

Case Nos. 85525 & 85656

In the Supreme Court of Nevada

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

Appellants,

vs.

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

Respondents.

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Case No. 85525

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

Petitioners,

vs.

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

Respondents,

vs.

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

Real Parties in Interest.

Case No. 85656

**APPELLANTS' APPENDIX
VOLUME 10
PAGES 2251-2500**

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CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
1.	Complaint (Business Court)	04/15/19	1	1–17
2.	Peremptory Challenge of Judge	04/17/19	1	18–19
3.	Summons - UMR, Inc. dba United Medical Resources	04/25/19	1	20–22
4.	Summons – United Health Care Services Inc. dba UnitedHealthcare	04/25/19	1	23–25
5.	Summons – United Healthcare Insurance Company	04/25/19	1	26–28
6.	Summons – Health Plan of Nevada, Inc.	04/30/19	1	29–31
7.	Summons – Sierra Health-Care Options, Inc.	04/30/19	1	32–34
8.	Summons – Sierra Health and Life Insurance Company, Inc.	04/30/19	1	35–37
9.	Summons – Oxford Health Plans, Inc.	05/06/19	1	38–41
10.	Notice of Removal to Federal Court	05/14/19	1	42–100
11.	Motion to Remand	05/24/19	1	101–122
12.	Defendants’ Statement of Removal	05/30/19	1	123–126
13.	Freemont Emergency Services (MANDAVIA), Ltd’s Response to Statement of Removal	05/31/19	1	127–138
14.	Defendants’ Opposition to Fremont Emergency Services (MANDAVIA), Ltd.’s Motion to Remand	06/21/19	1 2	139–250 251–275
15.	Rely in Support of Motion to Remand	06/28/19	2	276–308
16.	Civil Order to Statistically Close Case	12/10/19	2	309
17.	Amended Motion to Remand	01/15/20	2	310–348

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

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

Tab	Document	Date	Vol.	Pages
43.	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	07/09/20	7	1591–1605
44.	Joint Case Conference Report	07/17/20	7	1606–1627
45.	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	07/23/20	7	1628–1643
46.	Transcript of Proceedings, Plaintiff's Motion to Compel Defendants' Production of Unredacted MultiPlan, Inc. Agreement	07/29/20	7	1644–1663
47.	Amended Transcript of Proceedings, Plaintiff's Motion to Compel Defendants' Production of Unredacted MultiPlan, Inc. Agreement	07/29/20	7	1664–1683
48.	Errata	08/04/20	7	1684
49.	Plaintiffs' Motion to Compel Defendants' Production of Claims File for At-Issue Claims, or, in the Alternative, Motion in Limine on Order Shortening Time	08/28/20	7 8	1685–1700 1701–1845
50.	Defendants' Opposition to Plaintiffs' Motion to Compel Defendants' Production of Claims File for At-Issue Claims, Or, in The Alternative, Motion in Limine on Order Shortening Time	09/04/20	8	1846–1932
51.	Recorder's Transcript of Proceedings Re: Pending Motions	09/09/20	8	1933–1997
52.	Defendants' Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiffs to Supplement Their NRCP 16.1 Initial Disclosures on an Order Shortening Time	09/21/20	8 9	1998–2000 2001–2183
53.	Notice of Entry of Order Granting, in Part Plaintiffs' Motion to Compel Defendants' Production of Claims for At-Issue Claims,	09/28/20	9	2184–2195

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Tab	Document	Date	Vol.	Pages
241.	Errata	11/19/21	44	10,953
242.	Notice of Entry of Order Granting Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment	11/19/21	44	10,954–10,963
243.	Plaintiffs' Proposed Special Verdict Form	11/19/21	44	10,964–10,973
244.	Recorder's Transcript of Jury Trial – Day 16	11/19/21	44 45	10,974–11,000 11,001–11,241
245.	Response to Plaintiffs' Trial Brief Regarding Punitive Damages for Unjust Enrichment Claim	11/19/21	45 46	11,242–11,250 11,251–11,254
246.	Plaintiffs' Second Supplemental Jury Instructions (Contested)	11/20/21	46	11,255–11,261
247.	Defendants' Supplemental Proposed Jury Instruction	11/21/21	46	11,262–11,266
248.	Plaintiffs' Third Supplemental Jury Instructions (Contested)	11/21/21	46	11,267–11,272
249.	Recorder's Transcript of Jury Trial – Day 17	11/22/21	46 47	11,273–11,500 11,501–11,593
250.	Plaintiffs' Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time	11/22/21	47	11,594–11,608
251.	Defendants' Opposition to Plaintiffs' Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time	11/22/21	47	11,609–11,631
252.	4th Amended Jury List	11/23/21	47	11,632
253.	Recorder's Transcript of Jury Trial – Day 18	11/23/21	47 48	11,633–11,750 11,751–11,907

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

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

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

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

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

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

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

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

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

Filed Under Seal

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

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

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

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

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

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

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

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

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

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

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

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

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

ALPHABETICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
209	1st Amended Jury List	11/08/21	34	8343
219	2nd Amended Jury List	11/15/21	38	9426
234	3rd Amended Jury List	11/17/21	41	10,249
252	4th Amended Jury List	11/23/21	47	11,632
342	Amended Case Appeal Statement	08/15/22	71 72	17,740–17,750 17,751–17,803
17	Amended Motion to Remand	01/15/20	2	310–348
343	Amended Notice of Appeal	08/15/22	72	17,804–17,934
117	Amended Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 2 Regarding Plaintiffs’ Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order and Overruling Objection	08/09/21	18	4425–4443
118	Amended Notice of Entry of Order Affirming and Adopting Report and Recommendation No. 3 Regarding Defendants’ Second Set of Requests for Production on Order Shortening Time and Overruling Objection	08/09/21	18	4444–4464
158	Amended Transcript of Proceedings Re: Motions	10/19/21	23 24	5562–5750 5751–5784
159	Amended Transcript of Proceedings Re: Motions	10/20/21	24	5785–5907
47	Amended Transcript of Proceedings, Plaintiff’s Motion to Compel Defendants’ Production of Unredacted MultiPlan, Inc. Agreement	07/29/20	7	1664–1683

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

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

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

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

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

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

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

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

Tab	Document	Date	Vol.	Pages
311	Defendants Rule 62(b) Motion for Stay Pending Resolution of Post-Trial Motions on Order Shortening Time	04/05/22	66	16,362–16,381
42	Defendants' Answer to Plaintiffs' First Amended Complaint	07/08/20	7	1541–1590
150	Defendants' Answer to Plaintiffs' Second Amended Complaint	10/08/21	22	5280–5287
198	Defendants' Deposition Designations and Objections to Plaintiffs' Deposition Counter-Designations	11/03/21	32	7778–7829
99	Defendants' Errata to Their Objection to the Special Master's Report and Recommendation No. 3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Requests for Production	05/03/21	17	4124–4127
288	Defendants' Index of Trial Exhibit Redactions in Dispute	02/16/22	53	13,063–13,073
462	Defendants' Index of Trial Exhibit Redactions in Dispute (Filed Under Seal)	02/10/22	128	31,662–31,672
235	Defendants' Motion for Judgment as a Matter of Law	11/17/21	41 42	10,250 10,251–10,307
375	Defendants' Motion for Leave to File Defendants' Objection to the Special Master's Report and Recommendation No. 9 Regarding Defendants' Renewed Motion to Compel Further Testimony from Deponents Instructed not to Answer Under Seal (Filed Under Seal)	07/15/21	84	20,743–20,750
214	Defendants' Motion for Leave to File Defendants' Preliminary Motion to Seal Attorneys' Eyes Only Documents Used at	11/12/21	37	9153–9161

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

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

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

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

Tab	Document	Date	Vol.	Pages
	Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiffs' to Supplement Their NRCP 16.1 Initial Disclosures on an Order Shortening Time			
60	Defendants' Objections to Plaintiffs' Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	10/23/20	10 11	2482–2500 2501–2572
199	Defendants' Objections to Plaintiffs' Proposed Order Granting in Part and Denying in Part Plaintiffs' Motion in Limine to Exclude Evidence Subject to the Court's Discovery Orders	11/03/21	32	7830–7852
100	Defendants' Objections to Plaintiffs' Proposed Order Granting Plaintiffs' Renewed Motion for Order to Show Cause Why Defendants Should Not Be Held in Contempt and for Sanctions	05/05/21	17	4128–4154
108	Defendants' Objections to Special Master Report and Recommendation No. 7 Regarding Defendants' Motion to Compel Responses to Defendants' Amended Third Set of Requests for Production of Documents	06/17/21	17	4227–4239
431	Defendants' Omnibus Offer of Proof (Filed Under Seal)	11/22/21	109 110	27,100–27,143 27,144–27,287
14	Defendants' Opposition to Fremont Emergency Services (MANDAVIA), Ltd.'s Motion to Remand	06/21/19	1 2	139–250 251–275
18	Defendants' Opposition to Plaintiffs' Amended Motion to Remand	01/29/20	2	349–485
283	Defendants' Opposition to Plaintiffs' Cross-	02/10/22	52	12,997–13,000

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CERTIFICATE OF SERVICE

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

Electronic notification will be sent to the following:

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Attorneys for Amicus Curiae (case no. 85656)

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

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

Respondent (case no. 85656)

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

United HealthCare Services, Inc.
GREENSBORO SERVICE CENTER
P.O. BOX 740800
ATLANTA GA 30374-0800
PHONE: 1-877-842-3210

STD - PRA



PROVIDER REMITTANCE ADVICE

CRUM STEFANKO AND JONES LTD
RUBY CREST EMERGENCY MEDICINE
RUBY CREST EMERGENCY MEDICINE
PO BOX 638757
CINCINNATI OH 45263

PAYMENT DATE:

TIN:

NPI:

PAYEE NAME: CRUM STEFANKO AND
JONES LTD

PAYMENT NUMBER:

PAYMENT AMOUNT:

GROUP NUMBER:

GROUP NAME:

PATIENT:

SUBSCRIBER ID:

SUBSCRIBER NAME:

CLAIM NUMBER:

CLAIM DATE:

DATE RECEIVED:

PRODUCT:

REND PROV ID:

REND PROV:

RUBY CREST EMERGENCY

PATIENT CONTROL NUMBER	PATIENT ID	AUTH/REF NUMBER	DRG	DRG WEIGHT	CLAIM CHARGE AMOUNT	CLM ADJ AMT	GRP CD	CLM ADJ RSN CD	CLAIM PAYMENT AMOUNT	PATIENT RESPONSIBILITY
					\$463.00				\$217.77	

SERVICE LINE DETAIL(S)

LINE CTRL#	DATES OF SERVICE	SUB PROD/ SVC/ MOD	ADJ PROD/ SVC	MOD	REV	UNITS	ADJ QTY	CHARGE	AMOUNT ALLOWED	ADJ AMOUNT	GRP CD	CLM ADJ RSN CD	PAYMENT AMOUNT	REMARK/ NOTES
815090996 3Z1	01/01/19 - 01/01/19		99283			1		\$463.00	\$217.77	\$245.23	P1	242	\$217.77	IS
CLAIM#								SUBTOTAL	\$463.00	\$217.77			\$217.77	JP

PAYMENT OF BENEFITS HAS BEEN MADE IN ACCORDANCE WITH THE TERMS OF THE MANAGED CARE SYSTEM.

NOTES

PI242

PAYER INITIATED REDUCTIONS - SERVICES NOT PROVIDED BY NETWORK/PRIMARY CARE PROVIDERS .

IS

MEMBER: THIS SERVICE WAS RENDERED BY AN OUT-OF-NETWORK PROVIDER AND PROCESSED USING YOUR NETWORK BENEFITS. IF YOU'RE ASKED TO PAY MORE THAN THE DEDUCTIBLE, COPAY AND COINSURANCE AMOUNTS SHOWN, PLEASE CALL DATA ISIGHT AT 866-835-4022 OR VISIT DATAISIGHT.COM . THEY WILL WORK WITH THE PROVIDER ON YOUR BEHALF. PROVIDER: THIS SERVICE HAS BEEN REIMBURSED USING DATA ISIGHT WHICH UTILIZES COST DATA IF AVAILABLE (FACILITIES) OR PAID DATA (PROFESSIONALS). PLEASE DO NOT BILL THE PATIENT ABOVE THE AMOUNT OF DEDUCTIBLE, COPAY AND COINSURANCE APPLIED TO THIS SERVICE. IF YOU HAVE QUESTIONS ABOUT THE REIMBURSEMENT CONTACT DATA ISIGHT.

JP

IT IS IMPORTANT FOR US TO KNOW WHETHER OR NOT YOU OR YOUR COVERED FAMILY MEMBER(S) HAVE OTHER HEALTH INSURANCE. THIS WILL HELP US PAY YOUR CLAIMS QUICKLY AND ACCURATELY. WE ASK FOR THIS INFORMATION EVERY YEAR BECAUSE COVERAGE CAN CHANGE. TO UPDATE THIS INFORMATION, GO TO THE COORDINATION OF BENEFITS SECTION ON YOUR MEMBER WEBSITE OR CALL US AT 1-888-262-4001.

THE MEMBER, PROVIDER, OR AN AUTHORIZED REPRESENTATIVE MAY REQUEST RECONSIDERATION OR APPEAL THE DECISION BY SUBMITTING COMMENTS DOCUMENTS OR OTHER INFORMATION TO UNITEDHEALTHCARE. NETWORK PROVIDERS SHOULD REFER TO THE ADMINISTRATIVE GUIDE FOR CLAIM RECONSIDERATION OR APPEAL INFORMATION. IF YOU ARE A NETWORK PROVIDER APPEALING A CLINICAL OR COVERAGE DETERMINATION ON BEHALF OF A MEMBER, OR A NON-NETWORK PROVIDER APPEALING A DECISION ON BEHALF OF A MEMBER, FOLLOW THE PROCESS FOR APPEALS IN THE MEMBER'S BENEFIT PLAN DOCUMENT. DECISIONS ON APPEALS MADE ON BEHALF OF MEMBERS WILL BE COMPLETED IN 30 DAYS OF SUBMISSION OR WITHIN THE TIMEFRAME REQUIRED BY LAW.

UnitedHealthcare Insurance Company
 RICHARDSON/SPRGFLD SRVC CNTR
 P.O. BOX 740800
 ATLANTA GA 30374-0800
 PHONE: 1-877-842-3210

STD - PRA



PROVIDER REMITTANCE ADVICE

CRUM STEFANKO AND JONES LTD
 RUBY CREST EMERGENCY MEDICINE
 RUBY CREST EMERGENCY MEDICINE
 PO BOX 838757
 CINCINNATI OH 45263

PAYMENT DATE:

TIN:

NPI:

PAYEE NAME: CRUM STEFANKO AND
 JONES LTD

PAYMENT NUMBER:

PAYMENT AMOUNT:

GROUP NUMBER:

GROUP NAME:

PATIENT:

SUBSCRIBER ID:

CLAIM DATE:

REND PROV ID:

SUBSCRIBER NAME:

DATE RECEIVED:

REND PROV:

RUBY CREST EMERGENCY

CLAIM NUMBER:

PRODUCT:

PATIENT CONTROL NUMBER	PATIENT ID	AUTH/REF NUMBER	DRG	DRG WEIGHT	CLAIM CHARGE AMOUNT	CLM ADJ AMT	GRP CD	CLM ADJ RSN CD	CLAIM PAYMENT AMOUNT	PATIENT RESPONSIBILITY
					\$1,360.00				\$294.60	\$1,065.40

SERVICE LINE DETAIL(S)

LINE CTRL#	DATES OF SERVICE	SUB PROD/ SVC/ MOD	ADJ PROD/ SVC	MOD	REV	UNITS	ADJ QTY	CHARGE	AMOUNT ALLOWED	ADJ AMOUNT	GRP CD	CLM ADJ RSN CD	PAYMENT AMOUNT	REMARK/ NOTES
315892654 921	01/02/19 - 01/02/19		99285			1		\$1,360.00	\$294.60	\$1,065.40	PR	242	\$294.60	CO
CLAIM#								SUBTOTAL	\$1,360.00	\$294.60			\$294.60	

WE RECEIVED THE REQUESTED INFORMATION ON 03/17/19 AND HAVE PROCESSED CLAIM NUMBER 7592579164 0368167680.

PAYMENT OF BENEFITS HAS BEEN MADE IN ACCORDANCE WITH THE TERMS OF THE MANAGED CARE SYSTEM.

NOTES

PR242 PATIENT RESPONSIBILITY - SERVICES NOT PROVIDED BY NETWORK/PRIMARY CARE PROVIDERS.

CO AN OUT-OF-NETWORK PROVIDER OR FACILITY PROVIDED THESE SERVICES. THE CLAIM WAS PROCESSED USING YOUR NETWORK BENEFITS. YOU MAY BE RESPONSIBLE FOR PAYING THE DIFFERENCE BETWEEN WHAT THE FACILITY OR PROVIDER BILLED AND WHAT WAS PAID. THE NOT COVERED AMOUNT MAY NOT APPLY TO YOUR ANNUAL OUT-OF-POCKET MAXIMUM.

THE MEMBER, PROVIDER, OR AN AUTHORIZED REPRESENTATIVE MAY REQUEST RECONSIDERATION OR APPEAL THE DECISION BY SUBMITTING COMMENTS, DOCUMENTS OR OTHER INFORMATION TO UNITEDHEALTHCARE. NETWORK PROVIDERS SHOULD REFER TO THE ADMINISTRATIVE GUIDE FOR CLAIM RECONSIDERATION OR APPEAL INFORMATION. IF YOU ARE A NETWORK PROVIDER APPEALING A CLINICAL OR COVERAGE DETERMINATION ON BEHALF OF A MEMBER, OR A NON-NETWORK PROVIDER APPEALING A DECISION ON BEHALF OF A MEMBER, FOLLOW THE PROCESS FOR APPEALS IN THE MEMBER'S BENEFIT PLAN DOCUMENT. DECISIONS ON APPEALS MADE ON BEHALF OF MEMBERS WILL BE COMPLETED IN 30 DAYS OF SUBMISSION OR WITHIN THE TIMEFRAME REQUIRED BY LAW.

EXHIBIT 3

002253

002253

EXHIBIT 3



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UMR, Inc. dba United Medical Resources,
11 *Oxford Health Plans, Inc.,*
Sierra Health and Life Insurance Company, Inc.,
12 *Sierra Health-Care Options, Inc., and*
13 *Health Plan of Nevada, Inc.*

14
15 UNITED STATES DISTRICT COURT
16 DISTRICT OF NEVADA

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

21
22 Plaintiff,

23 vs.

24 UNITEDHEALTH GROUP, INC., a Delaware
corporation; UNITED HEALTHCARE
INSURANCE COMPANY, a Connecticut
25 corporation; UNITED HEALTH CARE
SERVICES INC. dba UNITEDHEALTHCARE, a
26 Minnesota corporation; UMR, INC. dba UNITED
MEDICAL RESOURCES, a Delaware
27 corporation; OXFORD HEALTH PLANS, INC.,
a Delaware corporation; SIERRA HEALTH AND
28 LIFE INSURANCE COMPANY, INC., a Nevada

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

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

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

5 Defendants.

6
 7 Defendants Unitedhealth Group, Inc., United Healthcare Insurance Company, United
 8 Health Care Services, Inc. dba Unitedhealthcare, UMR, Inc. dba United Medical Resources,
 9 Oxford Health Plans, Inc., Sierra Health and Life Insurance Company, Inc., Sierra Health-Care
 10 Options, Inc., and Health Plan of Nevada, Inc. (collectively "Defendants"), by and through their
 11 attorneys of the law firm of Weinberg Wheeler Hudgins Gunn & Dial, LLC, hereby
 12 respond to Plaintiff's ("Plaintiff" or "Fremont") First Set of Interrogatories:

13 **PRELIMINARY STATEMENT**

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

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

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



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

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

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

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

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

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



1 information.

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

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

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

1 claims administration.

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

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

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

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

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

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

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

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

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

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

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



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

3 **RESPONSES TO INTERROGATORIES**

4 **INTERROGATORY NO. 1:**

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

7 **RESPONSE:**

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

10 Defendants object that the term "CLAIM" is vague, as noted in Defendants' specific
11 objections to Plaintiff's Definitions, as the definition does not identify what specific list of
12 claims it is referring to. However, Defendants interpret this Interrogatory as referring to the
13 claims listed in FESM000011. Assuming those are the claims Fremont intended to refer to,
14 Defendants object to this Interrogatory on the basis that it is unduly burdensome and seeks
15 information that is not proportional to the needs of the case. Fremont has asserted 15,210
16 CLAIMS where it alleges that Defendants did not reimburse Fremont for the full amount billed.
17 To determine how the amount of reimbursement for each CLAIM was determined, Defendants
18 would, among other things, have to pull the administrative record for each of the 15,210
19 individual CLAIMS and analyze it. As explained more fully in the burden declaration attached
20 as **Exhibit 1**, this would be unduly burdensome and not proportional to the needs of the case as
21 Defendants believe it will take 2 hours to pull each individual administrative record for a total of
22 30,420 hours of employee labor.

23 Defendants further object to this Interrogatory as it essentially seeks to force Defendants
24 to explain their entire defense to Fremont's CLAIMS in narrative form. Courts have held this is
25 an inappropriate use of written discovery and constitutes an inappropriate "blockbuster"
26 interrogatory. *Bashkin v. San Diego Cty.*, No. 08-CV-1450-WQH WVG, 2011 WL 109229, at
27 *2 (S.D. Cal. Jan. 13, 2011) ("to the extent Plaintiff seeks every minute detail and narratives
28 about the subject incident and every possible surrounding circumstance, written discovery is not

the proper vehicle to obtain such detail.”); *Grynberg v. Total S.A.*, No. 03-CV-01280-WYD-BNB, 2006 WL 1186836, at *6 (D. Colo. May 3, 2006) (providing that the use of blockbuster interrogatories that call for every conceivable detail and fact which may relate to a case does not “comport with the just, speedy, and inexpensive determination of the action”).

Defendants further respond that there are many reasons billed charges by out of network providers are not paid in full. These reasons include, but are not limited to the following reasons: (1) not all of the billed charges are eligible charges under or are covered by the treated member’s health benefits plan, (2) improper billing by the provider (e.g., improper unbundling of charges), (3) lack of prior authorization and/or inpatient notification, as may be required depending on the terms of the plan and/or type of service rendered, (4) the out-of-network reimbursement methodology set forth in the member’s applicable health benefits plan (which often differs from plan to plan) establishes a different amount of reimbursement, and/or (5) lack of entitlement under applicable health benefits plans. As explained above, Defendants would have to research each and every one of Fremont’s 15,210 claims to determine how the reimbursement amount for each CLAIM was determined.

INTERROGATORY NO. 2:

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

RESPONSE:

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

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

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

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

13 **INTERROGATORY NO. 3:**

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

19 **RESPONSE:**

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

22 Defendants object that the term "CLAIM" is vague, as noted in Defendants' specific
23 objections to Plaintiff's Definitions, as the definition does not identify what specific list of
24 claims it is referring to. However, Defendants interpret this Interrogatory as referring to the
25 claims listed in FESM000011. Assuming those are the claims Fremont intended to refer to,
26 Defendants object to this Interrogatory on the basis that it is unduly burdensome and seeks
27 information that is not proportional to the needs of the case. Fremont has asserted 15,210
28 CLAIMS where it alleges that Defendants did not reimburse Fremont for the full amount billed.

1 To determine how the reimbursement amount for each CLAIM was determined, Defendants
2 would, among other things, have to pull the administrative record for each of the 15,210
3 individual CLAIMS and analyze it. As explained more fully in the burden declaration attached
4 as **Exhibit 1**, this would be unduly burdensome and not proportional to the needs of the case as
5 Defendants believe it will take 2 hours to pull each individual claim file for a total of 30,420
6 hours of employee labor.

