell*, 906 P.2d at 729.

10 B. The Protective Order does not contemplate a private trial.

11 United focuses its objection heavily on the Protective Order, which was specifically
12 entered to govern discovery under NRCP 26(b)(1). Although the Protective Order does not
13 foreclose the possibility, there is certainly no mandate within the Protective Order to seal the
14 courtroom at trial. And, although United argues that “nothing in the Protective Order indicates
15 these protections expire upon the commencement of trial,” the Protective Order does contemplate
16 reduced protections as trial approaches. For example, Paragraph 12(g) of the Protective Order
17 allows witnesses who are expected to testify at trial access to Attorneys’ Eyes Only information
18 in advance of their testimony. In other words, as trial approaches and the parties’ witness lists are
19 refined, the Protective Order contemplates that both sides witnesses would have access to the
20 highest level of confidential information produced in the case, in preparation for trial. This is
21 consistent with the expectation of a public trial.³

22 C. United does not satisfy the factors for prohibiting electronic coverage.

23 Even if United were only seeking to prohibit electronic coverage, as opposed to shutting
24 down all public access to the trial, United has not demonstrated that it has satisfied the factors set

25 _____
26 ³ United’s argument that the protective order extends beyond trial is a red herring. Hundreds of
27 thousands of documents were produced, not all of which will be used at trial. Of course, a public
28 trial would not have any effect on documents disclosed during discovery but not used at trial.
This is consistent with how federal courts treat the issue. *See, e.g., Center for Auto Safety v.*
Chrysler Grp., LLC, 809 F.3d 1092, 1097 (9th Cir. 2016) (noting a difference between the
public’s right to access discovery compared to trial or merits proceedings).

1 forth by the Nevada Supreme Court. As an initial matter, United only addresses three of the six
 2 factors—United does not argue that allowing electronic media coverage would (1) impact its right
 3 to a fair trial, (2) distract participants or detract from the dignity of the proceedings, or (3) be too
 4 much for the physical facilities of the court. SCR 230.2(a), (d)–(e).

5 As to the other three factors, United’s arguments are unavailing. First, United argues that
 6 it has a “right of privacy” to protecting its sensitive market data under the Protective Order. Even
 7 assuming that the “right of privacy” extends beyond constitutional concerns into commercial
 8 market data, this argument suffers from the same lack of specificity as United’s request to seal
 9 the courtroom. Without specifically identifying the documents and data that United is concerned
 10 with, United effectively asks to prohibit media coverage (and public access) over any portion of
 11 the trial that United unilaterally decides relates to its confidential information.⁴ This would
 12 entirely defeat Nevada’s strong open courts presumption.

13 Second, United argues that allowing the media requests would “harm Defendants’ well-
 14 being.” Setting aside the fact that United is one of the largest, most profitable insurance companies
 15 in the country (and, in fact, the world), this argument is entirely speculative. United relies solely
 16 on the notion that, potentially, unidentified competitors could gain access to unidentified
 17 information and, in some unidentified manner, use that information to harm United in unidentified
 18 future business.⁵ This is hardly the type of specificity that justifies overturning the public access
 19 presumption. And it certainly does not provide the Court with information that would allow the
 20 Court the specific findings required to do so.

21 Finally, United argues that allowing electronic media coverage would impact the fair
 22 administration of justice. But United does not argue that it will have any impact on the jury’s
 23 verdict or the conduct of the trial. In fact, if anything, the open courtroom and electronic media
 24

25 ⁴ This is particularly concerning in light of United’s pervasive, improper over-designating of
 26 information as “Confidential” or “Attorneys’ Eyes Only.”

27 ⁵ United’s motivation to seal the courtroom has nothing to do with confidentiality and everything
 28 to do with hiding its misconduct from the public eye. United did not ask to seal the limine
 hearings or jury selection. Numerous unsealed hearings have been conducted before the Court
 regarding a myriad of issues (including at least one hearing on United’s improper confidentiality
 designations). Why does United all of a sudden need the secrecy of a sealed courtroom?

coverage will enhance the administration of justice. *See, e.g., Del Papa*, 915 P.2d at 249 (“open court proceedings assure that proceedings *are conducted fairly*, and discourage perjury, misconduct by participants, and biased decision making”).

Instead, United suggests—without any evidence in support—that an open trial would somehow harm United more than the Health Care Providers. But both parties produced confidential information in the case, and both parties would be subject to the same open courtroom. There is no reason to believe that any of the Court’s rulings would disparately impact the disclosure of any such information.

Because United has not met the factors under SCR 230.2, the presumption of openness and electronic coverage should prevail and United’s objection should be overruled.⁶

D. There are reasonable alternatives to closing the courtroom.

Finally, there are other reasonable alternatives. Although United offers the alternative of only sealing those portions of the trial that relate to its confidential information, that alternative is unworkable for at least two reason. One, United has not identified the bounds of what it considers to be confidential at trial. And two, United has a history in this lawsuit of over-designating confidential information. United’s proposed alternative would only lead to repeated stoppage of trial to argue over whether certain portions of the trial qualified for sealing or did not.

The Health Care Providers, however, have offered a reasonable alternative to United—the Health Care Providers will not oppose any post-trial motions to seal the documentary evidence that comes into trial. This would allow United to maintain confidentiality over its documents while also protecting Nevada’s open courts. While testimony would be public, the documents themselves would not be, which would significantly mitigate any of United’s alleged harm. This is a more practical and reasonable solution than opening and closing the court at United’s whim.

III. CONCLUSION

United’s objection lacks merit. United seeks solely to hide its misconduct from the public

⁶ United’s supplement does not change the analysis. Open courts are open courts. The Nevada Supreme Court’s rules governing Electronic Coverage of Court Proceedings already provide specific limitations on media access to jurors. And the Court has already ensured a process by which any concerned juror can prevent media inquiry following the trial.

eye. But the public has a constitutional interest in these civil proceedings and there is a presumption in favor of public access to the trial. That presumption extends to electronic media coverage. United has not met the high bar to establish that the trial should be sealed from the public or that electronic media access should be precluded. Further, the Health Care Providers have offered a reasonable alternative. Accordingly, the Court should overrule United's objection.

DATED this 1st day of November, 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of November, 2021, I caused a true and correct copy of the foregoing **PLAINTIFFS' RESPONSE TO DEFENDANTS' OBJECTION TO MEDIA REQUESTS** to be served via this Court's Electronic Filing system in the above-captioned case, upon the following:

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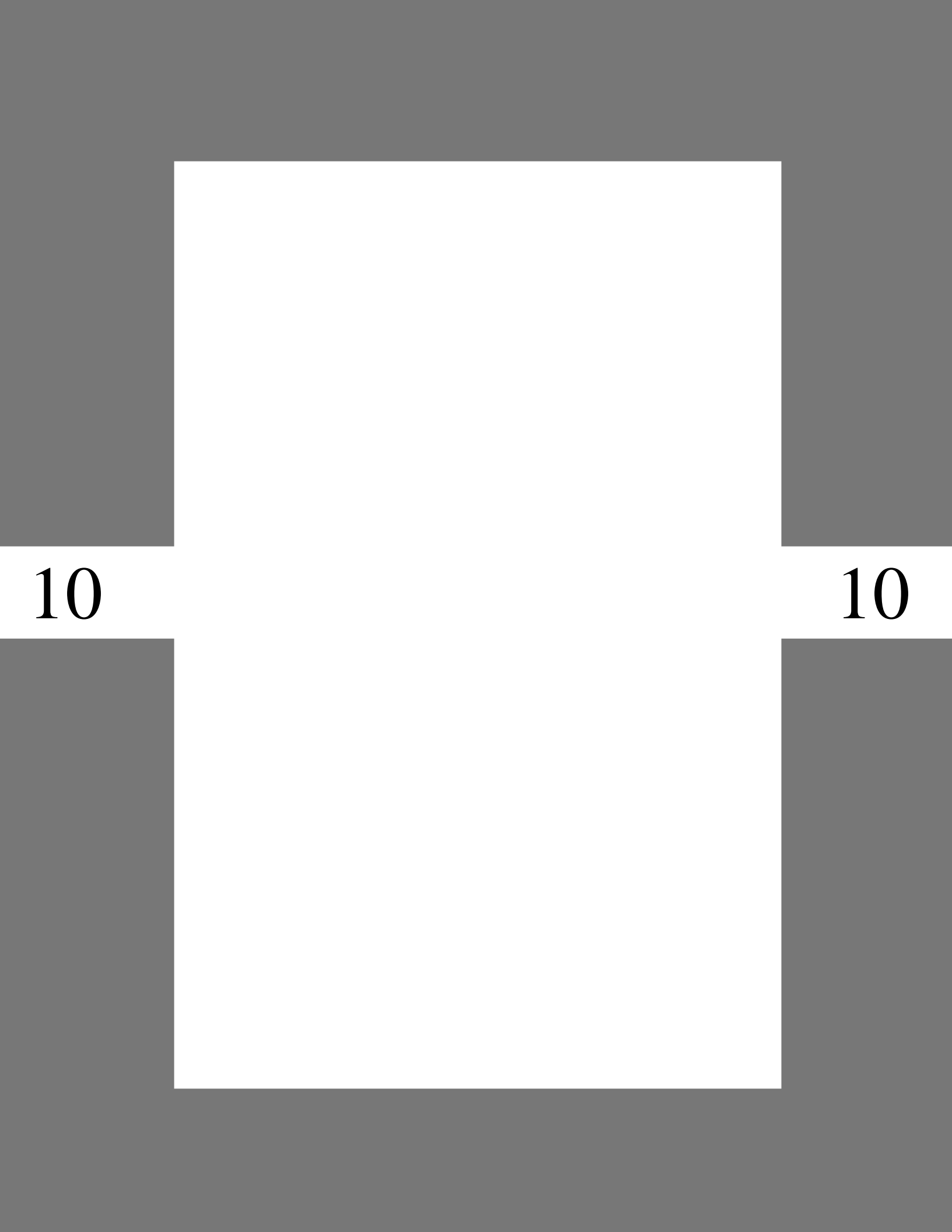
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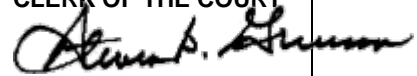
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1 RTRAN

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5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 FREMONT EMERGENCY SERVICES
(MANDAVIS) LTD., ET AL.,

9 Plaintiffs,

10 vs.

11 UNITED HEALTHCARE
INSURANCE COMPANY, ET AL.,

12 Defendants.
13

CASE#: A-19-792978-B

DEPT. XXVII

14 BEFORE THE HONORABLE NANCY ALLF
15 DISTRICT COURT JUDGE
MONDAY, NOVEMBER 1, 2021

16 **RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 5**

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JOSEPH Y. AHMAD, ESQ.
KEVIN LEYENDECKER, ESQ.

21 For the Defendants:

22 D. LEE ROBERTS, JR., ESQ.
K. LEE BLALACK, ESQ.
JEFFREY E. GORDON, ESQ.
23 COLBY L. BALKENBUSH, ESQ.

24
25 RECORDED BY: BRYNN WHITE, COURT RECORDER

1 Las Vegas, Nevada, Monday, November 1, 2021

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3 [Case called at 9:26 a.m.]

4 [Outside the presence of the prospective jurors]

5 THE MARSHAL: The Honorable Judge Alf presiding.

6 THE COURT: Thanks everyone. Please be seated.

7 All right. Calling the case of Fremont v. United. Let's take
8 appearances, starting first with the Plaintiffs.

9 MS. LUNDVALL: Good morning, Your Honor. Pat Lundvall
10 from McDonald Carano, here on behalf of the healthcare providers.

11 MR. ZAVITSANOS: John Zavitsanos on behalf of the
12 healthcare providers.

13 MR. AHMAD: Joe Ahmad, also on behalf of the healthcare
14 providers.

15 MR. MCMANIS: Good morning, Your Honor. Jason
16 McManis on behalf of the healthcare providers.

17 MR. LEYENDECKER: Good morning, Your Honor. Kevin
18 Leyendecker on behalf of the healthcare providers.

19 THE COURT: Thank you. And for the defense, please?

20 MR. BLALACK: Good morning, Your Honor. Lee Blalack on
21 behalf of the Defendants.

22 MR. ROBERTS: Good morning, Your Honor. Lee Roberts on
23 behalf of the Defendants.

24 MR. GORDON: Good morning, Your Honor. Jeff Gordon on
25 behalf of the Defendants.

1 MR. BALKENBUSH: Good morning, Your Honor. Colby
2 Balkenbush on behalf of the Defendants.

3 THE COURT: Thank you all. Okay. So are we ready to bring
4 in the venire?

5 MR. BLALACK: I think we are, Your Honor.

6 MR. BALKENBUSH: Well --

7 MR. ROBERTS: Do you have something else?

8 MR. BALKENBUSH: Your Honor, the defense was hoping
9 that we could hear its objection to the media requests that were filed last
10 week before we brought in the venire, if possible. I don't know if Your
11 Honor has had an opportunity to review that yet, but.

12 THE COURT: I have the law clerk working on it now. So I'd
13 like to take it up after lunch.

14 MR. BALKENBUSH: Understood. Thank you, Your Honor

15 THE COURT: Thank you.

16 MS. LUNDVALL: And I am certain that your law clerk has
17 seen this, but we filed a response then, to the media request that came in
18 this morning, Your Honor.

19 THE COURT: We've been talking about it all morning.

20 MS. LUNDVALL: Thank you very much.

21 THE COURT: Okay.

22 MR. ROBERTS: And Your Honor, there is one item I wanted
23 to raise with the Court. I don't know how the Court usually deals with it.
24 I actually have not had this come up. But we did criminal background
25 checks, and Juror 20, Mr. Leopold, has two convictions, October 19th,

1 1998, a conviction in California for sexual penetration with a foreign
2 object, and the same day, a conviction for lewdness with a child under
3 14. And in looking at the statutes, I know that if he had been released
4 from parole in Nevada, the language would be in his discharge. But
5 given that this was California, I think there may be a chance that his civil
6 rights were not restored.

7 THE COURT: Okay.

8 MR. ROBERTS: And I know you have already asked just the
9 whole venire, but would the Court be willing just to confirm with him or?

10 THE COURT: Let me give the Plaintiff a chance to weigh in.

11 MR. ZAVITSANOS: Yes, Your Honor. So this is the first we
12 are hearing of this.

13 May I just inquire of counsel, the -- he gave the date of the
14 first one, and he may have given the date of the second one, maybe I
15 missed it. What's the date of the --

16 MR. ROBERTS: The same day. October 19th, 1998. So it's
17 more than --

18 MR. ZAVITSANOS: Okay.

19 MR. ROBERTS: So he's obviously been released from his
20 parole.

21 MR. ZAVITSANOS: Yeah. So may I have Mr. Kennedy
22 address the Court, Your Honor?

23 THE COURT: Yes. But if you want a chance to research it,
24 you know, and we -- and NRS has been amended, but that's for only
25 convictions in Nevada. It's NRS 21 -- 176A.850 or 213.157.

1 MR. ZAVITSANOS: So Your Honor, we would like a chance
2 to research it, but Mr. Kennedy does have a criminal background and
3 so --

4 THE COURT: Okay.

5 MR. ZAVITSANOS: I mean, I don't mean he's a criminal --
6 well, maybe I do.

7 MR. KENNEDY: I saw something along those lines too, but
8 without his date of birth or further identifiers, I wouldn't -- I couldn't
9 confirm whether it was actually him or not.

10 THE COURT: Okay. We have age, but not --

11 MR. KENNEDY: Correct.

12 THE COURT: -- date of birth. Okay. Let's hold that.

13 MR. ROBERTS: Okay.

14 THE COURT: And give them a chance to respond.

15 MR. ROBERTS: Thank you, Your Honor.

16 THE COURT: Was there anything else?

17 MR. ROBERTS: Not from the Defendants, Your Honor.

18 THE COURT: Thank you. So as soon as I see the marshal, I'll
19 give him the high sign to bring them in.

20 MR. ROBERTS: So did you need us to remove any of our
21 team from the courtroom? I know we talked about maybe needing to
22 whittle down the teams.

23 THE COURT: So it looks like there are 17. There are four of
24 us here. Yeah.

25 MR. ROBERTS: That would put us over. That's --

1 THE COURT: It will. Especially when the marshal gets in the
2 room. And we need to have the 24 in the box. I think we have one extra
3 juror still as well?

4 (Pause)

5 THE CLERK: Can I please have everyone on BlueJeans mute
6 yourself?

7 (Pause)

8 THE COURT: And to let you guys all know, I met Friday -- or
9 Thursday with court security, the head of security. I have since talked to
10 the public information officer. She has instructed the press not to film
11 any jurors, any venire. You know, she's been back in touch with me.
12 She has been very firm with them. But they aren't allowed to tape in the
13 hallway, and she has provided them with a set of media rules.

14 (Pause)

15 THE COURT: Okay. I just gave the high sign to the marshal.

16 THE MARSHAL: All rise for the jury.

17 [Prospective jurors in at 9:35 a.m.]

18 THE COURT: Very good. Mr. Leopold, can you give us your
19 date of birth?

20 PROSPECTIVE JUROR 20: July 21, 1961. By the way, good
21 morning, Your Honor.

22 THE COURT: Good morning. All right.

23 THE COURT: Thank you. Please be seated. Good morning
24 everyone.

25 IN UNISON: Good morning.

1 THE COURT: It's Monday. I hope you all had a nice long
2 weekend. And Mr. Roberts, when you're ready.

3 Just to let everyone know, I gave you the update about
4 meeting with court security and the two -- the top three court security.
5 There is a media request. If you're selected to be on the jury, there is a
6 plan and a way to safely escort you outside of the presence of the media
7 at the end of the trial. In the meantime, I have spoken to the court's
8 public information officer. She has notified the media that you may not
9 be taped or photographed in this building. They know that no taping is
10 allowed in the hallway. And she also sent them a copy of our media
11 rules, which she has let them know that they will be strictly enforced in
12 the event you are selected for the jury.

13 And Mr. Roberts?

14 MR. ROBERTS: Thank you, Your Honor. Good morning,
15 everyone.

16 IN UNISON: Good morning.

17 MR. ROBERTS: I hope everyone had a nice long weekend. I
18 need to reorient myself to the box. Everyone is seated a little different
19 today. That's Herzog at the end, right? Okay.

20 So let me ask you this before we get started. We've got five
21 insurance companies and claims administrators that I am representing;
22 UnitedHealthcare Insurance Company, Services, UMR, HPN, and Sierra.
23 Has anyone thought of a negative experience over the weekend that they
24 didn't tell me about last week with one of my clients? Great.

25 Let's talk about corporations first thing this morning. Who

1 here, by show of hands, thinks that corporations should be policed and
2 regulated more by the government than they are now? Does anyone
3 feel that way? Does anyone feel that corporations by their nature tend to
4 put profits over safety?

5 Okay. Let's start with you Ms. Landau, right, badge 283?

6 PROSPECTIVE JUROR 283: Yes. I just feel like corporations
7 are worried -- more worried about their profits than usually, like, who
8 they represent.

9 MR. ROBERTS: Do you think that as a general matter, more
10 likely than not, more corporations would lie if they could make more
11 money by lying?

12 PROSPECTIVE JUROR 283: Yeah.

13 MR. ROBERTS: You think that that's more common in a
14 corporation than with an individual?

15 PROSPECTIVE JUROR 283: Well, I think so, yes.

16 MR. ROBERTS: Why do you think that?

17 PROSPECTIVE JUROR 283: I think corporations have more
18 power than individual and I think they recognize that.

19 MR. ROBERTS: Thank you so much.

20 PROSPECTIVE JUROR 283: Uh-huh.

21 MR. ROBERTS: Okay. Next hand, I believe -- okay, Mr.
22 Walker, badge number?

23 PROSPECTIVE JUROR 450: 450.

24 MR. ROBERTS: Great. What about with you? What makes
25 you feel that way?

1 PROSPECTIVE JUROR 450: From my experience working -- I
2 did work for a corporation. It seemed like they did value more of the
3 money more. They were more about profits than they were about the
4 individual.

5 MR. ZAVITSANOS: Your Honor -- I'm sorry, Your Honor. Is
6 the microphone on, Your Honor?

7 THE COURT: May I ask you to speak up?

8 MR. ROBERTS: It is on.

9 PROSPECTIVE JUROR 450: So can you hear me?

10 MR. ROBERTS: Yes, if you hold it close. That's fine.

11 MR. ZAVITSANOS: Thanks. And my apologies for the
12 interruption.

13 MR. ROBERTS: And so that was based on your own personal
14 experience?

15 PROSPECTIVE JUROR 450: Yes.

16 MR. ROBERTS: And you work for the DMV now; is that
17 correct?

18 PROSPECTIVE JUROR 450: Yes.

19 MR. ROBERTS: And do you find that that is -- you don't see
20 that as much in a government-run organization?

21 PROSPECTIVE JUROR 450: No.

22 MR. ROBERTS: Okay. With your employment with the DMV,
23 are you a member of the State Employees Benefits Plan?

24 PROSPECTIVE JUROR 450: Yes.

25 MR. ROBERTS: Yes. And do you know if you have United

1 Insurance? I didn't catch that.

2 PROSPECTIVE JUROR 450: I don't.

3 MR. ROBERTS: You don't. Do you have a PPO or an HMO?

4 PROSPECTIVE JUROR 450: A PPO.

5 MR. ROBERTS: Okay. And are you generally pleased with
6 the way your PPO has worked?

7 PROSPECTIVE JUROR 450: Yeah.

8 MR. ROBERTS: Yes. Okay.

9 PROSPECTIVE JUROR 450: Yeah.

10 MR. ROBERTS: Thank you so much, Mr. Walker.

11 PROSPECTIVE JUROR 450: Thank you.

12 MR. ROBERTS: All right. Mr. Zabinski?

13 PROSPECTIVE JUROR 494: Yes, 494.

14 MR. ROBERTS: Did the 49ers win over the weekend?

15 PROSPECTIVE JUROR 494: They did. They beat the Bears.

16 MR. ZAVITSANOS: Is that a dig at me?

17 PROSPECTIVE JUROR 494: Yeah, so corporations, you just
18 have to look at history. Tobacco companies, car manufacturers, when
19 they look at safety in cars, a lot of times they determine which is more
20 expensive, the cost to make repairs that would stabilize or is it more
21 costly to fight it in court. And that's how they make decisions, so.
22 Tobacco companies, the same thing. So it's -- you just have to -- just
23 look at the history and there's your answer.

24 MR. ROBERTS: Do you think all corporations do that?

25 PROSPECTIVE JUROR 494: No, not --

1 MR. ROBERTS: Or do you think there are just good ones and
2 bad ones?

3 PROSPECTIVE JUROR 494: Oh, yeah. It's like individuals.
4 There's good and bad, so it's not -- I'm not saying all corporations put
5 profits over people or safety, but there are -- there is a history of it.

6 MR. ROBERTS: Well, to the extent that happens, what
7 should we as a society do about that, regulate them more, punish them
8 more? What should we do?

9 PROSPECTIVE JUROR 494 : Well, there are laws -- there are
10 laws in place so I'm not in favor of more regulation. I think kind of the
11 way it is is a fair system. But to answer your question, corporations do
12 and have put profits ahead of people on safety.

13 MR. ROBERTS: Thank you, Mr. Zabinski. And Ms. Friedrich,
14 you had your hand up too?

15 PROSPECTIVE JUROR 522: Yes, 522. Yes. In my 40-year
16 career, I have only worked for hospitals that were owned by corporations
17 which did put, sometimes, a damper on things that we could do, or we
18 could not do. It was corporate policy. It was corporate rules. So the
19 things we didn't get that we needed for patients or -- you know, things
20 that patients didn't get because it wasn't covered under the corporate
21 policy. So I agree, there are good and there are bad corporations. But
22 on the whole, I do think that they would put profit ahead of the people.