7 Defendants further object to this Interrogatory as it essentially seeks to force Defendants
8 to explain their entire defense to Fremont's CLAIMS in narrative form. Courts have held this is
9 an inappropriate use of written discovery and constitutes an inappropriate "blockbuster"
10 interrogatory. *Bashkin v. San Diego Cty.*, No. 08-CV-1450-WQH WVG, 2011 WL 109229, at
11 *2 (S.D. Cal. Jan. 13, 2011) ("to the extent Plaintiff seeks every minute detail and narratives
12 about the subject incident and every possible surrounding circumstance, written discovery is not
13 the proper vehicle to obtain such detail."); *Grynberg v. Total S.A.*, No. 03-CV-01280-WYD-
14 BNB, 2006 WL 1186836, at *6 (D. Colo. May 3, 2006) (providing that the use of blockbuster
15 interrogatories that call for every conceivable detail and fact which may relate to a case does not
16 "comport with the just, speedy, and inexpensive determination of the action"). Defendants
17 further respond by incorporating their response to Interrogatory No. 1.

18 **INTERROGATORY NO. 4:**

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

RESPONSE:

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

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

INTERROGATORY NO. 5:

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

RESPONSE:

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

Defendants object that the term "CLAIM" is vague, as noted in Defendants' specific objections to Plaintiff's Definitions, as the definition does not identify what specific list of claims it is referring to. However, Defendants interpret this Interrogatory as referring to the claims listed in FESM000011. Assuming those are the claims Fremont intended to refer to, Defendants object to this Interrogatory on the basis that it is unduly burdensome and seeks information that is not proportional to the needs of the case. Fremont has asserted 15,210 CLAIMS where it alleges that Defendants did not reimburse Fremont for the full amount billed. To determine how the reimbursement for each CLAIM was determined, including the applicable health benefits plan documents specifying which medical services are covered, the amount of benefits the plan will pay for covered services, or another applicable contract/agreement that may be in place, Defendants would, among other things, have to pull the administrative record for each of the 15,210 individual CLAIMS and analyze it. As explained more fully in the burden declaration attached as **Exhibit 1**, this would be unduly burdensome and not proportional to the needs of the case as Defendants believe it will take 2 hours to pull each individual claim file for a



1 total of 30,420 hours of employee labor.

2 Defendants further respond as follows: with respect to the time period after which
3 Fremont became a non-participating out-of-network provider, Defendants are not currently
4 aware of any direct written participation agreement between Defendants and Fremont that would
5 govern the amount of reimbursement (if any) for the CLAIMS. However, there may be other
6 contracts/agreements that governed the amount of reimbursement Fremont received on its
7 CLAIMS, including, but not limited to, the plan documents for the patients that Fremont treated.
8 Defendants are continuing to attempt to determine whether any other contracts/agreements exist
9 and will supplement this response if any are found.

10 **INTERROGATORY NO. 6:**

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

16 **RESPONSE:**

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

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

24 Notwithstanding Defendants' objection, Defendants respond that, in general, the amounts
25 paid to Fremont would have been based on the terms of the applicable health benefits plan
26 documents specifying which medical services are covered, and the amount of benefits the plan
27 will pay for covered services. Defendants are continuing to investigate the CLAIMS asserted
28 and will supplement their response to this Interrogatory if it is determined that "prior dealings"

1 impacted any payments to Fremont.

2 **INTERROGATORY NO. 7:**

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

8 **RESPONSE:**

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

11 Defendants object that the term "CLAIM" is vague, as noted in Defendants' specific
12 objections to Plaintiff's Definitions, as the definition does not identify what specific list of
13 claims it is referring to. However, Defendants interpret this Interrogatory as referring to the
14 claims listed in FESM000011. Assuming those are the claims Fremont intended to refer to,
15 Defendants object to this Interrogatory on the basis that it is unduly burdensome and seeks
16 information that is not proportional to the needs of the case. Fremont has asserted 15,210
17 CLAIMS where it alleges that Defendants did not reimburse Fremont for the full amount billed.
18 To determine whether agreements with any other provider and/or amounts paid to any other
19 provider would have impacted the determination of the amount of reimbursement for each of the
20 CLAIMS, Defendants would, among other things, have to pull the administrative record for each
21 of the 15,210 individual CLAIMS and analyze it. As explained more fully in the burden
22 declaration attached as **Exhibit 1**, this would be unduly burdensome and not proportional to the
23 needs of the case as Defendants believe it will take 2 hours to pull each individual claim file for a
24 total of 30,420 hours of employee labor.

25 Defendants further object to the extent this interrogatory calls for them to reveal
26 information about their agreements with other providers. Defendants' agreements with other
27 providers typically contain confidentiality clauses such that revealing this information could
28 force Defendants to breach their obligations to these third parties. Moreover, the information

sought is proprietary and subject to protection as a trade secret pursuant to NRS 600A.030(5) as this information has independent value due to, among other things, the fact that it is not known to other providers like Fremont.

Defendants further respond that, in general, the amounts paid to Fremont would have been based on the terms of the applicable health benefits plan documents specifying which medical services are covered, and the amount of benefits the plan will pay for covered services.

INTERROGATORY NO. 8:

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

- (a) The development of the methodology, the materials considered in developing the methodology, and the methodology itself You used to calculate the allowed amount and the amount of Your alleged payment obligations for the CLAIMS in the Clark County Market;
- (b) Communications with Fremont regarding the CLAIMS;
- (c) To the extent that You contend or rely on provider charges by other providers to determine Your alleged payment obligation for the CLAIMS, the identity of those other providers, the amount of their charges, and any agreement(s) with those providers regarding those charges.

RESPONSE:

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

Defendants object that this Interrogatory is overbroad and unduly burdensome to the extent it seeks the identification of "all persons" with knowledge of the particular subject areas. *Mancini v. Ins. Corp. of New York*, No. CIV. 07CV1750-L NLS, 2009 WL 1765295, at *3 (S.D. Cal. June 18, 2009) ("Contention interrogatories are often overly broad and unduly burdensome when they require a party to state "every fact" or "all facts" supporting identified allegations or defenses."); *Bashkin v. San Diego Cty.*, No. 08-CV-1450-WQH WVG, 2011 WL 109229, at *2



1 (S.D. Cal. Jan. 13, 2011) ("In the written discovery process, parties are not entitled to each and
2 every detail that could possibly exist in the universe of facts . . . Further, to the extent Plaintiff
3 seeks every minute detail and narratives about the subject incident and every possible
4 surrounding circumstance, written discovery is not the proper vehicle to obtain such detail.").
5 Defendants will not be listing every single person who has any knowledge of the listed topics.

6 Defendants also object that all three categories listed (a, b and c) are overbroad, vague
7 and by extension unduly burdensome. As to category a, Defendants object that information on
8 the development of the methodology is not relevant to Fremont's claims and not proportional to
9 the needs of the case. Moreover, to identify the persons who would have knowledge of the
10 methodologies used to determine the amount of reimbursement for each of Fremont's 15,210
11 claims, Defendants would have to pull the administrative record for each of the 15,210 claims,
12 which, as set forth more fully in Defendants' objection to Interrogatory No. 1, would be unduly
13 burdensome and not proportional to the needs of the case.

14 As to category b, Defendants object that this category is vague, overbroad and unduly
15 burdensome. The number of individuals who may have knowledge of *any* communications
16 between Defendants and Fremont regarding the 15,210 claims at issue is huge. Defendants
17 request that Fremont narrow this Interrogatory to specific type(s) of communications that will
18 allow Defendants to identify a reasonable number of individuals with information on those
19 specific communications.

20 As to category c, Defendants object that this category calls for them to reveal
21 information about their agreements with other providers. Defendants' agreements with other
22 providers typically contain confidentiality clauses such that revealing this information could
23 force Defendants to breach their obligations to these third parties. Moreover, the information
24 sought is proprietary and subject to protection as a trade secret pursuant to NRS 600A.030(5) as
25 this information has independent value due to, among other things, the fact that it is not known to
26 other providers like Fremont.

27 Defendants further object to the extent this interrogatory is intended to force Defendants
28 to name Rule 30(b)(6) witnesses for these categories prior to a Rule 30(b)(6) deposition notice

1 being issued.

2 **INTERROGATORY NO. 9:**

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

7 **RESPONSE:**

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

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

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

20 **INTERROGATORY NO. 10:**

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

23 **RESPONSE:**

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

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

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

3 Defendants further respond to this Interrogatory that, in general, the amounts paid to
4 Fremont would have been based on the terms of applicable health benefits plan documents
5 specifying which medical services are covered, and the amount of benefits the plan will pay for
6 covered services.

7 **INTERROGATORY NO. 11:**

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

10 **RESPONSE:**

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

13 Defendants object that this Interrogatory is premature as the Defendants are not required
14 to file an Answer to the Complaint yet and are thus not required to state their affirmative
15 defenses at this time. Defendants further object that this Interrogatory seeks disclosure of
16 information protected by the attorney work-product doctrine. Defendants also object that this
17 Interrogatory is overbroad, vague and unduly burdensome in that it calls for the identification of
18 "all facts" rather than the material facts. *See e.g., Bovarie v. Schwarzenegger*, No. 08CV1661
19 LAB NLS, 2011 WL 719206, at *1 (S.D. Cal. Feb. 22, 2011) ("The Court agrees that seeking
20 every fact that underlies every affirmative defense is unduly burdensome."); *Mancini v. Ins.*
21 *Corp. of New York*, No. CIV. 07CV1750-L NLS, 2009 WL 1765295, at *3 (S.D. Cal. June 18,
22 2009) ("Contention interrogatories are often overly broad and unduly burdensome when they
23 require a party to state "every fact" or "all facts" supporting identified allegations or defenses.");
24 *Bashkin v. San Diego Cty.*, No. 08-CV-1450-WQH WVG, 2011 WL 109229, at *2 (S.D. Cal.
25 Jan. 13, 2011) ("In the written discovery process, parties are not entitled to each and every detail
26 that could possibly exist in the universe of facts . . . Further, to the extent Plaintiff seeks every
27 minute detail and narratives about the subject incident and every possible surrounding
28 circumstance, written discovery is not the proper vehicle to obtain such detail."); *Grynberg v.*

1 *Total S.A.*, No. 03-CV-01280-WYD-BNB, 2006 WL 1186836, at *6 (D. Colo. May 3, 2006)
2 (providing that the use of blockbuster interrogatories that call for every conceivable detail and
3 fact which may relate to a case does not “comport with the just, speedy, and inexpensive
4 determination of the action”). Moreover, assuming that Defendants will assert more than one
5 affirmative defense, the request is compound and may exceed the 25 interrogatory limit set forth
6 by Rule 33.

7 **INTERROGATORY NO. 12:**

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

12 **RESPONSE:**

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

15 Defendants object that this Interrogatory is overbroad, seeks irrelevant information, and
16 is unduly burdensome and not proportional to the needs of the case. The Interrogatory asks that
17 all companies be identified regardless of whether the information provided by those companies
18 to the Defendants was actually used to determine the amount of reimbursement for each of
19 Fremont’s 15,210 claims. Further, to determine the responsive list of companies, Defendants
20 would have to first retrieve and analyze the administrative record for each of the 15,210 claims,
21 which, as explained more fully in Defendants’ objection to Interrogatory No. 1, would be unduly
22 burdensome and not proportional to the needs of the case. Defendants further object that this
23 Interrogatory seeks irrelevant information that is not proportional to the needs of the case to the
24 extent that it seeks information related to usual and customary fees or rates outside of the time
25 period of Fremont’s claims (i.e. July 1, 2017 to present).

26 **INTERROGATORY NO. 13:**

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



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

RESPONSE:

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

Defendants object that the term "CLAIM" is vague, as noted in Defendants' specific objections to Plaintiff's Definitions, as the definition does not identify what specific list of claims it is referring to. However, Defendants interpret this Interrogatory as referring to the claims listed in FESM000011. Assuming those are the claims Fremont intended to refer to, Defendants are in the process of gathering additional information on whether the Plan Members referenced in FESM000011 are covered by plans fully-insured by Defendants or by self-funded plans administered by Defendants. Defendants intend to supplement this response by February 26, 2020.

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

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INTERROGATORY NO. 14:

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

RESPONSE:

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

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

Dated this 29th day of January, 2020.

/s/ Colby Balkenbush

D. Lee Roberts, Jr., Esq.

Colby L. Balkenbush, Esq.

Brittany M. Llewellyn, Esq.

WEINBERG, WHEELER, HUDGINS,

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United Health Care Services, Inc. dba
Unitedhealthcare,
UMR, Inc. dba United Medical Resources,
Oxford Health Plans, Inc.,
Sierra Health and Life Insurance Company, Inc.,
Sierra Health-Care Options, Inc., and
Health Plan of Nevada, Inc.*

CERTIFICATE OF SERVICE

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

Pat Lundvall, Esq.
 Kristen T. Gallagher, Esq.
 Amanda M. Perach, Esq.
 McDonald Carano LLP
 2300 W. Sahara Ave., Suite 1200
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 plundvall@mcdonaldcarano.com
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Attorneys for Plaintiff
Fremont Emergency Services (Mandavia), Ltd.

/s/ Cynthia S. Bowman

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

002274

WEINBERG WHEELER
HUDGINS GUNN & DIAL



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VERIFICATION

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

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

Executed on January 31st, 2020.



Rebecca Paradise



EXHIBIT 1

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EXHIBIT 1



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

14
15 UNITED STATES DISTRICT COURT
16 DISTRICT OF NEVADA

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

22 Plaintiff,

23 vs.

24 UNITEDHEALTH GROUP, INC., a Delaware
corporation; UNITED HEALTHCARE
INSURANCE COMPANY, a Connecticut
25 corporation; UNITED HEALTH CARE
SERVICES INC. dba UNITEDHEALTHCARE, a
26 Minnesota corporation; UMR, INC. dba UNITED
MEDICAL RESOURCES, a Delaware
27 corporation; OXFORD HEALTH PLANS, INC.,
a Delaware corporation; SIERRA HEALTH AND
28 LIFE INSURANCE COMPANY, INC., a Nevada

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

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

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

Defendants.

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

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

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

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

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

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

- 23 a. Member Explanations of Benefits ("EOBs");
- 24 b. Provider EOBs and/or Provider Remittance Advices ("PRAs");
- 25 c. Appeals documents;
- 26 d. Any other documents comprising the administrative records, such as
- 27 correspondence or clinical records submitted by Plaintiffs;
- 28 e. The plan documents in effect at the time of service.

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

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

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

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

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

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

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

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

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

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

- a. Member Explanations of Benefits ("EOBs"): *45 minutes*.¹
- b. Provider EOBs and/or Provider Remittance Advice ("PRAs"); *20 minutes*.
- c. Appeals documents: *30 minutes*.
- d. Other documents comprising the administrative records: *15 minutes*.

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

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

- a. United stores EOBs as images that are stored in EDSS and marked with "Film Locator Numbers" or "FLNs".
- b. To locate the correct EOB for a given claim, we must first determine the correct FLN by running queries in the system based on the data given to us by the provider. This process can take substantial time, because United-administered plans have tens of millions of members, each of whom is likely to see multiple

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

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

- 10 c. Once we use the claim data that is furnished to us by the provider to identify what
11 we believe to be the correct FLN, we must then enter that FLN into EDSS to pull
12 up and download the EOB in question.
- 13 d. Once the targeted EOB has completed downloading, our rigorous HIPAA
14 protection protocol requires us to review the entire downloaded document to
15 ensure (1) that it is the correct EOB that matches the claim at issue in the
16 litigation and (2) that there are no extraneous pages included that might result in
17 the inadvertent but unauthorized disclosure of HIPAA-protected information.
18 Some EOB records are simple, but others may contain several pages, and the
19 process of confirming a match and confirming that no extraneous information is
20 included takes substantial time.
- 21 e. Once the EOB has been verified, we must take the additional step of processing
22 and uploading it to the specific share drive that has been established for the
23 particular instance of litigation.

24 12. For each individual EOB, the above-described process may take more or less than
25 45 minutes, but across a large volume of records, my experience confirms that 45 minutes is the
26 average. As set forth in paragraph 9 above, EOBs take the longest time to locate, verify, and
27 process because of the massive volume of member records and the difficulties that are typically
28 encountered using member data to locate the requested records. Similar processes govern the

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

3 13. Thus, I estimate that it will take, on average, about *2 hours* to pull a full set of the
4 *a, b, c,* and *d* category documents for a single claim, which would need to be done for each of the
5 15,210 claims at issue claim (for a total of approximately *30,420 hours*). Based on the forgoing
6 time estimates, it would take a team of four people working full-time on nothing other than
7 gathering documents for this case over *3 years* to pull the documents related to categories *a, b, c,*
8 and *d.* This does not account for other factors that could complicate the collection process, such
9 as any at-issue claims that have not been successfully “mapped” to a unique United claim
10 number,² or archived documents that may have to be located and pulled from other sources or
11 platforms.

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

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

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

1 pulling these documents. I understand that plan documents for *current* United clients can be
2 accessed through a United database. First, the team must access the appropriate database, locate,
3 and pull all of the relevant documents for each plan implicated by the at-issue claims. Once
4 pulled, a United employee must then open each document, confirm that the document relates to
5 the plan covering the at-issue claim, label the file, and migrate the document to the appropriate
6 shared drive location related to this litigation. The colleagues who have informed me have
7 previously pulled plan documents in connection with other provider-initiated litigation where
8 only 500 claims were at issue. Based on the documents that they pulled previously and the
9 15,210 claims at issue here, it is estimated that it will take approximately *6,996 hours* to collect
10 the relevant plan documents. Because plan documents will be handled by a team that is separate
11 from my team handling the claim and appeal document collection, this time estimate will run
12 concurrently to the time estimate for pulling documents pertain only to pulling documents related
13 to categories *a, b, c, and d*.

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

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

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

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

12 Executed on January 29th, 2020 in Moline, Illinois

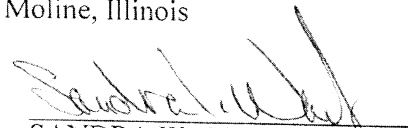
13
14 
15 SANDRA WAY
16 Business Manager
17 Claim & Appeal Regulatory Adherence
18 United Healthcare
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EXHIBIT 4

002285

002285

EXHIBIT 4

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

KRISTEN T. GALLAGHER DECLARATION IN SUPPORT PLAINTIFFS' OPPOSITION TO MOTION TO COMPEL PRODUCTION OF CLINICAL RECORDS

Hearing Date: September 30, 2020
Hearing Time: 1:30 p.m.

I, KRISTEN T. GALLAGHER, declare as follows:

1. I am an attorney licensed to practice law in the State of Nevada and am a partner
 in the law firm of McDonald Carano LLP, counsel for plaintiffs Fremont Emergency Services

(Mandavia), Ltd. ("Fremont"); Team Physicians of Nevada-Mandavia, P.C. ("Team Physicians"); Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine ("Ruby Crest" and collectively the "Health Care Providers").

2. This declaration is submitted in support of the Plaintiffs' Opposition To Motion to Compel Production of Clinical Records and is made of my own personal knowledge, unless otherwise indicated. I am over 18 years of age, and I am competent to testify as to same.

3. Fremont served its response to RFP No. 6 on July 29, 2019.

4. Not until the end of January 2020 did United even mention Fremont's responses, the timing obviously related to the Health Care Providers' motion practice relating to United's discovery failures that was heard by the federal district court on February 12, 2020.

5. In advance of that hearing, on February 10, 2020, on behalf of the Health Care Providers, I conveyed a discovery compromise to which United has still failed to substantively respond:

In advance of Wednesday's hearing, below is a discovery proposal that would result in an expedited ability for the parties to agree on the health care claims data and would eliminate or greatly reduce the need for United to collect and produce provider remittance forms/provider EOBs except for where the parties identify a discrepancy in the billed amount or allowed amounts or as specified below. Similarly, it would eliminate or greatly reduce the need for Fremont to collect and produce HCFA forms and related billing documents. Please review and let me know in advance of Wednesday's hearing whether United will agree to the following:

1. The Health Care Providers have already produced a spreadsheet that includes member name and Defendants' claim no. (to the extent available in Health Care Providers' automated system), in addition to other fields:
 - o Within 14 days, United provides matched spreadsheets and identifies any discrepancy in billed or allowed amounts fields;
 - o Within 7 days thereafter, for claims upon which the billed and allowed data match, parties stipulate that there is no need for further production of EOBs and provider remittances for evidentiary purposes related to establishing the existence of the claim, services provided, amount billed by Health Care Providers and amount allowed by United.
 - o Approximately every quarter, this process will take place again with any new claims included in the Litigation Claims Spreadsheet that accrued after the previous spreadsheet was submitted.
2. United produces all EOBs/provider remittances for all Data iSight processed NV claims submitted by the Health Care Providers; and
3. United and the Health Care Providers respectively agree to provide a market file, i.e. a spreadsheet of payments from other payers (Health Care Providers)

1 or a spreadsheet of payments to other providers (United) in the market which
2 de-identifies the specific payer or provider, as applicable (for the time period
3 2016-Present). The parties agree to meet and confer promptly to agree on
4 specified fields.

5 6. On February 13, 2020, the parties engaged in a meet and confer that included
6 Fremont's response to RFP No. 6. The Health Care Providers explained that it objected to the
7 request because clinical records for the at-issue claims are not relevant to the First Amended
8 Complaint's allegations and United had not raised an affirmative defense related to the amount
9 that was billed or the applied CPT code, nor did United deny payment or otherwise challenge or
10 deny the applied coding so the request does not inform the elements of the claims asserted.
11 Importantly, during the meet and confer, United's only stated basis for disagreeing with
12 Fremont's objection was that it claimed clinical records are relevant to the reasonable value of
13 services provided/unjust enrichment. Not once during the meet and confer did United indicate
14 that it disputed the CPT levels already deemed allowed and allowable. Nor did United assert that
15 the Health Care Providers had an obligation to produce clinical records as a part of its initial
16 disclosures.

17 7. United failed to reconvene prior to filing the Motion. So although United asserts
18 it was hoping to reach a reasonable compromise (Motion at 4:19-22), it never contacted the
19 Health Care Providers between February 13, 2020 and the filing of the Motion, a period of over
20 seven months.

21 8. Nor does United make any mention of the fact that it has never engaged in
22 meaningful discussions regarding the Health Care Providers' proposal aimed at streamlining
23 document retrieval and production.

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

25 Executed: September 29, 2020.

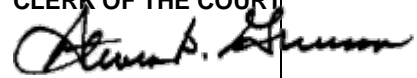
26 /s/ Kristen T. Gallagher
27 Kristen T. Gallagher
28

EXHIBIT 5

002289

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EXHIBIT 5



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

FREMONT EMERGENCY
SERVICES (MANDAVIA) LTD.,
Plaintiff(s),
vs.
UNITED HEALTHCARE
INSURANCE COMPANY,
Defendant(s).

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

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE
WEDNESDAY, SEPTEMBER 9, 2020

***RECORDER'S TRANSCRIPT OF PROCEEDINGS
RE: PENDING MOTIONS***

APPEARANCES (VIA VIDEO CONFERENCE):

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

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

RECORDED BY: BRYNN WHITE, COURT RECORDER

1 This is the Defendant's Motion for Protective Order with
2 regard to e-discovery and to compel a protocol for the retrieval and
3 production of email. Motion's going to be denied for the following
4 reasons:

5 First, what I find is that it is the defendant's effort to avoid a
6 Motion to Compel on those discovery requests one thousand three
7 hundred seventeen. It really just is an email protocol and not an ESI
8 protocol. It's -- it would unreasonably hamper the Plaintiff from
9 obtaining information with regard to identity of custodians and
10 information that, I believe, will be discoverable. But -- so I'm going to
11 deny the motion, but I am going to order both parties to meet and
12 confer with regard to a more comprehensive electronic discovery
13 protocol and to report back at our continued hearing on the 30th.

14 It's not fair for the Plaintiff to determine those search terms
15 and custodians before it has complete access to determine how to
16 prioritize (indiscernible). The Plaintiff has the burden of proof here,
17 and so I find that this was simply an effort to -- an unreasonable push
18 to cutting off the Plaintiff from doing a meaningful discovery.

19 So, Ms. Lundvall, prepare the order. Mr. Balkenbush, I
20 assume you wish to approve the form with that before it's submitted?

21 MR. BALKENBUSH: Yes, thank you, Your Honor.

22 MS. LUNDVALL: Thank you, Your Honor.

23 THE COURT: And you're both willing to negotiate in good
24 faith with regard to a comprehensive ESI protocol?

25 MS. LUNDVALL: We are, Your Honor. But what I wanted to

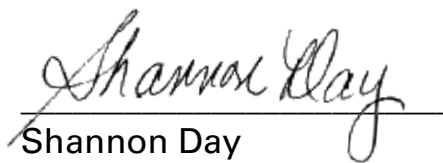
1 MS. LUNDVALL: Thank you very much.

2 MR. BALKENBUSH: Thank you, Your Honor.

3 [Proceedings adjourned at 3:26 p.m.]

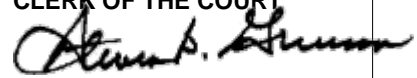
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20 ATTEST: I do hereby certify that I have truly and correctly
21 transcribed the audio/video proceedings in the above-entitled case to
22 the best of my ability.

23 
24 Shannon Day
25 Independent Transcriber

56

56



OMCM

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Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-19-792978-B

Dept. No.: 27

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

Hearing Date: October 8, 2020

Hearing Time: 1:30 PM



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

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

Dated this 6th day of October, 2020.

/s/ Colby L. Balkenbush
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Attorneys for Defendants

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs unilaterally ended productive discussions in favor of this motion to compel, which is premature and a waste of the Court’s time. By the present motion before the Court, Plaintiffs seek to compel Defendants to supplement their 16.1 disclosures and certain written discovery responses. The parties were actively engaged in meet and confer efforts in August regarding the very issues raised in Plaintiffs’ Motion, whereby United was seeking needed clarification as to certain of Plaintiffs’ requests, and working on determining dates for production as to others. Despite Defendants’ cooperation, Plaintiffs now accuse United of “tap dancing” and “delay.” Motion at 5:3.

Defendants have been participating meaningfully in discovery while simultaneously





1 responding to a barrage of seemingly strategically timed motions from Plaintiffs. Because of the
2 sheer volume of documents and information Plaintiffs have requested, and competing demands
3 on the businesspeople with whom United must work to provide responses, United must prioritize
4 its responses to Plaintiffs' discovery as best it can, and has already produced a volume of
5 documents.

6 As but one example, on September 30, 2020, United produced nearly 2,000 pages of
7 documents comprising a portion of the administrative records for the at-issue claims in
8 compliance with this Court's recent order. And United has agreed to produce—and is currently
9 working to obtain and produce—summary-level market data related to payments made by United
10 to other providers in the Las Vegas Metropolitan area for the time period encompassing
11 Plaintiffs' claims (i.e. July 1, 2017 to Jan. 2020). See **Exhibit A** "Summary of meet and confer
12 efforts" for RFP Nos. 14-17 ("we are working with our client to gather and produce market data,
13 and will provide a timeline for production.") (July 29, 2020 email from B. Llewellyn to K.
14 Gallagher). Meanwhile United is diligently engaged in the necessarily time-consuming process
15 of gathering and reviewing emails that will be responsive to many of the requests for production
16 listed in Plaintiffs' motion.

17 A cursory review of the meet-and-confer correspondence belies any contention of refusal,
18 delay, or intransigence by United. Rather, United has asked that Plaintiffs clarify certain vague
19 requests, or has requested sufficient time to gather certain requested documents. Maybe Plaintiffs
20 want United to speed up production, but United is diligently gathering responsive documents and
21 information. United objects in full to only two of Plaintiffs' identified categories of documents,
22 which seek information relating to third-party providers that has no bearing on this litigation.

23 **II. FACTUAL BACKGROUND**

24 Plaintiffs' motion offers the derisive argument that nearly every one of their
25 Interrogatories and Requests for Production have "been met with feigned lack of understanding
26 about the nature of the request, requests for more time to confer with United, followed by more
27 objections and refusal to provide any practical response." Motion at 7:16–18. But where requests
28 are unanswerable for vagueness and overbreadth, this is precisely the reason that courts require

1 parties to meet and confer before filing a motion. Defendants attempted to do this in good faith,
2 but Plaintiffs terminated discussions in favor of filing this premature motion.

3 On July 14, 2020, Plaintiffs sent out a generalized request to “meet and confer on
4 United’s discovery responses to RFPS and answers to interrogatories” without reference to any
5 specific requests or disputes. *See* July 14, 2020 email from Kristen Gallagher, **Exhibit B**.
6 Thereafter, on July 16, 2020, the parties agreed to set a call for July 20, 2020, and only then did
7 Plaintiffs provide an initial summary of the allegedly offending responses. *See* July 16, 2020
8 email from Kristen Gallagher, **Exhibit B**. The email detailed a total of thirty-seven (37) requests
9 for which they sought supplemental responses. *See id.* Plaintiffs thereafter sent a follow-up email
10 noting thirteen (13) interrogatory responses with which they took issue, and which were also
11 addressed in United’s summary of meet and confer efforts. **Exhibit A, Exhibit C**. The parties
12 met and conferred on these fifty (50) requests in calls that took place July 20, 21, and August 3.
13 On August 3, Plaintiffs demanded that the requests be supplemented within four (4) days, by
14 August 7, or they would proceed with a motion to compel. United’s position is that these issues
15 are not ripe for a motion to compel, as United is in the process of supplementing its discovery
16 responses, and has made that clear to Plaintiffs on multiple occasions.

17 The parties had previously engaged in meet and confer efforts, in June of this year, on six
18 of Plaintiffs’ Requests for Production 11, 12, 13, 21, 27, and 37. United agrees that meet and
19 confer efforts were exhausted with respect to these Requests, but prior motions and orders of this
20 Court have already resolved the issues they raised. Specifically, this Court previously ordered
21 United to produce unredacted MultiPlan agreements, which United produced on August 17,
22 2020; ordered production of the administrative records for each of Plaintiffs’ claims at issue, of
23 which United made an initial production on September 30, 2020; and ordered the parties to
24 develop an electronic search protocol for the production of electronic communications and
25 documents.¹ Accordingly, these requests have been satisfied, or have otherwise been addressed
26 by the Court.

27 _____
28 ¹ The parties have engaged in initial discussions pertaining to same.



III. LEGAL ARGUMENT

A. Plaintiffs' Request for Defendants to Supplement their Witness List is Moot

Plaintiffs' Motion takes issue with the fact that, at the time of filing, United had named a total of four United witnesses. Since that time, in its Third Supplemental 16.1 list of witnesses and documents, United has identified an additional five (5) witnesses, for a total of nine (9) United witnesses. United thus considers this portion of Plaintiffs' motion moot. Moreover, it bears noting that, to date, Plaintiffs have named only *five* TeamHealth witnesses, none of whom appear to be employed by the specific entities that brought this action against United.

B. Plaintiffs' motion to compel responses to Interrogatories and Requests for Production should be denied, as it is premature

Each and every one of Plaintiffs' requests failed to meet the basic requirement that they "describe with **reasonable particularity** each item or category of items to be inspected." Nev. R. Civ. P. 34(b)(1)(A) (emphasis added).² To understand and narrow Plaintiffs' requests so as to be in a position to respond to them, United requested clarification as to each one. The parties engaged in a meet-and-confer process involving several phone calls to discuss each of the fifty (50) requests at issue, and United sought a reasonable amount of time to respond. Dissatisfied with the fact that United could not instantaneously locate, review for responsiveness and privilege, and produce thousands of pages of documents, Plaintiffs have filed the instant motion setting forth the general categories for which they are seeking documents. United responds to each of the categorical requests in turn:

(1) Market and reimbursement data related to out-of-network reimbursement rates and related documents and analyses

Per prior conversations with Plaintiffs, United has agreed to produce market data for the Las Vegas metropolitan area. Specifically, United will be producing aggregate market data for

² For example, one of Plaintiffs' at-issue requests reads as follows:

REQUEST FOR PRODUCTION NO. 6:

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



1 out-of-network and in-network providers. United will produce this data within the next fourteen
2 (14) business days. Plaintiffs filed the instant motion notwithstanding the fact that United had
3 already committed to produce this information during the meet-and-confer process.

4 **(2) Methodology and sources of information used to determine amount to pay**
5 **emergency services and care for out-of-network providers and use of the FAIR**
6 **Health Database**

7 United objected to this set of requests because the determination on each of Plaintiffs'
8 22,153 at-issue claims is made on a claim-by-claim basis. United has agreed to supplement its
9 responses to provide a general overview of its out-of-network programs, but such a narrative is
10 needless; Plaintiffs are well aware that the claims are paid based on the terms set forth in each of
11 the governing plan documents. Furthermore, United is in the process of producing the
12 administrative record for each of the claims, which includes the plan document, *see* NRCP 33(d)
13 (allowing a responding party to produce business records in lieu of a narrative response to an
14 interrogatory), and has engaged a consultant to match Plaintiffs' claims data with United's
15 claims data to identify which out-of-network programs applied to each claim. Once this
16 matching exercise is complete, United will undertake efforts to identify the out-of-network
17 programs that applied to the at-issue claims, and will supplement its responses. Plaintiffs filed
18 the instant motion notwithstanding the fact that the Court previously ordered the production of
19 the administrative records.

20 **(3) Documents related to United's decision making and strategy in connection with**
21 **its out-of-network reimbursement rates and implementation thereof**

22 United is in the process of applying search terms to cull responsive e-mail
23 communications, which it intends to review for responsiveness and privilege, and produce to
24 Plaintiffs on a rolling basis. Plaintiffs filed the instant motion notwithstanding the fact that the
25 Court has heretofore ordered the production of electronic communications, and ordered that the
26 parties engage in substantive discussions regarding a search protocol.
27
28



1 **(4) Documents related to United's decision making and strategy in connection with**
2 **its in-network reimbursement rates and implementation thereof**

3 This category pertains only to the following request:

4 **REQUEST FOR PRODUCTION NO. 31:**

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

8 For this Request, United has agreed to produce information only as to Plaintiffs. Specifically, for
9 the period that is relevant for purposes of this litigation, and during which Plaintiffs were in-
10 network," United will produce responsive information pertaining to Plaintiffs, and is in the
11 process of collecting and reviewing e-mail communications for such information.

12 To the extent that this Request seeks information as to all other medical providers with
13 whom United has in-network agreements, United stands on its response and objection. The
14 Request seeks a substantial amount of information regarding Defendants' negotiations, strategy,
15 relationship, and rates of reimbursement pertaining to non-parties with no relevance to Plaintiffs'
16 claims. The Request improperly asks United to reveal irrelevant information about its
17 agreements with other providers, which typically contain confidentiality clauses such that
18 producing these agreements risks a breach of United's obligations to these third parties.

19 Moreover, the information sought is proprietary and subject to protection as a trade secret
20 pursuant to NRS 600A.030(5), as this information has independent value due to, among other
21 things, the fact that it is not known to providers like Plaintiffs. The Nevada Uniform Trade
22 Secrets Act defines a trade secret as:

23 Information, including, without limitation, a formula pattern, compilation,
24 program device, method, technique, product, system, process, design, prototype,
25 procedure, computer programming instruction or code that:

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



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

3 NRS 600A.030(5). The Trade Secrets Act further declares that “the court shall preserve the
4 secrecy of alleged trade secrets by reasonable means.” NRS 600A.070.

5 The Nevada Supreme Court has recently held that “contracts, customers, processes, [and]
6 prices” constitute “business-related confidential information” and “trade secrets.” *Finkel v.*
7 *Cashman Profl, Inc.*, 128 Nev. 68, 75, 270 P.3d 1259, 1264–65 (2012). The Court has also
8 cautioned that the “disclosure of [such] confidential information or trade secrets would create
9 irreparable injury . . . [as p]ublic disclosure of a trade secret destroys the information's status as a
10 trade secret.” *Saini v. Int'l Game Tech.*, 434 F. Supp. 2d 913, 919 (D. Nev. 2006). One of these
11 harms includes the availability for “competitors to reproduce [] work without an equivalent
12 investment of time and money.” *Id.*

13 The term “commercial information,” mirrored in the federal counterpart to NRCP 26, has
14 likewise been defined broadly. *See* Fed. R. Civ. P. 26(c)(1)(G). In accordance with this broad
15 interpretation, “[t]he cases concerning the protection of trade secrets and confidential
16 commercial information . . . indicate that this subject-matter category is broad enough to include
17 a wide variety of business information.” *Zenith Radio Corp. v. Matsushita Electric Industrial*
18 *Co., Ltd.*, 529 F.Supp. 866, 890 (E.D. Penn. 1981); *see also, Miles v. Boeing Co.*, 154 F.R.D.
19 112, 114 (E.D. Penn. 1994) (“The subject matter of confidential business information is broad,
20 including a wide variety of business information.”); *In re Aqua Dots Prod. Liab. Litig.*, 2009 WL
21 1766776, at *2 (N.D. Ill. June 23, 2009) (“‘matters whose disclosure would affect defendants
22 with their respective competitors or in conjunction with the day-to-day operation of their
23 business,’ warrant protection.”). Per the above, courts routinely protect from public disclosure
24 confidential and commercially sensitive business data just like that at issue here. While Plaintiffs
25 are not competitors of United, they are market participants, and they have not demonstrated any
26 basis for the production of this information.



1 **(5) Rental, wrap, shared savings program or any other agreement that United**
2 **contends allows it to pay less than full billed charges**

3 As noted at B.2 above, United's consultant is in the process of matching claims data.
4 Once the matching is complete, United will review the matched data and undertake efforts to
5 determine whether any "rental," "wrap," or "shared savings" programs may have applied to the
6 at-issue claims. United has previously produced its network access agreement with MultiPlan.
7 Plaintiffs filed the instant motion notwithstanding the fact that United had already committed to
8 produce additional responsive information during the meet-and-confer process.

9 **(6) Market and reimbursement data related to in-network reimbursement rates and**
10 **related documents and analyses**

11 As is detailed at B.1 above, United is in the process of gathering aggregate market data
12 for the Las Vegas Metropolitan area. United will be producing aggregate data for in-network
13 providers within the next fourteen (14) business days. Plaintiffs filed the instant motion
14 notwithstanding the fact that United had already committed to produce this information during
15 the meet-and-confer process.

16 **(7) Documents related to United's relationship with Data iSight and/or other third**
17 **parties**

18 United has previously produced unredacted contracts and client preferences related to
19 Data iSight. United has also agreed to produce Closure Reports, with a target date for production
20 of October 23, 2020. United has objected to the production of other reporting prepared by
21 MultiPlan, which contains program data aggregated at a national level. Defendants objected to
22 the production of these documents as they do not contain reimbursement rate information that is
23 specific to any of the Plaintiffs in this litigation, or to the Nevada region, and thus have no
24 bearing on the claims and defenses at issue in this litigation.

25 **(8) Documents and communications about the at-issue claims**

26 As this Court is aware, United was previously ordered to produce the administrative
27 records for all 22,153 claims at issue. On September 30, 2020, United produced nearly two-
28 thousand (2,000) pages of documents comprising administrative records for the at-issue claims.



United is continuing to manually collect and produce the administrative records on a rolling basis.

(9) Documents regarding negotiations between United and the Health Care Providers' representatives

As described above, United is currently working to collect and search potentially responsive e-mail communications, which it expects will contain communications regarding negotiations between United and Plaintiffs. However, it is important to note that, because these were communications between the parties, these documents are equally available to Plaintiffs.

(10) Documents regarding challenges from other out-of-network emergency medicine groups regarding reimbursement rates paid

This category pertains only to the following request:

REQUEST FOR PRODUCTION NO. 41:

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

For this Request, United stands on its response and objections. Defendants object that this Request does not comport with NRCP 26(b)(1), which is clear in its dictate that discovery must be limited to information that is relevant to the parties' claims or defenses and proportional to the needs of the case. NRCP 26(b)(1). This Request seeks "all documents and/or communications" relating to challenges by non-parties to Defendants' rates of reimbursement, but this information has no relevance to Plaintiffs' claims. Indeed, as written, this Request could be read to call for Defendants to produce *any* communication from *any* out of network provider to Defendants where the provider complains in any way about payment. This Request is wildly overbroad and wholly irrelevant to the claims and defenses at issue in this litigation.



1 **(11) Documents reflecting United's failure to effectuate a prompt settlement of**
2 **any of the at-issue claims**

3 As this Court is aware, United was ordered to produce the administrative records for all
4 22,153 claims at issue on September 9, 2020. On September 30, 2020, United produced nearly
5 two-thousand (2,000) pages of documents comprising the administrative records for at-issue
6 claims. United will continue producing these documents on a rolling basis.³

7 **(12) Documents relating to United's affirmative defenses**

8 United is working to gather responsive documents to support its affirmative defenses, but
9 is currently devoting its available resources to other discovery that has been ordered by the Court
10 and/or is being sought by Plaintiffs, including, but not limited to, the administrative records for
11 all 22,153 at-issue claims. United intends to supplement this response within the next thirty (30)
12 days.

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26 _____
27 ³ While the administrative records United is producing relate to attempts by United to resolve the at-issue
28 claims which arguably bring them within the ambit of this request, United denies that these records show
any failure to effectuate a prompt settlement.



1 **IV. CONCLUSION**

2 For the reasons set forth above, United requests that the Court deny the Motion in full.
3 United is working to seasonably supplement its responses, and Plaintiffs should not be rewarded
4 for their decision to terminate good faith attempts at resolution short of court intervention in
5 favor of discovery motions where the only issue in dispute is the timing of production rather than
6 whether production will in fact occur. Additionally, United respectfully requests that the Court
7 deny Plaintiffs' request for fees and costs, as any associated costs are purely a consequence of
8 Plaintiffs' decision to file a premature and unnecessary Motion to Compel.

9 Dated this 6th day of October, 2020.

10 /s/ Colby L. Balkenbush

11 D. Lee Roberts, Jr., Esq.

12 Colby L. Balkenbush, Esq.

13 Brittany M. Llewellyn, Esq.

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17 Las Vegas, Nevada 89118

18 Telephone: (702) 938-3838

19 Facsimile: (702) 938-3864

20 *Attorneys for Defendants*



CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of October, 2020, a true and correct copy of the foregoing **DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO COMPEL DEFENDANTS' LIST OF WITNESSES, PRODUCTION OF DOCUMENTS AND ANSWERS TO INTERROGATORIES ON ORDER SHORTENING TIME** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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

/s/ Colby L. Balkenbush

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



EXHIBIT A

002306

002306

EXHIBIT A

From: Kristen T. Gallagher [mailto:kgallagher@mcdonaldcarano.com]
Sent: Sunday, August 2, 2020 12:37 PM
To: Llewellyn, Brittany M.; Amanda Perach
Cc: Balkenbush, Colby; Pat Lundvall
Subject: RE: Fremont v UHC - written discovery

This Message originated outside your organization.

Brittany –

In advance of the continued meet and confer, the Health Care Providers' responses and further comments are in the attached.

Thanks,
Kristy

Kristen T. Gallagher | Partner

McDONALD CARANO

P: 702.873.4100 | **E:** kgallagher@mcdonaldcarano.com

From: Llewellyn, Brittany M. <BLlewellyn@wwhgd.com>
Sent: Wednesday, July 29, 2020 2:05 PM
To: Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>; Amanda Perach <aperach@mcdonaldcarano.com>
Cc: Balkenbush, Colby <CBalkenbush@wwhgd.com>
Subject: Fremont v UHC - written discovery

Kristen,

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

Thank you,

Brittany

INTERROGATORIES

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

INTERROGATORY NO. 1:

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

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

INTERROGATORY NO. 2:

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

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

INTERROGATORY NO. 3:

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

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

INTERROGATORY NO. 4:

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

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

INTERROGATORY NO. 5:

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

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

INTERROGATORY NO. 6:

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

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

INTERROGATORY NO. 7:

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

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

INTERROGATORY NO. 8:

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

- a. The development of the methodology, the materials considered in developing the methodology, and the methodology itself You used to calculate the allowed amount and the amount of Your alleged payment obligations for the CLAIMS in the Clark County Market;
- b. Communications with Fremont regarding the CLAIMS;
- c. To the extent that You contend or rely on provider charges by other providers to determine Your alleged payment obligation for the CLAIMS, the identity of those other providers, the amount of their charges, and any agreement(s) with those providers regarding those charges.

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

INTERROGATORY NO. 9:

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

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

INTERROGATORY NO. 10:

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

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

INTERROGATORY NO. 11:

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

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

INTERROGATORY NO. 13:

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

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

INTERROGATORY NO. 14:

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

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

then it's not over broad, but if there are thousands then maybe it is overbroad." We are working to determine if United will supplement this request.

REQUESTS FOR PRODUCTION

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

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

Summary of meet and confer efforts: As stated on our call, regarding emails generally, we intend to move for PO to ask court to enter our email protocol or a version of it. We believe the best way to deal with email issues is to have protocol in place. Regarding market data, production, we are discussing and will provide a timeline for production of market data if our client agrees.

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

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

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

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

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

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

RFP No. 8: Non-responsive answer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

RFP No. 42: the request seeks information about documents/communications concerning a failure to effectuate a prompt, fair equitable settlement of the at-issue claims. The objections are unfounded and United has denied the Health

Care Providers' allegations which suggests that it reviewed documents and communications in order to deny the allegations. Accordingly, the Health Care Providers are entitled to the information.

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

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

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

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

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



**LITIGATION DEPARTMENT
OF THE YEAR ALM'S DAILY REPORT**
2020 - 2019 - 2018 - 2017 - 2016 - 2014

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EXHIBIT B

002316

002316

EXHIBIT B

002317

002317

From: Kristen T. Gallagher [mailto:kgallagher@mcdonaldcarano.com]
Sent: Thursday, July 16, 2020 3:55 PM
To: Balkenbush, Colby
Cc: Pat Lundvall; Amanda Perach; Llewellyn, Brittany M.; Roberts, Lee
Subject: RE: Fremont Emergency Services (Mandavia) Ltd., et al. v. UnitedHealth Group, Inc., et al. - United's discovery responses and request for meet and confer

This Message originated outside your organization.

Let's plan to begin at 11:30 am on Monday, July 20 and trying to get through both the answers to interrogatories and responses to RFPs. Here is the dial in information:

Dial-in Info: +1 888 788-0909
Participant Code: 285-06
Additional Calling Info: +1 702-589-2680

So that you have a guide for what we intend to address with respect to United's Responses to Requests for Production of Documents, below is a summary. We will fully address the various objections during the meet and confer.

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

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

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

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

RFP No. 8: Non-responsive answer.

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

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

RFP No. 14: *see e.g.* United's affirmative defense nos. 6, 8, 13

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Kristen T. Gallagher | Partner

McDONALD CARANO

P: 702.873.4100 | **E:** kgallagher@mcdonaldcarano.com

From: Balkenbush, Colby <CBalkenbush@wwhgd.com>

Sent: Thursday, July 16, 2020 9:50 AM

To: Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>

Cc: Pat Lundvall <plundvall@mcdonaldcarano.com>; Amanda Perach <aperach@mcdonaldcarano.com>; Llewellyn, Brittany M. <BLlewellyn@wwhgd.com>; Roberts, Lee <LRoberts@wwhgd.com>

Subject: RE: Fremont Emergency Services (Mandavia) Ltd., et al. v. UnitedHealth Group, Inc., et al. - United's discovery responses and request for meet and confer

Hi Kristy,

Apologies for the delayed response. We can't do this week but can do Monday or Tuesday next week anytime from 9:00 am to 2:30 pm. I'm fine doing one call Monday and one call Tuesday or alternatively going through it all on one call. Let me know what you prefer. Thanks.