23 MR. ROBERTS: Would you consider the hospitals that you
24 worked at good corporations or bad corporations as a whole?

25 PROSPECTIVE JUROR 552: I'd say some were bad, some

1 were good. I've -- I worked for five corporations in my 40 years, so some
2 we had the things that we needed, and some we didn't. So it was just a
3 matter of who I was with at the time.

4 MR. ROBERTS: What about you, do you think most
5 corporations would like if they could get more money by lying?

6 PROSPECTIVE JUROR 522: Yes.

7 MR. ROBERTS: Thank you, ma'am. Let's go to the next row,
8 and --

9 PROSPECTIVE JUROR 038: 038, 038. There's always some
10 corporations, some corporations will be more concerned about money
11 than the families that are served.

12 MR. ROBERTS: And do you think that's most corporations?

13 PROSPECTIVE JUROR 038: I would say half.

14 MR. ROBERTS: Okay. Do you have a feeling about how we
15 could make that better as a society?

16 PROSPECTIVE JUROR 038: Maybe trying to regulate it.

17 MR. ROBERTS: What about the question about lying? Do
18 you think most corporations would lie to get more money?

19 PROSPECTIVE JUROR 038: I can't answer that.

20 MR. ROBERTS: Okay. Do you think there's a difference
21 between corporations and individuals when it comes to that?

22 PROSPECTIVE JUROR 038: Well, yes. There's -- both of the
23 power [indiscernible].

24 MR. ROBERTS: Thank you. Thank you, Mr. Torres. Mr.
25 Nesci?

1 PROSPECTIVE JUROR 593: 593. Well, before last Monday,
2 when I was allowed to watch the news --

3 MR. ROBERTS: The news?

4 PROSPECTIVE JUROR 593: You could see in current events
5 with Facebook. They're accused now of choosing profits over safety
6 especially for teenage children. And in my own life, I've been here a
7 while. My whole family worked in the casinos in the '70s, when it was
8 alleged mob-owned, in particular, Stardust Hotel. It was a great place. It
9 was pro labor.

10 Steve Wynn came in -- I won't waste the Court's time. But
11 Steve Wynn came in, public ownership, public offerings, Wall Street.
12 Total atmosphere changed. It went from labor first to money first, and
13 we -- my whole family has witnessed it.

14 MR. ROBERTS: And do you think that's the way it currently
15 is on the Strip?

16 PROSPECTIVE JUROR 593: Oh, definitely. Most definitely.
17 Most definitely. Yes. Most definitely.

18 MR. ROBERTS: Any locally owned casinos that might be
19 different? What do you think about that?

20 PROSPECTIVE JUROR 593: I do not. Basically casinos, as
21 soon as they get a slow day, okay, you need to go home. It's profit. It's
22 profit. The bottom line, that's what they're concerned with. Are there
23 good corporations? I think there may be some good corporate citizens,
24 but fewer and fewer in my opinion.

25 MR. ROBERTS: What do you think we should do about that?

1 PROSPECTIVE JUROR 593: I think we should enforce
2 regulation. Not --

3 MR. ROBERTS: Not more, just enforce it.

4 PROSPECTIVE JUROR 593: I don't believe it's enforced
5 properly or adopted. There's just too much of a backlog. And there's
6 too many non-good corporate citizens.

7 MR. ROBERTS: And how do we enforce regulations? Do we
8 fine people? Do we punish people? What do we do?

9 PROSPECTIVE JUROR 593: Well, what were you talking
10 about last week, punitive damages would help if it would help to coerce
11 them to discontinue their bad behavior, yeah. What's the bottom line?
12 My opinion, it's money. So how do you hit them? How do you correct
13 their behavior? By fining them, money.

14 MR. ROBERTS: What about the lying question?

15 PROSPECTIVE JUROR 593: Oh definitely.

16 MR. ROBERTS: Would you think that a -- someone speaking
17 for a corporation would be less likely to tell the truth than an individual?

18 PROSPECTIVE JUROR 593: Some -- no, someone's -- an
19 individual speaking for a corporation or the corporation itself?

20 MR. ROBERTS: Well, how does a corporation speak other
21 than through individuals?

22 PROSPECTIVE JUROR 593: Well, well in the case of
23 Facebook, not just one person is deciding those actions. Well, maybe it
24 was. I don't know. I'm not involved in it behind the scenes. Maybe it
25 wasn't. It was a board of directors, I would imagine, who would make

1 that decision.

2 MR. ROBERTS: Thanks, Mr. Nesci.

3 PROSPECTIVE JUROR 593: You're welcome.

4 MR. ROBERTS: Appreciate it.

5 PROSPECTIVE JUROR 593: You're welcome.

6 MR. ROBERTS: Okay. And Mr. Rucker.

7 PROSPECTIVE JUROR 561: 561. I've lived in -- I've seen it.

8 You know, I've seen it firsthand. And this was like way back before the
9 whistleblower type deal because nobody wanted to be a whistleblower
10 back then of course, you lost your job. That's it. You know. As far as
11 corporations lying? Of course. Do they all lie? No.

12 But we have to understand what -- when a corporation or
13 individuals, whatever, believes its own reality, what they believe is true
14 is their reality. What I believe is true is my reality. And that's where the
15 problem comes in. I do agree with him when he said it needs to be
16 enforced. You know, it's simple enforcement and what enforcement is,
17 like he told you, is money. That's what it's about. It makes the world go
18 round.

19 MR. ROBERTS: Now, Mr. Rucker, when you said that you
20 knew from personal experience, are these corporations you've worked
21 for?

22 PROSPECTIVE JUROR 564: Yes.

23 MR. ROBERTS: Have some been worse than others, or are
24 they all bad?

25 PROSPECTIVE JUROR 564: No, it was only a couple of them.

1 They -- one wasn't so bad, and one was just -- it was really bad. Yeah.

2 MR. ROBERTS: Thanks, Mr. Rucker. Do we have any other
3 hands? Let's see. Okay. All right. You're Mr. Meyer?

4 PROSPECTIVE JUROR 532: 532. I might be a little off on this,
5 but, you know, a corporation could be a closely held corporation. Then
6 you could have a stock corporation. It could be stockholders making
7 decisions. Also, stock corporations are -- their records are publicly
8 known so anybody can look up financially what they're doing. Closer to
9 the helm, you've got the family, or maybe a sole proprietor. They make
10 the calls. So there's a difference there maybe as far as safety.

11 As far as lying, I'm sure that there is some lying that goes on,
12 but I think a lot of it is maybe some things are just not disclosed,
13 preferably. It may be a lie in of that but they kind of look at it that they
14 don't have to disclose this, so we won't do that.

15 MR. ROBERTS: More of a sin of omission, might be more
16 complicated?

17 PROSPECTIVE JUROR 532: Yes.

18 MR. ROBERTS: Yes.

19 PROSPECTIVE JUROR 532: Right.

20 MR. ROBERTS: Now, you mentioned corporate --
21 corporations can be closely held or publicly traded. Do you think one is
22 a bigger problem than the other when it comes to profits over safety?

23 PROSPECTIVE JUROR 532: Well, with profits, you've got
24 your stockholders you have to satisfy. Obviously if your dividends go
25 down, stockholders are not going to be happy.

1 MR. ROBERTS: Yes.

2 PROSPECTIVE JUROR 532: So that's a big point of it right
3 there.

4 MR. ROBERTS: Do you think companies have an obligation
5 to their stockholders to maximize profits?

6 PROSPECTIVE JUROR 532: I think they do, yes.

7 MR. ROBERTS: How do you balance that?

8 PROSPECTIVE JUROR 532: Well, obviously the stockholders
9 want profits but yet they don't want the company to you know, obviously
10 deteriorate by finding out there's a lawsuit against them because of a
11 safety hazard that they just didn't disclose or things like that because that
12 obviously is going to destroy the company and there goes your profits.

13 MR. ROBERTS: Right. Putting profits --

14 PROSPECTIVE JUROR 532: But there's a balancing act there I
15 guess, yes.

16 MR. ROBERTS: I understand. You're saying putting profits
17 over safety may look good in the short term but the long term, it may not
18 pay.

19 PROSPECTIVE JUROR 532: Right. Exactly.

20 MR. ROBERTS: And do you think corporations are aware of
21 that?

22 PROSPECTIVE JUROR 532: I believe they do.

23 MR. ROBERTS: Okay. Thank you, Mr. Meyer. Appreciate it.
24 Saw a hand right here.

25 PROSPECTIVE JUROR 095: 095.

1 MR. ROBERTS: Ms. Wilson.

2 PROSPECTIVE JUROR 095: So I think corporations; there are
3 some good and some bad. I worked in the baking industry my whole
4 life. Obviously except for one, was held by a major -- it's a major bank.
5 So what I see in my industry is highly regulated. The punishment is
6 almost always, when they're not doing the right thing, is a money
7 punishment, and either by loss of customers, by fines from the
8 government, right? So it's highly regulated.

9 In my opinion, there are some things it has made that good.
10 So we can look at the mortgage crisis and understand that there was
11 some regulation and penalties that needed to be done. There's other
12 times when some other regulations, as somebody that works for the
13 company, sometimes feel a little burdensome. But I also understand that
14 they need more than.

15 But I think saying a blanket, that all corporations are bad, I
16 don't think that that's true. I think that you can have bigger corporations
17 like that that are good corporate citizens, and they do the right thing.
18 And still make a profit for their stockholders.

19 MR. ROBERTS: Do you think regulations are a little too
20 burdensome right now, or do you think it's a nice balance that we
21 currently have?

22 PROSPECTIVE JUROR 095: In the financial industry?

23 MR. ROBERTS: Yes.

24 PROSPECTIVE JUROR 095: I believe that they're probably
25 just right, right now. Like I don't think we need more because there is

1 some discussion about how they are right now. Yeah.

2 MR. ROBERTS: Thank you, Ms. Wilson.

3 PROSPECTIVE JUROR 095: You're welcome.

4 MR. ROBERTS: Did I see any other hands up here? I don't
5 think I did.

6 Okay. So everyone who just commented about corporations
7 putting profits over safety, let's talk about the health insurance industry
8 in particular. Do you think corporations that are involved in the health
9 insurance industry are just as bad as other corporations? Anyone think
10 that? Anyone think they're better? Okay. So that means everyone that
11 thinks they are all about the same, right? Mr. Nesci?

12 PROSPECTIVE JUROR 593: I just want to say I believe they're
13 like all other corporations. They're motivated by profit. Simple.

14 MR. ROBERTS: Thank you.

15 PROSPECTIVE JUROR 593: You're welcome.

16 MR. ROBERTS: Let's see. Can you pass the mic up for me?
17 Let's see. I'm going to go right up here to Ms. Wynn. I had a follow up
18 question for you. I -- did I hear correctly that you worked or have worked
19 for Southwest Medical Associates?

20 PROSPECTIVE JUROR 254: Me?

21 MR. ROBERTS: Yes.

22 PROSPECTIVE JUROR 254: NO.

23 MR. ROBERTS: Okay. I had my notes messed up. Does
24 anyone here work for Southwest Medical Associates, at any time?

25 PROSPECTIVE JUROR 254: What last name did you say?

1 MR. ROBERTS: Oh. I said Ms. Wynn.

2 PROSPECTIVE JUROR 254: There are two black women.

3 MR. ROBERTS: My mistake. Okay, very good. Ms. Wynn?

4 PROSPECTIVE JUROR 254: I worked for Southwest Medical
5 back in the 90s, and I currently work for Southern Hills now.

6 MR. ROBERTS: Okay. Now currently, did you know that
7 Southwest Medical Associates is an affiliate of Sierra?

8 PROSPECTIVE JUROR 254: Yes.

9 MR. ROBERTS: Okay. Were they affiliated with Sierra at the
10 time you worked there?

11 PROSPECTIVE JUROR 254: I believe so.

12 MR. ROBERTS: Okay. How does your experience with an
13 affiliate of my clients -- how does that make you feel about being on the
14 jury?

15 PROSPECTIVE JUROR 254: I've had a good experience from
16 both sides. So when I was with Southwest and I had HPN, I had the
17 HMO plan. And I just learned that the doctor that I had, I just had to let
18 them know when something was going on, if I needed a referral. It
19 didn't take long to get. So I didn't -- I've never had a PPO plan, and I've
20 always had HMOs. So if I needed something I just knew I had to speak to
21 -- not wait until anything I had got bad and I seemed to have whatever I
22 needed done. So I've had a good experience.

23 I've had a Health Plan Nevada for I want to say almost since
24 1996, whenever it was offered. And it was an HMO plan, so I haven't
25 dealt with any PPO plan, and it wouldn't sway me to go from one side

1 more than the other, so.

2 MR. ROBERTS: And when you say you had a good
3 experience with both sides?

4 PROSPECTIVE JUROR 254: Meaning where I worked at, I
5 was an employee for Southwest Medical. I was getting my treatment
6 through Southwest Medical doctors and my insurance was through HPN.
7 And I have no -- I haven't had any bad experience.

8 MR. ROBERTS: Have you had any bad experience in your
9 current plan?

10 PROSPECTIVE JUROR 254: No. And I'm in the process of
11 getting a new insurance plan now. So I have to -- so back then -- I looked
12 over and the HMO plan that was being offered seemed to have what I
13 need, so. I just know I've learned in my life to just speak up if I'm having
14 a medical condition; don't wait until the last minute and I might need
15 something that they don't cover.

16 And I've also been an outpatient or outpatient rep where you
17 had to verify patient insurance, go over the plan. I've learned to look at
18 the plan, not just say I have insurance and think I'm covered for
19 everything because that's part of the issue some people have when they
20 need something. It isn't covered. And then or its covered, 60-40 and
21 they can't afford it. Then that's when they get upset a little bit more
22 because now they're being told they have to pay this to have this done.

23 So it -- I don't have -- I can't say I've had a bad experience
24 and I hope I don't ever have one. And even working for the affiliates, I
25 follow the rules, so, and I feel everyone should follow the rules. So there

1 are times when people would do whatever they need to do to get things
2 done. So like I said, it's fine.

3 MR. ROBERTS: So is part of your current job to look at
4 policies of insurance and determine what's covered and what isn't?

5 PROSPECTIVE JUROR 254: I'm a healthcare unit coordinator
6 so I'm on one unit. I just check patients in and send them to their room
7 that the unit tells me to send them to. If they're there to be checked, they
8 go to a triage room. If they need to be admitted, they get admitted to
9 that room. I'm on the maternity ward so I deal with pregnant women all
10 -- I was going to say pregnant patients, I will say that. So that's all I can
11 say right now at this time.

12 MR. ROBERTS: Very good. With your employment in the
13 medical field --

14 PROSPECTIVE JUROR 254: Yes.

15 MR. ROBERTS: Do you ever hear discussions at work about
16 reimbursement for services rendered?

17 PROSPECTIVE JUROR 254: No, but what I do hear, is where
18 a lot of people think if you hear MD, they make a lot of money. And
19 that's all that they assume, but then there's things that they have to do
20 as a doctor, things that they have to have to cover themselves as a doctor
21 and nurse practitioners and the nurses. So everyone has to follow, and I
22 guess I've heard -- I didn't hear about reimbursement or everything. I
23 don't really pay attention to that if they're talking about it.

24 But from where I sit, I barely can hear it at the -- with my
25 previous employer, because I was sitting outside at the front, not where

1 they're at the desk talking but I have heard with some doctors, that's why
2 they're leaving because of what they have to pay to stay in Nevada, that
3 they have to pay to cover themselves. And I feel like it hurts patients
4 when we lose them, but some of them say they have to do what they got
5 to do to cover themselves and their families also.

6 And insurance wise, you just got to pay attention to what you
7 select and if it's not the one, you might have to pay a little bit more to get
8 the one that you can. I can only say I've only had HMO all my life and
9 I've been fine with that.

10 MR. ROBERTS: Thank you, ma'am.

11 PROSPECTIVE JUROR 254: You're welcome.

12 MR. ROBERTS: You said you disagreed that, you know, with
13 people who -- some folks who might think that doctors are overpaid?

14 PROSPECTIVE JUROR 254: Well, I disagree with some
15 people think that the person being the doctor, they immediately make
16 tons of money; they have enough. But they also have things that they
17 have to take care of that some people don't know about.

18 MR. ROBERTS: Do you think they're severely underpaid
19 given all those things people don't know about?

20 PROSPECTIVE JUROR 254: I don't know about them being
21 underpaid, but a lot of people just hear MD, and think money because
22 that's all that they have enough of all the time. I don't know their
23 expenses. I don't know what they go through but and I believe they
24 should have insurance like we pay for our insurance. I guess they pay
25 for theirs. I don't know. But I've heard it even from nurses. Nurses go

1 through it, where they think the nurses make enough money. But it's
2 also what they have to take care of outside of just doing their job there.

3 MR. ROBERTS: Thank you so much, Ms. Wynn. So is there
4 anyone who would disagree with the fact that doctors are very important
5 in the community? And the emergency room doctors in particular,
6 would everyone agree that they're of critical importance to the
7 community? Implied in how important they are, does anyone feel that
8 they're not just not overpaid but that they're way underpaid?

9 Everyone agree with Ms. Wynn that they're probably about
10 right based on what you believe?

11 I'm going to have to start calling on people individually soon.
12 Hopefully -- oh yes.

13 PROSPECTIVE JUROR 014: 014.

14 MR. ZAVITSANOS: Sorry, what number?

15 PROSPECTIVE JUROR 014: 014.

16 MR. ZAVITSANOS: Thank you.

17 PROSPECTIVE JUROR 014: Just so you have an answer out
18 there. I don't know that I have enough information on doctors' pay rate
19 and what they pay out for their malpractice insurance and all that to
20 really have an opinion on that. That's where I stand on it now. I don't
21 know what doctors get paid. I don't know what they -- I don't know.

22 MR. ROBERTS: So you just really have no opinion
23 whatsoever.

24 PROSPECTIVE JUROR 014: Yeah, no opinion at all. In that
25 field, like most people don't have a very good idea of what the doctors

1 and nurses deal with in the end.

2 MR. ROBERTS: All right. If I promise not to ask any follow-
3 up questions, give me a show of hands, who agrees with Ms. Forrester
4 that you don't know enough to know whether they're overpaid or
5 underpaid? Okay. I keep my promise. I got a lot more hands that time.

6 Is anyone here unfamiliar with how health insurance works?
7 Can we pass the microphone to Ms. Dudley? Is that right?

8 PROSPECTIVE JUROR 224: Yes.

9 MR. ROBERTS: God this seating arrangement has me all
10 messed up. So tell me about that.

11 PROSPECTIVE JUROR 224: So --

12 THE CLERK: Badge number please?

13 PROSPECTIVE JUROR 224: 224. Kelsey Dudley. As far as
14 health insurance goes, when I was younger, I had health insurance, but I
15 never saw medical doctors. My father's a chiropractor and we went the
16 natural path which was wonderful. I always had unexplainable health
17 issues that I'm becoming more aware of. And so I know I applied for
18 Medicaid and could not get it due to income. So at this point in time I
19 only have [indiscernible]. So -- and that's for an emergency, so when it
20 comes to emergency doctors, I -- and accidents, in the beginning of
21 things I can see how important chiropractors are, spiritually, and then
22 how important medical doctors are, so that's just -- that's the best
23 explanation I suppose I can give.

24 And in regards to health insurance, I know that when you are
25 in a fearful state and don't know what's going on with your body that

1 you will -- you will go to the emergency room without -- or at least in my
2 experience, looking or having a full understanding about out-of-network,
3 in-network, or even having health insurance, you just want to get
4 answers for once in your life, perhaps. And so I'm sure I'll pay for that
5 and happily will do so. But my view of health insurance is probably
6 more energetic now, in a sense, and not so much insurance and profit,
7 and would just [indiscernible - coughing in the background].

8 MR. ROBERTS: Do you think just going to the doctor without
9 really figuring out the financial consequences are more common with an
10 emergency room visit than going to see other doctors?

11 PROSPECTIVE JUROR 224: In my experience, I more so want
12 to just get my body working and wanted to -- once I felt that I would be
13 able to do so, then I was going to, you know, be able to financially meet
14 those costs inevitably.

15 MR. ROBERTS: So you brought up again that your father is a
16 chiropractor?

17 PROSPECTIVE JUROR 224: Yes, sir.

18 MR. ROBERTS: Do I remember correctly that he had a lot of
19 problems and disputes with insurance companies and attorneys?

20 PROSPECTIVE JUROR 224: Yes, he did.

21 MR. ROBERTS: Okay. And in this case where, you know,
22 we've got a bunch of attorneys in the room and we have insurance
23 companies in the room, do you think that the experiences that your
24 father had with insurance companies might come to mind as you're
25 deciding the facts of this case and listening to the evidence in this case?

1 PROSPECTIVE JUROR 224: That would be an emotional
2 reaction. Logically, we shouldn't generalize any group, whether it be
3 insurance, or a doctor, or a corporation. So I would choose from logic
4 over emotionality in that regard.

5 MR. ROBERTS: Okay. Do you think you might have that
6 emotional response?

7 PROSPECTIVE JUROR 224: I'm human.

8 MR. ROBERTS: Right.

9 PROSPECTIVE JUROR 224: So -- but I would still choose to
10 look at the facts to the best of my ability.

11 MR. ROBERTS: So even though some of those memories
12 might come up and you might have an emotional response, you believe
13 you can set that response --

14 PROSPECTIVE JUROR 224: I --

15 MR. ROBERTS: -- aside?

16 PROSPECTIVE JUROR 224: -- I welcome those emotional
17 responses, but also wanting to just sit back and think deeper, a deeper
18 inquiry and --

19 MR. ROBERTS: As an -- okay.

20 PROSPECTIVE JUROR 224: -- it might just take to myself
21 more time to look at the facts, but that's something I'm -- I feel is
22 imperative to do as an individual on each individual.

23 MR. ROBERTS: Thank you. And you understand why I
24 would ask that, though, right?

25 PROSPECTIVE JUROR 224: Yes.

1 MR. ROBERTS: I'm representing an insurance company --

2 PROSPECTIVE JUROR 224: Absolutely. Yes.

3 MR. ROBERTS: -- in a dispute with providers.

4 PROSPECTIVE JUROR 224: Yes.

5 MR. ROBERTS: Okay.

6 PROSPECTIVE JUROR 224: You might be that one in a

7 million perfect attorneys who's out for the good, the higher good.

8 MR. ROBERTS: Thank you.

9 PROSPECTIVE JUROR 224: So --

10 MR. ROBERTS: And your mind is open to that. That's --

11 PROSPECTIVE JUROR 224: That's [indiscernible].

12 MR. ROBERTS: Thank you so much. So who thinks that
13 unethical practices among health insurance companies has been
14 increasing over the last ten years? No follow-up question, just hands.
15 About the same?

16 PROSPECTIVE JUROR 074: What was the question again?

17 MR. ROBERTS: Do any of you believe that unethical
18 practices among health insurance companies are increasing over the last
19 ten years, that it's getting worse? Do people feel like they don't have
20 enough information to know that? Yes?

21 PROSPECTIVE JUROR 074: Yes.

22 MR. ROBERTS: Is that where most people are?

23 PROSPECTIVE JUROR 074: Right.

24 MR. ROBERTS: Let's pass the mic back to Ms. Gonzaga.

25 Let's go through it here. So Ms. Gonzaga?

1 PROSPECTIVE JUROR 074: 074.

2 MR. ROBERTS: Thank you. Do you currently work for the
3 Las Vegas Water District?

4 PROSPECTIVE JUROR 074: I do.

5 MR. ROBERTS: Okay. What were your prior jobs? Did you
6 work at any other place before you went to the Water District?

7 PROSPECTIVE JUROR 074: Yes. I worked at MGM Resorts
8 for their corporate office.

9 MR. ROBERTS: And what years was that?

10 PROSPECTIVE JUROR 074: 2010 to 2015.

11 MR. ROBERTS: Thank you. And do you have a higher
12 degree of education?

13 PROSPECTIVE JUROR 074: Yes. I have my master's degree.

14 MR. ROBERTS: Yes, and I saw that on your form. What
15 subject is that in? What was your specialty?

16 PROSPECTIVE JUROR 074: Business administration.

17 MR. ROBERTS: And when you were with MGM, do you
18 recall if you had a health plan administered by one of my clients?

19 PROSPECTIVE JUROR 074: I don't remember.

20 MR. ROBERTS: Okay. Just in general, did you have any
21 problems with your health plan getting legitimate claims paid?