LITIGATION DEPARTMENT
OF THE YEAR ALM'S DAILY REPORT
 2020 - 2019 - 2018 - 2017 - 2016 - 2014

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From: Kristen T. Gallagher [<mailto:kgallagher@mcdonaldcarano.com>]
Sent: Thursday, July 16, 2020 9:25 AM
To: Balkenbush, Colby; Llewellyn, Brittany M.; Roberts, Lee
Cc: Pat Lundvall; Amanda Perach
Subject: RE: Fremont Emergency Services (Mandavia) Ltd., et al. v. UnitedHealth Group, Inc., et al. - United's discovery responses and request for meet and confer

This Message originated outside your organization.

I am following up on the below request for a meet and confer. Please provide your availability for today or tomorrow to discuss United's responses to interrogatories. Also please provide your availability to discuss United's responses to RFPs on Monday or Tuesday next week.

Kristen T. Gallagher | Partner

MCDONALD CARANO

P: 702.873.4100 | E: kgallagher@mcdonaldcarano.com

From: Kristen T. Gallagher
Sent: Tuesday, July 14, 2020 9:15 AM
To: 'Balkenbush, Colby' <CBalkenbush@wwhgd.com>; Llewellyn, Brittany M. <BLlewellyn@wwhgd.com>; Roberts, Lee <LRoberts@wwhgd.com>
Cc: Pat Lundvall <plundvall@mcdonaldcarano.com>; Amanda Perach <aperach@mcdonaldcarano.com>
Subject: Fremont Emergency Services (Mandavia) Ltd., et al. v. UnitedHealth Group, Inc., et al. - United's discovery responses and request for meet and confer

I'd like to schedule a meet and confer on United's discovery responses to RFPS and answers to interrogatories. I'd like to start with United's interrogatory answers, followed by a second call to discuss the remaining responses to RFPs. Please advise of your availability on Thursday and Friday this week to discuss interrogatories. As a reminder, my February 24, 2020 email sets forth a summary of interrogatories that we intend to discuss.

For the RFPs, please provide your availability on Monday or Tuesday next week. Although not required for a meet and confer, I will provide a summary of the RFPs that we intend to discuss on or before Thursday.

-Kristy

Kristen T. Gallagher | Partner

McDONALD CARANO

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002321

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EXHIBIT C

002322

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EXHIBIT C

INTERROGATORIES

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

The Health Care Providers (HCPs) comments in green; however, the HCPs are not repeating every point of discussion during the telephonic discussions and do not waive any argument not stated below.

INTERROGATORY NO. 1:

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

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

HCPs: You further stated that you would check with United to see if there was anything in place that would apply across all claims or a portion of claims, such as a specific protocol that would apply to specific CPT codes. By what date and with what information; and is United planning on withholding documents based on its objections?

INTERROGATORY NO. 2:

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

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

HCPs: There is no reason United cannot provide information on what methodology it uses to adjudicate claims. What efforts are being undertaken and when will United respond?

INTERROGATORY NO. 3:

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

CLAIM, please identify in detail each methodology used and explain why different methodologies were used.

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

HCPs: There is no reason United cannot provide information on what methodology it uses to adjudicate claims. What efforts are being undertaken and when will United respond?

INTERROGATORY NO. 4:

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

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

HCPs: this information is long overdue. If United cannot confirm production by August 7, the HCPs deem this issue ripe for a motion to compel.

INTERROGATORY NO. 5:

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

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

HCPs: this information is long overdue. If United does not supplement and produce responsive documents by August 7, the HCPs deem this issue ripe for a motion to compel

INTERROGATORY NO. 6:

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

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

HCPs: The HCPs object to a unwarranted limitation of the term "dealings." On our call, we never agreed to any particular timeframe for this request as any timeframe is dictated by United's affirmative defense. As discussed, this request is aimed at determining whether United will rely on a prior course of business dealings to establish entitlement to pay less than the HCPs billed charges, or any course of business dealings that is relevant to the amount United has paid for any of the at-issue claims. If United does not supplement by August 7, we deem this issue ripe for a motion to compel.

INTERROGATORY NO. 7:

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

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

HCPs: You also requested the HCPs agreement to redact the provider names. I suggested that these documents be marked "AEO" and remain unredacted and that United also produce redacted documents with a "Confidential" designation. Also, it seems that no progress has been made with this request. What efforts have you undertaken? This information is long overdue. If United does not supplement by August 7, the HCPs deem this issue ripe for a motion to compel.

INTERROGATORY NO. 8:

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

- (a) The development of the methodology, the materials considered in developing the methodology, and the methodology itself You used to calculate the allowed amount and the amount of Your alleged payment obligations for the CLAIMS in the Clark County Market;
- (b) Communications with Fremont regarding the CLAIMS;
- (c) To the extent that You contend or rely on provider charges by other providers to determine Your alleged payment obligation for the CLAIMS, the identity of those other providers, the amount of their charges, and any agreement(s) with those providers regarding those charges.

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

HCPs: The HCPs are entitled to know who has information about the identified categories. To date, United has not listed a single witness from within any of the named defendant entities. If United does not supplement by August 7 or provide a reasonable certain date by which it will do so, the HCPs deem this issue ripe for a motion to compel.

INTERROGATORY NO. 9:

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

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

HCPs: If United does not supplement by August 7, the HCPs deem this issue ripe for a motion to compel.

INTERROGATORY NO. 10:

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

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

HCPs: This position borders on bad faith. The legal page on United’s website (accessed in 2020) provides information about the FAIR Health databases and indicates that United (including affiliates) may use one or more of FAIR Health’s databases. Documents United produced in this litigation also indicate that it uses FAIR Health. Is it United’s position that it represents publicly that it uses FAIR Health, but that it actually doesn’t? If so, please supplement to confirm as much. United also indicates that insurers send FAIR Health data about claims for services, including the provider’s charge. If United sends information to Fair Health, this information too falls within several of the HCPs’ RFPs. If United does not supplement by August 7, the HCPs deem this issue ripe for a motion to compel.

INTERROGATORY NO. 11:

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

Summary of meet and confer efforts: Our initial response was that this request was premature as we had not yet filed an answer. We also objected that contention interrogatories may only require “material facts” in support of affirmative defenses rather than “all facts” and cited to case law supporting this. We set forth our position again on the call, and you reserved the right to review what

we consider to be material facts and ask for supplementation if they don't deem our response satisfactory. You agreed to limit the request from July 2017 to present, but reserved the right to seek information from further back. United intends to supplement this response.

HCPs: We discussed United's citation to California federal court cases for its objections to contention interrogatories. I asked you to provide Nevada specific case law as it is my understanding that Nevada courts do not agree on this point. I do not recall that you provided that specific legal authority since our call, but please let me know if I have overlooked it. Therefore, at this point without applicable legal authority to narrow the request, the HCPs' position is that United needs to respond to the request as stated. When does United intend to supplement? Further, we both agreed that if the HCPs deem that supplement unsatisfactory, the issue will be ripe for a motion to compel. We will not again ask for supplementation.

INTERROGATORY NO. 13:

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

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

HCPs: This information is long overdue. When does United intend to supplement?

INTERROGATORY NO. 14:

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

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

HCPs: I don't recall saying that "if there are thousands maybe it is overbroad" in terms of a specific agreement that this request is overbroad. You conveyed that United has not looked for this information and did not know one way or the other whether there are responsive documents so how could it say it is unduly burdensome? If United does not supplement by August 7 or provide a reasonable certain date by which it will do so, the HCPs deem this issue ripe for a motion to compel.

REQUESTS FOR PRODUCTION

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

The Health Care Providers (HCPs) comments in green; however, the HCPs are not repeating every point of discussion during the telephonic discussions and do not waive any argument not stated below.

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

Summary of meet and confer efforts: As stated on our call, regarding emails generally, we intend to move for PO to ask court to enter our email protocol or a version of it. We believe the best way to deal with email issues is to have protocol in place. Regarding market data, production, we are discussing and will provide a timeline for production of market data if our client agrees.

HCPs: There is no basis for United to refuse to produce responsive documents. United also has no basis to withhold producing emails, especially the 100,000 in your Firm’s current possession to which you have started reviewing. There is currently no protective order that would provide for an email protocol in place and United hasn’t moved for such relief. The ongoing refusal by United to participate in discovery in good faith is concerning.

United’s List of Witnesses: To date, United has not identified a single witness from any of the defendants in its 16.1 disclosures. We stated that this needs to be supplemented. You noted that you already raised this issue with your client and it is something you are working on. You expressly agreed to a deadline of July 27th. The date has come and gone. What is the status of this?

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

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

HCPs: Confidentiality that may be provided for in a statute in terms of submission of information to the Division of Insurance does not allow United to refuse to use that as a bar to relevant discovery. Please clarify what appears to be a conflicting message that United is standing on its objection **and** that it will supplement “if we discover, relevant documents” for the period 2015 - July 2017 (which does not indicate that United is actually undertaking search efforts).

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

Summary of meet and confer efforts: We objection on the basis of, among other things, overbreadth and undue burden, since all 15,210 claim files would have to be reviewed to respond to this. Fremont has still not responded to United’s compromise proposal of only producing correspondence for the appealed

claims since those claims are the most likely to contain correspondence and non-appealed claims are unlikely to contain correspondence. We will review our response and determine whether United will supplement.

HCPs: The HCPs made it clear during the July 20 meet and confer that we did not agree to the above proposal because United's attempt to limit discovery to a subset of what United has called the "administrative record" and efforts to put boundaries around this case as though it is governed by ERISA is unfounded and contrary to the Court's June 24 Order. A substantive response is long overdue. If United does not supplement by August 7 or provide a reasonable certain date by which it will do so, the HCPs deem this issue ripe for a motion to compel.

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

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

HCPs: As we discussed during the meet and confer, these requests are not limited to specific data about the at-issue claims. A plain reading makes that clear and United's attempt to narrow them and point back to the "administrative record," that it then in turn refuses to produce, is not supported. You also state there are no "policies or procedures" (to which the HCPs do not know whether United is using some undisclosed definition that it is using as a basis to deny the existence of documents), but these requests are not limited to "policies or procedures." I also note that United does not deny that there are other responsive categories of documents. By way of further discussion, RFP No. 6 would include documents or communications related to United's stated, and later implemented, strategy, determination, decision to reduce reimbursement claims. As noted on our call, RFP No. 7 would include, among other things, valuations analytics, spreadsheets and memoranda. United's proposed email protocol only further serves to delay discovery the HCPs are entitled to receive, and United is obligated to disclose; and to try to improperly shift the discovery burden to the HCPs. We deem this issue ripe for a motion to compel.

RFP No. 8: Non-responsive answer.

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

HCPs: The HCPs object to a unwarranted limitation of the term "dealings." As discussed, this request is aimed at determining whether United will rely on a prior course of business dealings to establish entitlement to pay less than the HCPs billed charges, or any course of business dealings that is relevant to the amount United has paid for any of the at-issue claims. If United does not supplement by August 7, we deem this issue ripe for a motion to compel.

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

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

HCPs: United's interpretation ignores the plain language of the request which is clear it asked for methodology as stated. For United to assert that there may be no documents "beyond health plans that guides United's determination on how to pay" is bordering on bad faith. The ongoing refusal by United to participate in discovery in good faith is concerning. If United does not supplement by August 7, we deem this issue ripe for a motion to compel.

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

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

HCPs: The HCPs made it clear during the July 20 meet and confer that we did not agree to the above proposal because United's attempt to limit discovery to a subset of what United has called the "administrative record" and efforts to put boundaries around this case as though it is governed by ERISA is unfounded and contrary to the Court's June 24 Order. This request is also relevant because United has produced documents that indicate it considers amounts it has negotiated with in-network providers in connection with reimbursement of out of network emergency services. As stated on our call, this information is also relevant because if you are paying another provider the same amount the HCPs charge, it refutes your argument that the HCPs are charging too much. With respect to RFP No. 15, you stated on our call that you intended to discuss with your client. Are you now standing on your objections? Regarding RFP No. 17, you stated that you did not know if United looked to see if there is anything out what United has characterized as the "administrative record" which does not meet United's discovery obligations. You also stated that you did not know whether you have ever pulled any of the Fremont claims. The HCPs also explained why non-participating provider information is discoverable during our July 20 meet and confer. A substantive response is long overdue. If United does not supplement by August

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7 or provide a reasonable certain date by which it will do so, the HCPs deem this issue ripe for a motion to compel.

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

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

HCPs: While I did identify specific categories of documents which would be responsive to this request, the request was not limited to such documents. If United does not supplement by August 7 or provide a reasonable certain date by which it will do so, the HCPs deem this issue ripe for a motion to compel.

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

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

HCPs: If United does not supplement by August 7 or provide a reasonable certain date by which it will do so, the HCPs deem this issue ripe for a motion to compel.

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

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

HCPs: United's attempt to re-write this request and limit it to your quoted language is not supported and is pure gamesmanship. During our discussions I provided an example of what might be expected to be in United's files, but I made it clear I was not limiting any request by stating an example. I also stated during the call that the HCPs do not know what terms or terminology United affixes, assigns or calls any of its materials but United is obligated to produce the information if it exists. If United does not supplement by August 7 or provide a reasonable certain date by which it will do so, the HCPs deem this issue ripe for a motion to compel.

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

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

HCPs: It is difficult to fathom that United would not have documents responsive to this request. We also did not limit it to the descriptors that you state above but merely provided examples of types of documents that would be expected to be in United’s files. If United does not supplement by August 7 or provide a reasonable certain date by which it will do so, the HCPs deem this issue ripe for a motion to compel.

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

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

HCPs: The relevant statutory chapters are: NRS Chapters 679A, 679B, 680A, 683A, 683C, 684A, 686B, 686C, 689A, 689B, 689C, 694C, 695C, 695G and include the related NAC chapters as well as any related guidelines. As I indicated during the call, evaluations or analyses of NV statutes are not necessarily entitled to privilege or work product protection. In the event United makes such assertions, we expect United will provide an appropriate privilege log.

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

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

HCPs: If United does not supplement by August 7 or provide a reasonable certain date by which it will do so, the HCPs deem this issue ripe for a motion to compel.

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

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

uncover responsive documents. Our current understanding is that any documents would be publicly available.

HCPs: The HCPs dispute that the information sought is “publicly” available, but if United thinks it is, please supplement with the location United believes it can be obtained. In addition, as I noted on our call, if United has engaged a third party to gather this information, this would also fall into the scope of responsive documents. If United does not supplement by August 7 or provide a reasonable certain date by which it will do so, the HCPs deem this issue ripe for a motion to compel.

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

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

HCPs: United’s proposed email protocol only further serves to delay discovery the HCPs are entitled to receive, and United is obligated to disclose; and to try to improperly shift the discovery burden to the HCPs. It is also difficult to believe that there are literally no internal emails responsive to this request. And how can United indicate there are none when it has refused to undertake a complete retrieval, search or review of emails?

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

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

HCPs: United’s proposed email protocol only further serves to delay discovery the HCPs are entitled to receive, and United is obligated to disclose; and to try to improperly shift the discovery burden to the HCPs. United has asserted defenses that the HCPs’ rates are not reasonable; as a result, this is discoverable information. As to the market data, if United does not supplement by August 7 or provide a reasonable certain date by which it will do so, the HCPs deem this issue ripe for a motion to compel.

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

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

HCPs: If United does not supplement by August 7 or provide a reasonable certain date by which it will do so, the HCPs deem this issue ripe for a motion to compel.

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

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

HCPs: I agreed to a 2017-present timeframe during our discussions, with the caveat that we are not waiving the right to seek documents prior to that time. Additionally, we discussed whether the HCPs would initially agree to narrow the request to complaints of fraud and other assertions about wrongful, unlawful or unjustified payments. I explained that I did not want United to limit any search to just "fraud" and was not agreeing to such a limitation and I noted we would review the documents and reconvene. Indeed RFP No. 41 uses the term "appropriateness" of the reimbursement rates. If United does not supplement by August 7 or provide a reasonable certain date by which it will do so, the HCPs deem this issue ripe for a motion to compel.

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

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

HCPs: We are not willing to limit it to HCPs; based on the allegations, we are entitled to the information as requested. If United does not supplement by August 7 or provide a reasonable certain date by which it will do so, the HCPs deem this issue ripe for a motion to compel.

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

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

HCPs: On our call, you were unable to answer the question of whether there were different policies in place across different regions or across providers. I stated that if you go back to your client and find out that there are different policies based on region, we can discuss the prospect of limiting the request. What is the status of this information? If United does not supplement by August 7 or provide a reasonable certain date by which it will do so, the HCPs deem this issue ripe for a motion to compel.

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

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

HCPs: This includes more than market data, as I stated on our call, as it asks for documents and communications. Colby expressly stated he would get back to us on whether there were higher level memos, analyses and/or summaries. United has a discovery obligation to identify and search custodians that have this information. If United does not supplement by August 7 or provide a reasonable certain date by which it will do so, the HCPs deem this issue ripe for a motion to compel.

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

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

HCPs: United has asserted defenses that the HCPs' rates are not reasonable; as a result, this is discoverable information. This includes more than market data as it asks for documents and communications. United has a discovery obligation to identify and search custodians that have this information. If United does not supplement by August 7 or provide a reasonable certain date by which it will do so, the HCPs deem this issue ripe for a motion to compel.

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

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

HCPs: If United does not supplement by August 7 or provide a reasonable certain date by which it will do so, the HCPs deem this issue ripe for a motion to compel.

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

HCPs: Is there an update? Colby said he was positive the number was in his inbox and that he would provide that number to us. That was nearly two weeks ago.

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

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

HCPs: If United does not supplement by August 7 or provide a reasonable certain date by which it will do so, the HCPs deem this issue ripe for a motion to compel.

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

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

HCPs: The objection is without support. United is obligated to identify custodians and search. Alternatively, the HCPs suggest that United consider a stipulation that will then preclude it from asserting any argument or defense concerning Medicare reimbursement rates. If you do not agree to stipulate, we will seek this relief as a sanction for your refusal to produce responsive documents.

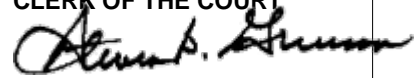
RFP No. 45: when does United intend to supplement this response now that the Answer is on file?

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

HCPs: What is the status of this?

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57



RPLY

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-19-792978-B

Dept. No.: 27

**REPLY IN SUPPORT OF DEFENDANTS'
MOTION TO COMPEL PRODUCTION
OF CLINICAL DOCUMENTS FOR THE
AT-ISSUE CLAIMS AND DEFENSES
AND TO COMPEL PLAINTIFFS TO
SUPPLEMENT THEIR NRCP 16.1
INITIAL DISCLOSURES**

Hearing Date: October 8, 2020

Hearing Time: 1:30 PM.



1 Defendants UnitedHealth Group, Inc.; UnitedHealthcare Insurance Company; United
2 HealthCare Services, Inc.; UMR, Inc.; Oxford Health Plans LLC (Incorrectly named as “Oxford
3 Health Plans, Inc.”); Sierra Health and Life Insurance Company, Inc.; Sierra Health-Care
4 Options, Inc. and Health Plan of Nevada, Inc. (collectively, “United” or “Defendants”) hereby
5 file their Reply in support of their Motion to compel production of clinical documents for the at-
6 issue claims and defenses and to compel Plaintiffs to supplement their NRCP 16.1 initial
7 disclosures.

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

11 Dated this 7th day of October, 2020.

12
13 /s/ Colby L. Balkenbush
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Discovery in a case where Plaintiffs seek \$26 million in damages relating to over 22,000 medical claims cannot be a one-way street. As discussed at length in Defendants' Motion, Plaintiffs bear the burden to "prove that the services for which they seek additional reimbursement were actually performed as billed."¹ None of the arguments in Plaintiffs' Opposition justify denying Defendants discovery of the Clinical Records² for the very claims that *Plaintiffs* specifically put at issue.

Plaintiffs' leading argument in their Opposition is that Defendants failed to adequately meet and confer prior to filing the Motion, a purported procedural defect. Plaintiffs' argument, which tries to distract from the clear merits of Defendants' Motion, is wrong for the simple reason that Plaintiffs admit that "on February 13, 2020, the parties engaged in a meet and confer that included Fremont's response to RFP No. 6." Opposition at 6:1-2 (emphasis added). Moreover, according to Defendants' billing records, the February 13, 2020 meet and confer call lasted 1 hour and 36 minutes, which is more than sufficient to satisfy EDCR 2.34 and NRCPP 37(a)(1).

Plaintiffs' substantive arguments are equally unpersuasive. In fact, many of Plaintiffs' arguments against producing documents sought in Request No. 6 were *raised for the very first time* in their Opposition. Because Plaintiffs did not previously raise such objections in the nearly **18 months** since Request No. 6 was served, the Court need not even consider those arguments. NRCPP 34(b)(2)(B). But even if the Court were to consider these new objections, each is erroneous for the reasons discussed *infra*.

Plaintiffs' attempt to distract the Court from the merits of Defendants' Motion by arguing that "United has already admitted it has clinical records in its possession" and Defendants'

¹ See Motion at p. 12 (citing *Sacred Heart Health Sys., Inc. v Humana Military Healthcare Serv.'s, Inc.*, No. 3:07-cv- 00062-MCR-EMT at *32 (N.D. Fla. Mar. 30, 2012)).

² All defined terms have the same meaning as in Defendants' moving brief.



1 Motion is “retaliatory.” As Plaintiffs know, they alone possess the full Clinical Records needed
2 to test the representations in their disputed claim forms. And Defendants served Request No. 6
3 on June 28, 2019, which was 16 months before the Court’s September 9, 2020 Order on
4 Plaintiffs’ Motion to Compel and nearly 18 months before Defendants’ present Motion—
5 Defendants have pursued discovery of the Clinical Records for nearly 18 months. There is
6 nothing retaliatory about Defendants’ request for documents responsive to Request No. 6.

7 Plaintiffs also incredibly argue that, because Defendants admit in their Answer that they
8 made partial payments on certain of the at-issue claims, Defendants waived their right to contest
9 that Plaintiffs have actually performed the medical services as billed. Opposition at pp. 9-11.
10 However, a lawsuit by healthcare providers, such as Plaintiffs, seeking additional reimbursement
11 for previously paid claims necessarily puts at issue the accuracy of those claims, which
12 Defendants have a due process right to contest. Defendants’ Answer specifically “denie[d] any
13 allegation, implicit or explicit . . . that any services Plaintiffs provided qualify as ‘emergency’
14 services and denies that Plaintiffs provided any “valuable” service to Defendants, Answer at ¶¶
15 217-222, and Defendants’ affirmative defenses challenge Plaintiffs’ procedure coding based on
16 the services allegedly performed for the at-issue claims. (Answer at Affirmative Defense Nos.
17 24-25). There is no lawful basis to find that, by merely making partial payment on a claim from
18 a healthcare provider, Defendants have knowingly and intentionally relinquished their rights to
19 contest whether the services allegedly performed by the provider were in fact performed or
20 whether the coding of those services complies with applicable legal and industry requirements.
21 There is simply no lawful basis to deny Defendants the due process right to challenge the
22 accuracy of the at-issue claims in the Claims Spreadsheet.³ With respect to Plaintiffs’ reliance
23 on the Nevada prompt pay statutes (Opposition at pp. 9-10), those arguments are misplaced:
24 there is not a single Nevada case or anything in the statutes’ legislative history that interprets the
25 prompt pay statutes to restrict discovery in civil litigation. And, as discussed in Section II(D),
26

27 ³ “Whether there has been a waiver is a question for the trier of facts.” *Mahban v. MGM Grand Hotels,*
28 *Inc.*, 100 Nev. 593, 596-97, 691 P.2d 421, 424 (1984).



1 *infra*, the parties have diverging factual positions on the application of the Nevada prompt pay
2 statutes thus necessitating discovery, including discovery of the Clinical Records. At bottom,
3 Nevada's prompt pay statutes have no bearing on whether Defendants are entitled to discovery of
4 Plaintiffs' Clinical Records.

5 Finally, while Plaintiffs reference market data as being a helpful component in
6 determining the "reasonable value" of services provided for the at-issue claims in the Claims
7 Spreadsheet (Opposition at pp. 11-13), neither Plaintiffs nor Defendants can carry their burden of
8 proof with *only* market data. Motion at pp. 12-15. And this is self-evident: If Plaintiffs have
9 been up-coding services under "emergency" CPT codes as Defendants contend, then market data
10 for emergency CPT codes will be both irrelevant and misleading. Defendants are entitled to "go
11 beyond the claim forms" and "challenge the validity of the individual claims" through other
12 evidence, including claim-specific records, even if partial payment was already made on some of
13 these claims.⁴

14 For all these reasons and those set forth below, Defendants' request that this Court order
15 Plaintiffs to produce the Clinical Records for the at-issue claims in the Claim Spreadsheet
16 (FESM000344). Plaintiffs should also be required to produce the EOBs and PRAs that support
17 the damage calculations in the Claim Spreadsheet, as such documents should have been
18 produced with their initial disclosures. *See* Section II(H), *infra*.

19 **II. LEGAL ARGUMENT**

20 **A. Defendants Satisfied Their Meet and Confer Obligations.**

21 Tellingly, Plaintiffs' primary argument does not address the merits of Defendants'
22 discovery request, but rather argues that the Court should not decide the Motion because
23 Defendants allegedly failed to adequately meet and confer. Opposition at pp. 5-7. A cursory
24 review of Plaintiffs' counsel's declaration reveals this contention is inaccurate. *See* Exhibit 4 to
25

26
27 ⁴ *Sacred Heart Health Sys., Inc. v Humana Military Healthcare Serv.'s, Inc.*, No. 3:07-cv-00062-MCR-
28 EMT, at 8, 11 (N.D. Fla. Oct. 21, 2011)).



1 Opposition. In her declaration, Plaintiffs' counsel makes the following admission: "On February
2 13, 2020, the parties engaged in a meet and confer that included Fremont's response to RFP No.
3 6." *Id.* at ¶ 4. RFP No. 6 is the request at issue in this Motion. For this reason alone, the
4 requisite conferral requirements of EDCR 2.34 and NRCP 37 have been met.

5 Moreover, after the February 13, 2020 meet-and-confer, Defendants' counsel sent
6 Plaintiffs' counsel an email summarizing the discussion and stating "*Defendants will be filing a*
7 *motion to compel Fremont's response to Request for Production No. 6.*" Exhibit 4 to Motion
8 (emphasis added). Plaintiffs' counsel responded that Plaintiffs intended to supplement their
9 responses to certain document requests—RFP Nos. 15 and 16, for example—but made no
10 mention of any forthcoming compromise regarding Request No. 6. *Id.* **Exhibit A** (Feb. 20 email
11 from Plaintiffs' counsel). For this reason, too, the requisite conferral requirements of EDCR
12 2.34 and NRCP 37 have been met.

13 Plaintiffs' next complaint⁵ is that even if RFP No. 6 was discussed during the February
14 13, 2020 meet and confer, the conferral did not address every single argument raised in
15 Defendants' Motion and thus the meet and confer was inadequate. This argument is entirely
16 unsupported by the text of EDCR 2.34 and NRCP 37, which do not require that the parties
17 exchange unfiled briefs or discuss every conceivable argument that may be raised in relation to a
18 particular discovery request to satisfy the meet and confer requirement. Rather, all that is
19 required is a "good faith . . . attempt[] to confer with the person or party failing to make the
20 disclosure or discovery in an effort to obtain it without court action." NRCP 37(a)(1).
21 Defendants' counsel clearly satisfied this requirement. Indeed, according to Defendants'
22 counsel's billing records, the meet and confer call lasted 1 hour and 36 minutes. **Exhibit B**
23 (Balkenbush Declaration in Support of Reply).

24
25 ⁵ Plaintiffs contend that Defendants never adequately responded to Plaintiffs' February 10, 2020 proposal
26 that is described in footnote 4 of the Opposition. However, this discovery proposal had nothing to do
27 with the request for discovery of the Clinical Records that is the subject of this Motion. Opposition at fn.
28 4. Rather, the February 10 proposal was made in response to Defendants' objection that it was unduly
burdensome to produce the administrative records for all 22,153 at-issue claims.



1 **B. Plaintiffs' Waiver and Prompt Pay Statute Arguments Have Been Waived As**
2 **These Objections Were Never Asserted in Their Formal Objections to**
3 **Request No. 6.**

4 The grounds for objecting to a request for production must be stated “with specificity,
5 including the reasons.” NRCP 34(b)(2)(B) (emphasis added). This portion of NRCP 34 is
6 identical to Federal Rule of Civil Procedure 34 and thus case law interpreting that rule is strong
7 persuasive authority. Nevada federal district courts have repeatedly found that submitting non-
8 specific boilerplate objections will result in the waiver of any valid objections a party may have.
9 See e.g., *Gurshin v. Bank of Am., N.A.*, No. 215CV00323GMNVCF, 2017 WL 4248130, at *2
10 (D. Nev. Sept. 25, 2017); *Resendez v. Smith's Food & Drug Centers, Inc.*, No. 2:15-CV-00061-
11 JAD, 2015 WL 1186684, at *2 (D. Nev. Mar. 16, 2015) (“Boilerplate, generalized objections are
12 inadequate and tantamount to not making any objection at all.”).

13 Here, Plaintiffs' objections to Request No. 6 do not mention (1) that because Defendants
14 already have the Clinical Records in their possession Plaintiffs need not produce documents
15 responsive to Request No. 6, (2) Defendants' alleged waiver of the right to contest performance
16 of the alleged medical services, or (3) Nevada's prompt payment statutes—arguments that form
17 the basis of much of Plaintiffs' Opposition. See Exhibits 2 and 6 to Motion (Plaintiffs' original
18 response and supplemental response to Request No. 6). Therefore, since these objections were
19 never stated with specificity, they have been waived and their merits should not even be
20 considered by the Court.

21 **C. Plaintiffs' Waiver Argument is Without Merit.**

22 Plaintiffs repeatedly insist that this case only involves a dispute over the amount of
23 payment due for the medical services that they allegedly rendered to members of health plans
24 administered or insured by Defendants. Opposition at p. 2. That is undoubtedly Plaintiffs'
25 preference but they do not, alone, define the scope of the litigation and the necessary discovery.
26 Defendants have the due process right to contest Plaintiffs' factual allegations as well as the right
27 to assert defenses that shape the scope of the legal dispute and the attendant discovery.

28 Because this lawsuit necessarily puts at issue Plaintiffs' performance and reporting of the





1 services for which they seek more money from Defendants, they bear the burden of identifying
2 some extraordinary circumstance that would entitle them to a categorical finding that they
3 performed and properly reported all of the services alleged in the Claims Spreadsheet. Plaintiffs,
4 knowing they cannot satisfy this burden without claim-specific discovery of their Clinical
5 Records, raise boiler-plate waiver and estoppel arguments contending that Defendants waived
6 their right to contest that the services for the at-issue claims in the Claim Spreadsheet.
7 Opposition at pp. 9-10. But having placed the claims in the Claims Spreadsheet at issue,
8 Plaintiffs cannot now contend that it is too late for Defendants to challenge them. In the guise of
9 a discovery objection, Plaintiffs effectively ask the Court to grant them summary judgment on
10 the question of their performance and on the Affirmative Defenses that Defendants asserted in
11 their Answer.

12 As a threshold matter, Plaintiffs' waiver argument is entirely inconsistent with the
13 equitable principle of waiver—"waiver is an intentional relinquishment of a known right. To be
14 effective, a waiver must occur with full knowledge of all material facts." *State, Univ. & Cmty.*
15 *Coll. Sys. v. Sutton*, 120 Nev. 972, 987, 103 P.3d 8, 18 (2004). In its Answer, United expressly
16 denied, among many other things, that the Plaintiffs provided a "benefit" to Defendants and
17 denied that Plaintiffs' billed services qualify as "emergency services," stating:

18 United . . . specifically denies that any services Plaintiffs provided
19 conferred a benefit on United. United denies any allegation, implicit or
20 explicit, in Paragraph 218, that any services Plaintiffs provided qualify as
"emergency" services.

21 Answer at ¶ 218; *see also* Answer at ¶¶ 217-222 (denying that the services allegedly
22 provided by Plaintiffs were "valuable" and repeatedly denying that these services qualify as
23 "emergency" services). Similarly, Defendants' affirmative defenses expressly contend that
24 Plaintiffs billed their services under CPT codes that Plaintiffs' clinical records will show to have
25 been improperly submitted. Thus, rather than "waiving" their right to contest that the services
26 Plaintiffs claim to have performed were actually performed, Defendants have expressly
27
28

1 preserved this right.⁶

2 Indeed, to the extent any doubt remains in the Court's mind as to whether some type of
3 waiver occurred, the Nevada Supreme Court has held that "[w]hether there has been a waiver is a
4 question for the trier of facts." *Mahban v. MGM Grand Hotels, Inc.*, 100 Nev. 593, 596-97, 691
5 P.2d 421, 424 (1984) (emphasis added) (holding that genuine issues of material fact existed on
6 the waiver and estoppel issues). Plaintiffs have not been granted summary judgment on the issue
7 of whether Defendants, by making partial payment on certain claims for reimbursement that
8 were submitted by Plaintiffs, waived their right to contest performance of the reported medical
9 services if and when Plaintiffs sued them to seek additional payments. Therefore, Plaintiffs
10 cannot resist discovery aimed at determining whether they actually performed the services listed
11 on the Claims Spreadsheet that they have put at issue in this lawsuit.

12 NRS 48.105 also bars Plaintiffs from even making such a waiver argument. That statute
13 provides that evidence of furnishing or offering to furnish "a valuable consideration in
14 compromising or attempting to compromise a claim which was disputed as to either validity or
15 amount, is not admissible to prove liability for or invalidity of the claim or its amount." In
16 interpreting this statute, the Nevada Supreme Court has held that "[a]n offer of compromise is an
17 offer by one party to settle a claim where an actual dispute or a difference of opinion exists at the
18 time the offer is made." *Davis v. Beling*, 128 Nev. 301, 311, 278 P.3d 501, 509 (2012) (internal
19 quotations omitted). By their discovery objections, Plaintiffs are attempting to use Defendants'
20 partial payments on their claims for reimbursement in exactly the way that NRS 48.105
21 prohibits—to establish that by paying some amount on disputed claims Defendants have waived
22 the right to contest the validity of the claims themselves or the amount due and payable.
23 Therefore, NRS 48.105 bars Plaintiffs from using Defendants' compromise payments on
24

25 ⁶ In addition, Plaintiffs attached two example provider remittance advices ("PRAs") as Exhibit 2 to their
26 Opposition. These documents show the amount Plaintiffs charged on a particular claim for
27 reimbursement and the amount paid by United. Nowhere in these documents is there any statement,
28 express or implied, that United is waiving its right to contest that Plaintiffs actually provided the service
they claim to have provided in their claim forms.



1 disputed claims to establish the validity of the claims themselves.

2 In addition to being (1) a disputed question of fact and (2) barred by NRS 48.105,
3 Plaintiffs' waiver argument is wholly illogical and disapproved by prevailing case law. The
4 argument is based on portions of Defendants' Answer where United admits that, at some point in
5 time between July 1, 2017 to July 31, 2019, Plaintiffs provided *some* services to Defendants'
6 health plan members and Defendants made *some* payments to Plaintiffs based upon Plaintiffs'
7 submissions of some claims for reimbursement to Defendants. Opposition at 4:9-19; Answer at
8 ¶¶ 26, 193, 194, 196. In the *Sacred Heart* case attached as Exhibit 7 to Defendants' Motion, that
9 court was explicit in holding that a medical provider's submission of a bill for services, and an
10 insurer's partial payment of that bill, does not *prove* that those services were actually
11 performed. The *Sacred Heart* court stated as follows:

12 [b]ecause Plaintiffs have placed in issue the individual claims for which they were
13 paid previously and **Plaintiffs will be required to demonstrate that they**
14 **performed** the services identified in the individual claim forms – and **not just**
15 **that they Plaintiffs reported the services** – as a matter of due process Defendant
16 should be entitled to investigate and, if appropriate, seek recoupment of any
monies paid to Plaintiffs for services not provided or for monies paid for services
for which Plaintiffs were not entitled.

17 *Sacred Heart Health Sys. Inc. v. Humana Military Healthcare Serv. 's Inc.*, No. 3:07-cv-00062-
18 MCR-EMT at *32 (N.D. Fla. Oct. 21, 2011) (emphasis added). And this result is the same in
19 other contexts. *See e.g.*, 4A Bruner & O'Connor Construction Law § 13:34 (in the construction
20 context, a developer's payment of a contractor's invoice does not constitute final acceptance of
21 the contractor's work or bar the developer from later challenging whether the work was actually
22 performed). Plaintiffs therefore cannot resist discovery of the Clinical Records underlying their
23 22,153 claims for underpayment because partial payment was made on certain at-issue claims in
24 the Claims Spreadsheet.

25 **D. Nevada's Prompt Pay Statutes Do Not Bar Discovery of Plaintiffs' Clinical**
26 **Records.**

27 Plaintiffs also argue that Nevada's insurance prompt payment statutes bar the discovery
28 Defendants are seeking and cite to NRS 683A.0879, 689A.410, 689B.255, 689C.485, 695C.185,



1 and NAC 686A.675. However, Plaintiffs misunderstand both the text and purpose of these
2 statutes. First, the statutes say nothing about the concepts of waiver or written discovery in civil
3 litigation.⁷ These statutes do nothing to help Plaintiffs.

4 Rather, they are primarily administered by the Nevada Insurance Commissioner. If the
5 statutes are violated, the penalties include payment of interest on the overdue claim, fees and
6 costs to the prevailing party and revocation of an insurers' certificate of registration. *See e.g.*,
7 NRS 683A.0879(1), (5), (8). The statutes say nothing about barring litigation on the merits of a
8 disputed claim for reimbursement as a penalty for failing to make prompt payment. In other
9 words, the statutes do not impact Defendants' ability to contest whether Plaintiff actually
10 performed and properly reported the services described in the disputed claims.

11 Second, the prompt pay statutes require prompt payment once a claim has been
12 "approved" and deemed "fully payable." *See e.g.*, NRS 683A.0879(1) ("if the claim is approved,
13 the administrator shall pay the claim within 30 days after it is approved."); NRS 683A.0879(4)
14 ("[a]n administrator shall not pay only part of a claim that has been approved and is fully
15 payable."). The statutes have no application if claims are disputed, denied or partially denied.
16 Here, Defendants expressly deny Plaintiffs' prompt payment allegations in their Answer,
17 including Plaintiffs' allegation that Defendants had "approved" Plaintiffs' claims and deemed
18 them "fully payable." *See Answer at ¶¶ 236-242.*⁸

19 Third, Nevada's prompt pay statutes were created to incentivize insurers to make prompt
20 payments on fully approved claims through the use of the aforementioned statutory penalties. If
21 payment of any amount on a disputed claim for reimbursement was deemed to be an "approval"
22 of the entire claim and a waiver of the insurer's right to contest that the medical service was
23

24 ⁷ Notably, there is not a single Nevada District Court or Nevada Supreme Court case interpreting *any* of
25 these statutes, most of which have been in place since at least 1999. No Nevada court has ever relied on
these statutes to restrict discovery in civil litigation.

26 ⁸ Plaintiffs argue that a prompt pay violation has already been *proven* for all 22,153 at-issue claims and
27 that this violation bars Defendants' discovery requests. Opposition at pp. 9-10. Plaintiffs have "proven"
28 nothing—this issue may not be resolved on a discovery motion.



1 actually performed, insurers would quickly cease paying claims within 30 days, begin
2 conducting full clinical record audits of every claim submitted, and massive delays in claims
3 processing would ensue, to the detriment of patients and healthcare providers alike. Such a
4 disruptive result would violate the Legislature's intent. The Court should reject Plaintiffs'
5 contrived interpretation of these statutes and order the Clinical Records to be produced.⁹

6
7 **E. Defendants Do Not Possess All of the Requested Clinical Records for the**
8 **Disputed Claims.**

9 Plaintiffs vaguely argue that Defendants "have access to the clinical records" and thus
10 discovery of the Clinical Records from Plaintiffs is unnecessary. Opposition at p. 8. The Court
11 should reject this sham argument. Defendants do not possess the critical evidence—namely, the
12 full Clinical Records—necessary to test Plaintiffs' representations that they performed the
13 disputed services for the at-issue claims in the Claims Spreadsheet. And the implication of
14 Plaintiffs' argument that Defendants have all of the Clinical Records is misleading. Based on
15 Defendants' review of the administrative records they have located to date, Plaintiffs' claims for
16 reimbursement were often submitted without any supporting clinical records, or, at best, with
17 minimal supporting clinical records. Notably, despite vaguely alleging that these Clinical
18 Records may already be in Defendants' possession, Plaintiffs' never affirmatively state that they
19 have already produced the Clinical Records to Defendants. Plaintiffs avoid such a statement
20 because it would be provably false. Defendants have a due process right to contest the accuracy
21 of Plaintiffs' claims by offering the primary-source Clinical Records in Plaintiffs' possession that
22 impeach the accuracy of those claims. Plaintiffs cannot avoid their discovery obligation with
23 vague unfounded allegations that Defendants already have these documents. This is a classic
24 example of a non-specific boilerplate objection that should be deemed waived. *See e.g., Cooley*
25 *v. Marshal*, No. 209CV00559RLHGWf, 2012 WL 13066395, at *1 (D. Nev. Jan. 4, 2012)

26
27 ⁹ Defendants continue to contend that Nevada's prompt pay statutes are preempted by ERISA, as they
28 attempt to regulate the processing of claims, but will not reiterate that argument here. *See e.g.,*
Defendants' Petition for Writ of Prohibition or, Alternatively, Mandamus at pp. 26-27.



(overruling a plaintiff's objection that the requested documents were already in defendant's possession because the plaintiff had failed to identify the specific documents with particularity).

F. Neither Plaintiffs Nor Defendants Can Carry Their Burden of Proof With Only Market Data.

Plaintiffs argue that discovery of the Clinical Records is not needed because unjust enrichment damages are measured by the "market value" of the services provided. Opposition pp. 11-13. Thus, the argument goes, all that is needed to establish market value is the market data showing what the going rate is for the medical services Plaintiffs billed to Defendants. *Id.*

This argument misses the point. Market data on what Defendants pay, and what Plaintiffs accept, for services billed under certain CPT codes for emergency medical services, is irrelevant if the CPT code was improperly submitted because the service actually provided was not an "emergency" service.

Again, Defendants have not waived their right to contest the accuracy of the CPT codes submitted by Plaintiffs, but have rather expressly disputed the accuracy of the submitted codes. *See Answer at ¶¶ 217-222 and Affirmative Defense No. 24* (expressly disputing that the services allegedly provided by Plaintiffs qualify as "emergency" services and disputing the accuracy of the submitted CPT codes).

Thus, for market data to be useful and for the market value of Plaintiffs' services to be determined, it must first be determined whether Plaintiffs actually performed the services they claim to have performed and, if so, the proper CPT coding for the services that were performed. Performance and coding are the issues that Defendants seek to address through discovery of the Clinical Records.

Finally, while Plaintiffs focus on the concept of "market value," this is only one of four ways to measure unjust enrichment damages. The Nevada Supreme Court has adopted the Restatement's position on measuring unjust enrichment damages. *See Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 380, 283 P.3d 250, 256 (2012) (citing extensively to § 49(3) of



1 the Restatement (Third) of Restitution and Unjust Enrichment, which discusses how to measure
2 unjust enrichment damages).¹⁰

3 The Restatement states as follows:

4 Enrichment from the receipt of nonreturnable benefits may be
5 measured by

6 (a) the value of the benefit in advancing the purposes of the
7 defendant,

8 (b) the cost to the claimant of conferring the benefit,

9 (c) the market value of the benefit, or

10 (d) a price the defendant has expressed a willingness to pay, if
11 the defendant's assent may be treated as valid on the question of
price.

12 Restatement (Third) of Restitution and Unjust Enrichment § 49(3) (2011). If these measures of
13 enrichment yield different results, which measure to use turns on, among other things, where the
14 benefit conferred was "solicited" or "unsolicited," and whether the recipient of the benefit is
15 "innocent" or has acted wrongfully to obtain the benefit. *Id.* at §§ 49-52. If, as Defendants
16 contend is the case here, the benefit was unsolicited and conferred on an innocent recipient,¹¹
17 unjust enrichment is measured by "the standard that yields the smallest liability for restitution."
18 *Id.* at § 50(2)(a). Further, "[t]he liability in restitution of an innocent recipient of unrequested
19 benefits may not exceed the cost to the claimant of conferring the benefits in question." *Id.* at §
20 50(4).

21 Discovery of the Clinical Records sought by Defendants is highly relevant, not only to
22 determining market value, but also to (1) determining the cost to Plaintiffs of providing the

24 ¹⁰ Plaintiffs appear to argue that *Certified Fire* held that unjust enrichment is only measured by market
25 value. This is incorrect. While the Nevada Supreme Court did use market value in that case, it do so only
because the benefit (a fire suppression sprinkler system) was clearly solicited given the relationship
between the general contractor and its subcontractor.

26 ¹¹ Plaintiffs are out-of-network providers who provided services to Defendants' health plan members.
27 Complaint at ¶ 20. Therefore, if anyone solicited a benefit from the Plaintiffs, it would be the patients
28 who were treated rather than Defendants.



1 medical services and (2) the value of the services provided in advancing the purposes of
2 Defendants. Restatement (Third) of Restitution and Unjust Enrichment § 49(3)(a) and (b).

3 **G. Plaintiffs' Opposition Essentially Concedes that Their Undue Burden and**
4 **Proportionality Objections to Request No. 6 Lack Merit.**

5 Plaintiffs' Opposition does not challenge the case law cited in Defendants' Motion
6 holding that "an objection that a discovery request is 'unduly burdensome' must be supported by
7 a declaration to carry weight." Motion at 11:1-10. Further, just as with their discovery
8 responses, Plaintiffs have failed to attach an undue burden declaration to their Opposition or
9 provide any explanation as to why producing the Clinical Records would be unduly burdensome
10 or not proportionate to the needs to this case where Plaintiffs seek over \$26 million dollars in
11 additional reimbursements. *See Jackson v. Montgomery Ward & Co.*, 173 F.R.D. 524, 528-29
12 (D. Nev. 1997) ("[A] party claiming that a discovery request is unduly burdensome must allege
13 specific facts which indicate the nature and extent of the burden, usually by affidavit or other
14 reliable evidence.").

15 Indeed, Plaintiffs have failed to meet *their own standard* for supporting an undue
16 burden/proportionality objection to discovery. In Plaintiffs' August 28, 2020 Motion to Compel
17 Defendants' Production of Claims File for At-Issue Claims, Plaintiffs argued that Defendants'
18 undue burden declaration "must be rejected as insufficient" because (1) "it does not assert that
19 claim information is not reasonably accessible" and (2) it "makes no mention of any cost."
20 Plaintiffs' Motion at 9:12-19. Here, not only do Plaintiffs lack a declaration to support their
21 undue burden/proportionality objection, but their Opposition completely fails to even *argue* that
22 the Clinical Records are not reasonably accessible and/or that retrieval of these records would be
23 too costly. Discovery is not a one-way street. Therefore, Plaintiffs' vague and unsupported
24 undue burden objection should be overruled.