22 PROSPECTIVE JUROR 074: No.

23 MR. ROBERTS: Do you think most people have problems
24 collecting on legitimate claims from their insurance?

25 PROSPECTIVE JUROR 074: No.

1 MR. ROBERTS: Do you have any preexisting beliefs, one
2 way or another, whether providers are reimbursed fairly?

3 PROSPECTIVE JUROR 074: I do not have an opinion on it.

4 MR. ROBERTS: Okay. Don't know enough?

5 PROSPECTIVE JUROR 074: I don't know enough.

6 MR. ROBERTS: Okay. Great. Thank you. Thank you Ms.
7 Gonzaga. Let's pass to Ms. Springberg.

8 PROSPECTIVE JUROR 141: 141,

9 MR. ROBERTS: Okay. Ms. Springberg, did you previously
10 work for a law firm?

11 PROSPECTIVE JUROR 141: Yes.

12 MR. ROBERTS: And you work for Clark County?

13 PROSPECTIVE JUROR 141: Yes, for the courts.

14 MR. ROBERTS: Okay. And do I recall that you know one of
15 the attorneys for the Plaintiffs from your prior legal experience?

16 PROSPECTIVE JUROR 141: I do. I know a lot of people down
17 here, plus staff, yes.

18 MR. ROBERTS: And I think the judge already asked you this,
19 but your experience with the Plaintiff's attorney that you know in this
20 case, how long did you work with her?

21 PROSPECTIVE JUROR 141: I observed her in court on
22 multiple occasions, in -- yeah, in multiple cases.

23 MR. ROBERTS: And so your knowledge of her comes from
24 your work as a JA? Your reports?

25 PROSPECTIVE JUROR 141: Yes.

1 MR. ROBERTS: And did you know when you were in private
2 practice for a law firm?

3 PROSPECTIVE JUROR 141: I did not, no.

4 MR. ROBERTS: Okay. And that's not going to hurt my client,
5 the fact that you know one of the Plaintiff lawyers?

6 PROSPECTIVE JUROR 141: No.

7 MR. ROBERTS: Okay. Thank you. Thank you very much.
8 What about Ms. Landau?

9 PROSPECTIVE JUROR 283: 283.

10 MR. ROBERTS: And as I recall, you work for Whole -- you
11 work for Whole Foods?

12 PROSPECTIVE JUROR 283: Yeah.

13 MR. ROBERTS: Did I see that you're also a student?

14 PROSPECTIVE JUROR 283: Yes.

15 MR. ROBERTS: Where do you -- are you currently going to
16 school?

17 PROSPECTIVE JUROR 283: Well, I was in school for nursing,
18 but I decided I didn't like it, so now I'm looking at other schools to do like
19 esthetician stuff.

20 MR. ROBERTS: Okay. Are you currently attending classes
21 anywhere?

22 PROSPECTIVE JUROR 283: No, not right now, so --

23 MR. ROBERTS: And you have been to emergency rooms that
24 were staffed by the Plaintiffs?

25 PROSPECTIVE JUROR 283: Yes.

1 MR. ROBERTS: And your experiences there, are they going
2 to cause you to favor them in this lawsuit in any way?

3 PROSPECTIVE JUROR 283: No.

4 MR. ROBERTS: No?

5 PROSPECTIVE JUROR 283: No.

6 MR. ROBERTS: Could you be fair and impartial?

7 PROSPECTIVE JUROR 283: Yes.

8 MR. ROBERTS: What about you; do you think it's difficult to
9 collect from a health insurance company on a legitimate claim?

10 PROSPECTIVE JUROR 283: I don't know enough about that,
11 so I don't have an opinion.

12 MR. ROBERTS: Do you have any preexisting beliefs about
13 reimbursement rates and whether they're fairly set?

14 PROSPECTIVE JUROR 283: No.

15 MR. ROBERTS: Thank you.

16 PROSPECTIVE JUROR 283: Uh-huh.

17 MR. ROBERTS: You could pass it to Mr. Walker.

18 PROSPECTIVE JUROR 450: 450.

19 MR. ROBERTS: What about you, Mr. Walker, do you think it's
20 tough to collect on legitimate insurance claims?

21 PROSPECTIVE JUROR 450: I don't have enough knowledge
22 to know about that.

23 MR. ROBERTS: Have you personally ever had any problem
24 collecting on what you felt was a legitimate claim?

25 PROSPECTIVE JUROR 450: I don't think so because I've

1 never had to respond [indiscernible].

2 THE COURT: Mr. Walker --

3 PROSPECTIVE JUROR 450: I'm sorry.

4 THE COURT: -- can I ask you to speak up?

5 PROSPECTIVE JUROR 450: I'm sorry.

6 THE COURT: Thank you.

7 PROSPECTIVE JUROR 450: I don't think I've ever had to
8 respond to anything.

9 MR. ROBERTS: And I see you had some college, correct?

10 PROSPECTIVE JUROR 450: Yes.

11 MR. ROBERTS: What did you -- declare a major or just take
12 general courses?

13 PROSPECTIVE JUROR 450: Just did general study.

14 MR. ROBERTS: What was your favorite subject when you
15 were in school?

16 PROSPECTIVE JUROR 450: Science was one and civil
17 literature.

18 MR. ROBERTS: Thank you. Mr. Zabinski?

19 PROSPECTIVE JUROR 494: 494.

20 MR. ROBERTS: Both of your parents are registered nurses in
21 northern California, right?

22 PROSPECTIVE JUROR 494: Yes. My dad's retired.

23 MR. ROBERTS: Your dad's retired. Did you ever discuss
24 reimbursement with them?

25 PROSPECTIVE JUROR 494: [No audible response]

1 MR. ROBERTS: Did you ever form any beliefs about whether
2 healthcare providers as a whole were underpaid or overpaid or just
3 didn't come up?

4 PROSPECTIVE JUROR 494: They felt nurses are underpaid,
5 but nothing as far as insurance, dealing with that, if it's --

6 MR. ROBERTS: And I think that's because of the burden that
7 the nurses bore for healthcare as opposed to the doctors.

8 PROSPECTIVE JUROR 494: They do more work than doctors
9 and make less money, so that's what they're [indiscernible].

10 MR. ROBERTS: You think doctors are underpaid too or just
11 mainly nurses?

12 PROSPECTIVE JUROR 494: I don't believe doctors are
13 underpaid, no.

14 MR. ROBERTS: Okay. Do you believe nurses are underpaid
15 or is this just a belief that --

16 PROSPECTIVE JUROR 494: As a society whole, I would say
17 yes.

18 MR. ROBERTS: Yes. Thank you, sir. Okay. Ms. Friedrich?

19 PROSPECTIVE JUROR 522: 522. I know nurses around here,
20 too.

21 MR. ROBERTS: And obviously, you know that from personal
22 experience at several different health systems. What do you think about
23 this question, about whether it's tough to collect on a valid claim from a
24 health insurance company?

25 PROSPECTIVE JUROR 522: On a valid claim, I think it's

1 probably easy, you know, if you submit it, and it's on the insurance, it
2 usually is paid.

3 MR. ROBERTS: Do you think health insurers look for
4 loopholes to keep from paying claims?

5 PROSPECTIVE JUROR 522: I don't think necessarily that they
6 look for them. I think if one jumps up they'll take it.

7 MR. ROBERTS: And what about reimbursements set for
8 healthcare providers by insurance companies; do you have any
9 preexisting belief as to those?

10 PROSPECTIVE JUROR 522: No, I don't. I don't have enough
11 information on what the doctors make to know whether it's fair or not.

12 MR. ROBERTS: Okay. So you believe that nurses is
13 underpaid, is that going to make you want to make us pay more in this
14 case, where nurses are involved?

15 PROSPECTIVE JUROR 522: No, I think I would be fair.

16 MR. ROBERTS: Okay. Is that going to be inside though?

17 PROSPECTIVE JUROR 522: Might be.

18 MR. ROBERTS: Okay. Thank you. Let's -- if we can go right
19 in front, Ms. Ross?

20 PROSPECTIVE JUROR 093: 093.

21 MR. ROBERTS: What about you, Ms. Ross? Do you think it's
22 tough to get valid claims paid?

23 PROSPECTIVE JUROR 093: No, I don't think so.

24 MR. ROBERTS: Do you think insurance companies look for
25 loopholes?

1 PROSPECTIVE JUROR 093: No.

2 MR. ROBERTS: No?

3 PROSPECTIVE JUROR 093: I don't think so. I don't know
4 enough.

5 MR. ROBERTS: And you've never had any problem getting
6 your own claims paid?

7 PROSPECTIVE JUROR 093: No.

8 MR. ROBERTS: And you were an operations engineer?

9 PROSPECTIVE JUROR 093: No, like computers. IT specialist.

10 MR. ROBERTS: Okay. So let me ask you this. So you wrote
11 software, right?

12 PROSPECTIVE JUROR 093: I didn't write it, but --

13 MR. ROBERTS: But you managed it?

14 PROSPECTIVE JUROR 093: Yes.

15 MR. ROBERTS: Worked with it?

16 PROSPECTIVE JUROR 093: Yes.

17 MR. ROBERTS: What involvement, if any, did you have with
18 fee schedules in your job with billing software?

19 PROSPECTIVE JUROR 093: So we usually were given a fee
20 schedule, and we would load it into our system. The way our system
21 paid claims is they were like benefit code driven, so we had to, like, link
22 up a certain benefit code to a certain -- what is it called? CBT or SED
23 code in order for the claim to pay, so it's kind of a table behind the
24 scenes that would match everything up.

25 MR. ROBERTS: And you would load that table into the

1 computer software?

2 PROSPECTIVE JUROR 093: Yes.

3 MR. ROBERTS: And did you look at the numbers when you
4 loaded them in?

5 PROSPECTIVE JUROR 093: No, it was so long ago. We're
6 talking like 1995 through 2006, so I really don't remember.

7 MR. ROBERTS: And the benefit code that you would log in
8 on your system?

9 PROSPECTIVE JUROR 093: Yes.

10 MR. ROBERTS: Would it -- was that like a benefit code that
11 was part of the benefit plan or was it more of a CBT code to --

12 PROSPECTIVE JUROR 093: No, like -- for an office visit the
13 benefit code might be OB, so they would have to put OB in the claim,
14 and then that would know which CBT code or whatever to pull a claim,
15 you know?

16 MR. ROBERTS: Did you form any belief as to whether or not
17 those reimbursement rates and the fee schedules you loaded in were
18 fair?

19 PROSPECTIVE JUROR 093: No, I never thought about it.

20 MR. ROBERTS: Never thought about it?

21 PROSPECTIVE JUROR 093: No, I just figured it was what it
22 was. I don't --

23 MR. ROBERTS: And you -- and I'm taking it from your
24 description of your job duties you never had any direct contact with
25 providers about their reimbursements?

1 PROSPECTIVE JUROR 093: No. That was all done by
2 someone else, like about my pay scale.

3 MR. ROBERTS: Thank you very much.

4 PROSPECTIVE JUROR 093: Uh-huh.

5 MR. ROBERTS: All right. Ms. Carr?

6 PROSPECTIVE JUROR 049: 049.

7 MR. ROBERTS: Okay. All right. What about you? Do you
8 think it's hard to get paid on legitimate health insurance claims?

9 PROSPECTIVE JUROR 049: I have not experienced any
10 difficulties.

11 MR. ROBERTS: Okay. Do you think insurance companies
12 look for loopholes?

13 PROSPECTIVE JUROR 049: Not necessarily.

14 MR. ROBERTS: Okay.

15 PROSPECTIVE JUROR 049: But that's not to say it doesn't
16 happen. I don't have enough information either.

17 MR. ROBERTS: You don't have enough information. Your
18 mind is open. Let's see. And you're a -- your best friend is an RN?

19 PROSPECTIVE JUROR 049: Yes.

20 MR. ROBERTS: Aunts and cousins are RNs?

21 PROSPECTIVE JUROR 049: I'm -- yes, my aunts. Aunts and a
22 cousin.

23 MR. ROBERTS: Okay. And have you ever heard them talk
24 about reimbursements?

25 PROSPECTIVE JUROR 049: No.

1 MR. ROBERTS: Do you have any belief that they're
2 underpaid? That nurses in general are underpaid based on what they
3 have to do in the community?

4 PROSPECTIVE JUROR 049: I don't really know enough either
5 way. I know first on their own, in their own lives, with what they are
6 paid, and their own financial situations are not necessarily what
7 everybody else's financial situations are, and this is across a few
8 different states. I know the rate in Colorado is different versus California.
9 I don't -- I've never heard either one of them complain specifically saying
10 I am so underpaid for my job, if that's what you're asking.

11 MR. ROBERTS: Yes. Sort of. But let me -- let me ask this
12 since you have so many healthcare providers in your life.

13 PROSPECTIVE JUROR 049: Okay.

14 MR. ROBERTS: You know nothing more than the fact that
15 two people get on the stand, a representative of an insurance company
16 and a healthcare provider, and they disagree about something. All right.
17 Based on your personal experience with friends and family, are you
18 going to be more inclined to believe the healthcare provider?

19 PROSPECTIVE JUROR 049: I don't know about for sure either
20 way.

21 MR. ROBERTS: Okay.

22 PROSPECTIVE JUROR 049: I don't know, I don't -- I don't
23 know who would sway me.

24 MR. ROBERTS: Okay. Good. So right now, it doesn't
25 matter?

1 PROSPECTIVE JUROR 049: No.

2 MR. ROBERTS: It depends on what they have to say?

3 PROSPECTIVE JUROR 049: Yes.

4 MR. ROBERTS: Perfect. Mr. Torres?

5 PROSPECTIVE JUROR 038: 038.

6 MR. ROBERTS: What about you? Do you think it's tough to
7 get legitimate claims paid?

8 PROSPECTIVE JUROR 038: No.

9 MR. ROBERTS: Think insurance companies look for
10 loopholes?

11 PROSPECTIVE JUROR 038: No.

12 MR. ROBERTS: You've been sued, and you won, right?

13 PROSPECTIVE JUROR 038: That was with a civil case, motor
14 vehicle. It was -- I was committing fraud.

15 MR. ROBERTS: So say that again?

16 PROSPECTIVE JUROR 038: Would you -- yes, we won.

17 MR. ROBERTS: Did I hear you say something about fraud?
18 And you don't have to share this with the whole group if you're
19 uncomfortable.

20 PROSPECTIVE JUROR 038: No, I'm not comfortable.

21 MR. ROBERTS: Okay. Thank you.

22 PROSPECTIVE JUROR 038: I'm just going to say we won,
23 and it was good work on the attorney's side on the client's information.

24 MR. ROBERTS: Did you have a good experience with the
25 legal system?

1 PROSPECTIVE JUROR 038: Yes.

2 MR. ROBERTS: Do you feel like you got justice?

3 PROSPECTIVE JUROR 038: Yes.

4 MR. ROBERTS: Thank you, sir. All right. Mr. Nesci.

5 PROSPECTIVE JUROR 593: 593.

6 MR. ROBERTS: So let's go back to the question about is it
7 tough to get legitimate claims paid by insurance?

8 PROSPECTIVE JUROR 593: No, I'm not -- I'm not really
9 understanding your questions because unfortunately, I have not won the
10 gene pool, and I've had numerous medical issues. I've always gone
11 prior to any I've had on the website under care and pricing, I look up
12 what it's going to cost. I know what my co-pay is going to be, and if I
13 have an issue, I just call benefit services and speak to them directly. I
14 know what I'm paying before I even go in. And I implore everyone, be
15 your own advocate. You have to. We have to. I've never had an issue
16 with not paying that because I know what's -- if it's different, it's resolved
17 with a phone call.

18 MR. ROBERTS: So do you just look at the website or do you
19 look at the actual detailed terms of your plan?

20 PROSPECTIVE JUROR 593: Oh, the detailed terms, correct.
21 Yeah.

22 MR. ROBERTS: And as long as you understand that, you've
23 never had a problem? Never?

24 PROSPECTIVE JUROR 593: Well, not [indiscernible].
25 Both sides, the doctors' offices and the insurance company, there's a

1 level of ineptitude on both sides. The -- you just have to take the positive
2 out of it and look, and the bottom line is everything worked out and I'm
3 still here. Will my -- to answer your next question, will my experiences
4 sway my decision? I believe it will not.

5 MR. ROBERTS: Thank you. And the fact that your son is in
6 nursing school, is going to be a healthcare provider, will that sway your
7 decision in any way?

8 PROSPECTIVE JUROR 593: It will not.

9 MR. ROBERTS: Okay. Fair and impartial.

10 PROSPECTIVE JUROR 593: I believe I can be, yes,
11 consciously.

12 MR. ROBERTS: Thank you, Mr. Nesci.

13 PROSPECTIVE JUROR 593: You're welcome, sir.

14 MR. ROBERTS: Mr. Rucker?

15 PROSPECTIVE JUROR 564: Yes. 564.

16 MR. ROBERTS: What do you think? Is it tough to get
17 legitimate health insurance claims paid?

18 PROSPECTIVE JUROR 564: I wouldn't know anything about
19 that. I don't know anything about the claims be being paid and all that. I
20 have no clue.

21 MR. ROBERTS: Do you have personal experience submitting
22 claims?

23 PROSPECTIVE JUROR 564: No.

24 MR. ROBERTS: Ever gotten the EOB in the mail --

25 PROSPECTIVE JUROR 564: No.

1 MR. ROBERTS: -- an explanation of benefits?

2 PROSPECTIVE JUROR 564: Well, yeah, I got that. Yeah. But
3 I haven't had any -- as far as my health insurance provider, there's never
4 been any problems.

5 MR. ROBERTS: All right. When you -- when you got the EOB
6 in the mail, did you read it?

7 PROSPECTIVE JUROR 564: Some of it.

8 MR. ROBERTS: Did you try to understand it?

9 PROSPECTIVE JUROR 564: I tried to.

10 MR. ROBERTS: Just the amount due from patient was the --

11 PROSPECTIVE JUROR 564: Right.

12 MR. ROBERTS: -- main part of your looking at it?

13 PROSPECTIVE JUROR 564: Right.

14 MR. ROBERTS: So you've also been in a -- in a lawsuit over a
15 traffic accident --

16 PROSPECTIVE JUROR 564: Yes.

17 MR. ROBERTS: -- if I recall?

18 PROSPECTIVE JUROR 564: Yes.

19 MR. ROBERTS: All right. Do you feel that you had a good
20 experience with the justice system?

21 PROSPECTIVE JUROR 564: No.

22 MR. ROBERTS: Okay. Do you think you got justice?

23 PROSPECTIVE JUROR 564: Well, no one got anything, you
24 know, so it was -- it was a wash. But the whole thing was just a circus
25 act. It was -- it was crazy.

1 MR. ROBERTS: What specific criticisms did you have with
2 the legal process in your case?

3 PROSPECTIVE JUROR 564: That -- I don't know. It was the --
4 it was a bunch of false accusations, you know, that was -- that was
5 thrown at me. This was years ago. There was a lot of false accusations
6 that -- that, I don't know, it was -- I didn't agree with any of it. It wasn't
7 true. We were countersuing each other, you know, and neither one of us
8 got anything, bottom line. And it was years ago. I really don't even
9 remember all the specifics about it, but I know there was a bunch of lies
10 given being thrown around.

11 MR. ROBERTS: And one of the jobs of the jury, if you're
12 selected in the case, is to judge the credibility of witnesses. If two people
13 are saying two different things, how would you go about sorting out
14 when one is closer to the truth?

15 PROSPECTIVE JUROR 564: I mean I guess whatever one I
16 feel as though is telling the truth based on facts or evidence or whatever.
17 You know, that's the best thing I can do is to weigh them out as far as
18 the evidence. That's it.

19 MR. ROBERTS: Very good. And your mom was an ER nurse,
20 and you don't remember anything except a lot of cussing --

21 PROSPECTIVE JUROR 564: Uh-huh.

22 MR. ROBERTS: -- when she came home, right? So did she
23 ever complain about salary or reimbursement? Did you form any belief
24 as to --

25 PROSPECTIVE JUROR 564: No.

1 MR. ROBERTS: -- what a nurse --

2 PROSPECTIVE JUROR 564: No. She wasn't -- she wasn't a
3 nurse. She was -- she was an administrator there in the emergency
4 room.

5 MR. ROBERTS: Oh, okay.

6 PROSPECTIVE JUROR 564: Yeah. She wasn't a nurse.

7 MR. ROBERTS: That's right.

8 PROSPECTIVE JUROR 564: My son's a nurse.

9 MR. ROBERTS: So she worked as an administrator in an ER?

10 PROSPECTIVE JUROR 564: Uh-huh.

11 MR. ROBERTS: And she was an employee of the hospital?

12 PROSPECTIVE JUROR 564: Yes.

13 MR. ROBERTS: Okay. And your none is the RN?

14 PROSPECTIVE JUROR 564: Right.

15 MR. ROBERTS: Right. Anything about the involvement of
16 your mom and son in the medical industry that might cause you to favor
17 one side over another here?

18 PROSPECTIVE JUROR 564: No.

19 MR. ROBERTS: No? All right. You can fair to both of us?

20 PROSPECTIVE JUROR 564: Yep.

21 MR. ROBERTS: Other than the lawsuit over the traffic, have
22 you had any other experiences in the legal system good or bad?

23 PROSPECTIVE JUROR 564: No.

24 MR. ROBERTS: No. One thing I was curious about.

25 PROSPECTIVE JUROR 564: Uh-huh.

1 MR. ROBERTS: You used to be an emotional decision-maker
2 and now you're a practical decision-maker --

3 PROSPECTIVE JUROR 564: Uh-huh.

4 MR. ROBERTS: -- right?

5 PROSPECTIVE JUROR 564: Uh-huh.

6 MR. ROBERTS: What -- was that a conscious effort to change
7 your decision-making?

8 PROSPECTIVE JUROR 564: Of course. Of course. Yes. Very
9 conscious.

10 MR. ROBERTS: What made you decide to make that change?

11 PROSPECTIVE JUROR 564: The emotional -- the emotional
12 decisions, the outcome was always most of the time pretty much
13 negative. So in order to change a negative from [sic] a positive, I'd have
14 to change the way I make a decision.

15 MR. ROBERTS: Has that worked?

16 PROSPECTIVE JUROR 564: Of course. Yeah.

17 MR. ZAVITSANOS: Of course.

18 PROSPECTIVE JUROR 564: Uh-huh.

19 MR. ROBERTS: Excellent. Thank you.

20 All right. Mr. -- Mr. Meyer?

21 PROSPECTIVE JUROR 532: 532?

22 MR. ROBERTS: Okay. Let's start out with the question about
23 reimbursements. Do you think it's tough to get valid health insurance
24 claims paid?

25 PROSPECTIVE JUROR 532: Personally I've had some tests

1 done earlier this year, and pretty much all my claims have been paid on
2 time and to what they should have been paid. One claim I -- is still
3 outstanding. So I'm not sure which way that's going yet. My results
4 were sent to an outside lab for further testing, and that one's still
5 pending. Then it was denied, but now the lab is appealing it. So it's still
6 in limbo. I'm still waiting for that.