25 **H. Plaintiffs Should be Required to Supplement Their Initial Disclosures by**
26 **Producing the PRAs and EOBs On Which Their Claims Spreadsheet is**
27 **Based**

28 Plaintiffs do not address Defendants' argument that the PRAs and EOBs on which
Plaintiffs' Claims Spreadsheet is based should have been produced with Plaintiffs' initial



disclosures. Motion at p. 18.. Plaintiffs, instead, admit the relevance and importance of these types of documents by attaching *previously unproduced* PRAs as Exhibit 2 to their Opposition.¹² Plaintiffs cannot withhold the documents on which their computation of damages is based and choose to only produce them when they deem it advantageous to a motion. Indeed, NRCP 37(c)(1) recognizes that if a document is relevant enough to be used in support of a motion, it should have been produced with a party's initial or supplemental NRCP 16.1 disclosures. NRCP 37(c)(1) (stating that if a party fails to produce documents required by NRCP 16.1(a)(1), "the party is not allowed to use that information or witness to supply evidence on a motion."). Plaintiffs cannot have it both ways: Plaintiffs should be ordered to produce the PRAs and EOBs on which their Claims Spreadsheet is based.

III. CONCLUSION

For all the above reasons, Defendants request an order requiring Plaintiffs to (1) produce the Clinical Records for the 22,153 claims listed in their Claims Spreadsheet (FESM000344) and (2) produce the EOBs and PRAs on which the data in the Claims Spreadsheet is based. Plaintiffs have not demonstrated that the requested documents are irrelevant or that it would be unduly burdensome to produce them given the stakes of this litigation.

Dated this 7th day of October, 2020.

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

Attorneys for Defendants

¹² These documents are not bates numbered and prior to the filing of the Opposition Plaintiffs had not produced a single PRA.



CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of October, 2020, a true and correct copy of the foregoing **REPLY IN SUPPORT OF DEFENDANTS' MOTION TO COMPEL PRODUCTION OF CLINICAL DOCUMENTS FOR THE AT-ISSUE CLAIMS AND DEFENSES AND TO COMPEL PLAINTIFFS TO SUPPLEMENT THEIR NRCP 16.1 INITIAL DISCLOSURES** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

Pat Lundvall, Esq.
Kristen T. Gallagher, Esq.
Amanda M. Perach, Esq.
McDonald Carano LLP
2300 W. Sahara Ave., Suite 1200
Las Vegas, Nevada 89102
plundvall@mcdonaldcarano.com
kgallagher@mcdonaldcarano.com
aperach@mcdonaldcarano.com
Attorneys for Plaintiff
Fremont Emergency Services (Mandavia), Ltd.

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



EXHIBIT A

002354

002354

EXHIBIT A

002355

002355

From: Kristen T. Gallagher [mailto:kgallagher@mcdonaldcarano.com]
Sent: Thursday, February 20, 2020 6:53 PM
To: Llewellyn, Brittany M.
Cc: Pat Lundvall; Amanda Perach; Balkenbush, Colby; Bowman, Cindy S.; Roberts, Lee
Subject: RE: Fremont v UHC - Request for Meet and Confer

This Message originated outside your organization.

Brittany –

In follow-up to the below, we have considered whether to supplement Fremont's responses to Requests for Admission Nos. 1, 4 and 6. Based on today's Order granting the amended motion to remand, we think that our discussion about those RFA responses are now moot. Based on our understanding of Interrogatory No. 4, this too seems to have been addressed by today's Order. If you'd like to further discuss, please let me know and we can set up a call.

We have agreed to supplement responses to RFP Nos. 15 and 16, with a target date of February 28, 2020. We are considering your request to supplement responses to RFP Nos. 14, 18 and 19 in light of today's Order and will provide you with an update.

Has your client provided input regarding the discovery proposal we forwarded on February 10?

Also, I am working to provide you a summary of the issues with Defendants' responses to discovery

for next week's scheduled meet and confer, but want to address any additional issues that may be impacted by today's Order.

Thank you,
Kristy

Kristen T. Gallagher | Partner

McDONALD CARANO

P: 702.873.4100 | E: kgallagher@mcdonaldcarano.com

From: Llewellyn, Brittany M. <BLlewellyn@wwhgd.com>

Sent: Thursday, February 13, 2020 2:56 PM

To: Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>

Cc: Pat Lundvall <plundvall@mcdonaldcarano.com>; Amanda Perach <aperach@mcdonaldcarano.com>; Balkenbush, Colby <CBalkenbush@wwhgd.com>; Bowman, Cindy S. <CBowman@wwhgd.com>; Roberts, Lee <LRoberts@wwhgd.com>

Subject: RE: Fremont v UHC - Request for Meet and Confer

Kristen,

Thank you for taking the time to speak with us today regarding your client's responses to Defendants' first set of written discovery requests. This email is intended to address the parties' agreements as to each of the requests, and also provides clarification as to Defendants' positions as requested:

Requests for Production of Documents

1. The parties have agreed to table discussions as to Requests numbered 1, 2, 4, 5, and 10, pending our client's review of Plaintiffs' discovery proposal. We will suspend follow-up on these requests until such time as Defendants have had an opportunity to evaluate this proposal and/or Plaintiffs have had an opportunity to review and evaluate any counter-proposal.
2. For Requests numbered 14, 16, 18, and 19, we have asked that Fremont supplement its responses to affirmatively state whether it is withholding any documents subject to its objections. You asked that we provide legal authority in support of Defendants' position. Defendants respond that Fed. R. Civ. P. 34 codifies Fremont's obligation to "state whether any responsive materials are being withheld on the basis of [its] objection." Fed. R. Civ. P. 34(b)(2)(C). Please also note the following recent D. Nev. Order from U.S. Mag. Judge Ferenbach addressing this issue:

A party objecting to a request for production must state its objection with specificity. See Fed. R. Civ. P. 34(b)(2)(B) ("For each item or category, the response must ... state with specificity the grounds for objecting to the request, including the reasons."), (b)(2)(C) ("An objection must state whether any responsive materials are being withheld on the basis of that objection. An objection to part of a request must specify the part and permit inspection of the rest."); see also Fischer, 2017 WL 773694, at *1 ("responses to discovery requests must: [1] State grounds for objections with specificity; [2] An objection must state whether any responsive materials are being withheld on the basis of that objection; and [3] Specify the time for production and, if a rolling production, when production will begin and when it will be concluded.").

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Caballero v. Bodega Latina Corp., 2017 WL 3174931, at *5 (D. Nev. July 25, 2017).

3. Fremont will be supplementing Requests numbered 15 and 16, with a target date of February 28th for this supplement. Defendants request that the “rolling production” referenced in Fremont’s responses be done on a regular basis so that Defendants need not meet and confer on these requests again in the future.
4. Defendants will be filing a motion to compel Fremont’s response to Request for Production No. 6.

Interrogatories

- 1. The parties have agreed to table discussions as to Interrogatory No. 1, pending our client’s review of Plaintiffs’ discovery proposal. We will suspend follow-up on this interrogatory until such time as Defendants have had an opportunity to evaluate this proposal and/or Plaintiffs have had an opportunity to review and evaluate any counter-proposal.
- 2. Defendants will be filing a motion to compel Fremont’s response to Interrogatory No. 4.

Requests for Admissions

- 1. Fremont has requested additional time to evaluate its responses to Requests for Admissions numbered 1, 4, and 6. Fremont agrees to notify Defendants by 2/20 whether it will supplement these responses or stand on its objections as stated.

Thank you,

Brittany



Brittany M. Llewellyn, Attorney
Weinberg Wheeler Hudgins Gunn & Dial
 6385 South Rainbow Blvd. | Suite 400 | Las Vegas, NV 89118
 D: 702.938.3848 | F: 702.938.3864
www.wwhgd.com | [vCard](#)

From: Kristen T. Gallagher [<mailto:kgallagher@mcdonaldcarano.com>]
Sent: Thursday, February 06, 2020 2:29 PM
To: Bowman, Cindy S.
Cc: Pat Lundvall; Amanda Perach; Roberts, Lee; Balkenbush, Colby; Llewellyn, Brittany M.
Subject: RE: Fremont v UHC - Request for Meet and Confer

This Message originated outside your organization.

Colby –

Per your request, I can discuss Fremont’s responses to written discovery on Thursday, February 13.

How is 10:30 am for you?

Kristen T. Gallagher | Partner

McDONALD CARANO

P: 702.873.4100 | E: kgallagher@mcdonaldcarano.com

From: Bowman, Cindy S. <CBowman@wwhgd.com>
Sent: Thursday, January 23, 2020 4:01 PM
To: Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>
Cc: Pat Lundvall <plundvall@mcdonaldcarano.com>; Amanda Perach <aperach@mcdonaldcarano.com>; Roberts, Lee <LRoberts@wwhgd.com>; Balkenbush, Colby <CBalkenbush@wwhgd.com>; Llewellyn, Brittany M. <BLlewellyn@wwhgd.com>
Subject: FW: Fremont v UHC - Request for Meet and Confer

Please see revised correspondence. A response is requested by February 6.

Thank you,
Cindy



Cindy S. Bowman, Legal Secretary
Weinberg Wheeler Hudgins Gunn & Dial
 6385 South Rainbow Blvd. | Suite 400 | Las Vegas, NV 89118
 D: 702.938.3841 | F: 702.938.3864
www.wwhgd.com | [vCard](#)

From: Bowman, Cindy S.
Sent: Thursday, January 23, 2020 3:43 PM
To: 'kgallagher@mcdonaldcarano.com'
Cc: 'plundvall@mcdonaldcarano.com'; 'aperach@mcdonaldcarano.com'; Roberts, Lee; Balkenbush, Colby; Llewellyn, Brittany M.
Subject: Fremont v UHC - Request for Meet and Confer

Please see attached correspondence from Colby Balkenbush.

Thank you,
Cindy

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The information contained in this message may contain privileged client confidential information. If you have received this message in error, please delete it and any copies immediately.

EXHIBIT B

002360

002360

EXHIBIT B

**DECL**

D. Lee Roberts, Jr., Esq.

Nevada Bar No. 8877

lroberts@wwhgd.com

Colby L. Balkenbush, Esq.

Nevada Bar No. 13066

cbalkenbush@wwhgd.com

Brittany M. Llewellyn, Esq.

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Telephone: (702) 938-3838

Facsimile: (702) 938-3864

*Attorneys for Defendants***DISTRICT COURT****CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-19-792978-B

Dept. No.: 27

**DECLARATION OF COLBY L.
BALKENBUSH IN SUPPORT OF
DEFENDANTS' REPLY IN SUPPORT OF
DEFENDANTS' MOTION TO COMPEL
CLINICAL DOCUMENTS FOR THE AT-
ISSUE CLAIMS**

1 I, COLBY L. BALKENBUSH, declare as follows:

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

5 2. This Declaration is submitted in support of Defendants' Reply in Support of
6 Defendants' Motion to Compel Production of Clinical Records for At-Issue Claims and Defenses
7 and to Compel Plaintiffs to Supplement Their NRCP 16.1 Initial Disclosures. I have personal
8 knowledge of the matters set forth herein and, unless otherwise stated, am competent to testify to
9 the same if called upon to do so.

10 3. On February 13, 2020, my colleague Brittany Llewellyn and I participated in a
11 meet and confer phone call with Plaintiffs' counsel Kristen Gallagher and Amanda Perach
12 regarding the sufficiency of Plaintiffs' responses to certain of Defendants' written discovery
13 requests.

14 4. On the February 13 call, we discussed request for production no. 6, which sought
15 production of clinical records, at length, but Plaintiffs' counsel did not agree to produce
16 responsive documents.

17 5. According to my billing records, the February 13 meet and confer phone call with
18 Plaintiffs' counsel lasted 1 hour and 36 minutes.

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

20 Executed: October 7, 2020.

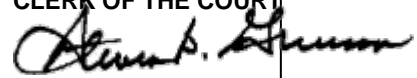
21 /s/ Colby L. Balkenbush

Colby L. Balkenbush



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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

FREMONT EMERGENCY
SERVICES (MANDAVIA) LTD.,

Plaintiff(s),

vs.

UNITED HEALTHCARE
INSURANCE COMPANY,

Defendant(s).

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

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE
THURSDAY, OCTOBER 8, 2020

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

APPEARANCES (Attorneys appeared via Blue Jeans):

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

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

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

1 **LAS VEGAS, NEVADA, THURSDAY, OCTOBER 8, 2020**

2 [Proceeding commenced at 1:30 p.m.]

3
4 THE CLERK: Good afternoon. This is Fremont Emergency
5 Services versus United Healthcare.

6 If I could please have all counsel please mute yourself until
7 it is your turn to speak. And if you could please state your name
8 each time you speak, so we can have a clear record.

9 Thank you.

10 THE COURT: Hello, everyone. This is the judge. And I'm
11 calling the case of Fremont Medical versus United Healthcare.

12 Let's take appearances, starting first with the plaintiff.

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

15 THE COURT: Thank you.

16 Other appearances for the plaintiff, please.

17 MS. LUNDVALL: Your Honor, can you hear me?

18 THE COURT: Yes.

19 MS. LUNDVALL: This is Pat Lundvall.

20 THE COURT: Yes.

21 MS. LUNDVALL: I'm sorry. You may not have heard
22 my appearance before. But Pat Lundvall, with McDonald Carano, on
23 behalf of the plaintiff Health Care Providers.

24 THE COURT: Thank you.

25 Is that all of the plaintiffs' counsel?

1 All right. Let's have defense counsel, please.

2 MR. ROBERTS: Good afternoon, Your Honor. This is Lee
3 Roberts, for the defendants.

4 THE COURT: Thank you.

5 MR. BALKENBUSH: Good afternoon, Your Honor. Colby
6 Balkenbush, also for the defendants.

7 THE COURT: Thank you.

8 All right, you guys. You know the drill. I'm in the
9 courtroom today, so no computer -- the computer doesn't have a
10 camera, so I -- it's voice-activated. So when I am speaking to you, I
11 try to look at one of the cameras. But your faces appear on the
12 screen, so when I'm looking away, it means I'm really looking at you.

13 So it makes sense to me to take the motion -- the renewed
14 motion for a stay, first.

15 MR. ROBERTS: Thank you, Your Honor. Lee Roberts. I'll
16 be addressing this on behalf of the defendant.

17 I apologize that you cannot see me on video. Blue Jeans
18 would not let me join the meeting on video, so I had to call in.

19 The Court previously heard and denied United's --

20 Did you say something, Your Honor?

21 THE COURT: No. I shuffled some paper. Sorry.

22 MR. ROBERTS: Okay. No problem.

23 Your Honor, as you know, the Court previously heard
24 United's motion for stay pending their writ in the Nevada Supreme
25 Court. And the Court denied that motion.

1 However, we've included a citation of the transcript where
2 this Court did say that if there was a briefing the Court would
3 reconsider the motion for stay -- if the Supreme Court requested
4 briefing on the issue, I would consider a brief stay for that purpose.

5 And although we had the opportunity to seek a stay from
6 the Nevada Supreme Court after this Court denied the stay, the
7 Court's comments struck us as reasonable. We understood that the
8 Court did not feel that our chances of success were very high, and
9 that even a request for briefing would not be ordered.

10 So we decided to wait to see if the Supreme Court did
11 request briefing on the writ, and if it did, make a renewed motion for
12 a stay in this court, rather than going up to the Nevada Supreme
13 Court at the time.

14 As we have set out for the Court, the Supreme Court has
15 indicated that an answering brief would be helpful to them in their
16 analysis.

17 We believe that, based on what the Court itself said at the
18 last hearing, that this does change the analysis on the likelihood of
19 success. And even though, just looking at general statistics, we
20 acknowledge that this doesn't mean that, based on statistics, we
21 have a 50/50 chance of success; we do believe that it increases the
22 likelihood of success greatly that the Supreme Court wants briefing
23 from the plaintiffs on the issues outlined in our writ petition.

24 In addition, you know, addressing some of the issues
25 raised in the opposition to our renewed motion, we don't believe

1 that those changed the analysis.

2 Again, the plaintiffs raise the fact that writ petitions are
3 rarely granted for an order denying a motion to dismiss, but
4 obviously the Nevada Supreme Court knew that this was a writ
5 petition seeking review of a Motion to Dismiss, and still ordered
6 briefing.

7 The opposition argues that our arguments misrepresent
8 the case law -- and it's fairly insulting, Your Honor, but we don't
9 need to get into that. But what they say simply isn't true. They say,
10 Oh, well, all you've seen are United's misrepresentations of the
11 cases.

12 Certainly the Supreme Court has the ability to read those
13 cases for themselves, before they order briefing. And even more
14 critically, the arguments raised below were all in front of the
15 Supreme Court. Our motion to dismiss and the opposing briefs filed
16 by the plaintiffs, which raise the very arguments they claim are
17 going to change the Supreme Court's mind, are all before the
18 Supreme Court as part of the record that went up with our writ
19 petition.

20 The Nevada Supreme Court is well aware of the context in
21 which the Court's order was issued. They're well aware of the
22 plaintiffs' arguments with regard to the case law we cited. And they
23 still ordered an answering brief.

24 In these circumstances, we believe that it would be
25 appropriate to issue a brief stay, and if nothing else, for purposes of

1 judicial economy. We've obviously been continuously seeking the
2 intervention of this Court to resolve discovery disputes. This Court
3 has spent an inordinate amount of time hearing issues from the
4 parties and will continue to spend an inordinate amount of time on
5 matters that will likely be resolved and never have to be considered
6 by this Court, if the Supreme Court grants the stay.

7 The argument that the Supreme Court is busy and this
8 stay is going to last a year, that's certainly not our experience. And
9 if, indeed, our arguments are so frivolous and can be summarily
10 disposed of by the plaintiffs with their answering brief, then certainly
11 it will not take that long for the Supreme Court to dispose of them, if
12 indeed they're correct.

13 But we don't believe they're correct. We think we have an
14 excellent chance of success, because ERISA is an area that the
15 Supreme Court has expressed interest in. This is an area of ERISA
16 which has not previously been dealt with by the Nevada Supreme
17 Court. It is an area that needs to be clarified.

18 And the argument that all of the discovery is going to be
19 needed any way really doesn't ring true, Your Honor. While they do
20 raise the possibility of discovery that would be allowable under
21 ERISA, the fact is they haven't pled ERISA claim -- that if the
22 Supreme Court grants the writ, the Supreme Court -- grants the
23 power to completely dispose of this lawsuit with leave for them to
24 amend. But whether or not they would amend to allege ERISA is
25 speculation at best.

1 If they believe that they had good claims under ERISA, if
2 they believe that they had exhausted their administrative remedies
3 under ERISA, and that the administrative records supported the
4 claim for the \$20 million which they put forward, they certainly could
5 have claimed that, either directly or in the alternative. And they have
6 not done so.

7 The discovery, even if they chose to amend and plead
8 under ERISA, would be significantly curtailed over what is going on
9 now.

10 And the idea that the Court can look at the sign that the
11 Supreme Court has now accepted the writ to the extent that they've
12 ordered an answer, but that this Court should ignore that issue and
13 presume that we still had very little likelihood of success -- it's
14 simply belied by the record.

15 The fact that an answering brief would -- was argued is an
16 indication that we do have significantly more success than the
17 average writ. And the fact that they filed an answering brief, despite
18 the posture of this case, is an indication that they're interested in the
19 issues. And even if the Court were to remand on less than all the
20 issues, judicial economy would still dictate that we have a brief
21 period of time.

22 And perhaps, Your Honor, if you feel that a year is simply
23 too long, this Court would certainly have the power to grant a stay
24 for, say, three months or six months; and if the Court has not ruled
25 at the end of that time, to lift the stay.

1 It's not a Hobson's choice where you either have to deny
2 the stay or issue an indefinite stay for however long the Supreme
3 Court may take to consider the writ issues.

4 And therefore, Your Honor, based on the analysis set forth
5 in our original Motion to Stay and in our renewed Motion to Stay, we
6 would ask that the Court issue a stay of these proceedings pending
7 the decision of the Supreme Court on writ or alternatively for a set
8 period of time at which -- the end of which period of the time the
9 stay would exhaust, subject to our motion before this court or the
10 Nevada Supreme Court to extend it.

11 THE COURT: Thank you.

12 And the opposition, please.

13 MS. LUNDVALL: Thank you, Your Honor. Pat Lundvall on
14 behalf of the plaintiffs, the Health Care Providers.

15 What the Court has before it is essentially a Motion for
16 Reconsideration. That Motion for Reconsideration continues to
17 [indiscernible] analyzed under the Rule of Appellate Procedure 8(c)
18 for determining whether or not a stay should issue. And when you
19 scour the briefs that have been presented then by United, you don't
20 have any different facts before you today, with one exception, than
21 you did the last time that we were before you. And so to the extent
22 that the law hasn't changed and the facts haven't changed, there is
23 no grounds then by which then to grant a Motion for
24 Reconsideration.

25 One of the things that I think is unique about the oral

1 presentation that was just made by Mr. Roberts is that he suggested
2 somehow that if the Court thought that a stay of a year was too long,
3 then the Court has the power by which to order a three-month stay
4 instead. And I have to confess, nowhere in its moving papers or in
5 its reply papers do they advance such an argument.

6 And I'm going to rely now, as far as on my own
7 experience before the Nevada Supreme Court, but I don't believe
8 that there is any legal foundation [indiscernible] for the business
9 court saying, well, if the Nevada Supreme Court hasn't done its job
10 within a three-month period of time and [indiscernible] a stay
11 doesn't work [indiscernible] that foundation of how expression by
12 which the Court should act, and they've given you no legal standard
13 by which then to do so.

14 The one thing that I want to address is a couple of the
15 arguments that they made in their reply brief, and that were at least
16 tangentially addressed then by Mr. Roberts.

17 One of the things that, in their reply brief, is that United
18 contended that we never addressed any of the exceptions to the
19 general rule that the Nevada Supreme Court has employed -- and
20 that is it will not renew or review on a writ a denial of a Motion to
21 Dismiss. [Indiscernible] not only did we address that -- not only did
22 [indiscernible] renewed [indiscernible] findings of conclusion of law
23 as to how those exceptions did not apply in this case.

24 And the two exceptions that were previously discussed in
25 the original briefing is whether or not that there -- this was a case

1 where there were no disputed facts and where clear statutory or rule
2 baked authority of the dismissal -- and this is discussed in the
3 briefing [indiscernible] with prejudice.

4 So if you take a look then at our opposition brief, and to
5 the renewed motion on page 4, we discussed both of those
6 exceptions. If you look at your order denying the Motion to Stay,
7 you discuss both of those exceptions. And you made specific
8 findings, specific Conclusions of Law No. 2 and No. 3. And if you
9 look at our original opposition, we addressed both exceptions.

10 So what I did is I tried to scour then the renewed motion
11 that had been filed by United, as well as their reply brief.

12 And do they contend anywhere within either of those
13 briefs, or before you now on oral argument, that somehow that this
14 case involves no disputed factual issues? No. They haven't given
15 you any argument, any contention. They haven't [indiscernible] as
16 far as any set statement of facts by which that are undisputed before
17 the parties and upon which the Nevada Supreme Court then could
18 review under a pure issue of law.

19 If you go to your order denying the Motion to Dismiss, I
20 could go through probably about 40 different findings of fact and
21 conclusions of law that you made in the original Motion to Dismiss
22 identifying the factual issues that have been alleged in our complaint
23 for which United disputes.

24 And so to the extent that the Court has already made
25 extensive findings that there are disputed issues of fact, that limited

1 exception that has been recognized in a handful of cases by the
2 Nevada Supreme Court does not exist.

3 And so if you take a look at their second argument that
4 they claim, or second exception that they claim, it is whether or not
5 that there is clear statutory or rule-based authority that obligates
6 dismissal.

7 Once again, we address this in our opposition to their
8 renewed motion. The Court addressed this issue in denying their
9 Motion to Stay, and we address it in our original opposition brief.
10 There is not clear statutory or rule-based authority that obligates a
11 dismissal with prejudice of the claims that have been asserted by the
12 Health Care Providers in this case.

13 And even United acknowledges that any dismissal, even if
14 they were 100 percent successful before the Nevada Supreme Court,
15 that any remand would give opportunity then to the Health Care
16 Providers by which to replead their claims. And so therefore, this
17 case is not over. And the repleading of the claims then would fall
18 within the scope of ERISA claims and that those discovery issues are
19 front and center before the court, have been before, and are again
20 today, and so to the extent that those discovery disputes will
21 continue, even if they are 100 percent successful before the Nevada
22 Supreme Court.