7 MR. ROBERTS: And do you think insurance companies look
8 for loopholes?

9 PROSPECTIVE JUROR 532: Again, I don't think they look for
10 loopholes. Like what was said earlier, you know, if something maybe
11 pops up, I think we maybe can get around this way, and just doing this
12 instead. I believe they may do that personally.

13 MR. ROBERTS: Have you ever had that personal experience?

14 PROSPECTIVE JUROR 532: Well, it seems like it may be right
15 now.

16 MR. ROBERTS: Okay. With the lab --

17 PROSPECTIVE JUROR 532: With my lab work.

18 MR. ROBERTS: -- like [indiscernible]?

19 PROSPECTIVE JUROR 532: Yeah, with the outstanding claim
20 right now.

21 MR. ROBERTS: Okay. And is the lab pursuing you directly
22 because that claim hasn't been paid by your insurance?

23 PROSPECTIVE JUROR 532: No, they are not. We're in
24 appeal right now with the insurance company.

25 MR. ROBERTS: Okay. Great. Let's see. All right. I

1 remember you said some college?

2 PROSPECTIVE JUROR 532: Yes.

3 MR. ROBERTS: What coursework did you take in college?

4 Any particular subject?

5 PROSPECTIVE JUROR 532: Yes. Mainly mechanical design.

6 So it was mostly statics, [indiscernible] materials, operations,

7 manufacturing, and things of that nature.

8 MR. ROBERTS: Was that under the engineering department?

9 PROSPECTIVE JUROR 532: Yes.

10 MR. ROBERTS: Yes.

11 PROSPECTIVE JUROR 532: It was a tech school.

12 MR. ROBERTS: All right. Pass the microphone. Let's see.

13 We can just go right here in front to Ms. Wilson.

14 Ms. Wilson --

15 PROSPECTIVE JUROR 095: 095.

16 MR. ROBERTS: Thank you. What about you as far as
17 reimbursements, do you think insurance companies look for loophole
18 when they pay claims?

19 PROSPECTIVE JUROR 095: No. That's not been my
20 experience.

21 MR. ROBERTS: Okay. Do you -- do you think people in
22 general have problems getting valid reimbursement claims paid by their
23 health insurance?

24 PROSPECTIVE JUROR 095: No. No.

25 MR. ROBERTS: All right. I'm going back and forth, and my

1 notes are out of order. Okay. That's -- that was it. You are currently in
2 litigation; is that correct?

3 PROSPECTIVE JUROR 095: Yes --

4 MR. ROBERTS: Do you have --

5 PROSPECTIVE JUROR 095: -- that is correct. It's in -- it's
6 concerning a new house build, yeah.

7 MR. ROBERTS: How long has the litigation been ongoing?
8 Do you know if --

9 PROSPECTIVE JUROR 095: Oh, it's just a couple months.
10 We've just at the beginning of it.

11 MR. ROBERTS: Has the papers actually been filed with the
12 court? Do you know?

13 PROSPECTIVE JUROR 095: I don't think so. Not yet. We're
14 just being told to wait right now. They have all our information.

15 MR. ROBERTS: Okay. And is that your attorneys that are
16 telling you to wait or someone --

17 PROSPECTIVE JUROR 095: Correct.

18 MR. ROBERTS: -- else?

19 PROSPECTIVE JUROR 095: Correct.

20 MR. ROBERTS: Okay.

21 PROSPECTIVE JUROR 095: Yes.

22 MR. ROBERTS: And has this been going on long enough for
23 you to form an impression about the legal system?

24 PROSPECTIVE JUROR 095: No. No. Not at all.

25 MR. ROBERTS: And obviously you don't know yet whether

1 you've gotten justice, right?

2 PROSPECTIVE JUROR 095: No, I don't.

3 MR. ROBERTS: So your experience with balance bill --
4 billing, do I remember that one time the doctor took care of it and the
5 other time the facility mistook what the insurance would pay?

6 PROSPECTIVE JUROR 095: Correct. Yes.

7 MR. ROBERTS: Do you think that your own personal
8 experience about balance billing was resolved fairly?

9 PROSPECTIVE JUROR 095: Yes, I believe it was. Like --

10 MR. ROBERTS: Okay.

11 PROSPECTIVE JUROR 095: -- more than fair, to be honest.

12 MR. ROBERTS: Okay.

13 PROSPECTIVE JUROR 095: Yeah.

14 MR. ROBERTS: And explain why -- why you thought that
15 was fair the way things ended up?

16 PROSPECTIVE JUROR 095: So --

17 MR. ROBERTS: And not just to you. Was it also fair to the
18 insurance --

19 PROSPECTIVE JUROR 095: Well --

20 MR. ROBERTS: -- company and the provider?

21 PROSPECTIVE JUROR 095: I mean the doctor and the facility
22 are checking taking what the insurance company pays, right? To me, it's
23 probably not fair -- wasn't fair to providers. If you look at it as a whole,
24 it's probably not fair to every single patient that may have that same
25 experience, right, because in both cases, it's a personal connection

1 because -- that's the reason why they went ahead and took care of the
2 bill and not really based on the -- because it was a hardship or
3 something like that, right? Like I'm a firm believer in you have to -- we as
4 citizens have a responsibility for some of our healthcare. We cannot
5 expect everything to be free for us.

6 So paying our health insurance, paying our copays, paying
7 any of our, I guess you'd call it, out-of-pocket expense. That's
8 responsibility. We don't -- we don't want socialized medicine, where
9 somebody's making a decision for us that shouldn't be making a
10 decision for us. This is a way for us to be able to keep our decisions
11 made by ourselves for what's right for us. I don't know if I'm making
12 sense or not, but --

13 MR. ROBERTS: Okay.

14 PROSPECTIVE JUROR 095: Yes.

15 MR. ROBERTS: No wrong answers. And you're --

16 PROSPECTIVE JUROR 095: Right.

17 MR. ROBERTS: -- you're making sense --

18 PROSPECTIVE JUROR 095: Okay.

19 MR. ROBERTS: -- to me. I understand what you're saying.

20 PROSPECTIVE JUROR 095: Yeah.

21 MR. ROBERTS: I appreciate it.

22 PROSPECTIVE JUROR 095: Thank you.

23 MR. ROBERTS: Okay. Ms. Hortillas?

24 PROSPECTIVE JUROR 114: 114. I don't have enough
25 knowledge, no.

1 MR. ROBERTS: Have you ever had any problems with your
2 own claims?

3 PROSPECTIVE JUROR 114: No, I don't have any problems
4 with billing.

5 MR. ROBERTS: And you -- you've got no sort of opinions
6 just to general as to --

7 PROSPECTIVE JUROR 114: No.

8 MR. ROBERTS: -- whether insurance companies look for
9 loopholes?

10 PROSPECTIVE JUROR 114: No.

11 MR. ROBERTS: Refuse to pay valid claims?

12 PROSPECTIVE JUROR 114: Right.

13 MR. ROBERTS: So -- and don't share anything with me that
14 you're uncomfortable with. But is there anything about losing your
15 husband that -- that might affect you as a juror?

16 PROSPECTIVE JUROR 114: Not at all.

17 MR. ROBERTS: All right. How long has it been?

18 PROSPECTIVE JUROR 114: 2008. So it's been --

19 MR. ROBERTS: So it's been a while.

20 PROSPECTIVE JUROR 114: Uh-huh.

21 MR. ROBERTS: So a lot of the intensity, the emotions are --

22 PROSPECTIVE JUROR 114: Yeah. I'm good now.

23 MR. ROBERTS: -- are gone? You're good now?

24 PROSPECTIVE JUROR 114: Yeah, I'm good.

25 MR. ROBERTS: That's good. Let me ask you a little bit

1 different question. Do you think that because health insurers are in the
2 business they're in, reimbursing for people's medical care, they should
3 be held to a higher standard than other companies?

4 PROSPECTIVE JUROR 114: I don't have enough individual
5 experience.

6 MR. ROBERTS: Okay. Anyone have an opinion about that?
7 Do you think -- back to -- back to Ms. Wilson, badge --

8 PROSPECTIVE JUROR 095: 095. So, again, being from the
9 financial industry, I think the healthcare insurers should have just as
10 much responsibility, like -- yes, because people's lives that you're -- you
11 know, like I said before, it was money. There are people lives and their
12 health, so they should be held to a higher standard for sure --

13 MR. ROBERTS: Okay.

14 PROSPECTIVE JUROR 095: -- yes.

15 MR. ROBERTS: And about the same higher standard, the
16 financial institutions or --

17 PROSPECTIVE JUROR 095: I would say about the same.
18 Yes.

19 MR. ROBERTS: Okay. Not higher, not lower?

20 PROSPECTIVE JUROR 095: About the same.

21 MR. ROBERTS: Anyone else agree with Ms. Wilson? That
22 make sense to you? Yes? So you can pass the mic back. Ms. Trambulo?
23 Did I say that right?

24 PROSPECTIVE JUROR 116: You did. 116.

25 MR. ROBERTS: Okay. Good. Good. What about you, do

1 you think insurers -- health insurers look for a reason to deny valid
2 claims?

3 PROSPECTIVE JUROR 116: No.

4 MR. ROBERTS: No. Don't look for loopholes?

5 PROSPECTIVE JUROR 116: No.

6 MR. ROBERTS: No. What did higher standard question, do
7 you think health insurers should be held to a higher standard another
8 company; that is the field they deal in?

9 PROSPECTIVE JUROR 116: Yeah, I would agree with
10 Ms. Wilson. You're dealing with people's lives and there's lots of impact
11 there.

12 MR. ROBERTS: How would you hold a health insurer to a
13 higher standard in this litigation? You don't know anything about it
14 other than it's about reimbursement claims.

15 PROSPECTIVE JUROR 116: I mean I guess it would be
16 proper for whatever the reimbursement rate is.

17 MR. ROBERTS: One of the things that Plaintiffs told you and
18 that we would agree with is there is no written contract. And they're
19 suing under implied contract. So let me ask you a tough question. If
20 there's no written contract, what would you personally look for to figure
21 out what the terms are of an implied contract?

22 MR. ZAVITSANOS: Your Honor, that invades the promise of
23 the Court, and it also attempts to commit the juror to the -- to the
24 evidence.

25 THE COURT: I'm inclined to sustain the objection. Would

1 you like to make a record on the break?

2 MR. ROBERTS: Yes. That would be fine, Your Honor. How
3 long did the Court want to go this morning?

4 THE COURT: This is a good time. It's --

5 MR. ROBERTS: All right.

6 THE COURT: It's 10:42. Even though you guys didn't come
7 in until 9:40, we were here at 9:15. So let me give you the admonition
8 for our morning recess.

9 During the recess, don't talk with each other or anyone else
10 on any subject connected with the trial. Don't read, watch, or listen to
11 any report of or commentary on the trial. Don't discuss this case with
12 anyone connected to it by any medium of information, including, without
13 limitation, newspapers, television, radio, Internet, cell phones, or texting.

14 Don't conduct any research on your own relating to the case.
15 Don't speculate about the issues, the evidence, the parties. Don't
16 consult dictionaries, use the Internet, or use any reference materials.
17 Don't conduct any investigation, test any theory of the case, recreate any
18 aspect of the case, or in any other way investigate or learn of it on your
19 own.

20 You may not use social media; that you are in jury selection
21 or if you're selected for the trial, you cannot post on social media. Don't
22 text, Tweet, Google, or conduct any type of book or computer research
23 with regard to any issue, party, witness, or attorney involved in the case.
24 Most importantly, do not form or express any opinion on any subject
25 unless you're selected for the jury and the jury deliberates.

1 Thank you this morning for being so attentive and being on
2 time. It is 10:44. Be ready at 11, please.

3 THE MARSHAL: All rise for the jury.

4 [Prospective jurors out at 10:44 a.m.]

5 [Outside the presence of the prospective jurors]

6 THE COURT: The room is now clear. Mr. Roberts, did you
7 want to make a record on that?

8 MR. ROBERTS: Yes, Your Honor. I understand that the Court
9 is going to instruct the jury on what forms an implied contract. So if -- I
10 just looked at Rule 770. It might be a question touching on an instruction
11 of law. But I really don't see how it's any different than asking the jury
12 what -- or the potential jury what level of evidence they would personally
13 want to see, would you want a higher level of evidence than
14 preponderance, and asking her personally what she would personally
15 look for, regardless of, you know, what the instruction may be, just helps
16 me inquire as to her personal beliefs and inclinations and maybe what
17 she thinks the law should be. And then as long as she can follow the
18 law, then it's no problem for her. And I think that's where I was going,
19 and I wasn't going to try to commit her to the facts or commit her to a
20 verdict in this case.

21 THE COURT: Thank you. Is there a response?

22 MR. ZAVITSANOS: Yes, Your Honor. So the reason I
23 objected, Your Honor, and I've tried not to, but the reason I objected is
24 because the form of the question was very improper. If counsel had
25 said, if the Court gives an instruction on the following, would you

1 consider something else, that's right down the fairway. He didn't do
2 that. And there's an issue, of course, on whether the price term has to
3 be part of this implied agreement or not. So asking -- just asking
4 pointblank, what kind of things you would consider to form an implied
5 contract, I do think invades the province of the Court. If counsel would
6 just rephrase it slightly, no objection.

7 THE COURT: Good enough.

8 MR. ZAVITSANOS: And I think, Your Honor, with the
9 preponderance, I think that's what I did, which is I -- you know, I just said,
10 look, you know, if the Court gives one, are you going to require
11 something higher? If he does it like that, I -- that's fine.

12 THE COURT: And the reason I sustained it is only because
13 the issue of whether or not the implied contract is just a direct issue in
14 the case.

15 So let's take a break. We have two letters up here. The --
16 Springberg in seat number 2 had done a long letter about why she
17 should be excused. Mr. Meyer's wife has been contact traced for a
18 COVID exposure. And then I printed the media rules out for both sides
19 so that you would have a copy of that. Thank you.

20 MR. ZAVITSANOS: Thank you, Your Honor.

21 MR. ROBERTS: Thank you, Your Honor.

22 THE COURT: See you at 11.

23 [Recess taken from 10:47 a.m. to 11:01 a.m.]

24 [Outside the presence of the prospective jurors]

25 THE COURT: Thanks, everyone. Please remain seated.

1 Okay. Did you get a chance to look at the letters, everybody?

2 MR. ZAVITSANOS: Yes, Your Honor.

3 MR. BLALACK: I did, Your Honor.

4 THE COURT: Defendant, any questions about the letters?

5 MR. ROBERTS: No, Your Honor. We don't believe either one
6 would justify as a hardship under the standard we did apply.

7 MR. ZAVITSANOS: We agree, Your Honor.

8 THE COURT: All right. And I've got copies of these for you.
9 Did you both take them?

10 MR. BLALACK: Oh. Yes, Your Honor.

11 MR. ZAVITSANOS: Oh, Your Honor, the other thing is that
12 the gentleman that we discussed earlier, the gentleman --

13 THE COURT: Yes.

14 MR. ZAVITSANOS: That is him.

15 THE COURT: That is him?

16 MR. ZAVITSANOS: Yes, Your Honor. So I think maybe -- I
17 don't know what the Court's pleasure is. Maybe the Court could make an
18 inquiry.

19 THE COURT: Good enough. I can bring him in outside the
20 presence of the other jurors.

21 MR. ZAVITSANOS: Yes, Your Honor.

22 THE COURT: Okay. So we're going to ask Mr. Leopold to
23 come in alone.

24 THE MARSHAL: Yes, Your Honor.

25 THE COURT: And then to let you guys know, we do have

1 another venire at 11:00. I'm not going to bring them in now, only
2 because I don't have room.

3 MR. ZAVITSANOS: I think we have one person left.

4 THE COURT: We do, in the back.

5 MR. ZAVITSANOS: Okay.

6 THE COURT: And she did have English as the second
7 language issue.

8 MR. ZAVITSANOS: Oh, she did?

9 THE MARSHAL: All rise.

10 THE COURT: So Mr. Leopold, you can stay right there. I
11 have a couple of questions to ask you. Have you ever been convicted of
12 a felony?

13 PROSPECTIVE JUROR 020: Yeah.

14 THE COURT: And have your civil rights been restored?

15 PROSPECTIVE JUROR 020: Yeah.

16 THE COURT: And when did that occur and where?

17 PROSPECTIVE JUROR 020: 1998 in Los Angeles.

18 THE COURT: Okay.

19 PROSPECTIVE JUROR 020: I --

20 THE COURT: You don't have to tell us anything about what
21 you were convicted of.

22 PROSPECTIVE JUROR 020: Yeah. I was -- I was exonerated.
23 I was -- I was convicted in 1998. I served my time. My rights were
24 restored in 2001.

25 THE COURT: In 2001?

1 PROSPECTIVE JUROR 020: Yeah.

2 THE COURT: Thank you.

3 PROSPECTIVE JUROR 020: I believe 2001, 2003.

4 THE COURT: Okay. Thank you. So could you please step
5 back out to the hallway? Room is clear. Plaintiff, do you have anything?

6 MR. ZAVITSANOS: No, Your Honor.

7 THE COURT: Defendant?

8 MR. ROBERTS: Nothing, Your Honor. He's under oath, so
9 we'll accept that.

10 THE COURT: Good enough. As soon as the marshal comes
11 back, I'll give him the high sign.

12 MR. ROBERTS: Your Honor, forgive me for asking, but the
13 exchange we just had, was that on the record?

14 THE COURT: Yes.

15 MR. ROBERTS: Okay. Thank you, Your Honor.

16 THE MARSHAL: All rise for the jury.

17 [Prospective jurors in at 11:05 a.m.]

18 THE COURT: Thank you. Please be seated. Go ahead, Mr.
19 Roberts.

20 MR. ROBERTS: Thank you, Your Honor. Ms. Trambulo,
21 Badge number 116.

22 PROSPECTIVE JUROR 116: Yes.

23 MR. ROBERTS: We started -- did I get that right?

24 PROSPECTIVE JUROR 116: Yes.

25 MR. ROBERTS: Okay. Great. We had started to talk about

1 implied contracts. So if -- the Judge might -- you know, is obviously
2 going to instruct you what it takes to form an implied contract. If the
3 Judge instructs you that to form an implied contract requires a
4 manifestation by the parties of an intent to form a contract, is that the
5 type of thing you could hold the Plaintiffs to their burden of proof?

6 PROSPECTIVE JUROR 116: I'm sorry. Can you repeat that?

7 MR. ROBERTS: Sure. If the Court instructs you that in order
8 to form an implied contract, the Plaintiffs have to prove that both sides
9 manifested or showed by their actions an intention to form a contract, is
10 that something you can hold the Plaintiffs to their burden of proving
11 before you'll give them a verdict?

12 PROSPECTIVE JUROR 116: Yes.

13 MR. ROBERTS: Yes. If the Court instructs you that you
14 cannot find an implied contract without finding an ascertainable
15 agreement, you know, that they've proven that not only was there an
16 intent to contract, but this is the contract, can you hold them to that
17 burden?

18 PROSPECTIVE JUROR 116: Yes.

19 MR. ROBERTS: Everyone here feel the same way? Anyone
20 disagree that that should be the law? As long as you've -- do you still
21 have the microphone?

22 PROSPECTIVE JUROR 116: I don't.

23 MR. ROBERTS: No. They've marked them. Okay. I wanted
24 to ask you about your prior work experience. I understand that you were
25 a software engineer for a law firm; is that correct?

1 PROSPECTIVE JUROR 116: No. So I was a runner.

2 MR. ROBERTS: Oh.

3 PROSPECTIVE JUROR 116: Before everything was
4 [indiscernible].

5 MR. ROBERTS: Okay. Got it. And you knew one of the
6 lawyers for the Plaintiff?

7 PROSPECTIVE JUROR 116: I did. Yes.

8 MR. ROBERTS: What type of law did this law firm do?

9 PROSPECTIVE JUROR 116: I think it was corporate law. But
10 honestly, I wasn't there for very long, so.

11 MR. ROBERTS: Did you form any friendship with the
12 attorney that's in this case?

13 PROSPECTIVE JUROR 116: No. I mean, we did, like,
14 corporate team-building things. I don't even think she was there, to be
15 honest, so.

16 MR. ROBERTS: Okay. And do you have any feeling about
17 their side versus our side based on your knowledge of this lawyer for the
18 Plaintiff?

19 PROSPECTIVE JUROR 116: No.

20 MR. ROBERTS: No. Did you learn the facts of any particular
21 lawsuits that this firm was involved in that interested you?

22 PROSPECTIVE JUROR 116: No.

23 MR. ROBERTS: Didn't get involved in the merits of their
24 cases at all?

25 PROSPECTIVE JUROR 116: No. No.

1 MR. ROBERTS: Form an opinion about whether they
2 were -- their causes were just?

3 PROSPECTIVE JUROR 116: No.

4 MR. ROBERTS: No. What made you decide to leave the
5 legal business?

6 PROSPECTIVE JUROR 116: I was -- previously, before that, I
7 was working at Dylan Lapis [phonetic], and I was also going to school at
8 UNLV. And so I just needed a job that was flexible with my schedule,
9 and they were.

10 MR. ROBERTS: How long ago did you leave the law firm?

11 PROSPECTIVE JUROR 116: I want to say it was 2007, maybe.

12 MR. ROBERTS: Okay. So it's been a while.

13 PROSPECTIVE JUROR 116: Yes.

14 MR. ROBERTS: Yes. Let me ask you some follow-up
15 questions about your partner being a registered nurse.

16 PROSPECTIVE JUROR 116: Sure.

17 MR. ROBERTS: Has she ever complained about
18 reimbursement rates or salary?

19 PROSPECTIVE JUROR 116: No.

20 MR. ROBERTS: No? Do you think you'll have any difficulty
21 finding against companies that work with healthcare providers?

22 PROSPECTIVE JUROR 116: No.

23 MR. ROBERTS: No? No feelings about it one way or
24 another?

25 PROSPECTIVE JUROR 116: I mean, I personally think that

1 registered nurses are underpaid, but I don't have that feeling about, you
2 know, one way or another in this case.

3 MR. ROBERTS: Do you think that they're underpaid because
4 insurance companies don't reimburse them enough?

5 PROSPECTIVE JUROR 116: No. I just think their rate is low
6 for what they do.

7 MR. ROBERTS: Your partner works hard?

8 PROSPECTIVE JUROR 116: Yes.

9 MR. ROBERTS: Yes. Okay. Let's see. If we can go to Ms.
10 Dudley. I was trying to remember if I've covered everything. I jumped
11 ahead when we were talking before. But I did want to ask you a little bit
12 more about your knowledge of medical billing. Are you involved in that
13 in any way?

14 PROSPECTIVE JUROR 224: When I worked at
15 Comprehensive Cancer Centers, but as more in regards to data entry.
16 And then, lab requisitions. That's as far as medical billing went, but it
17 was a fractured system there, too, so.

18 MR. ROBERTS: Okay. And you used that word Thursday
19 when we were talking.

20 PROSPECTIVE JUROR 224: I did, yeah. Yeah.

21 MR. ROBERTS: And do you blame anyone for the fact the
22 system is fractured in your opinion?

23 PROSPECTIVE JUROR 224: I think -- I think it's multiple -- I
24 can't give you an honest answer. I'm not certain I know enough.

25 MR. ROBERTS: Okay. So --

1 PROSPECTIVE JUROR 224: I just -- for example, I worked at
2 Comprehensive Cancer Center as an [indiscernible] requisitions. And I
3 didn't always have requisitions if somebody didn't give them to me. So
4 it's kind of like it's multiple people are needed to get the job done
5 correctly. And so as far as medical billing goes, if one person isn't doing
6 the job right, then it just kind of trickles. And then it can become even a
7 greater issue for private investigators. So medical billing, when I say
8 fractured, I did really mean that there is fractured parts within each. I
9 don't know how to better explain that.

10 MR. ROBERTS: When you say investigators can get
11 involved?

12 PROSPECTIVE JUROR 224: So yeah, private investigators
13 and research. So I don't recall enough anymore. It's been too long. But
14 yeah, medical billing, we had another database to enter in, and anyway.
15 Yeah.

16 MR. ROBERTS: So what type of data did you enter into the
17 system?

18 PROSPECTIVE JUROR 224: It was cancer. Oncology.

19 MR. ROBERTS: Right. But data.

20 PROSPECTIVE JUROR 224: Years ago.

21 MR. ROBERTS: Did you enter in CPT codes and charges
22 and -- or some other type of data?

23 PROSPECTIVE JUROR 224: It had to do with charges -- I -- as
24 well. It's -- honestly, I -- all I can say is it's been far too long for me to
25 remember at this point that.

1 MR. ROBERTS: Do you remember if people at your employer
2 talked about problems with the reimbursement from insurance
3 companies?

4 PROSPECTIVE JUROR 224: I don't recall.

5 MR. ROBERTS: With your involvement in medical billing, is
6 there anything about that experience that might cause it to be hard for
7 you to enter a verdict in favor of an insurance company?

8 PROSPECTIVE JUROR 224: No.

9 MR. ROBERTS: Okay. I did want to follow up about one of
10 the things you said back on the first day. I guess it was a week ago, I
11 think it was. Maybe it was Tuesday. About the hardship in being away
12 from some of your patients.

13 PROSPECTIVE JUROR 224: Yes.

14 MR. ROBERTS: And how are you feeling about that? Are
15 you able to fully concentrate, give us your full attention in this matter,
16 sort of set that aside during the day?

17 PROSPECTIVE JUROR 224: As in fully concentrate, that
18 continues to be an obstacle for me. In regards to the business, I believe
19 this magnificent owner is able to go above and beyond finding ways to
20 cover clientele. So as in fully concentrate, I think I'm always kind of in
21 a -- in a state of awareness that isn't always fully here but tries to be. So
22 I will do my due diligence to be here for you --

23 MR. ROBERTS: Okay.

24 PROSPECTIVE JUROR 224: -- if I am called upon.

25 MR. ROBERTS: So I'm going to ask for a little clarification.

1 Does your mind wander every now and then?

2 PROSPECTIVE JUROR 224: All the time.

3 MR. ROBERTS: All the time.

4 PROSPECTIVE JUROR 224: Yeah. Yeah.

5 MR. ROBERTS: So -- and I really appreciate the fact that you
6 say you'll try to give me that attention because --

7 PROSPECTIVE JUROR 224: Yes, sir.

8 MR. ROBERTS: -- you know, sometimes if you miss some
9 evidence, then it's gone, and you missed it.

10 PROSPECTIVE JUROR 224: Yes, sir.

11 MR. ROBERTS: Do you think you might be able to commit to
12 that, to keeping your mind here while the evidence is coming in?

13 PROSPECTIVE JUROR 224: I would love to commit to it.

14 MR. ROBERTS: Okay.

15 PROSPECTIVE JUROR 224: I would love to. Yes.

16 MR. ROBERTS: Thank you. I appreciate it. Okay. Let's go
17 with Mr. Roberts.

18 PROSPECTIVE JUROR 252: 252.

19 MR. ROBERTS: What about you? Do you think health
20 insurers look for loopholes to keep from paying claims?

21 PROSPECTIVE JUROR 252: I'm indifferent.

22 MR. ROBERTS: You're indifferent? Have you ever had any
23 bad personal experiences with getting your own claims through?

24 PROSPECTIVE JUROR 252: No.

25 MR. ROBERTS: What about friends and family? Anyone

1 complain about that to you?

2 PROSPECTIVE JUROR 252: No.

3 MR. ROBERTS: I'm going to ask you a couple new questions
4 so that we can pick up for a few others. Have you ever felt like you've
5 been taken advantage of by a bank or financial institution?

6 PROSPECTIVE JUROR 252: Every time.

7 MR. ROBERTS: Ever been cheated, scammed, defrauded by
8 anyone?

9 PROSPECTIVE JUROR 252: Nothing comes to mind right
10 now.

11 MR. ROBERTS: So I don't remember if the exact question
12 was if or if there's a healthcare crisis or just who's fault is the healthcare
13 crisis. I believe you said doctors and insurance companies are both to
14 blame, right?

15 PROSPECTIVE JUROR 252: Yeah.

16 MR. ROBERTS: Explain to me why you feel that way.

17 PROSPECTIVE JUROR 252: As in, what's going on now or in
18 general or what?

19 MR. ROBERTS: In general. Not about this.

20 PROSPECTIVE JUROR 252: If there's a problem, they should
21 come together and make a solution. If there's a problem, they're both to
22 blame. It takes two people to make a problem.

23 MR. ROBERTS: Do you think there is a crisis?

24 PROSPECTIVE JUROR 252: As in?

25 MR. ROBERTS: Do you think there's a healthcare crisis?

1 PROSPECTIVE JUROR 252: Funding or? Not in my view.
2 They have a [indiscernible] now.

3 MR. ROBERTS: Okay. So -- and that -- I think that's
4 intentionally a really broad question so that your own experiences and
5 beliefs can maybe get triggered by such a broad question. It comes
6 down to if you really don't think there is one.

7 PROSPECTIVE JUROR 252: Indifferent.

8 MR. ROBERTS: Indifferent. Okay. Thank you, sir. If you
9 could pass the mic to Ms. Forester.

10 PROSPECTIVE JUROR 014: 014.

11 MR. ROBERTS: So what about you? Do you think it's tough
12 to get paid on legitimate claims?

13 PROSPECTIVE JUROR 014: Not on legitimate claims, no. I
14 think -- I think they try their best to do, you know, what they're supposed
15 to do and pay for what is expected of them.

16 MR. ROBERTS: Do you think they look for loopholes to keep
17 from paying claims?

18 PROSPECTIVE JUROR 014: I don't think they look for
19 loopholes. I think if there is a loophole, most insurance -- people who
20 are dealing with insurance all day, they know what loopholes are there.
21 So I don't think they necessarily look for loopholes, but they don't let -- if
22 the circumstance is not to -- that they don't have to pay out on it.

23 MR. ROBERTS: So we've had several people say they've
24 looked at their claim documents.

25 PROSPECTIVE JUROR 014: Yes.

1 MR. ROBERTS: If an insurance company doesn't pay
2 because it's not covered by their plan, is that a loophole or is that
3 legitimate?

4 PROSPECTIVE JUROR 014: No. If it's not covered by the
5 health plan that, you know, if you've agreed to the terms when you take
6 on your healthcare. So that's not really a loophole. The one that kind of
7 comes to mind is when I did have insurance through my mom, they
8 didn't -- like, when I gave birth, they didn't cover my child because I was
9 insured under my mom and my kid wasn't considered covered, which
10 they didn't tell me until after, you know, I got the bill. Which was here
11 nor there, you know. But if it wasn't covered, it wasn't covered. But you
12 know, I don't think it was necessarily a loophole. I just think it's there.
13 You know?

14 MR. ROBERTS: Did you think it was unfair?

15 PROSPECTIVE JUROR 014: No. I mean, it makes sense. You
16 know, I'm my mom's dependent. My kid is not listed yet. So it makes
17 sense.

18 MR. ROBERTS: Some grandparents feel this right now. So
19 what about the bank question? Do you ever feel like you've been taken
20 advantage --

21 PROSPECTIVE JUROR 014: No.

22 MR. ROBERTS: -- by financial institutions? Have you ever
23 been scammed or defrauded by anyone?

24 PROSPECTIVE JUROR 014: No.

25 MR. ROBERTS: No? Any bad experience with the legal

1 system?

2 PROSPECTIVE JUROR 014: No.

3 MR. ROBERTS: No? All right. Can you pass the mic to Mr.
4 Leopold, please?

5 PROSPECTIVE JUROR 020: 020.

6 MR. ROBERTS: What about you, Mr. Leopold? Do you think
7 insurance companies look for loopholes?

8 PROSPECTIVE JUROR 020: Look for, no. You made a
9 comment that they pop out at them, I think they would take them.

10 MR. ROBERTS: Is it a loophole if it's not covered by the
11 plan?

12 PROSPECTIVE JUROR 020: No.

13 MR. ROBERTS: Ever been taken advantage of by a financial
14 institution?

15 PROSPECTIVE JUROR 020: No.

16 MR. ROBERTS: Ever been scammed or defrauded by
17 anyone?

18 PROSPECTIVE JUROR 020: I think we've all been scammed,
19 or someone tried to scam or defraud all of us. But no, I don't think I've
20 been gullible.

21 MR. ROBERTS: No. So people have attempted and not been
22 successful?

23 PROSPECTIVE JUROR 020: Yeah. You get them every day in
24 your email.

25 MR. ROBERTS: Right. Right. Any beliefs about the legal

1 system?

2 PROSPECTIVE JUROR 020: No.

3 MR. ROBERTS: No?

4 PROSPECTIVE JUROR 020: No. The legal system is there,
5 has been in place for decades, sometimes centuries.

6 MR. ROBERTS: Yeah.

7 PROSPECTIVE JUROR 020: There's always good and bad to
8 everything.

9 MR. ROBERTS: Do you think it's a good way to resolve
10 disputes?

11 PROSPECTIVE JUROR 020: I think so. Yeah.

12 MR. ROBERTS: Have you ever been underpaid by someone?

13 PROSPECTIVE JUROR 020: That's a matter of opinion. To
14 them, no. To me?

15 MR. ROBERTS: In your opinion, have you ever been
16 underpaid by someone?

17 PROSPECTIVE JUROR 020: Yeah, years ago.

18 MR. ROBERTS: Are you comfortable telling me about it?

19 PROSPECTIVE JUROR 020: Yeah. It was just a situation that,
20 you know, the type of work I was doing at the time was [indiscernible],
21 and I was salaried. So, okay, they figured, okay, fine, you're going to get
22 paid X amount of dollars. Okay, and when I took the job, I said, okay,
23 fine, I can [indiscernible] 60 hours a week. Okay, fine. So I wind up
24 working 80, 85, 90 hours, and I got paid the same amount. So to me,
25 that isn't fair.

1 MR. ROBERTS: And what did you do about it?

2 PROSPECTIVE JUROR 020: Nothing I really could do. I had a
3 contract.

4 MR. ROBERTS: Okay.

5 PROSPECTIVE JUROR 020: I agreed to the contract when I
6 went into it. So I just knew for the future if I ever wound up getting into
7 a contract like that, I knew what to look for.

8 MR. ROBERTS: Okay. So do you think it was fair that you
9 were bound to your contract?

10 PROSPECTIVE JUROR 020: No. Being that I went by my
11 contract, I think it was fair.

12 MR. ROBERTS: Okay.

13 PROSPECTIVE JUROR 020: They went by my contract. So I
14 can't really say that it was anything unfair, because like I said, all
15 according to what was written.

16 MR. ROBERTS: Lawsuit between an insurance company and
17 people seeking money on behalf of healthcare providers.

18 PROSPECTIVE JUROR 020: Uh-huh.

19 MR. ROBERTS: Is that the type of case where you can be
20 fair?

21 PROSPECTIVE JUROR 020: Absolutely.

22 MR. ROBERTS: Leaning toward either side?

23 PROSPECTIVE JUROR 020: Not at all. Not at all.

24 MR. ROBERTS: Thank you, Mr. Leopold.

25 PROSPECTIVE JUROR 020: Uh-huh.

1 MR. ROBERTS: Let's see, we'll go ahead and start right here
2 in the front. And you can help -- first of all, can I have your badge
3 number Ms. Herzog.

4 PROSPECTIVE JUROR 270: 270.

5 MR. ROBERTS: And what do you think about insurance
6 companies look for loopholes when they pay claims?

7 PROSPECTIVE JUROR 270: I don't -- that hasn't been my
8 experience. And I have had no experience with that at all. I hope that
9 they don't.

10 MR. ROBERTS: Okay. And have all of your experiences
11 have been good?

12 PROSPECTIVE JUROR 270: Good, yes.

13 MR. ROBERTS: And you have no belief one way or another
14 whether it's a problem outside of your own experience or do you think
15 that it's not?

16 PROSPECTIVE JUROR 270: I don't really know. I mean I
17 know my own situation, and I have a pretty clear understanding of my
18 medical plan, so I don't expect coverage on something that isn't on my
19 plan. If that makes sense.

20 MR. ROBERTS: It does.

21 PROSPECTIVE JUROR 270: Yeah.

22 MR. ROBERTS: Do you think there's a healthcare crisis in
23 America today?

24 PROSPECTIVE JUROR 270: I'm not sure I would use the
25 word crisis. I think there is -- it could be better between providers,

1 insurance, pharmaceuticals, all of it. It could be better. I'm not sure I
2 would use the word crisis.

3 MR. ROBERTS: What would you do to improve the system?

4 PROSPECTIVE JUROR 270: Oh, that's a big -- that's a job
5 way bigger than me. I don't know where I would start to be honest with
6 you. I think, you know, it all goes -- I don't know where I would start. I
7 don't know enough about it.

8 MR. ROBERTS: Have you ever worked in healthcare?

9 PROSPECTIVE JUROR 270: I'm a contract tracer with the
10 Southern Nevada Health District, so it's not exactly healthcare. It's more
11 like community care.

12 MR. ROBERTS: Sure. And I remember you telling us that
13 you were in contact tracing.

14 PROSPECTIVE JUROR 270: I am.

15 MR. ROBERTS: And I was just wondering before you went to
16 work for the health district in contact tracing, if you had held any other
17 jobs in the medical field?

18 PROSPECTIVE JUROR 270: No, I worked in -- I worked in
19 entertainment. So it was a pre-COVID career that died when COVID
20 came out, and so I went and had to figure something else out until the
21 dust settled.

22 MR. ROBERTS: What type of entertainment did you work in?

23 PROSPECTIVE JUROR 270: I worked for a big entertainment
24 company called AEG.

25 MR. ROBERTS: Sure, they put on concerts and shows, yes.

1 PROSPECTIVE JUROR 270: Yes. That's what I did. I worked
2 there 17 years. We ran the Coliseum at Caesar's Palace with all of the
3 resident artists. So it was one of the first industries to shut down with
4 COVID, and it's been one of the slowest to come back.

5 MR. ROBERTS: Did you ever meet Rod Stewart?

6 PROSPECTIVE JUROR 270: I did. I did.

7 MR. ROBERTS: Celine?

8 PROSPECTIVE JUROR 270: I did. 1140 shows.

9 MR. ROBERTS: Wow. So what were your duties there a
10 AEG?

11 PROSPECTIVE JUROR 270: I was the entertainment
12 manager. So once the shows were booked and then I did all of the sort
13 of, you know, ground transportation, private planes, hotel rooms.

14 MR. ROBERTS: You handled all of the logistics.

15 PROSPECTIVE JUROR 270: Logistics, yeah. Backstage. All
16 of the backstage of.

17 MR. ROBERTS: Did you have to read the contracts for the
18 performers to know what their needs were?

19 PROSPECTIVE JUROR 270: I did. Everything was in the
20 contract.

21 MR. ROBERTS: And you read them and dealt with them as
22 part of your job?

23 PROSPECTIVE JUROR 270: Well, I wasn't the booker, so
24 usually they would summarize the -- you know, because every show kind
25 of dealt with the same sort of things. Like this is covered, this isn't. This

1 is on us; this is on them. This is -- you know, whether it's ground
2 transportation, catering. Somebody's got to pay for it. It's either them
3 or us.

4 MR. ROBERTS: And would you review the contract to figure
5 out what your responsibility was, so you would go do it, or did someone
6 else do that?

7 PROSPECTIVE JUROR 270: Someone else did that.

8 MR. ROBERTS: Okay.

9 PROSPECTIVE JUROR 270: Someone else did that.

10 MR. ROBERTS: What made you decide to go into contact
11 tracing with the health district from entertainment? It seems like a pretty
12 radical career switch.

13 PROSPECTIVE JUROR 270: It was a radical -- I didn't decide
14 it, COVID did.

15 MR. ROBERTS: Ahh-ahh.

16 PROSPECTIVE JUROR 270: COVID did. So I needed
17 something to do until the dust settled. So I took an online course in
18 contact tracing, went to the health district. I'm still there.

19 MR. ROBERTS: Okay. Thank you, Ms. Herzog. Okay. Ms.
20 Wynn next. So we've already talked for a while this morning.

21 PROSPECTIVE JUROR 254: Yes.

22 MR. ROBERTS: Let me just ask you the big question at the
23 end. You've got the experience and good from both sides. Is there any
24 reason why you could not be fair and impartial and give a Defense
25 verdict to an insurance company if they do not meet their burden of

1 proof in this case?

2 PROSPECTIVE JUROR 254: Repeat that one more time.

3 THE COURT RECORDER: Badge number, please.

4 PROSPECTIVE JUROR 254: 254.

5 MR. ROBERTS: Is there anything about your background and
6 experience in the medical field, which would make it hard for you to
7 check off a Defense verdict for the insurance company, where they're
8 being sued by healthcare providers?

9 PROSPECTIVE JUROR 254: No. Because I would look at the
10 evidence. Whatever both sides present is what would help the decision
11 making.

12 MR. ROBERTS: Do you think it's fair that they have to meet a
13 burden of proof and get over 50 percent certain.

14 PROSPECTIVE JUROR 254: Sure.

15 MR. ROBERTS: More likely true than not true.

16 PROSPECTIVE JUROR 254: It's fair that they have to present.
17 And if they meet the requirement, there should be no problem making a
18 decision.

19 MR. ROBERTS: Right even. Who's right and who's wrong.
20 It's exactly even on both sides for the evidence. Can you still send them
21 home with nothing, when they're seeking ten a half million?

22 PROSPECTIVE JUROR 254: If it doesn't meet the
23 requirement. I would have to do what's right. If it doesn't meet the
24 requirement, do the 51-50, or whatever the Judge orders, then I would
25 have to do what's right. So all I can say is I'd just have to see the

1 evidence, hear both sides and make a decision. I can't do that until
2 everything is presented.

3 MR. ROBERTS: Nothing's been presented yet. Are you
4 leaning towards one side or the other?

5 PROSPECTIVE JUROR 254: No. Neither side.

6 MR. ROBERTS: Thank you, Ms. Wynn.

7 PROSPECTIVE JUROR 254: You're welcome.

8 MR. ROBERTS: I appreciate it. All right. Mr. Ramsey, badge
9 number.

10 PROSPECTIVE JUROR 219: 219.

11 MR. ROBERTS: So let's talk about some of these same
12 questions. Do you think that insurance companies look for loopholes?

13 PROSPECTIVE JUROR 219: Not necessarily. I think
14 individuals look for loopholes, but I don't like to blanket the entire
15 statement as companies in general. Companies are made up of
16 individuals, of course.

17 MR. ROBERTS: So no more and no less than people of any
18 other industry?

19 PROSPECTIVE JUROR 219: No more, no less.

20 MR. ROBERTS: What about the question I asked about
21 financial institutions. It was brought up because they're heavily
22 regulated because they've got a sort of -- according to one of our jurors
23 they sort of have a higher responsibility because of the field that they're
24 in. Have you ever had a problem with a financial institution?

25 PROSPECTIVE JUROR 219: I have not.

1 MR. ROBERTS: Have you ever been scammed or defrauded
2 by anyone?

3 PROSPECTIVE JUROR 219: Not that I know of.

4 MR. ROBERTS: Any feelings about the justice system? Is
5 this a good way to resolve disputes?

6 PROSPECTIVE JUROR 219: Absolutely, yes. Best justice
7 system in the world, no doubt.

8 MR. ROBERTS: Would you be disappointed if you're not
9 chosen as a juror in this case? Half of you are going to be chosen.

10 PROSPECTIVE JUROR 219: No, neither way.

11 MR. ROBERTS: Neither way.

12 PROSPECTIVE JUROR 219: I mean if I'm needed, I'll serve.
13 If not I'll gladly go home and enjoy the rest of my life.

14 MR. ROBERTS: Thank you, Mr. Ramsey. All right. Mr.
15 Reese, same questions. Badge number?

16 PROSPECTIVE JUROR 094: 094.

17 MR. ROBERTS: Thank you. You've got a great voice. Do
18 you think insurance companies look for loopholes when they're paying
19 claims?

20 PROSPECTIVE JUROR 094: Sometimes. I know when I filed
21 claims for myself or my wife or I believe they've been filed by healthcare
22 providers. A lot of times they'll send letters asking where the accident
23 happened, was it involving a motor vehicle, blah, blah, blah. And it's
24 never been over an accident -- well, just one time. [Indiscernible]
25 trashing an ankle.

1 MR. ROBERTS: I'm sorry.

2 PROSPECTIVE JUROR 094: But, you know, the other one
3 was involving a motorcycle. You know, it was on private property. Or,
4 you know -- so it's like, you know, they're looking for somebody else to
5 pay the bill. If you want to call that a loophole, which is --

6 MR. ROBERTS: Is it a loophole if it's not covered by the
7 policy?

8 PROSPECTIVE JUROR 094: No.

9 MR. ROBERTS: What about what Mr. Ramsey said? Do you
10 agree with him that insurance companies don't do it any more than any
11 other company, or do you think that insurance --

12 PROSPECTIVE JUROR 094: Well, you know, like was
13 discussed earlier, corporations are about profit. You know, so they're
14 going to do what they can to increase their bottom line.

15 MR. ROBERTS: Do you think that's fairly uniform across all
16 corporations?

17 PROSPECTIVE JUROR 094: Yes.

18 MR. ROBERTS: Ever been scammed or defrauded?

19 PROSPECTIVE JUROR 094: No, but taken advantage of. I've
20 had a couple of store credit cards charge from 24 to 29 percent interest.

21 MR. ROBERTS: So 24.9 percent interest and that's being
22 taken advantage of.

23 PROSPECTIVE JUROR 094: I don't have them anymore.

24 MR. ROBERTS: Other than the credit cards?

25 PROSPECTIVE JUROR 094: No, no.

1 MR. ROBERTS: Any bad experience with financial
2 institutions?

3 PROSPECTIVE JUROR 094: No.

4 MR. ROBERTS: What about the justice system? What do you
5 think of our justice system?

6 PROSPECTIVE JUROR 094; I think it's great. You know, it's --
7 I agree with what he said. You know, it's the best in the world.

8 MR. ROBERTS: Very good. Thank you, sir. I appreciate it.
9 Mr. Cabrales.

10 PROSPECTIVE JUROR 041: 041.

11 MR. ROBERTS: Do you think insurance companies look for
12 loopholes?

13 PROSPECTIVE JUROR 041: I agree that some insurance
14 companies, like individuals will take advantage of loop holes
15 [indiscernible].

16 MR. ROBERTS: More often than other types of companies do
17 you think?

18 PROSPECTIVE JUROR 041: No.

19 MR. ROBERTS: No. What about, have you ever been
20 scammed or defrauded by anyone?

21 PROSPECTIVE JUROR 041: Not that I can think of.

22 MR. ROBERTS: Have you ever been taken advantage of by a
23 financial institution or a bank?

24 PROSPECTIVE JUROR 041: Not that I can think of.

25 MR. ROBERTS: All right. Your mom is an RN?

1 PROSPECTIVE JUROR 041: Mom, a nurse retired, registered
2 nurses.

3 MR. ROBERTS: Okay. And did you ever hear them talk about
4 reimbursement disputes?

5 PROSPECTIVE JUROR 041: No.

6 MR. ROBERTS: No. Did you believe that your mom was
7 underpaid when she was a nurse?

8 PROSPECTIVE JUROR 041: I think that she was overworked.
9 I don't know about underpaid.

10 MR. ROBERTS: So -- and I apologize if I missed this, but can
11 you tell me a little bit more about the field investigator duties? What is it
12 exactly that you do?

13 PROSPECTIVE JUROR 041: So I review reports on claims
14 about our team members or on our VIP customers, to see theft, burglary
15 and sometimes [indiscernible] to make sure that the cashiers are
16 managing money correctly. So I do interviews, the surveillance footage,
17 that kind of stuff.