23 One of the things I think is a helpful tool also the look at,
24 and that is the case that they cited in their reply brief contending that
25 somehow that we didn't address in any form or the issues raised in

1 any form. And it's the *Western Cab case versus Eighth Judicial*, is
2 the 2017 case, that was decided then by Judge Bare, went below,
3 and that was reviewed then by the Nevada Supreme Court.

4 One of the things that I found interesting about that
5 analysis in the case that they brought to the Court's attention was
6 the fact that the Nevada Supreme Court found that the minimum
7 wage amendment was not ERISA preempted. And when you look at
8 the analysis that was employed by the Nevada Supreme Court in
9 finding that the Nevada's Minimum Wage Amendment was not
10 preempted by ERISA, and look at the case law that they employ, it is
11 the very case law that we have utilized in arguing against their
12 Motion to Dismiss. It's the very case law that the Court embraced in
13 denying their motion to dismiss. And it's the very case law upon
14 which that demonstrates that they do not have a likelihood of
15 success before the Nevada Supreme Court. Why? Because the
16 Nevada Supreme Court expressly rejected in the *Western Cab*
17 *Company* case, the analysis that United wishes to employ defined
18 conflict preemption for the claims that we have asserted.

19 And so I find that their recitation and their bringing to the
20 Court's attention that case to be a bit perplexing because it
21 underscores the fact that the Nevada Supreme Court has employed
22 the same conflict preemption argument that this Court embraced
23 and relied upon in denying their Motion to Dismiss.

24 And I could go through the cases that they cite and the
25 cases that were rejected and the analysis that was expressly rejected

1 by the Nevada Supreme Court, if you wish for me to walk you
2 through it. But in sum --

3 THE COURT: You know, it's a --

4 MS. LUNDVALL: I guess the point -- I'm sorry.

5 THE COURT: I guess the point is, if you feel you need to
6 make a record on it, feel free to take the time. But I did read
7 everything, and I'm a good listener.

8 MS. LUNDVALL: Thank you, Your Honor.

9 I guess, in sum, what I would say is this, is that, Did United
10 embrace or address or try to argue against the -- the exceptions that
11 occasionally are recognized by the Nevada Supreme Court? Did they
12 bring to you the fact or the contention that somehow there are
13 undisputed factual predicate upon which the Nevada Supreme Court
14 could review this case? No.

15 And did it bring to you then any clear statutory authority
16 or rule-based authority that mandates a dismissal of our claims? No.

17 In fact, what it did is it brought to you the case law that
18 embraced the authority and the analysis that was employed by the
19 Court.

20 So what did they actually do in their brief? They did give
21 you a couple of new additions. And those new admissions are a
22 helpful tool then in the analytical framework then so the Court can
23 reach the same conclusion in denying this renewed Motion for Stay,
24 as it did in the original Motion for Stay.

25 United acknowledges that there's four factors to be

1 analyzed. And number one, that first factor is whether or not that
2 there's a likelihood of success on appeal. We've already identified
3 that in the very case that they cite and they embrace and that they
4 suggested somehow that helps them in arguing then for a stay the --
5 the *Western Cab* case, that is a case then that embraces the same
6 analysis the Court did.

7 Number 2, what they entirely do is that they gloss over the
8 fact that complete preemption is a jurisdictional tool. And complete
9 preemption is a tool that was employed by Judge Mahan to deny --
10 or to grant our Motion for Remand and to state that the federal court
11 did not have jurisdiction over this case.

12 So what is United actually asking our Nevada Supreme
13 Court to do? The same thing that they asked you to do, and that is to
14 overturn Judge Mahan and to state that the federal court does have
15 jurisdiction over this case.

16 And I think this Court is well aware of the case law and the
17 basic premise that a state court doesn't have the authority to define
18 or determine the jurisdictional parameters of the federal court, and it
19 doesn't have the authority by which to overrule a federal court.

20 And the simplest way of looking at that is what is the
21 procedural vehicle by which that this case could ever get back to
22 federal court? And if there is no procedural vehicle for this case to
23 get back to federal court, a complete preemption is not an argument
24 that is available to United.

25 So let's turn then, as far as to the second issue, and that is

1 whether or not that the object of the writ would be defeated if a stay
2 was denied.

3 Now, this is where United makes two admissions. And I'm
4 going to quote both of these admissions, because I think that they're
5 helpful tools for the Court to look at.

6 In their reply brief at page 5, lines 21 through 23, United
7 takes the position, and I'm going to quote here -- that a brief stay of
8 discovery may eliminate concerns of significant wasted resources.

9 So in other words, what are they trying to do? They're
10 trying to save some money.

11 What did they include in their declaration asking for this
12 Court to order or to enter an order shortening time then? I go to
13 Paragraph No. 12 from the declaration that was offered by
14 Mr. Balkenbush to the Court in support of an order shortening time.
15 And once again I quote, Because discovery is ongoing, time
16 intensive and costly, and because of the pending writ, it may curtail
17 the need for discovery.

18 So in other words, once again, what is United admitting?
19 That they're trying to save money.

20 So if the object of their writ is to try to save them some
21 money and to curtail, in their words [indiscernible] discovery, what
22 this Court would have to do then is you would have to overturn or
23 reject two decisions from our Nevada Supreme Court, that state that
24 if that is the object of their writ or if, in fact, that that is the prejudice
25 that is claimed by seeking a stay, then that is insufficient and may

1 not be considered whether it be by the district court or by the
2 Nevada Supreme Court in determining whether to issue a stay.

3 The two cases that I cite that the Court would have to
4 either reject or overturn -- I guess reject is the proper terminology --
5 would be the *Micon* case and the *Fritz Hansen* case. And the *Micon*
6 *Gaming* case, it was a case involving Charlie McCray [phonetic] and
7 his employment agreement. And the District Court had determined
8 that his employment agreement was subject to arbitration, and there
9 was an attempt then by which to seek a stay in that case.

10 And in *Micon Gaming* -- I'm going to quote from the
11 Nevada Supreme Court, finding the *Fritz Hansen* case, the Nevada
12 Supreme Court says, We have previously explained that litigation
13 costs, even if significant, are not irreparable harm. And then they go
14 on to say that it is not a reason then by which to grant a stay.

15 And if you take a look at the *Fritz Hansen* case, our Nevada
16 Supreme Court more extensively then looked at and evaluated
17 whether or not the saving of money or the saving of time was a
18 sufficient reason by which to grant a stay. In *Fritz Hansen*, the Court
19 could not -- the Nevada Supreme Court could not have been more
20 clear saying, no, it may not.

21 That was a case involving a contest as to whether or not
22 that there was personal jurisdiction then over the defendant. And
23 the defendant contended that he should not have to be required to
24 participate in the expense of a lengthy and time-consuming
25 discovery, trial prep, and trial. And the Nevada Supreme Court says,

1 Such litigation expenses, while potentially substantial, are neither
2 irreparable or serious. And they refused to use that as a foundation
3 then for granting a stay.

4 In making that holding, they cited to three other Nevada
5 Supreme Court cases, as well as cases from other jurisdictions, that
6 enforced that same proposition.

7 Now, United tries to contend that somehow it's trying to
8 do more than save money because its business people are very busy
9 and that they should not have to be taken from their business task to
10 focus on litigation. But that's nothing but a cost of litigation. And if,
11 in fact, that there's any suggestion to the contrary, all you have to do
12 is to look at the *Fritz Hansen* case because the Nevada Supreme
13 Court goes on to identify that the time associated with litigating that
14 case, or the business people having to litigate a case, that's nothing
15 but a cost of litigation, and it is not a foundation then for the
16 granting of the stay.

17 So one of the things that I think is another helpful
18 acknowledgment, or helpful admission, that comes from their
19 pleadings is that that they acknowledge that this case is not even
20 over if the writ is granted in full.

21 And this is where I think that the real sophistry comes in
22 the argument that is being advanced by United. Before you, they
23 take the position that it is just going to take too long to do discovery
24 and to pull all these administrative records for the claims that are at
25 issue in this case and, therefore, they shouldn't have to do that. And

1 then they go on to say, well, we should get a reprieve or a recess
2 from having to perform that task. But we acknowledge that if the
3 Health Care Providers replead their claims, we're going to have to do
4 that anyway.

5 And so one way versus another, the discovery demands or
6 the discovery requests that have perpetuated this case and which
7 you're going to hear about for the balance of this hearing, those
8 discovery disputes are going to continue, even if United is
9 100 percent successful on its motion.

10 THE COURT: Okay. Looks like we lost --

11 Ms. Lundvall, you're back?

12 MS. LUNDVALL: My apologies, Your Honor, I didn't mean
13 to --

14 THE COURT: No problem.

15 MS. LUNDVALL: -- but the one last point, I guess that I'd
16 like to make about that is this -- there are two additional factors that
17 United didn't even address in their -- either in their renewed motion
18 or, in fact, in their reply papers as to whether or not that there was
19 some type of irreparable harm to United or the irreparable harm that
20 was found by this Court then in granting or in denying their Motion
21 for Stay in the first place. They didn't even touch those two factors.
22 And so there's nothing really new for this Court to reconsider.

23 The only thing that is really before you is better
24 admissions and a better record underscoring what it is and why it is
25 that United wants to have this case stayed.

1 And so therefore, Your Honor, we would ask for the same
2 result that the Court had issued when you denied their original
3 Motion to Stay.

4 Thank you, Your Honor.

5 THE COURT: Thank you.

6 And Mr. Roberts, your reply, please.

7 MR. ROBERTS: Thank you, Your Honor.

8 Addressing first the point raised by Ms. Lundvall that there
9 is no proper basis for reconsideration, I'm going to say again that
10 we're relying on this Court's own words that said, If there is a
11 briefing request, I would reconsider this. This is why we delayed
12 seeking a stay from the Supreme Court, and this is what we believe
13 does change the Court's calculus.

14 In denying the Motion for Stay, this Court stated that with
15 all due respect to the defendants, I do not think there's a likelihood of
16 success on the matter even being considered by the Nevada
17 Supreme Court. And the fact that the Nevada Supreme Court has
18 requested briefing, and they have requested briefing with knowledge
19 of all of the issues, which plaintiffs continue to raise as to the
20 unlikelihood of success, does considerably change the calculus.

21 Going to the argument on the irreparable harm, this Court
22 did find that the irreparable harm [indiscernible] on defendants in
23 denying the original Motion to Stay. And therefore, I think it would
24 be appropriate to take at least another look at those arguments in --
25 with regard to the length of the stay, because while plaintiffs argue

1 that the only irreparable harm United can point to is money and the
2 fact that we're going to have to spend money -- in essence, the only
3 irreparable harm the plaintiffs are alleging is money -- money that
4 this Court has not even found that they're entitled to.

5 And therefore, to the extent that the Court does think that
6 an indefinite stay of a year or longer would be too long, I know of no
7 prohibition that would prevent this Court from ordering a shorter
8 stay to minimize any harm to the plaintiffs from a stay in the case.

9 But while plaintiffs minimize it, United doesn't argue
10 something that merely the cost of discovery. In the affidavit with
11 regard to the discovery that was sought by the plaintiffs in their
12 Motion to Compel that was heard at the last hearing by the Court, we
13 outline that even in order to comply with a delayed schedule for
14 production of those documents, it would take four of our employees,
15 working full time. That is a significant disruption of United's
16 business. These are not people whose only job is to do discovery in
17 connection with litigation. It is harming United and their attempts
18 to continue their business under these strained circumstances that
19 everyone is currently going through. Therefore, there is something
20 merely beyond litigation costs.

21 But I think the Court can also consider that really, the
22 factor, as far as irreparable harm, which is the Court is considering
23 now, is very parallel to the irreparable harm in connection with
24 whether or not a party has a speedy and adequate remedy.

25 And typically, yes, the Nevada Supreme Court says, hey, if

1 you've got a future appeal, that's a sufficient adequate speedy
2 remedy. And the fact that you have to do discovery doesn't alter
3 that.

4 But in this case, the Supreme Court, nevertheless, has
5 requested briefing on the stay. And in our writ to the Supreme
6 Court, at page 21, we cited to *International Game Technology*, where
7 the Court noted that an appeal is not adequate and speedy, given the
8 early stages of litigation and the policies of judicial administration.
9 In other words, it's not an absolute rule.

10 And in this case, where we're so early in the litigation, and
11 a Supreme Court order on the dismissal could dispose of the entire
12 matter, the analysis is a little bit different. And the Supreme Court
13 has recognized that if there is complex litigation and you're early in
14 the litigation, and the writ could dispose of the case and eliminate all
15 of those costs, it can change that analysis.

16 And while Ms. Lundvall did a very nice job of pointing out
17 words in our brief that were less than unconditional, but that doesn't
18 change the fact that we do contend in our briefing that we're
19 entitled, if we win at the Supreme Court, to a complete dismissal of
20 the entire case.

21 It's something that we have asked for. We have cited
22 authority to the Court in supporting that that is a potential remedy
23 that we could get. And the mere fact that they could potentially
24 replead after a complete dismissal to assert ERISA claims doesn't
25 alter the fact that as the litigation currently stands before this Court,

1 if the Supreme Court grants our writ petition, all of the plaintiffs'
2 claims could be dismissed.

3 As far as Judge Mahan's decision, as this Court is well
4 aware, in a decision on a Motion to Remand, there are no appellate
5 rights. We had no right to appeal that decision to the Ninth Circuit.
6 And Judge Mahan's analysis with regard to complete preemption is
7 not binding in any way on this Court, and it also does not go to the
8 issue of conflict preemption which is one of the primary bases of our
9 writ to the Supreme Court.

10 In summary, Your Honor, we believe that this Court
11 recognized at the prior hearing that it would change the way of the
12 four factors under Rule 8 if the Supreme Court requested briefing;
13 that it would indicate that we have a higher probability of success
14 than this Court found at the prior hearing. And we believe that that
15 factor would weigh in favor of granting a stay in this case, a brief
16 stay, simply to give the Supreme Court a chance to resolve the writ
17 on the merits, if they intend to do so.

18 Thank you, Your Honor.

19 THE COURT: Thank you, both.

20 The matter is now submitted, and this is the ruling of the
21 Court. I read everything. I listened with an open mind, but for all of
22 the reasons that I denied the stay previously, I'm going to deny this
23 motion.

24 The Supreme Court orders talked about propriety of writ
25 relief. And the *Dignity Health* case is law in Nevada where they've

1 already said they rarely grant writs on motions to dismiss.

2 I don't find that the object of the litigation would be
3 defeated without a stay. I think still the defendant has a low
4 likelihood of success on the merits on the writ.

5 I'm concerned about the delay in this case. I do not
6 believe that the motion was filed for any dilatory purpose. But
7 clearly the extensive litigation doesn't equal irreparable harm in
8 Nevada. I'm concerned about the delay in the case itself. April 15 of
9 2019 is when the complaint goes back to. It is already a year and a
10 half old.

11 So for those reasons, I am going to deny the motion,
12 Mr. Roberts.

13 Ms. Lundvall to prepare the order. See if you can agree as
14 to form. If you can't, outline your issues for me. This may be a
15 simple order -- and let me know if you can't agree on the form of an
16 order. But I don't accept any competing orders.

17 Any questions, with regard to the ruling?

18 MS. LUNDVALL: No questions, Your Honor. Thank you.

19 THE COURT: All right.

20 MR. ROBERTS: No questions, Your Honor.

21 THE COURT: Thank you.

22 So the next motion I have briefed is the Defendant's
23 Motion to Compel the political documents.

24 MR. ROBERTS: Yes, Your Honor. This is Lee Roberts. I'll
25 be handling that motion for the defendant.

1 The plaintiffs in this matter seek to foreclose United from
2 taking discovery and offering proof with regard to the clinical
3 records which describe the services that are actually -- that were
4 actually performed for which the plaintiffs are now taking additional
5 payment.

6 The clinical records, the medical records, will demonstrate
7 what services were performed. Perhaps they will demonstrate the
8 need for those services, the medical necessity of those services.
9 They will demonstrate how long it took in order for those services to
10 be performed in certain cases. And it will also demonstrate whether
11 or not the services for which the plaintiffs seek payment are indeed
12 the services that are identified in the claims they submitted to United
13 for payment.

14 Based on our meet and confers and the papers filed by
15 plaintiffs, plaintiffs seem to be essentially arguing that because
16 United has partially paid those claims, that United cannot now
17 dispute whether the services were performed, that United cannot
18 dispute how the services were coded, and that United cannot defend
19 in any way whether or not those services were necessary or properly
20 coded.

21 The opposition to the Motion to Compel is essentially
22 asking this Court to grant summary judgment on United's defenses
23 and to grant summary judgment on whether or not United can
24 dispute at this point in the litigation whether the services were
25 performed and whether they were properly submitted for payment.

1 And one of the factors that the Court should consider is
2 the public policy of encouraging insurers to pay claims based on the
3 representations of the providers who perform medical services.

4 Under the Prompt Payment Act -- and which would not necessarily
5 apply if these were ERISA claims -- but the argument which is being
6 asserted is that they're not ERISA claims, and therefore you would
7 have to look to the Prompt Payment Act.

8 But regardless, it's the public policy in Nevada to
9 encourage insurers to pay high volumes of claims in a short period
10 of time. And it's the public policy to encourage those claims to be
11 paid based on the representations made by the providers when they
12 submitted claim for pay.

13 In this case, we know that part of what is in dispute here is
14 emergency room services. And we know that emergency room
15 services are subject to significant abuse in the industry for upcoding.
16 We know, based on the sampling, that it would appear that a very
17 large percentage of claims are coded Level 4 and 5 for emergency
18 services, which are subjective standards based on whether or not the
19 illness for which the patient is being treated was life threatening,
20 whether or not it involves a moderate or high complexity of medical
21 reasoning. There are lots of things that are in the medical records
22 which would be relevant to determine the reasonable value of the
23 services.

24 And in this case, the Court cannot ignore the fact that
25 plaintiffs have pled *quantum meruit*. They have pled the unjust

1 enrichment of United. And without admitting that the -- those claims
2 are valid, at this point in the litigation, the Court has to recognize that
3 in an unjust enrichment claim, the Court can look at a number of
4 different factors, such as the reasonable value of the services that
5 are performed. And the Court is entitled to know, and we're entitled
6 to know, what services were actually performed, even if we never
7 requested those records in the beginning.

8 Just because an insurance company pays a certain
9 amount under the representation that services were properly coded
10 to a certain CPT code does not mean that everything is not back
11 opened when the plaintiffs refuse to accept that payment and move
12 to compel a reasonable payment of a reasonable value.

13 Once they refuse to accept our payment, they place the
14 reasonable value of the services in dispute. And while there's not a
15 lot of case law on this issue in the country, we have cited the case
16 to -- the Court to a case in Florida, which outlines the logic of that
17 exact issue.

18 Now that they have placed their entitlement to be paid
19 more than what they were paid, they have put at issue whether the
20 work was performed, whether the services are the same as that were
21 identified in their claim form, and whether or not they were billed
22 and coded appropriately.

23 There is one argument which was not reached in the brief,
24 but I think it is somewhat applicable by analogy, and that is NRS
25 48.105, which they said accepting or offering or promising to accept

1 a valuable consideration and compromising or attempting to
2 compromise a claim which was disputed either as to validity or
3 amount, is not admissible to prove liability for or invalidity of the
4 claim for its amount.

5 And really that's exactly what they're asking the Court to
6 do. We disputed the amount of the claim that they submitted. We
7 paid a lower amount. And now they're trying to use that payment,
8 which Nevada policy encourages, to estop us from contesting the
9 validity of the claim itself. And that's just not proper, and they have
10 not gotten summary judgment on that issue. They have not
11 precluded us from asserting that defense.

12 And this is a discovery motion, and as long as that defense
13 still exists, then they have not filed that motion and the Court has
14 not granted that relief, it is inappropriate for the Court to refuse to
15 order relevant discovery on the basis -- on their claim that they will
16 be able to get summary judgment on the actual coding of the claims
17 for services and that it was proper and that the services were
18 performed.

19 They haven't gotten that yet, and United is entitled to
20 discovery on this issue. And there's a claim that this is simply
21 retaliatory for the Motion to Compel that was filed by the plaintiffs,
22 but the fact is that this discovery was requested long before they
23 moved to compel discovery from us. We put this at issue because
24 we thought it was relevant to the value of the services that were
25 performed, that whether or not we requested medical records in

1 initially paying a smaller amount is simply not relevant or probative
2 to whether or not we're entitled to see the records of what they did
3 now that they are claiming that our payment was insufficient.

4 So we would ask the Court to compel the clinical records
5 for the claims that they are seeking. And as we said before, to the
6 extent that the plaintiffs contend this would be overly burdensome
7 and time-consuming, we are more than willing to meet and confer
8 with them with regard to sampling methodologies or other mediums
9 that would allow both sides to prove or to defend their case in a
10 statistically significant reasonable manner. But at this point in the
11 litigation, these items are relevant, and they are likely to lead to
12 admissible evidence. And United is entitled to receive.

13 THE COURT: I just have --

14 MR. ROBERTS: Thank you, Your Honor.

15 THE COURT: Just one question, Mr. Roberts. Are you
16 asking for EOBs in addition to clinical records?

17 MR. ROBERTS: Yes. And I was focused on the clinical
18 records. But we are asking for all of the records which would
19 support their spreadsheets. They have created around the
20 spreadsheet. They have asked the Court do deem that everything in
21 the spreadsheet is accurate, if United doesn't dispute it.

22 But the fact is, Your Honor, a chart, a spreadsheet is only
23 admissible at trial and is only admissible in evidence to the extent
24 that it is based on admissible evidence and the other party is offered
25 an opportunity to review and copy the information summarized in

1 the spreadsheet.

2 And in this case, we have been provided a spreadsheet,
3 but the plaintiffs have not provided any of the underlying data or
4 documents from which those spreadsheet entries are drawn. We
5 believe that should have been provided initially, under Rule 16.1.
6 And we are asking that the Court compel all documents upon which
7 the spreadsheet is drawn so that we can review those and verify that
8 the spreadsheet entries are correct.

9 THE COURT: Thank you.

10 MR. ROBERTS: And in going through -- and the Court may
11 hear more of this with regard to Plaintiffs' Motion to Compel, which
12 is on today -- but in going through and trying to compile clinical
13 records and trying to match claims, United has already found many
14 errors in the spreadsheets, which have made it difficult to research
15 and align the issues. So we are asking for the COBs and all other
16 documents which plaintiffs intend to use to show that the
17 spreadsheet is admissible and that it correctly reflects and correctly
18 summarizes is underlying admissible documents.

19 THE COURT: Thank you.

20 And the opposition, please.

21 MS. GALLAGHER: Good afternoon, Your Honor. This is
22 Kristen Gallagher. And I'll be responding in connection with the
23 clinical records.

24 What I'd like to start with is just an overview.

25 THE COURT: Hang on just a second.

1 MS. GALLAGHER: What we heard is really just United
2 conflating this case into something it's not. This is consistent with
3 what we [indiscernible] from the beginning.

4 THE COURT: Ms. Gallagher, Ms. Gallagher, hang on just a
5 second.

6 I just need the court reporter to change the screen so that I
7 can see you on the screen. Can you -- you can't increase. Okay.
8 Sorry. Good enough.

9 So go ahead then again, please.

10 MS. GALLAGHER: Sure. Thank you, your Honor.

11 So as I was saying, is that this is a consistent effort by
12 United to conflate what this case is actually about. We know from
13 our first amended complaint in paragraph 1 that this case is specific.
14 This is not a right-to-payment case. This is a rate-of-payment case.

15 And so what you're seeing with the clinical records is
16 language and using terminology that is trying to transform this into
17 a right-to-payment case.

18 And we saw that in the moving papers, but particularly
19 with Mr. Roberts's presentation today. And I'd like to hit on a few
20 points and then the rest I'll address as we go forward.