18 MR. ROBERTS: Okay. Do you write the reports? Are you a
19 report writer, or do you give information to someone else who is the
20 report writer on your team?

21 PROSPECTIVE JUROR 041: Both.

22 MR. ROBERTS: Both.

23 PROSPECTIVE JUROR 041: Yes.

24 MR. ROBERTS: So are you a lead investigator on teams?

25 PROSPECTIVE JUROR 041: We don't really have that

1 position. But I do focus more on the investigative side in our team.

2 MR. ROBERTS: And what's the name of your company
3 again?

4 PROSPECTIVE JUROR 041: Goodwill of Southern Nevada.

5 MR. ROBERTS: Okay. Very good. When you are doing an
6 investigation, do you just put the facts down, or do you reach a
7 conclusion? It is my conclusion that so and so is guilty of fraud, or
8 embezzlement, or stealing money?

9 PROSPECTIVE JUROR 041: So my job is just to collect
10 information so that managers and HR can make those kinds of decisions.

11 MR. ROBERTS: Okay. So your reports would not have made
12 that judgment?

13 PROSPECTIVE JUROR 041: Correct.

14 MR. ROBERTS: Do you work with your managers and
15 decision makers when they make that? You know, do they come talk to
16 you and say what do you think? Should we pull the trigger on this and
17 take action?

18 PROSPECTIVE JUROR 041: Occasionally when we need to
19 characterize certain actions like suspicious. Given our store policy and
20 such, but generally speaking no.

21 MR. ROBERTS: Do you know what type of standard your
22 company required in an investigation before they take action? In other
23 words, you know, we go back to the last week. Is it a preponderance, is
24 it clear and convincing, or is it beyond a reasonable doubt before your
25 company will take action?

1 PROSPECTIVE JUROR 041: What sort of action?

2 MR. ROBERTS: Well, whatever action might be appropriate.
3 You know, if you're investigating, you know, embezzlement.

4 PROSPECTIVE JUROR 041: Right.

5 MR. ROBERTS: You know, would you go confront someone
6 and terminate them, or institute legal action? What standard does your
7 company need before they take an action that's appropriate based on the
8 allegation?

9 PROSPECTIVE JUROR 041: Yeah, the company policies do
10 present certain things like, you know, tolerance policies where we would
11 have to -- it would be our priority to look at it. In terms of confronting,
12 we often do that in order to gather context about visual evidence. About
13 -- about certain types of evidence. But in terms of termination, in terms
14 of suspension, that's a little bit -- that's a higher standard.

15 MR. ROBERTS: How high?

16 PROSPECTIVE JUROR 041: That I wouldn't know. That's
17 more of a discretion of HR or management. Their direct supervisor.

18 MR. ROBERTS: Okay. Let's start some -- actually, before I
19 start with a new topic, I started one halfway in between to keep things at
20 least a little more interesting, not quite as dull. Who here has been
21 scammed or defrauded, that hasn't been asked the question here in the
22 back? Ms. Springberg, badge 141.

23 PROSPECTIVE JUROR 141: The unemployment claim, of
24 fraud that [indiscernible].

25 MR. ROBERTS: Yes.

1 PROSPECTIVE JUROR 141: I Hs [indiscernible].

2 MR. ROBERTS: Can you pull it a little bit closer?

3 PROSPECTIVE JUROR 141: It was the unemployment fraud
4 [indiscernible], and it caused a lot of -- it was a lot of paperwork and a lot
5 of report that I had to do.

6 MR. ROBERTS: So it was actually your employer who got
7 defrauded, right?

8 PROSPECTIVE JUROR 141: Correct.

9 MR. ROBERTS: But you felt like it was also you?

10 PROSPECTIVE JUROR 141: Well, I'm the one who had to file
11 the police reports. I'm the one that filed with all of the agencies. So it
12 was fraud under my Social Security number, so it was me.

13 MR. ROBERTS: Right. Oh, okay. I didn't -- I forgot that part.
14 I apologize.

15 PROSPECTIVE JUROR 141: Yeah.

16 MR. ROBERTS: Do you feel like that situation resolved
17 favorably? Satisfactorily?

18 PROSPECTIVE JUROR 141: I had no negative repercussions
19 from it. So I guess, yes.

20 MR. ROBERTS: Do you feel like the person who defrauded
21 you should have been punished more than they were?

22 PROSPECTIVE JUROR 141: I don't believe that the person
23 who defrauded me was punished at all. These individuals weren't
24 identified, so --

25 MR. ROBERTS: Does that bother you?

1 PROSPECTIVE JUROR 141: It bothers me that some
2 government employee's information was accessed. And nobody really
3 knows how that happened. So that bothers me.

4 MR. ROBERTS: Thank you. Anybody else? Yes, Mr. Nesci.

5 PROSPECTIVE JUROR 593: 593. Would you consider credit
6 cards being hacked fraud?

7 MR. ROBERTS: I would. Would you?

8 PROSPECTIVE JUROR 593: Yeah. Four times. And each
9 time I just got ahold of my credit union and of course, cancelled the
10 cards. I have fraud protection. Cancelled the cards. Disputed the
11 charges and the charges were declined all four times.

12 MR. ROBERTS: So it all worked out?

13 PROSPECTIVE JUROR 593: It all worked out. Yes, that
14 angers me, like she just said. That there's -- it's such a -- there's so many
15 victims that they don't even bother trying to prosecute them.

16 MR. ROBERTS: So in your case, you would have liked to
17 have seen repercussions for the people who attempted to defraud you?

18 PROSPECTIVE JUROR 593: Absolutely. I wanted them to go
19 to Hungary where my credit card was used and get [indiscernible].

20 MR. ROBERTS: All four times for Hungary?

21 PROSPECTIVE JUROR 593: Two times. \$21.78 each charge.
22 Yeah, it's crazy, but yes.

23 MR. ROBERTS: So has that left sort of a bad taste in your
24 mouth about the legal system?

25 PROSPECTIVE JUROR 593: No.

1 MR. ROBERTS: Or is it just one of those things?

2 PROSPECTIVE JUROR 593: No, it's just -- it's made me more
3 aware to -- again like I said earlier, to be my own advocate and to protect
4 my assets on a daily basis. Look at my accounts and make sure
5 everything's okay. You have to take care of yourself.

6 MR. ROBERTS: Now is this one of those situations where
7 going after the people who attempted to defraud you would be morally
8 right, but it's not practical, so they won't do it? Because there's so much
9 of it, such small dollars.

10 PROSPECTIVE JUROR 593: Well, it's big dollars. You know,
11 our country -- yeah, it's big dollars. But I think it's more practical not to
12 pursue the criminal.

13 MR. ROBERTS: And do you agree with that judgment?

14 PROSPECTIVE JUROR 593: No. No.

15 MR. ROBERTS: Who here agrees with Mr. Nesci that people
16 should be pursued for something like that even if it's not practical to do
17 it? Anyone else raise their hand? Yes, sir, Mr. Meyer.

18 PROSPECTIVE JUROR 532: Badge 532. Obviously, credit
19 card fraud. And also we had, I don't know if it's been followed, or what
20 you're getting at, but we purchased a new home, existing home about
21 six years ago. And a week after we moved in, the title company missed
22 a judgment on the previous owner. So we were about to lose our new
23 home that we just got. But we fortunately had title insurance, and I
24 recommend that everybody buying a home. So the title insurance took
25 care of it. I wasn't real pleased with the title -- with the previous owner. I

1 don't know if they did not disclose they had a judgment or what actually
2 happened. But nothing ever happened with them. And then obviously
3 the credit card fraud it was all taken care of. But they need to stop it.
4 They issued a credit card, so I didn't lose any money on that.

5 MR. ROBERTS: So ultimately both those situations resolved
6 favorably for you?

7 PROSPECTIVE JUROR 593: They were, yes.

8 MR. ROBERTS: And you were pleased with the outcomes?

9 PROSPECTIVE JUROR 593: Well, I [indiscernible] was. But
10 again, I wasn't real happy with the previous owner of our home getting
11 away with stuff, too.

12 MR. ROBERTS: Do you think that previous owner who failed
13 to disclose perhaps a judgment lien against the property that you now
14 own should have faced some repercussions?

15 PROSPECTIVE JUROR 593: I believe they should have.

16 MR. ROBERTS: Do you have any knowledge of whether they
17 were [indiscernible] repercussions?

18 PROSPECTIVE JUROR 593: To my knowledge, they were not.

19 MR. ROBERTS: Do you think practically speaking it would
20 have been tough to do that? To go after them.

21 PROSPECTIVE JUROR 593: Without the title insurance?

22 MR. ROBERTS: Uh-huh.

23 PROSPECTIVE JUROR 593: Yes, it would have been. It
24 would have been. We probably would have lost our home.

25 MR. ROBERTS: So it was a big judgment?

1 PROSPECTIVE JUROR 593: Well, less than \$10 million. It
2 was a good size amount.

3 MR. ROBERTS: Thank you, Mr. Meyer. Any other hands?
4 Scammed, defrauded, taken advantage of by a financial institution?

5 One of the questions that Mr. Zavitsanos asked was
6 Obamacare, Affordable Care Act, good for the country, bad for the
7 country. Okay. Let me ask about that a little broader. As things work
8 the way they do now, who has an unfavorable view of the healthcare
9 system in this country, the way it is now? Can I just have a show of
10 hands?

11 No one's with Mr. Nesci here? Okay. So maybe three of you,
12 just an unfavorable view of the way things work. And everyone else, are
13 you just sort of no opinion, or is there anyone here who thinks, man, the
14 healthcare system -- we've got the best in the world in the United States?
15 For the record, was that a laugh, Mr. Meyer?

16 PROSPECTIVE JUROR 532: Yes.

17 MR. ROBERTS: All right. Let's see if you did your
18 homework for me. Where's the microphone? Okay. Let's pass it back.
19 And we'll go in order starting with Ms. Gonzaga. And I'm going to get
20 two questions in one here. I have a multiple choice test, and then an
21 answer to our question about your most admired person.

22 MR. ZAVITSANOS: And I'm sorry, Your Honor. Could I get
23 counsel to just state the juror number, please, as we go through?

24 MR. ROBERTS: Sure. Ms. Gonzaga, badge 74. But I haven't
25 asked the question yet.

1 So in addition to telling me your most admired person, living
2 or dead, public figure, I want you to answer a multiple choice question.
3 My property taxes, A) they're too high, B) they're fair, or C) I don't pay
4 property taxes. Okay.

5 PROSPECTIVE JUROR 074: 074, I would say Mother Teresa
6 just due to her compassion and selflessness of the positive community --
7 the positive work that she would do around the community and the
8 world. And my answer would be C.

9 MR. ROBERTS: Thank you, Ms. Gonzaga. Ms. Springberg,
10 badge 141.

11 PROSPECTIVE JUROR 141: I actually gave this question
12 about the public figure a lot of thought. And I don't have an answer for
13 you. So there are a lot of people I admire the qualities that they have. I
14 don't -- I didn't just want to pick one of them. So I don't really have a
15 public figure that I admire better.

16 MR. ROBERTS: Tell me what qualities you admire most in a
17 public figure that you thought of.

18 PROSPECTIVE JUROR 141: Integrity, compassion, empathy,
19 someone who is direct, forthright. And those would be -- those are
20 qualities that I admire in public figures or in anybody. So yeah. There
21 wasn't one person I wanted to identify. I'm sorry. You asked about the
22 question that was multiple choice?

23 MR. ROBERTS: Yes. My property taxes, too high, A, B, fair,
24 C, I don't pay them.

25 PROSPECTIVE JUROR 141: I guess B, fair. I don't really think

1 about it because I don't have a choice. It's just something I pay and it's
2 over.

3 MR. ROBERTS: I left too low out, you know. Could you pass
4 the mic to Ms. Landau, please, badge 283.

5 PROSPECTIVE JUROR 283: For my person I chose Sojourner
6 Truth. And she was a female's rights activist in the 19th Century. And
7 then, for your multiple choice question, I would have to go with C.

8 MR. ROBERTS: Thank you. Mr. Walker, badge 450?

9 PROSPECTIVE JUROR 450: My public figure that I picked --
10 that I picked was Martin Luther King. One thing I liked about him was
11 that he was a person that stood up for what was right and that he found
12 an alternative other than using violence. He found an alternative to get
13 his point across. And for the question, the multiple choice, it would be C.

14 MR. ROBERTS: B?

15 PROSPECTIVE JUROR 450: C like cat.

16 MR. ROBERTS: C like cat. Thank you, Mr. Walker. Mr.
17 Zabinski, badge --

18 PROSPECTIVE JUROR 494: 494.

19 MR. ROBERTS: 494. Thank you.

20 PROSPECTIVE JUROR 494: Multiple choice would be C as in
21 cat. And then I would say Jesus would be somebody that I most admire
22 and respect. His philosophy basically is about treating people how you
23 would want to be treated yourself. And that's kind of a golden rule. Not
24 getting into religion, but just treat people the way you want to be treated,
25 and the world would be a much better place.

1 MR. ROBERTS: Thank you, Mr. Zabinski. Ms. Friedrich,
2 badge 522?

3 PROSPECTIVE JUROR 522: My -- the multiple choice would
4 be B. And my admired person would be Florence Nightingale just for all
5 the things that she did to make the nursing career as it is now.

6 MR. ROBERTS: Thank you. Ms. Ross, badge 93?

7 PROSPECTIVE JUROR 093: Yes. The answer to multiple
8 choice -- multiple choice would be B. And then, yeah, I don't know. I
9 don't really -- I can't really think of someone that I admire. I don't -- I
10 mean, I admire qualities in people, but I don't really have anybody
11 specific that I would admire.

12 MR. ROBERTS: Can you -- can you give me a list of qualities
13 like Ms. Springberg did?

14 PROSPECTIVE JUROR 093: So like honesty, integrity,
15 compassion. Like, people who do, like, volunteer work. Like he said, you
16 know, you should always treat people how you want to be treated. So
17 respect. Good qualities.

18 MR. ROBERTS: Thank you, Ms. Ross. If you could pass it to
19 Ms. Carr, badge 49, please.

20 PROSPECTIVE JUROR 049: Yes. 049. For the property tax
21 question, B. I think it's fair coming from California. For the person I
22 admire, I kind of struggled with this. And through conversation with
23 friends over the weekend just about what's going on with lives, I have a
24 girlfriend who is dealing with infidelity in her marriage. And that's a
25 really, really tough thing for, you know, anyone and any couple to get

1 through. And I kind of landed on Hilary Clinton for this because she
2 dealt with infidelity in her marriage in a -- in the public eye. Everybody
3 felt like they were entitled to details. And somehow, she and her
4 husband were able to find a way to work through it, and stayed together,
5 which I feel like is not something every couple would be able to do. That
6 takes a certain amount of strength.

7 MR. ROBERTS: Thanks for --

8 PROSPECTIVE JUROR 049: That's my answer.

9 MR. ROBERTS: -- thanks for putting so much thought into
10 that. I appreciate it, Ms. Carr. Mr. Torres, badge --

11 PROSPECTIVE JUROR 038: 038. I thought long on this last
12 night. It would be Abraham Lincoln for what he did. Gave the freedom
13 and rights to the people.

14 MR. ROBERTS: And that was --

15 PROSPECTIVE JUROR 038: Oh, and my taxes, they're paid.

16 MR. ROBERTS: Fair. Very good. Thank you, Mr. Torres. Mr.
17 Nesci, badge --

18 PROSPECTIVE JUROR 593: 593. Taxes, A, too high. And the
19 person I admire most would be Jackie Robinson. April 15th, 1947, for
20 the Brooklyn Dodgers, he broke the color barrier in baseball. And the
21 adversity that he had to overcome, horrendous, horrendous adversity
22 and racism. He changed the game for the better. And ultimately, he
23 changed the whole country for the better.

24 MR. ROBERTS: Did you see the movie?

25 PROSPECTIVE JUROR 593: Heck yeah, I did.

1 MR. ROBERTS: And question, have you ever lived in
2 California? I know you told us you were going to Palm Springs. Have
3 you ever owned property there?

4 PROSPECTIVE JUROR 593: I never have. But -- are you
5 asking about the property taxes?

6 MR. ROBERTS: I am. I was just curious.

7 PROSPECTIVE JUROR 593: Yeah. Well, I just have a -- you're
8 going to put me on my soap box, you know. I have a child that I'm
9 paying for college. Why do I still have to pay all those taxes for the
10 school? I have no children at school. I'll pay taxes of my property. But
11 look at the breakdown of your property taxes, and the majority of them
12 are for Clark County School District. I don't think that's fair.

13 MR. ROBERTS: Understood. Thank you, sir.

14 PROSPECTIVE JUROR 593: You're welcome.

15 MR. ROBERTS: Mr. Rucker, badge --

16 PROSPECTIVE JUROR 564: 564. B on the taxes. They're not
17 too bad. And Barack Obama. And I say that because at least he took a
18 stab at healthcare. Okay. At least he had the guts to try it. Whether we
19 agree with it or not, he tried. And that means a lot to me.

20 MR. ROBERTS: Thank you, sir. Mr. Meyer, badge --

21 PROSPECTIVE JUROR 532: 532. I'm going to go with B. I
22 think the taxes -- property taxes are not bad. After thought, I came up
23 with Vince Lombardi. I look back to back in the '60s when he had groups
24 of athletes coming on from such small colleges that didn't have the
25 training, the background, the knowledge of big colleges. And he took

1 these group of kids and disciplined them and tried to fix them into a
2 fantastic team. Plus, he instilled in their minds that they're not going to
3 play football for the rest of their life, so they need to look beyond that to
4 get another pick of a career going. I think just doing that was fantastic
5 for these kids coming out of college. A lot of them didn't even go to
6 college that he took in.

7 MR. ROBERTS: Which team did he do the best job for?

8 PROSPECTIVE JUROR 532: I think he did the best job with
9 the Green Bay Packers.

10 MR. ZAVITSANOS: Let me see if I can slide under this table
11 here or something.

12 PROSPECTIVE JUROR 532: That would be one humble
13 opinion.

14 MR. ROBERTS: Thank you. Thank you so much. If you
15 could pass it up to Ms. Wilson, badge 95.

16 PROSPECTIVE JUROR 095: For property taxes, B. Having
17 come from New York, we're very fair here. And my most admired is --
18 and the judge is going to think I'm sucking up here, but it's Ruth Bader
19 Ginsburg. Just -- I just -- everything that she stood for, aside from the
20 politics, I think that -- well, I can't say that in court what I was going to
21 say. Tough woman. She stood up for what was right. Very supportive
22 with her husband. I just -- everything about her, I admire.

23 MR. ROBERTS: Brilliant legal servant --

24 PROSPECTIVE JUROR 095: Absolutely.

25 MR. ROBERTS: -- as a lawyer.

1 PROSPECTIVE JUROR 095: Yes.

2 MR. ROBERTS: Thank you for that answer.

3 PROSPECTIVE JUROR 095: Thank you.

4 MR. ROBERTS: I appreciate it. Ms. Hortillas, badge 114.

5 PROSPECTIVE JUROR 114: 114. Property tax, my answer is

6 C. And about the public figure, I can't think of any. Ellen DeGeneres.

7 She's funny and very generous.

8 MR. ROBERTS: Funny and generous. Good qualities. Thank
9 you.

10 PROSPECTIVE JUROR 116: 116. So property tax, B. And
11 then somebody I do admire, I picked Serena Williams just because of her
12 determination, and perseverance, and all she was able to accomplish in
13 her career.

14 MR. ROBERTS: Have you seen the new Wonder Woman
15 commercial?

16 PROSPECTIVE JUROR 116: Oh, no, I haven't.

17 MR. ROBERTS: I'm sure. Look for it. Thank you, Ms.
18 Trambulo. Ms. Dudley?

19 PROSPECTIVE JUROR 224: 224. So I have way too many
20 names that come up in my mind, of course. But anyone who can break
21 down ego and make somebody better and cause deeper inquiry. So first
22 off, I will say Jesus Christ because he -- you have to become more
23 humble and appreciate the sacrifice. I adore [indiscernible]. I adore
24 Mother Mary, St. Bridget. So it's more qualities within individuals that
25 just make beings overall better. And then I don't quite pay property tax.

1 MR. ROBERTS: Okay.

2 PROSPECTIVE JUROR 224: Yet.

3 MR. ROBERTS: Thank you, Ms. Dudley.

4 PROSPECTIVE JUROR 252: 252. I'd go with B. And then for
5 a person, I'm going to go with Andre Agassi. He grew up here. He's a
6 good -- great tennis player. And then he's helping out with the
7 community. He helps out the community.

8 MR. ROBERTS: Thank you, sir.

9 PROSPECTIVE JUROR 014: 014. I don't pay property taxes.
10 My husband does. But I think they're pretty fair, considering. I mean,
11 we -- we grew up in California. Me and my husband both did. It's okay
12 as far as taxes go.

13 And then, my person -- I'm going to tell you I have anxiety. I
14 was like, I don't know who I'm going to pick. I don't know public figures.
15 But the one person that I finally settled on this morning was Marc-Andre
16 Fleury. I think he was really a family-oriented person. He was kind. He
17 loved kids. You know, he -- as far as I could tell, he's an honest person.
18 He's just an all-around great guy. And he really took his game seriously.
19 Not just like taking it seriously, but he took it hard on himself when he
20 didn't -- you know, couldn't stop the goal. And, like, I think that's
21 awesome that he really cared that much.

22 MR. ROBERTS: Vegas Knights?

23 PROSPECTIVE JUROR 014: Yeah. Hockey in general.

24 MR. ROBERTS: Very good. Mr. Leopold, tell me.

25 PROSPECTIVE JUROR 020: As far as taxes --

1 MR. ROBERTS: Whichever question you want first.

2 PROSPECTIVE JUROR 020: -- property taxes, C. I rent, so.

3 As far as -- I spent a lot of time trying to figure out who I admire most.

4 But a name that kept coming up in my mind was Samuel Clemens.

5 Other than being a fantastic author, when he saw something wrong, he
6 spoke out. He said something. He didn't just let it go.

7 MR. ROBERTS: Have you read all of his books?

8 PROSPECTIVE JUROR 020: Oh, more than once. And to my
9 nephew.

10 MR. ROBERTS: Thank you, Mr. Leopold.

11 PROSPECTIVE JUROR 270: Okay. 270. I do pay property
12 tax. And I think it's fair, especially considering -- I mean, they could
13 always be lower, and I would be happy with that. But I think it's fair
14 considering what other people pay in other states. It's very -- it's fair.

15 I am also a Ruth Bader Ginsburg fan. I wish I had done more
16 research and watched more about her while she was alive instead of
17 after she died. And what she did at the time, especially, you know -- it's
18 just amazing. It's just amazing. It's heroic. And she had, you know, a
19 great support around her with her husband. And you know, she lost her
20 parents when she was very -- when she was relatively young. And I just
21 think that it was bold for her at that time to have done what she did. I
22 wish I would have read more about her or watched more things on her
23 when she was alive.

24 MR. ROBERTS: Thank you, Ms. Herzog.

25 PROSPECTIVE JUROR 270: Uh-huh.

1 MR. ROBERTS: Ms. Wynn, badge number?

2 PROSPECTIVE JUROR 254: Badge number 254. C, I don't
3 pay property taxes. I also rent. And one person that I do admire is
4 Gabrielle Union.

5 MR. ROBERTS: Could you explain?

6 PROSPECTIVE JUROR 254: Well, for one --

7 MR. ROBERTS: I don't know anything about her as an
8 individual.

9 PROSPECTIVE JUROR 254: Okay. Well, the first thing that
10 comes to mind is the first movie she ever played in, Bring It On. And her
11 name just happened to be Isis. I found out during the movie when they
12 yelled it out. But as following her through the movies she's been in, her
13 current life, she speaks up. And that's one thing that I admire. And that
14 she -- I feel she doesn't take sides. She cares for both. And like, even
15 her family life that she goes through, and all the issues that they have
16 had that are brought to the public, she doesn't mind speaking out. I will
17 say this week -- or starting last week, I finally was able to -- I bought the
18 book a year ago almost. And I started reading it and learned about her
19 life, what she went through. And I could relate to some of the things. So
20 I admire her for being who she is and what she stands for. So that's one
21 of the reasons I chose her out of a lot of the people that I admire.

22 MR. ROBERTS: Thank you for putting so much thought into
23 that. I appreciate it. Mr. Ramsey, badge number?

24 PROSPECTIVE JUROR 219: 219. Mine would be Martin
25 Luther King, Jr. And I think just for enforcing -- or not enforcing, but

1 engraining that -- the importance of vision, of a dream. And property
2 taxes, the only reason that I say A is I would take a discount any day.

3 MR. ROBERTS: Mr. Reese, badge number?

4 PROSPECTIVE JUROR 094: 094. Property taxes, B. I believe
5 they are fair. Person I admire would be Rosa Parks. Had the courage to
6 stand up for her rights and the rights of all the black people regardless of
7 the consequences.

8 MR. ROBERTS: Thanks, Mr. Reese. And last, let's see, Mr.
9 Cabrales.

10 PROSPECTIVE JUROR 041: 041. On property tax, C. Most
11 admired person is Socrates. He was principled. He was questioning. He
12 was courageous. He was full of integrity.

13 MR. ROBERTS: Thank you. Thank you, sir. Your Honor,
14 would this be a good time?

15 THE COURT: It's a good time.

16 MR. ROBERTS: Thank you.

17 THE COURT: It's -- can everybody be back at 1? Does that
18 give you enough time for lunch? Okay.

19 So during the recess, don't talk with each other or anyone
20 else on any subject connected with the trial. Don't read, watch, or listen
21 to any report of or commentary on the trial. Don't discuss this case with
22 any person connected to it by any medium of information, including
23 without limitation newspapers, television, radio, internet, cell phones, or
24 texting.

25 Don't conduct any research on your own relating to the case.

1 Don't consult dictionaries, use the internet, or use reference materials.
2 Don't talk, text, Tweet, Google, or conduct any other type of book or
3 computer research with regard to any issue, party, witness, or attorney
4 involved in the case. Most importantly, do not form or express any
5 opinion on any subject connected with the trial unless you're selected for
6 the jury and the jury deliberates.

7 You guys have been great again today. Thank you. See you
8 at 1:00.

9 THE MARSHAL: All rise for the jury.

10 [Prospective jurors out at 12:07 p.m.]

11 [Outside the presence of the prospective jurors]

12 THE COURT: Okay. The room is clear. Plaintiff, do you have
13 anything for the record?

14 MR. ZAVITSANOS: Just a minor thing, Your Honor, just as a
15 housekeeping thing. Whenever we do seat a jury, if Your Honor would
16 not mind asking if there are any, like, dietary restrictions or allergies
17 since the lawyers are going to be providing lunch.

18 THE COURT: Okay.

19 MR. ZAVITSANOS: That just occurred to me, so.

20 THE COURT: Thank you. And for the Defense?

21 MR. BLALACK: We agree.

22 THE COURT: Okay. Let's take up the issue at 10 to 1 on the
23 media -- the objection on the media request. And I have some
24 preliminary thoughts. I'm keeping my mind open to both sides. I -- what
25 concerns me is the attorneys' eyes only and the trade secrets. The rest

1 I'm not so concerned about. I -- you know, you guys chose a public form
2 for -- to resolve your disputes. So that's where I'm leaning. And we'll
3 argue it at 12:50.

4 MR. ZAVITSANOS: I understand.

5 MR. ROBERTS: Thank you, Your Honor.

6 MR. ZAVITSANOS: Thank you, Your Honor.

7 MR. BLALACK: Thank you, Your Honor.

8 [Recess taken from 12:08 p.m. to 12:58 p.m.]

9 [Outside the presence of the prospective jurors]

10 THE CLERK: -- session. Honorable Nancy Allf presiding.
11 Thanks everyone. Please remain seated.

12 MR. ZAVITSANOS: Thank you, Your Honor.

13 THE COURT: So Defendant, your motion, please.

14 MR. BALKENBUSH: Thank you, Your Honor and did you
15 intend to hear the objection to media request or your --

16 THE COURT: That's correct.

17 MR. BALKENBUSH: Okay. Thank you. Move this candy out
18 of the way, so I'm not temped. Colby Balkenbush for the Defendant,
19 Your Honor. At the outset, what I want to make clear to the Court is by
20 our objection, we're not seeking to completely close the courtroom to
21 the media. That's essentially a dark trial. That is not the intent. The only
22 thing we're seeking to protect, Your Honor, is our attorney's eyes only
23 material. And so I'm sure Your Honor recalls in the protective order that
24 this Court entered back in June, 2020 that we cited in our objection, there
25 are two categories of documents, confidential documents and then

1 attorney's eyes only documents.

2 The confidential documents, we are not requesting that the
3 media be prohibited from videotaping those or livestreaming those
4 when they're being referenced, just the attorney's eyes only documents.
5 And so those are the documents that we referenced in our brief, Your
6 Honor, that involved rates that we pay to other providers both in-network
7 and out of network, the details of our costs, out of network cost
8 management programs are run, parameters, negotiation parameters that
9 we've given to certain out of network management programs.

10 And the purpose -- the reason that we're fighting for this,
11 Your Honor, is we are very concerned that with the livestream of this
12 trial, when those are being aired, not only other providers who negotiate
13 with us, but also our direct competitors, other commercial payers, are
14 going to have inside view of exactly how we run these programs. And
15 Your Honor and the jury's going to hear during this trial from one of our
16 experts, Karen King, who's going to testify to how competitive the ASO
17 market is for securing contracts, Your Honor, to run self-funded
18 employer programs.

19 And one of the key aspects of those negotiations is always
20 the out of network cost management programs that a particular
21 commercial payor can offer. And so what we're really concerned about
22 is that being aired to the world to see during this trial. Now, with that
23 said, I guess I want to just take a step back and make sure that the Court
24 understands where we -- these proceedings stand as far as the
25 protection of these documents. Supreme Court Rule 230 requires that

1 the Court make particularized findings, if it's going to limit access to the
2 courtroom. Weigh -- balance the interest of the public versus the privacy
3 interests of a party, but in our view, Your Honor, this Court has actually
4 already done that when it entered the June, 2020 protective order.

5 In fact, if you look at that order, paragraph 28 states, quote,
6 "Particularized harm will occur, due to public disclosure of confidential
7 information to be protected under this protective order, given the
8 important privacy and business interests at issue here. And two, when
9 balancing the public and private interests, a protective order must issue,
10 because the public's interest is disclosure is substantially outweighed by
11 the party's important privacy, proprietary and business interests."

12 So there is certainly a presumption in favor of open court
13 proceedings, but in our view, Your Honor, with the protective order in
14 place, the Court has already analyzed that issue and found that at least in
15 regard to attorney's eyes only documents, the balance weighs in favor of
16 protecting those to exposure to our competitors.

17 And I -- the second issue, I want to address, I think opposing
18 counsel may raise this argument that essentially, yes, the protective
19 order was in place during the pretrial phase, but now that the parties
20 have elected to go to trial, that this protection ceases to exist. But if you
21 read through the protective order, it's clear that both parties
22 contemplated these protections would exist through trial. Paragraph 20
23 of the order specifically addresses trial and states that a party who
24 intends to use protected materials shall give the other party three
25 business days' notice of its intent to use that material at trial and then

1 states that the Court may take the appropriate measures to protect that
2 material from disclosure to any individuals not listed in paragraph 12 of
3 the protective order.

4 And paragraph 12 is what lists which individuals are entitled
5 to view protected material. And under paragraph 12, among the -- it lists
6 the counsel, witnesses, the Court. It also lists jurors. So our view is the
7 fact that jurors are listed there indicates that when the parties entered
8 that order, they contemplated it was going to be in effect, even for trial. I
9 also want to point out in that protective order, in paragraph 14, it
10 contemplates what happens to documents that have been disclosed after
11 the litigation ends and it contemplates the parties either destroying them
12 or returning them to each other.

13 So again, there wouldn't be a need for that paragraph, Your
14 Honor, if all protection ceased at trial and everybody's attorney's eyes
15 only documents were exposed for the world to see. So our view is that
16 the order clearly contemplated this protection going from the pretrial
17 phase through the trial phase. And so I think the question that the Court
18 is faced with today is is there a reason to revisit the findings in the June
19 2020 protective order.

20 And I think what we would submit Your Honor is, if anything,
21 the reasons in support of that order are stronger today than they were
22 when it was entered. But back when it was entered, there had not been a
23 significant amount of reimbursement data, out of network
24 reimbursement data, negotiation parameters and the like produced.
25 Since then, there's been tens of thousands of documents that relate to

1 that produced and in reliance on the language in that order. And I think
2 what Plaintiffs are essentially asking for is a wholesale rescinding of the
3 order and all of that -- all of those documents being exposed for the
4 world to see.

5 So we think that would be fundamentally unfair to United,
6 Your Honor, that produced all these documents in reliance in the
7 language of that order to have them be aired for all their competitors and
8 other providers to see. And I do want to point out we filed a supplement
9 to our objection, Your Honor, last night and attached a press release that
10 TeamHealth released on Friday, October 29th and the last paragraph of
11 that press release is really illuminating, because what it says is -- it says,
12 quote, "The Nevada trial should be the most significant view behind the
13 managed care curtain in recent history, all of which has been largely
14 attorney's eyes only going into trial."

15 So they're telegraphing to the Court why they're opposing or
16 why they're in favor of allowing media in the courtroom. They want to
17 expose all of United's attorney's eyes only material that's been protected
18 throughout this case, that we painstakingly filed motions to seal on to
19 ensure it wouldn't be viewed by the public. They want to air that to the
20 world and make sure it's livestreamed to all United's competitors. So I
21 think the Court should be skeptical of any other reason given by the
22 Plaintiffs, given that press release.

23 And then I just want to -- I want to point out, too, you know,
24 that there's two ways we've seen this play out. We handled the David
25 Copperfield case previously before judge Denton, where this same issue

1 came up and we attached an order from the Supreme Court on that
2 issue. And there were really two ways to deal with it. One was to close
3 the courtroom to media when attorney's eyes only type material is being
4 used and the other is to not close the courtroom, allow the media to
5 videotape the proceedings and then permit redactions of the video
6 recordings after the fact, just to redact portions where attorney's eyes
7 only material was discussed.

8 And we would be fine with either of those options, Your
9 Honor, whatever the Court feels would be appropriate. In the
10 Copperfield case, the Court closed the courtroom temporarily during
11 those proceedings and did not allow the media in when trade secrets
12 were being discussed. And conversely, at the Supreme Court level, the
13 Supreme Court just allowed the proceedings to be videotaped and then
14 the parties to redact the material after the fact. So either one of those
15 would be fine with us.

16 And then I think just in closing, Your Honor, I want to point
17 out that the issue of media in the courtroom does have -- there's another
18 element to it that's come up during voir dire and Your Honor heard there
19 were a number of jurors who expressed concern about media coverage.
20 And I have just in my notes, looks like -- and I know a couple of them
21 have been excused now, I believe, but one of them said, quote, "This
22 makes me feel very uncomfortable." Another one said, "I'm going to be
23 very uncomfortable with that."

24 And that does give us just general concern, Your Honor,
25 you know, especially, as the Defendants here. We're insurance

1 companies. The concern that if a juror has a microphone shoved in their
2 face when they walk out, it's going to be a lot more uncomfortable for
3 them to say that they didn't pay the Las Vegas doctors than if they hit an
4 insurance company with a large multimillion dollar verdict. So I think
5 that does kind of militate in favor of the defense. But I just want to point
6 that out. I know some of them have been excused, but you know, if
7 three of them said it, that means there may be, you know, six or seven of
8 them in there who may have that same concern that just aren't voicing
9 in.

10 And then just addressing the opposition that was filed this
11 morning by the Plaintiffs. I think first of all, I think there is a concern that
12 they should be estopped from now reversing course and trying to
13 essentially ask that the protective order be rescinded. The Plaintiffs
14 agreed to this protective order that protected their material as well. They
15 successfully defended against some attempts by the Defendant to de-
16 designate their material from attorney's eyes only to a lesser
17 designation.

18 And so for them now to say that that -- all those protections
19 are gone, and everything showed be aired at trial and media should be
20 allowed to air this, I don't think is appropriate at this point. But just
21 looking at the substantive points they make, if the Court wants to
22 entertain that. They cite to a number of statutes. They cite to NRS 1.090,
23 and it says, quote, "The sitting of every court of justice shall be public
24 except as otherwise provided by law." And in the portion of that statute
25 they cited, Your Honor, the only portion they quoted was, "The sitting of

1 every court of justice shall be public." But the sentence doesn't end
2 there. It says, except as otherwise provided by law. And as we pointed
3 out, Supreme Court Rule 230 provides there are exceptions to that, and
4 we believe those were set out in the protective order.

5 They cite a number of other rules. Nevada Rule of Civil
6 Procedure 77 and Nevada Rule of Civil Procedure 43. But again -- and I
7 think they're kind of citing this for the argument that there's just -- a
8 courtroom -- a courtroom must always be open to the media. There are
9 no exceptions. Clearly that's not the case. And even if you were to read
10 the rules that way, under the rules of statutory instruction, Your Honor is
11 supposed to read statutes to not be in conflict and to harmonize them.
12 Clearly Supreme Court Rule 230 provides an exception to -- that allows
13 the Court to temporarily close the courtroom, if needed to protect trade
14 secrets. So with that, Your Honor, unless you have any questions, I will
15 rest. Thank you, Your Honor.

16 THE COURT: Thank you. The opposition, please.

17 MS. LUNDVALL: Thank you, Your Honor. Pat Lundvall on
18 behalf of the healthcare providers. In 2006, I tried a case before Judge
19 Jessie Walsh that took us almost five months to try. It was before our
20 state had enacted the Supreme Court rules that are at issue under this.
21 And I will tell you that part of the reason we were five months in trial was
22 because of literally -- the adversity that we went through because of a
23 party who had designated materials similar to what United has done in
24 this case as being confidential and the claim and the contention by that
25 party then to try to get people out of the courtroom, witnesses,

1 documents, et cetera, et cetera.

2 It was after that and after all the scandals that plagued as far
3 as this judicial district that our Nevada Supreme Court enacted the
4 commission. They looked at the filings that were being made in this
5 particular depart -- not department, but in this particular district that
6 were secret, done in private out of the public eye. And they enacted
7 then, the very rules that are issue under this --

8 THE COURT: I was on the Board of Governors during all of
9 that for the State Bar.

10 MS. LUNDVALL: Then I'm preaching to the choir on this,
11 because this was, in many practitioner's standpoint, one of the worst
12 things that we could do was to have secret private proceedings that
13 inured to the benefit of a select few, rather than having things be open
14 and to the public, as what we are requesting in this action. And those
15 rules then were to bring all of the districts in line to ensure that they met
16 what was existing statute at the time, new rules of civil procedure at the
17 time and constitutional law of the state.

18 And as a result of that, there is this strong presumption of
19 openness within all court proceedings. And you have to hit a very, very
20 high hurdle by which to overcome that strong presumption. Contrary to
21 what Mr. Balkenbush has said, we did not misquote anything within our
22 briefs that spoke to that strong presumption and included the idea that
23 unless otherwise provided by law, there is a strong presumption of
24 openness. And so with that, the question becomes is whether or not that
25 they have met their burden.

1 And therefore, let's get into this particular case. When you
2 look at what United has done during the course of discovery, they
3 produced to us over 61,000 piece of information. Of that 61,000 pieces of
4 information, 63 percent of that was designated AEO. 63 percent of it was
5 designated attorney's eyes only. When he described -- which counsel
6 has described it in their briefs, they described it as great breadth of what
7 needs to be protected. What they are describing is this case. The cost
8 management controls that they've tried to put in place for out of network
9 providers. That is exactly what this entirety of this case is and that's
10 what they contend should be outside of the public eye.

11 And so what they are suggesting is that by painting with
12 some type of a broad brush during the course of discovery, that that
13 entitles them to somehow have a private trial that does not allow any
14 members of the public then to see what's going on. So when you take a
15 look then at what we did and what we tried to accomplish during the
16 course of discovery, each and every time we challenged their AEO
17 designation, what did they do? They did one of two things. They folded
18 on the designation or when it was challenged and we brought it to the
19 Court's attention, the Court then overruled them as to what their
20 designations were.

21 And so the extent that at least you got a glimpse or a peek at
22 the breadth by which they are trying to use these AEO designations,
23 what you can look at, though, also with their trial exhibit list from both
24 sides. When you take a look at the designation of United's documents,
25 there's hardly a single document by which that they contend as an

1 exhibit that should be permitted to be examined in open court. And
2 what that means is that the breadth of what they are asking for is nearly
3 the entirety of this trial to be done in private.

4 Also, one of the things you take a look at, looking at the
5 sincerity then, of their request in this regard. The protective order did
6 have a provision that said if we get to trial, then there'd be negotiation as
7 to what, if anything, was going to happen then with any of these
8 materials. We made an offer three times to United, all of which went
9 completely in response, crickets, that if there was a document that was
10 current and specific and that did indicate that it was some type of a trade
11 secret, that we could work that out. In response to that, what did we get
12 from them? Nothing. Crickets. They didn't want to as far as have any
13 discussion as far as on that issue and they never responded to the offers
14 that we made in an effort to try to suggest that if there was something
15 that was current and specific for which they needed to be -- have special
16 protection, then we could deal with it, and they did not respond to that.

17 In addition, when the first request for broadcast was made,
18 there was a response by United and that was response was the filing of
19 the lawsuit. And when you look at that lawsuit, they pushed it out over
20 the airwaves everywhere. Since then, people have -- somebody has
21 gone into the Wikipedia page for TeamHealth and made modifications to
22 make reference then to allegations of what a bad company they are and
23 all the different things that they're doing. New commercials have arisen
24 as far as in the public airwaves then.

25 And so there has been this response from a public

1 standpoint where United is out there trying to man the airwaves and
2 trying with their surround sound idea that they did during the course of
3 the Yale study and the Brooking Institute study to try to make us look
4 bad. And so one of the things that they're now trying to do is to have
5 that out there, but not to allow anyone else to take a look at whether or
6 not there was any accuracy, if there was any truth to the allegations or
7 not.

8 In presenting the motion, one of the things that Mr.
9 Balkenbush intended is that there was an expert and that that expert
10 would speak to how competitive the market is in which United practices.
11 But what he did not tell you is that their only expert says that the outlier
12 cost management program -- the cost management programs for the
13 out-of-network providers, that they're being done by everybody and that
14 this isn't anything that's unique within the industry. And that also, that
15 their experts say that they're doing the same thing that everyone else is
16 doing so how can that be a trade secret?

17 Last, Your Honor, I would point out this. There have been
18 two trials that have preceded this one that deal with similar issues. One
19 was in Arkansas. One was in Texas. And neither one of those courts
20 had any type of sealing of the courtroom. Neither one of those courts
21 did anything that would prevent the public from being able to see the
22 people's business. And therefore, we would ask this Court to allow the
23 public to see the people's business unadorned, unfiltered, uncensored
24 because one of the things that they have not been able to do is to
25 present and to identify with narrowness, with specificity, and to

1 articulate then the genuineness of their request that narrow, isolated,
2 specific piece of some information may arise so high to the level of being
3 a trade secret that it can't be aired public, otherwise it would cause some
4 type of financial harm to them.

5 The broad brush with which that they've painted throughout
6 the course of discovery is continuing throughout the course of this trial.
7 And the fact that they rejected sincere efforts at trying to maintain any
8 legitimate cause for concern also would suggest to the Court that this
9 request that they're making is not a legitimate one either. And so
10 therefore, we would ask the Court to deny their objection then to the
11 media request.

12 THE COURT: And the plaintiff has given notice of intent to
13 use -- has the three-day notice been triggered at this point?

14 MS. LUNDVALL: The three-day notice --

15 THE COURT: Right. In paragraph 20 of the stipulated
16 protected order.

17 MS. LUNDVALL: We -- all within the exhibit list then would
18 fall into that three-day notice then, Your Honor. Yes.

19 THE COURT: Good enough. All right. Thank you. Reply,
20 please?

21 MR. BALKENBUSH: So let me start, Your Honor, with
22 addressing the issue that Ms. Lundvall raised --

23 THE COURT: I'm sorry. I just need to confer for a moment.

24 [Court and Marshal confer]

25 THE COURT: I'm sorry for the interruption. Please go ahead.

1 MR. BALKENBUSH: No problem, Your Honor. Thank you.

2 So let me just start with addressing this argument that she
3 raised that essentially it's this argument that United has over designated,
4 that we've designated material that is not truly attorney's eye only and
5 not truly a trade secret and therefore, if this Court imposes some
6 reasonable limitations on media access to the trial, that that is going to
7 present problems as far as allowing any media access to the trial. The
8 entire trial is going to be shot essentially.

9 So I think our response to that, Your Honor, is that first of all,
10 the protective order has a specific process in place for challenging
11 attorney's eyes only designations. And in fact, it provides that the party
12 who makes the designation bears the burden of bringing a motion to
13 protect the designation if the other side challenges it. That is all they
14 have to do is send us an email and say Bates number 1 through 10,000,
15 we believe all of these are not appropriately attorney's eyes only
16 documents. All of them should have no confidential designation, and we
17 request you de-designate them.

18 Under the protective order, once they do that, it triggers a 21-
19 day time frame. We have to file a motion within 21 days and then we
20 bear the burden of protecting that litigation. And they have done that
21 four or five times, Your Honor, where they send us an email, and they
22 say we don't believe these are actually confidential or attorney's eyes
23 only. We filed a motion and each time the special master granted --
24 denied our motion and de-designated the documents.

25 So the process works. And in fact, there's nothing

1 preventing them from filing a motion now to designate whatever
2 documents they believe have been improperly designated attorney's
3 eyes only and aren't truly trade secrets. But there's no question that
4 they agreed to the language in the protective order that states what is
5 attorney's eyes only. They agreed information related to rates of
6 reimbursement that we make to other providers and that they accept
7 from other commercial payors is attorney's eyes only. They agreed to
8 that. They agreed that's a trade secret.

9 Now, there's a factual question if they think we've designated
10 something that's not true -- it's not truly related to you know, rates of
11 reimbursement or outlier cost management programs. But they've been
12 free to challenge that this entire case, and they've shown that they know
13 how to challenge it by doing it four or five times and winning.

14 So this argument that you know, somehow the Court should
15 waive -- essentially, waive all the attorney's eyes only designations
16 without them having ever availed themselves of the method in the
17 protective order for them to challenge it, I just -- I don't think it's
18 appropriate.

19 Again let me address too, this idea that this is not really a
20 trade secret, this outlier cost management program. You heard Ms.
21 Lundvall say that, you know, our expert is going to testify that many
22 other commercial payors have outlier cost management programs, and
23 that therefore, this isn't really a trade secret because everyone has it.
24 But in fact, that is the reason -- that is one of the reasons we're very
25 concerned about media coverage when we're talking about outlier cost

1 management systems, Your Honor. Because there are so many other
2 competitors that use these, the process by which these programs
3 operate, the parameters they use, those are trade secrets. Those are
4 what other commercial payors would love to know because we're in
5 competition with them for other self-funded insurance plans.

6 So that is actually an argument in favor of retaining it, not in
7 favor of waiving all the protection without them ever having brought a
8 motion to de-designate.

9 And then I just want to reference -- you know, Ms. Lundvall
10 referenced that you know, it could take a long time, this, you know, five
11 month trial she had to deal with. But you know, again, we have this
12 David Copperfield case in front of Judge Denton, Your Honor. Judge
13 Denton initially -- and this is not -- I want to make clear, I'm not citing this
14 for persuasive authority. It's an unpublished Court of Appeals decision.
15 But I think it's important for context because the Nevada Supreme Court
16 ultimately, in the appeal of the case, did win live streaming of the issues
17 related to the trade secret.

18 And in that case, Judge Denton initially disagreed with us
19 and believed that the courtroom should remain open and should not be
20 closed at all to media. But the Court of Appeals reversed, and the
21 Nevada Supreme Court implicitly affirmed that when on appeal, they
22 allowed -- they required the media to videotape the proceedings and
23 then allowed redactions after the fact so that the trade secrets that were
24 discussed at the Nevada Supreme Court would not be aired to the public.

25 So other courts do allow this and, you know, if their position

1 was going to be from the start, Your Honor, that this is the people's
2 business, none of this should be aired to the public, they didn't have to
3 enter into this protective order. They entered one back in October of
4 2019, here in federal court before it was remanded, and they entered the
5 June 2020 one, which is almost identical to the one issued in federal
6 court, as well. So nobody forced them to do that.

7 They could've taken the position then that this is a public
8 court proceeding. Everything is going to be aired. That their -- the rates
9 they accept from other commercial payors are going to be aired, the
10 rates we pay are going to be aired, that they were free to take that
11 position, but they took the position that this should be strictly protected.
12 And I don't think they should be allowed to walk back from that now and
13 get this Court to essentially completely eviscerate the protections of the
14 protective order that both parties willingly entered into.

15 So we would request the Court take some limited -- and put
16 some limited protections in place for just when attorney's eyes only
17 documents are shown. Again, we're not asking that confidential
18 documents be protected, the lower designation, just attorney's eyes
19 only. Thank you, Your Honor.

20 THE COURT: Thank you. You know, this is the first time I've
21 had to deal with this issue. So I --

22 MS. LUNDVALL: Your Honor, may I make one point of
23 order?

24 THE COURT: Of course.

25 MS. LUNDVALL: Mr. Balkenbush suggests that this is the

1 first time that we have raised this issue that somehow that the protective
2 order was a discovery tool, was a case management tool, and that it was
3 not going to apply during the -- during the jury trial. I stood at this very
4 podium in opposition to their motion for an order to show cause to hold
5 myself and my firm in contempt, and that was our principle argument
6 that that protective order was a case management order applicable
7 during discovery. And because that we couldn't ask jurors to sign
8 protective orders, that that was Exhibit number 1 why it is that that case
9 management order should not be applicable then throughout the course
10 of the trial. So to suggest that somehow that this is a newfound
11 position, that's my point of order, Your Honor. Thank you.

12 THE COURT: Understand. Mr. Balkenbush, it's your motion.
13 You have the last word.

14 MR. BALKENBUSH: Thank you, Your Honor. I'll be -- just in
15 response to that, I'll say, if they -- if what they wanted is the order to just
16 apply to pretrial proceedings, there was an easy remedy for them to
17 handle that. They could have refused to enter into paragraph 20, which
18 expressly discusses use of AEO material at trial, requires them to give
19 three business days' notice of their intent to use it, it requires us to do
20 that too. And then specifically states that the Court may take appropriate
21 measures to ensure that individuals other than those listed under
22 paragraph 12 don't see attorney's eyes only material.

23 And again, paragraph 12 lists jurors under it. If this was
24 intended to just be pretrial, why would it list jurors under it? So we
25 would request that the Court just protect our attorney's eyes only

1 material and impose some limited restrictions on the dissemination of
2 that. Thank you, Your Honor.

3 THE COURT: And I can't really totally rule on everything now
4 because I don't know what's going to be offered. But I suggest we take it
5 up on a piecemeal basis. I can tell you right now that I will not seal
6 anything that's admitted. It's not going to happen. I'd be inclined no
7 attorney's eyes only to close the room and have a redacted transcript,
8 but it's going to have to be taken up on a case-by-case basis. And I
9 realize that's going to affect how the plaintiff puts on their case. So --

10 MS. LUNDVALL: And Your Honor, it's also going to impact
11 as far as the time that is going to be involved. And I use this as a classic
12 example. These folks wrote a letter to Congress -- to Congress. Sent it
13 to Congress about balance billing. And you know what, when they
14 produced it to us in this case, they marked it as attorney's eyes only. A
15 public document that was sent to members of the public, and they
16 marked it as attorney's eyes only. That is a classic example of what they
17 have done and the length of time that it's going to take as we take up
18 one by one by one, each and every one of the documents that they've
19 identified.

20 Moreover, from this perspective when they talk about this
21 wholesale idea that somehow that we have the ability by which to
22 challenge, each and every time that we did challenge, like I said, that
23 they either dropped it or it was overruled. And each and every time that
24 there was massive expense that was associated with that. And so to the
25 extent that we have identified -- we've given them our three-day notice

1 by including these documents on our exhibit list. We've given them the
2 opportunity then by which to suggest that somehow that they need to
3 take special action on each one. They are the ones that have not
4 complied then with and taken any action.

5 The suggestion by Mr. Balkenbush that somehow that we
6 still have the opportunity by which to employ the mechanism under the
7 protective order, what he failed to tell the Court though is that that
8 mechanism mandates for the 21-day period of time available to them
9 that it was supposed to be maintained then as AEO protected. So what
10 they're suggesting then is somehow that that process and that procedure
11 then allows them that same protection during the time of the trial.

12 And so with that, Your Honor, then what we're trying to do is
13 to simply herald to the Court the length of time and the difficulty. And
14 that with a suggestion that because they do have our exhibit list, if the
15 Court is going to insist then on some type of an exhibit-by-exhibit
16 issue --

17 THE COURT: I can tell you I won't seal any exhibit that gets
18 admitted. I think I made that clear. What I'm concerned about is the
19 testimony, the foundation that will be laid. And let me ask of the
20 Defense team, whoever has the answer, in Texas, and was it Arkansas,
21 the other state? Was it the exact same issue teed up in those other
22 litigations?

23 MR. BALKENBUSH: Your Honor, we were not a party to
24 those other cases so I can only speak from reviewing the transcripts. Mr.
25 Zavitsanos --

1 THE COURT: Mr. Zavitsanos --

2 MR. BALKENBUSH: -- might be able to say. But I will say
3 this, Your Honor, while the dispute about out-of-network reimbursement
4 was at issue I believe in one of the trials, the claims were slightly
5 different because the programs that are at issue in this case are very
6 much a focus of their pleadings and where I don't believe they were in
7 the other case.

8 THE COURT: Thank you. Mr. Zavitsanos?

9 MR. ZAVITSANOS: So counsel is correct. The Arkansas case
10 was materially different, that was a contract case. In Texas, these
11 programs -- and I'm using air quotes on that because when the first
12 witness gets on the stand -- this is just an attempt to cut
13 reimbursements. And that was not part of the Texas case, but the rates
14 they were paying, what they were doing, how they were driving rates
15 down, what their reimbursement rates were, all of that was admitted. All
16 of that was broadcast. All of that was disclosed. Nothing was sealed.
17 There was an attempt early on to close off some of that -- not all of it --
18 some of it, much narrower than what we have here, and that was denied.

19 And here's the real problem Your Honor, that we told them
20 who the first witness is going to be. That gentleman, I anticipate -- and
21 I'm just kind of previewing this right now. I've got him. He's going to
22 be on the stand for three days. I'm going to cross-examination for three
23 days. And it's going to be the single longest witness in the trial. And
24 here is my concern. If I get a little rhythm going, and I start making some
25 points, they're going to pull this lever to take the air out of the room so

1 that we can take up this ceiling issue to try to obstruct whatever
2 momentum we get going, maybe meet with the witness during the
3 break, and this is -- I mean, this is a tactic, and I just -- I mean, Your
4 Honor, the documents they're trying to seal are where they are
5 exchanging notes with the other insurers about how they're going to
6 drop the rates, where they're keeping up with each other on what they're
7 doing. And they're marking this AEO. Okay. So look, I challenge
8 counsel to identify one document right now that they claim is a AEO. Let
9 me see if it's on the exhibit list.

10 THE COURT: Well, you're going to have to talk to them
11 before you call that witness because I won't allow you to interrupt the
12 presentation of the case, but I am going to look at protecting your rights
13 as to the AEO things, if necessary.

14 MR. BLALACK: And just to be clear, Your Honor, I don't
15 really appreciate the characterization of what her motives are, by
16 opposing counsel. I'm here to try the case straight up. We have right to
17 AEO protection under the Court's order, which is all that Mr. Balkenbush
18 is seeking to enforce. It's straightforward, and it's got no tactical, larger
19 implications, notwithstanding the assertion here. I suggest if the Court
20 enforces the order as written, the parties act in good faith, the concerns
21 that are expressed on this side shouldn't be there.

22 MR. BALKENBUSH: I would just add --

23 THE COURT: And that's all I'm telling you guys, is that I'm
24 going to. The Court may take such measures as it deems appropriate to
25 protect the claimed confidential nature, et cetera, et cetera.

1 MR. BLALACK: Exactly.

2 THE COURT: But if --

3 MR. BALKENBUSH: I would --

4 THE COURT: -- it gets admitted it's in the public domain.

5 MR. BALKENBUSH: Can I -- just a point of clarification, Your
6 Honor, that prior to admission then, there will need to be a discussion
7 before they reference it. For example -- because our concern, Your
8 Honor, for example, is that they're -- rather than admit it they're
9 referencing it in their opening statement --

10 THE COURT: I just asked them to confer with you.

11 MR. BALKENBUSH: Okay.

12 THE COURT: So let's close this argument down now. You've
13 got a venire outside. It's 1:35, I told them to come back at 1:00. We have
14 another panel that's available if we need it. So I know the issue will
15 come up again.

16 So, Mr. Roberts, without holding you to it how much longer
17 will you need?

18 MR. ROBERTS: I should be under an hour, Your Honor.

19 THE COURT: Great.

20 MR. ROBERTS: And I don't see, right now any causes -- any
21 cause challenges --

22 THE COURT: That was my --

23 MR. ROBERTS: -- by us.

24 THE COURT: Without holding you to it.

25 MR. ROBERTS: So we may not need that next panel, I'm

1 very hopeful of that.

2 THE COURT: Okay. Great. Let's bring in the venire.

3 MR. ROBERTS: And then we had the decision on how we're
4 going to exercise the strikes. Will there be a break where we can take
5 that up before --

6 THE COURT: Yeah.

7 MR. ROBERTS: -- we have to exercise strikes?

8 THE COURT: We'll take a break before you do that. Yes.

9 MR. ROBERTS: Okay.

10 MR. BLALACK: Thanks, Your Honor.

11 MR. ZAVITSANOS: Your Honor, one last thing, just as a
12 housekeeping matter. Will Your Honor be available to address some of
13 the other issues after we -- okay. Thank you.

14 THE COURT: I was hopeful that you would -- we'd be able to
15 swear in the jury today.

16 MR. ZAVITSANOS: Yes.

17 THE COURT: So --

18 MR. ZAVITSANOS: Well, we're hopeful --

19 THE COURT: And if we have to take up the issue about what
20 you can show during your opening, we'll either come early or have time
21 at the end of the day.

22 MR. ZAVITSANOS: Yes, Your Honor. Because this a big
23 issue.

24 THE COURT: I understand.

25 MR. ZAVITSANOS: It's a big issue. So --

1 THE COURT: I'm going to tell you both, after five days of jury
2 selection they've figured out what both sides want. Although I'm sure
3 you're quite aware of that yourselves.

4 MR. ZAVITSANOS: Your Honor, I think you figured that out a
5 long time ago.

6 THE COURT: No. I think they did -- they did.

7 [Pause]

8 THE MARSHAL: All rise for the jury.

9 [Prospective jurors in at 1:39 p.m.]

10 THE COURT: Thank you. Please be seated. But before you
11 start, Mr. Roberts, let me just tell you guys. It isn't that we disrespect
12 your time, but we had matters to take up outside your presence that I
13 thought would take shorter than they did. So thank you for your
14 professional courtesy, because you had to wait. Now please go ahead.

15 MR. ROBERTS: Thank you, Your Honor. Marshal, could we
16 have a microphone? Let's go ahead and start up at the top with Ms.
17 Gonzaga.

18 So thank you for giving us all of this time, I promise we're
19 almost done. Before the next break I'm going to be done, and hopefully
20 this process is going to winding down. Thank you for your patience,
21 Your Honor, I appreciate the opportunity.

22 You talked about burden of proof quite a bit, this first couple
23 of days here, and not speaking about the law, but your own personal
24 feelings, as Mr. Zavitsanos explained, a certain amount was billed, we
25 paid a certain amount, and they had the burden of proving we should

1 have paid more.

2 Do you think, personally, that the insurance company should
3 have to prove that the amount paid was reasonable?

4 PROSPECTIVE JUROR 074: 074, I would say yes.

5 MR. ROBERTS: Okay. And why is that?

6 PROSPECTIVE JUROR 074: Just because it depends on the
7 type of service that the patient received.

8 MR. ROBERTS: Okay. And when it comes to deciding the
9 case based on the instructions that the Court gives you, can you take that
10 belief about the way the law should be, perhaps, set it aside and decide
11 the case the way the Judge instructs you to?

12 PROSPECTIVE JUROR 074: Yes.

13 MR. ROBERTS: And you could hold them to their burden?

14 PROSPECTIVE JUROR 074: Yes.

15 MR. ROBERTS: Okay. Thank you. Ms. Springberger [sic],
16 same question.

17 PROSPECTIVE JUROR 141: Can you repeat it, sorry?

18 MR. ROBERTS: And I'm sorry, Ms. Springberg.

19 PROSPECTIVE JUROR 141: That's okay

20 MR. ROBERTS: I put the E-R on the end.

21 PROSPECTIVE JUROR 141: I've been called that before, it's
22 fine.

23 MR. ROBERTS: My question is this, putting aside what the
24 law is, the Judge will instruct you on the law, do you think insurance
25 companies in a case like this should have to prove that the amount they

1 paid was reasonable?

2 PROSPECTIVE JUROR 141: Outside of this environment, I
3 would say, yes.

4 MR. ROBERTS: Okay.

5 PROSPECTIVE JUROR 141: Inside the courtroom and follow
6 the Judge's rules.

7 MR. ROBERTS: Okay. And you'll hold them to their burden
8 of proof?

9 PROSPECTIVE JUROR 141: Thank you.

10 MR. ROBERTS: Ms. Landau, badge?

11 PROSPECTIVE JUROR 283: 283.

12 MR. ROBERTS: Thank you.

13 PROSPECTIVE JUROR 283 Yes. I do think that they should
14 prove that they're reasonable.

15 MR. ROBERTS: And if the Judge instructs you that we don't
16 have to, in theory if we didn't put on any evidence at all, we just -- they
17 didn't --

18 PROSPECTIVE JUROR 283: Then I would just go based on
19 the evidence provided to me by the -- just follow what the judge
20 instructs.

21 MR. ROBERTS: Okay. And you can hold them to their
22 burden?

23 PROSPECTIVE JUROR 283: Yeah.

24 MR. ROBERTS: Even though you personally think we maybe
25 shouldn't have to prove that --

1 PROSPECTIVE JUROR 283: Yes. I believe --

2 MR. ROBERTS: -- what we did was reasonable.

3 PROSPECTIVE JUROR 283: Yes.

4 MR. ROBERTS: Thank you, Ms. Landau.

5 Mr. Walker.

6 PROSPECTIVE JUROR 450: Badge 450.

7 MR. ROBERTS: Thank you, sir.

8 PROSPECTIVE JUROR 450: For the insurance, the payout,
9 that was the question; they should have paid it all.

10 MR. ROBERTS: So my question is, putting aside what the
11 law is --

12 PROSPECTIVE JUROR 450: Okay.

13 MR. ROBERTS: Partially, do you think an insurance company
14 should have to prove that the amount of paid was reasonable, they paid
15 less than the bill charges?

16 PROSPECTIVE JUROR 450: Yes. [Indiscernible].

17 COURT RECORDER: Can you speak up, please?

18 PROSPECTIVE JUROR 450: That is based on the type of
19 service that was provided. Now as far as the Court goes, go based off of
20 what's presented, and on the direction under Her Honor, and --

21 THE COURT: So if the Court instructs you that as a
22 Defendant you don't have to prove anything in this trial, the Plaintiff has
23 the burden of proof; can you follow that instruction?

24 PROSPECTIVE JUROR 450: Yes.

25 THE COURT: Okay. Thank you.

1 PROSPECTIVE JUROR 494: 494, I do not believe you have to
2 prove anything, the burden of proof is on the Plaintiff. If that contradicts
3 what the actual law is I'd be willing to follow the law, regardless of my
4 personal beliefs.

5 MR. ROBERTS: Thank you, Mr. Zabinski.

6 PROSPECTIVE JUROR 522: 522. Yes. In the sense that the
7 insurance is setting the price, and the doctors provided the service. So it
8 would be behooving to figure -- to say why it's going to cost you that.
9 But as according to the law, whatever the Judge said, I would be able to
10 follow that.

11 MR. ROBERTS: So even if we never said why, never tried to
12 prove it?

13 PROSPECTIVE JUROR 522: Correct. We can still follow the
14 directions.

15 MR. ROBERTS: And hold the Plaintiffs to their burden.?

16 PROSPECTIVE JUROR 522: Yes.

17 MR. ROBERTS: Thank you, Ms. Friedrich. Ms. Ross?

18 PROSPECTIVE JUROR 093: 093. I think on a personal level I
19 would say you have to prove it, but not like in this case is, you know,
20 they have to prove it [indiscernible]. So I would just follow the law and
21 apply the evidence [indiscernible].

22 MR. ROBERTS: Thanks very much, Ms. Ross. Ms. Carr.

23 PROSPECTIVE JUROR 049: 049. My brain knows that there
24 are two sides to the story. You have reasons for why your side is saying
25 what they have, by -- the Plaintiffs are saying what they want, this X

1 amount of money, but I know that those are not the rules for what the
2 lawsuit is. So, yes, I could follow whatever rules are set out, that we'll
3 actually be deliberating on.

4 MR. ROBERTS: Thank you, Ms. Carr. Mr. Torres. 738

5 PROSPECTIVE JUROR 738: I will follow the instructions of
6 the Honorable Judge. I'm going to listen to both sides again, and I will
7 go with the person who has more proof.

8 MR. ROBERTS: Can you hold one to their burden of proof, or
9 are you going to make us prove?

10 PROSPECTIVE JUROR 738: It's on the Plaintiff.

11 MR. ROBERTS: Okay. Thank you, sir. Mr. Nesci.

12 PROSPECTIVE JUROR 593: 593. Could you please clarify?
13 They provide a service, they send you the bill that you paid, without --
14 less than the face amount of the --

15 MR. ROBERTS: Correct.

16 PROSPECTIVE JUROR 593: But with a quote/unquote,
17 explanation of benefits where you explain, or you just say here's what
18 we're giving you. So if you're locked up --

19 MR. ROBERTS: I'm not going to get into the specific
20 evidence.

21 PROSPECTIVE JUROR 593: Okay.

22 MR. ROBERTS: My question is, first of all, putting aside
23 what's -- the Court is going to instruct you on the law, do you think that
24 we should have to prove that the amount to be paid was reasonable?

25 PROSPECTIVE JUROR 593: Yes.

1 MR. ROBERTS: Okay. But you can set that aside and make
2 them prove the amount should have been higher.

3 PROSPECTIVE JUROR 593: If the Judge's orders are that, the
4 instructions, they could follow the instructions of the Judge.

5 MR. ROBERTS: Okay. Thank you, sir.

6 PROSPECTIVE JUROR 593: You're welcome.

7 MR. ROBERTS: Mr. Rucker?

8 PROSPECTIVE JUROR 593: Yeah. As stated, they will have
9 to prove, the Defendant won't have to prove anything. And closely
10 follow the instructions of, Your Honor, you know, you have to do that.

11 MR. ROBERTS: Yes, you do, we all do. Thank you, sir. Mr.
12 Meyer?

13 PROSPECTIVE JUROR 532: 532. Without knowing anything,
14 I would prefer to have you explain, or to prove. But I definitely could
15 follow the rules of whatever the Court dictates.

16 MR. ROBERTS: Okay. Thank you, sir.

17 PROSPECTIVE JUROR 095: 095. So the first question, I think
18 personally, I'm going to prove what's reasonable, but I think absolutely
19 follow what the Judge says.

20 MR. ROBERTS: Even if we don't prove it, that they didn't --

21 PROSPECTIVE JUROR 095: Absolutely.

22 MR. ROBERTS: -- prove it, but they didn't prove that we
23 should pay more.

24 PROSPECTIVE JUROR 095: Correct. Yes.

25 MR. ROBERTS: What do you do? We don't prove it, or they

1 don't prove it?

2 PROSPECTIVE JUROR 095: Well, then there's not a
3 preponderance of evidence. So --

4 MR. ROBERTS: Very good.

5 PROSPECTIVE JUROR 095: We've been listening.

6 MR. ROBERTS: Ms. Hortillas.

7 PROSPECTIVE JUROR 114: 114. The same thing, I just
8 follow the instructions of the Judge.

9 MR. ROBERTS: Okay. Thank you. Ms. Trambulo?

10 PROSPECTIVE JUROR 116: Yeah. I mean, personally I'd
11 want to understand how you guys came to that determination of what
12 was paid out, but I can also follow what the Judge says. So --

13 MR. ROBERTS: Thank you.

14 PROSPECTIVE JUROR 224: 224, Kelsey Dudley. I'd like to
15 follow what the Honorable Judge says, seeing as she's kind of the heart
16 and soul of the courtroom. I'm the type of being that likes to understand
17 both sides of the story, probably to a fault. I understand that the burden
18 of proof relies on that, but I still couldn't -- I'd like to get that you would
19 want to get your own evidence to help your side of the case, just for
20 everyone to understand [indiscernible].

21 MR. ROBERTS: Thank you, Ms. Dudley.

22 PROSPECTIVE JUROR 252: 252. I'd say it's the Plaintiff's job,
23 for burden of proof. You got to do that to prove it to me.

24 MR. ROBERTS: Very good. Thank you. Mr. Roberts.

25 PROSPECTIVE JUROR 014: 014. I -- you are talking about

1 the context of you're going just [indiscernible] --

2 MR. ROBERTS: So first of all --

3 PROSPECTIVE JUROR 014: -- right?

4 MR. ROBERTS: Your personal opinion, if the insurance
5 company pays less than those charged, we have to prove to you that the
6 amount we take is reasonable?

7 PROSPECTIVE JUROR 014: As a jury, I don't think so,
8 because it's their job to prove that -- you know, they're asking for all this
9 money, so they have to prove what they deserve. I don't think
10 [indiscernible]. It's you guys' obligation to explain -- you know, explain
11 your side of this because [indiscernible]. And, I mean, there are some
12 things that contradicted that, but -- and I'd told us -- I would be able to
13 follow it.

14 MR. ROBERTS: Thank you, Ms. Forrester. Mr. Leopold?

15 PROSPECTIVE JUROR 020: 020. Real simple, it either is or it
16 isn't. If the Judge says one way, we [indiscernible].

17 MR. ROBERTS: Well, what do you think you should --

18 PROSPECTIVE JUROR 020: Well, if I were one of the
19 providers I'd like to know why you came to us. But from my standpoint,
20 it really doesn't matter.

21 MR. ROBERTS: Thank you, sir.

22 PROSPECTIVE JUROR 270: All right. Juror 270. I think as a
23 citizen I would want to know why. As a juror I'd follow the instructions. I
24 think it's two different things. My curiosity would wonder why, but I'm
25 not sure of the evidence. Personally, personally I would want to know