21 But when Mr. Roberts talks about the top case statutes as
22 being something that they denied part of a payment or made a
23 partial payment, that is actually a misnomer of what this case is
24 about. What happened is that United accepted the emergency
25 department services at the level coded. They paid the claim. They

1 either asked for information or they didn't, as they're entitled to do
2 under the prompt case statutes in Nevada, and then they paid the
3 claim. But what they represented when they paid the claim is that it
4 was full payment for the claims that had been submitted.

5 Now what we're hearing in an effort to try and expand this
6 case to something it's not, now they're saying what they did is they
7 made partial payment. And so that's important if they want to stand
8 on that, saying that they made partial payments under Nevada law,
9 we'll certainly take that admission. But what we're seeing is
10 language being used inappropriately and not forthcoming in terms
11 of how these claims are adjudicated and how they're paid. So this
12 case, make no mistake about it is the rate of payment.

13 So what has happened is that United accepted the claims.
14 They processed them at the level coded. And then they paid them
15 based on that level -- based on documentation.

16 We know from United's declaration of standard way, that
17 they do have clinical records. They've represented to the Court they
18 have clinical records. They have produced, although it's only nine
19 claims to date. We have produced clinical records. So we know that
20 United has that in their possession. And if they asked for it, they
21 have it.

22 But what I want to make clear as I go through my
23 opposition is that the terminology being used about clinical records
24 and how we have to prove our claims because they have been
25 partially paid is an inaccurate description of this case, Your Honor.

1 And it's important for the lay of the land because as the
2 plaintiffs we are entitled to bring certain claims. Had we wanted to
3 challenge denied claims, that would be a different action, but this is
4 clear. We have received -- well, let me go back, United has accepted
5 and allowed at the level that has been paid. There's no denial of the
6 level that's been paid. There's no partial payment because they
7 thought it should have been paid at a different level.

8 And so to suggest that somehow this is different than the
9 prompt pay statute or that this somehow opens the door to clinical
10 records, I just want to make that record clear that it is an opportunity
11 to United is trying to use this language and morph this case into
12 something it's not.

13 But before I get too far down the road, I wanted to start by
14 providing the Court an update on the meet and confer efforts. We
15 did raise this issue in our opposing papers, because we thought it
16 was significant that we had provided these responses more than a
17 year ago now, I believe -- somewhat a year ago. We did not hear
18 from United in terms of them having any issues with our responses
19 until there became other discovery disputes in the federal -- while
20 the case was pending in federal court.

21 At that time, the issue was raised specific to No. 6, which
22 is the subject of this particular motion. And it's important in terms of
23 timing, because at the time that the request was asked, United did
24 not have an answer on file. United did not have any affirmative
25 defenses that were provided, and so when we went to the meet and

1 confer, what we were brought forward with is, well, you have a claim
2 for unjust enrichment, and so as a result the clinical records are
3 required.

4 Then sometimes after that, not too long ago, in July of this
5 year, United filed their answer, which included the recruitment or an
6 option. And so that timing is really important because United is
7 trying to cut off our objections by virtue of this timing that they're
8 trying to take advantage of.

9 So it's important for the Court to see sort of that timing,
10 when the meet and confer came forward, what the lay of the
11 landscape was at the time we made objections. And when we went
12 to the meet and confer, what we were confronted with or what we
13 were told is that, well, it's your unjust enrichment claim, you have to
14 show the value of services.

15 And so those were the conversations that is we were
16 having, subsequently then United filed an answer, and then brought
17 this motion without regrouping with the Health Care Providers. And
18 why that's important is you have a declaration indicating that had
19 there been a reconvening on the meet and confer, perhaps United
20 expected that there would be some outcome of compromise. We
21 heard Mr. Roberts talk about perhaps a phantom compromise.

22 However, what's important is that that's the first that
23 we've heard of it. We didn't hear about it before. And in fact, when
24 United saw our opposition, they reached back out to us to say,
25 Would there be an opportunity for a compromise?

1 And our response was, well, you suggested that there was
2 in -- in your moving papers, and so if you have a compromise that
3 you had in mind when you filed your moving papers suggesting you
4 had a compromise in mind, we would be open to discussing that.

5 And so we received information that counsel was going to
6 be talking with United on Tuesday, I believe it was, and expected to
7 be able to chat with us on Wednesday with regard to what an
8 acceptable compromise might be.

9 The timing is important because it just goes to show that
10 there was actually no reasonable compromise that United had in its
11 mindset when it filed the motion, even though it sort of suggested
12 that it had one.

13 I hate to say we have not been contacted since then,
14 Your Honor. So the first we're hearing of this sampling potential
15 compromise is with the presentation today. At this point, I'll leave
16 that as it is, just because we haven't had the opportunity and it
17 hasn't been presented to us. But that meet and confer is important,
18 because it does set the landscape for where we were in terms of the
19 meet and confer in our objections and opposition and sort of the
20 forthcoming nature of how we got here today.

21 THE COURT: And can I -- can I interrupt?

22 MS. GALLAGHER: So now [indiscernible].

23 THE COURT: I'm going to interrupt. You know, this
24 motion was only filed on September 21. My inclination is to give
25 you guys a chance to try to work this out and come back. Is that

1 something the plaintiff is amenable to?

2 MS. GALLAGHER: Well, Your Honor, I would like to finish
3 the presentation in terms of why we think that this discovery is not
4 appropriate and why it shouldn't be permitted.

5 THE COURT: I'll allow you to complete your entire
6 argument. I just want to hear if the parties are amenable -- plaintiff
7 and then defendant.

8 MS. GALLAGHER: And Your Honor, of course, depending
9 on your outcome, we will definitely consider a compromise. We
10 have often reached out. As you know, we've had a compromise
11 pending since February that would have addressed a lot of these
12 matters, that United has not responded to. And unfortunately, it
13 seems evident with this moving papers and the reply that the reason
14 they haven't responded is because they simply want to try and press
15 the Health Care Providers for discovery that isn't necessary.

16 As Your Honor may recall, we have proposed a protocol
17 where United would match our data points for the very reason that
18 was raised by Mr. Roberts. If there is a data point that doesn't
19 match, that then tells the parties they need to further discuss it. If
20 the data points match, then it's clear the Health Care Providers
21 submitted a claim and United paid it at the level based on the
22 information it had.

23 So definitely we are open to compromise positions as may
24 be appropriate, given the Court's ruling.

25 And I appreciate the opportunity to address the

1 substantive piece of it, Your Honor.

2 THE COURT: Thank you.

3 Mr. Roberts, are -- is the defendant, or are the defendants,
4 amenable to trying to resolve this?

5 MR. ROBERTS: Your Honor, the defendants are amenable
6 to trying to resolve this. However, if we are only amenable if the
7 plaintiffs indicate that they're willing to discuss a reasonable way to
8 relieve the burden on both sides.

9 THE COURT: I think that's --

10 MR. ROBERTS: And so the -- the Court --

11 THE COURT: -- that's what she just said.

12 MR. ROBERTS: The Court may recall that part of our
13 moving papers in the Motion to Compel, our documents, indicated
14 and mentioned in argument that one way to resolve it might be to
15 order the parties to meet and confer on some sort of sampling that
16 could allow the parties to prove their case. And that's been rejected.

17 And we would not be willing to meet and confer on a
18 sampling methodology that would relieve the burden on plaintiffs,
19 unless they were willing to entertain the same relief for us on our
20 claims.

21 THE COURT: Okay. All right.

22 So then, Ms. Gallagher, let me hear the rest of your
23 argument.

24 MS. GALLAGHER: Thank you, Your Honor.

25 And I could just note, you know, the timing of a request for

1 relief for United's discovery -- it obviously comes long after we've
2 had to Move to Compel, long after the Court has ordered them to
3 produce documents.

4 So but with respect to the specific clinical records at issue,
5 United tries to convince the Court that there are three reasons why
6 clinical records are needed.

7 And if I could just spend a moment discussing clinical
8 records -- so those are going to be the doctor's notes on the ground,
9 the nurse's notes on the ground. Those are, you know, actually what
10 is taken at the hospital, at the time that the services are provided.

11 As this Court is aware, the Health Care Providers are
12 obligated to treat -- not only treat, but to evaluate and -- take a look
13 at and evaluate when somebody presents to the emergency room
14 what is happening and then treat them accordingly. They don't have
15 the luxury of turning somebody away or only treating them and not
16 evaluating them when somebody presents with a heart -- you know,
17 heart chest pain or, you know, something that looks to be an
18 emergency situation -- they are eligible and required to evaluate
19 those situations.

20 And so when a United member presents to the emergency
21 room, that essentially is the triggering piece of when a claim is right.
22 And a claim then becomes something that if the United member is
23 going to be obligated by United to pay.

24 And so if United says that we have to establish the burden
25 of proof that the claims are even valid. However, that is trying to

1 revise history, in terms of what has happened already. So United's
2 member already presented, the professional services were already
3 provided. And then what happens after that is the appropriate
4 billing forms are filled out and submitted to United.

5 And then United has their procedures in terms of what
6 they review, how quickly they're supposed to review, and guided by
7 Nevada Prompt Payment statutes.

8 And so when they look at claims and they see them
9 allowable, the allowable piece of it is at the level -- CPT code level
10 that has been submitted.

11 We know from United that they may deny a claim. We
12 know that they may partially pay a claim based on perhaps multiple
13 CPT codes that are submitted based on the services provided.

14 But what we're not dealing with in this case and what we
15 made clear in our complaint and in our list of claims is that those
16 claims we are seeking payment of are ones that United already
17 deemed allowable at the level -- they were not denied based on the
18 level. And United represented that that was full payment, based on
19 prevailing market rates.

20 Well, what we've uncovered is that that is not accurate in
21 terms of full -- the full payment.

22 So now they're trying to say it's a partial payment. But
23 that's not actually true, based on the allegations in the complaint. It
24 was full payment -- representative full payment, but to which the
25 Health Care Providers had uncovered is not full payment because

1 they have allegedly manipulated market rates with some of their
2 third-party friends that we've identified in the complaint.

3 The next reason that United tries to convince the Court
4 that clinical records are needed is that they say that it's important for
5 the reasonable value of services. But in our opposition, we've
6 identified that the case law indicates that is not the case.

7 What a market rate is, is what are people willing to pay for
8 that level of service? So, for example, the most emergent care is
9 coded at a CPT code 99285. What is the prevailing market rate?
10 What is the usual and customary rate for that in the market that's
11 applicable?

12 We know here we're going to have a dispute in a little bit
13 about what should be the appropriate geography because we have
14 alleged that even though Data iSight and United are saying that rates
15 are market or a specific geographic locations, we know, in fact,
16 based on data, that it's a national data. So we're going to have a
17 little bit of a dispute about what the right geographic area is.

18 However, the reasonable value of services is going to be
19 the market value. What are people willing to pay for a level 99285?
20 That has nothing to do with the underlying clinical records, because
21 United has already made that determination.

22 Again, I sound like I'm beating a dead horse, but our
23 complaint, at paragraph 1, makes that abundantly clear. And we
24 know that United consistently tries the change this into an ERISA
25 claim. And they're doing it here by trying to categorize or

1 characterize or try and classify it as something that is a denial of a
2 claim or a partial payment because of levelling -- and that is a right
3 to benefits, not a rate of payment.

4 So for that reason, we think, under the reasonable value of
5 services, the Health Care Providers don't have a burden of proof
6 issue with respect to producing underlying clinical records.

7 The last category that United tries to indicate that it's
8 entitled to clinical records are in connection with its recruitment
9 defense.

10 We know from the opposition, where we indicated that
11 recruitment means something -- first of all, they can't recover more
12 than what they paid, so it sort of seems like if they want to revisit
13 every CPT code, that is outside the bounds of what recruitment is
14 permitted from a legal perspective.

15 The other piece of it is that, again, we have framed this
16 case, specifically -- which we are entitled to do, which means that
17 this is a right to the amount of the payment because United has
18 manipulated that payment reimbursement rate. And so that's what
19 this case is about, not about a denial of any of the claims, but about
20 the manipulation of the rate that is being paid.

21 And so it's important to know that United has already said
22 in its answer, in Paragraphs 26, 193, 194, and 196, that it has paid for
23 covered services.

24 And so that is really the end of the inquiry for the Court,
25 because if there is an admission that that piece of what they are now

1 claiming, which is they want to revisit levelling, has been closed --
2 foreclosed by their own admissions.

3 They also make a similar statement in answer to
4 Interrogatories Nos. 6 and 7. And so the Court should be able to rely
5 on their statement in terms of what the state of affairs and what the
6 history is, and them trying to turn this into an ERISA case,
7 essentially, by asking for clinical records and revisiting every level --
8 CPT level.

9 I wanted to address a couple of points if I could,
10 Your Honor, still.

11 The other point of the recruitment piece that I wanted to
12 talk about is about how United is trying to circumvent the Prompt
13 Pay statutes with its recruitment defense. Now they said that it's due
14 process and that they need to be able to go back and revisit these
15 claims. But it's important that the only case that they -- that they
16 point to is an unpublished decision from Florida. And it involves a
17 government payer and it involves a contracted or a network hospital
18 facility.

19 And so we're dealing with a different set of circumstances.
20 The Court in that case discussed that there was a right to a
21 post-audit review of claims that were submitted. And so it seems as
22 though the Court was simply interpreting [indiscernible] contract
23 between those -- those two entities in terms of the due process.

24 But here United has gotten due process. They had that
25 opportunity to either deny a claim or ask for additional documents

1 before deeming a claim allowable, pursuant to the Nevada Prompt
2 Pay statute. And so that due process that they now claim that
3 they're entitled to is something that they already received and were
4 able and aptly able to follow that in terms of whether to allow a
5 claim or not. Again, only allowable claims are part of this particular
6 claim -- litigation.

7 THE COURT: Did that conclude your argument,
8 Ms. Gallagher?

9 MS. GALLAGHER: Just one point I wanted to revisit on
10 Mr. Roberts's presentation, if I could, just in terms of, you know,
11 trying to characterize this as a denial or a partial payment.

12 With respect to the statutes, I think it's, you know, cautious
13 on their part. They should be cautious about basically saying that
14 they're circumventing by partially paying. But again, like I said, we
15 will take any admission that they want to make.

16 And I guess the last point is with respect to the settlement
17 statute that Mr. Roberts referred to. Sort of a little bit of a head
18 scratcher in terms of how United partially paying a claim in the
19 normal course of business would have any sort of coverage under
20 Nevada's statutory scheme for evidentiary compromise in terms of
21 submission to the Court for liability. And also I think it gives the
22 Health Care Providers a little bit of pause if United is purposely
23 short-paying or partial-paying claims that they've allowed,
24 knowingly. I think that speaks volumes.

25 So again, I would just like to close that we think that

1 clinical records are not appropriate in this case. This is not in terms
2 of what the Health Care Providers as burden of proof or in terms of
3 what United is entitled to on a defense, in light of the admissions
4 made and in light of United trying to transform this into what it has
5 tried to do from the beginning -- which is something different than
6 what the Health Care Providers have alleged. And for that reason we
7 would ask that you deny the claim -- or deny the motion,
8 Your Honor.

9 THE COURT: Okay. I would like your response to
10 something Mr. Roberts said -- that he claims that in the compilation
11 that you provided that some of the CPT codes are incorrect. He
12 wanted to match up with the EOBs and the CPTs.

13 Can you respond to that?

14 MS. GALLAGHER: Yes, Your Honor.

15 So with respect to any issue about matching data points,
16 certainly that was an opportunity that we tried and we made that
17 offer of compromise back on February 10th of this year. United has
18 given every reason why they can't substantively respond to it. I find
19 it interesting that it's raised now, but we certainly had offered that.

20 But yes, we want to engage in a data point comparison. If
21 they find one they think isn't right, then we are certainly willing to
22 have that discussion. That's what discovery is all about.

23 But one point I do want to make about the EOBs and the
24 PRAs and Mr. Roberts's attempt to try and get the Health Care
25 Providers to produce those is that United has already been ordered

1 to produce those, I believe, as part of the administrative record. I
2 imagine that comes along with it.

3 But I also find it interesting that those are United
4 generated documents. United generates the explanation of benefits.
5 United generates the provider [indiscernible] forms.

6 So to try and put it on the Health Care Providers just
7 seems to be another effort to try and circumvent its discovery
8 obligations and certainly try and avoid a court order that is already --
9 that it is already facing and is in the process of trying to comply with.

10 THE COURT: Thank you, Ms. Gallagher.

11 Mr. Roberts, your response, please.

12 MR. ROBERTS: On everything or just on the question the
13 Court just asked?

14 THE COURT: Everything.

15 MR. ROBERTS: Okay. Very good. Thank you,
16 Your Honor.

17 The first point I would like to address is the
18 mischaracterization of my argument that United has somehow
19 admitted they made partial payment in the sense of paying less than
20 the amount United believes was due. That's a complete
21 mischaracterization of my argument.

22 Under NRS 48.105, where a claim, which they submitted to
23 us, was disputed as to either validity or amount is paid, then the
24 evidence of payment is not admissible to prove liabilities for the
25 claim. So what we are saying is that we disputed the amount of the

1 claim that was submitted to us by the plaintiffs. We paid less than
2 the amount submitted, which was the amount we thought was due,
3 based on the certifications they provided in their claim forms. There
4 is not an admission that United paid less than the amount due.

5 United paid less than the amount claimed. And now
6 they're trying to use the fact that we paid something promptly, in
7 reliance on their representations in the claim form, as an admission
8 that their representations in the claim form were correct and
9 accurate.

10 Now that they have put in issue whether or not we paid a
11 proper amount for these claims, they should be required to
12 demonstrate that they performed the services and that they were
13 correctly coded in order to get paid. That's certainly part of their
14 burden.

15 Now, I don't blame them for not wanting to prove they
16 performed services. I don't want to blame them for not wanting to
17 avoid proving that the services were accurately coded on their claim
18 forms. But now that they have placed the issue of the amount they
19 were entitled to be paid for those services, as part of this litigation,
20 they can't be relieved of their burden of proving all elements of their
21 cause of action, including their cause of action for unjust enrichment.

22 The answer filed by United -- and counsel mentioned that
23 we had filed an answer -- I would point the Court to Affirmative
24 Defense No. 9 where the defendants stated, To the extent that
25 plaintiffs have any right to receive plan benefits, that right is subject

1 to basic preconditions and prerequisites that have not been
2 established, such that patients are members of United on the date of
3 service, that the coordination of benefits have been applied, that the
4 services were medically necessary, that an emergency medical
5 condition was present, that plaintiffs timely submitted correctly
6 coded claims, and that all necessary authorizations were obtained.
7 United reserves all rights with respect to asserting any and all such
8 defenses, once plaintiffs have adequately identified the specific
9 claims they contend were underpaid.

10 Again, their argument seeks to have the Court disregard
11 this affirmative defense, grant summary judgment on this affirmative
12 defense, and find that they don't have to prove that they performed
13 any service or that they performed the service at the level for which
14 they are seeking pay. And that simply is not appropriate at this
15 stage of the litigation.

16 THE COURT: So I --

17 MR. ROBERTS: All of this information goes to the proof of
18 that.

19 THE COURT: Okay. Go ahead, sorry.

20 MR. ROBERTS: And I may have misspoken, Your Honor.
21 And I believe that the problem we're having is that the insurance
22 provider and the employee -- the patient's benefit plan was
23 incorrectly identified in some of the spreadsheets which have had us
24 searching multiple databases.

25 The CPT issue was not that it doesn't match on their

1 spreadsheet versus what's on their claim form. The CPT issue is that
2 what we're saying is we're entitled to the clinical records to see if,
3 indeed, the services were provided at the appropriate level and at
4 the appropriate CPT code for which we were billed.

5 And now that they put in issue whether or not they were
6 underpaid, they should have to prove that -- and we -- even as they
7 don't want to have to prove it, we should be able to do discovery to
8 assert the defense that the services were not provided.

9 THE COURT: Right.

10 MR. ROBERTS: And if, for example, discovery reveals that
11 they were overpaid by millions of dollars because what we paid at
12 Level 5 should have been submitted at Level 3 or 4, we submit a
13 right to recoupment. And that's still an affirmative defense. It's still
14 what we've raised. And we're entitled to discovery on that issue.

15 THE COURT: Right. All right. So Mr. Roberts --

16 MR. ROBERTS: I think that the issue of the chart --

17 THE COURT: I'm sorry. I keep interrupting.

18 MR. ROBERTS: -- and the summary, I need to address that
19 again, Your Honor.

20 The whole idea that if we dispute something in their chart,
21 that we can raise that and they'll try to prove it, is just totally
22 contrary to Nevada law. NRS 52.275 summaries says that the
23 contents of voluminous writings, recordings, or photographs, which
24 cannot be conveniently examined in Court may be presented in the
25 form of a chart summary for calculations. Item 2 is, The originals

1 shall be made available for examination or copy or both -- both
2 parties at a reasonable time and place.

3 So it essentially would be the same thing as me standing
4 up in Court with a big chart, and them objecting to it because they
5 haven't gotten the underlying documents. And -- and I would point
6 to them and say, which one do you dispute? And I'll get you that
7 document, but otherwise it's admissible.

8 That's not the way evidence goes, and that doesn't comply
9 with 16.1. If they want to use this chart in support of their claims, we
10 are entitled to a copy of every document upon which they base that
11 chart. And the fact that we may be able to dig out documents and
12 our own records and attempt to match those up ourselves, doesn't
13 relieve them of their obligation under 16.1 to give us the documents
14 that they obviously have already compiled in order to prepare that
15 chart. They don't get to hide those documents from us. They don't
16 get to refuse to produce those documents. They must be already
17 compiled. Assuming they just didn't make up this chart out of thin
18 air, they already have those documents compiled and in a form that
19 allowed them to compare it. And we are seeking to have the Court
20 to compel them to what they should have already done in their initial
21 disclosures, without us even asking for it.

22 And unless the Court has any questions, [indiscernible].

23 THE COURT: No. Well, I guess my question is, the
24 plaintiff in its bills gave the CPT codes. And this is a rate of pay case.
25 There is no counterclaim.

1 If you are trying to recover money from them, you had the
2 ability to do that when you filed your answer. I just don't see how
3 the records you're seeking here are relevant to the plaintiffs'
4 complaint. So if -- one last bite at the apple.

5 MR. ROBERTS: Yes, Your Honor. I think those are two
6 separate issues. We've raised an affirmative defense of recoupment
7 that if we overpaid on one claim, we should be able to use that to
8 offset amounts owed on another claim. That's an affirmative
9 defense and not a counterclaim.

10 But I would go further and just say again, Your Honor, the
11 fact that they say it's a rate of payment case, doesn't mean that's all
12 it is. The fact that they want to avoid the need to prove that they
13 performed the services for which they're seeking to be paid should
14 not eliminate the requirement to prove that. The simple due process
15 entitles us to have them prove their entire case and not simply the
16 one element that they want to place at issue -- the rate of pay,
17 because you never get to the rate of payment, if you haven't proved
18 that the services were performed and that they were performed at
19 the level for which they were coded.

20 And the fact that United chose not to request those
21 documents and make a payment instead, doesn't mean United
22 waived the right to challenge it once they brought this lawsuit. You
23 could make the same time argument as waiver, that their quiet
24 acceptance for years of the payments they now dispute should
25 preclude them from contending that they were underpaid.

1 The fact that the -- they submitted a claim in reliance on
2 that coding we paid the amounts they now dispute should not
3 prevent United from requiring them to prove their entire case, not
4 just the part of their case which they would like to focus on.

5 THE COURT: Thank you, Mr. Roberts. This is the
6 Defendant's Motion to Compel clinical documents.

7 The motion will be denied without prejudice. However,
8 the parties will be required to meet and confer meaningfully, and
9 within the next two weeks on a protocol to match data points, and
10 for the reasons that I've brought up in my questions to both of you.

11 Mr. Roberts, I do see it as a rate-of-pay case. The two of
12 you are trying completely different theories -- the defendant, of
13 course, continues to resist the plaintiffs' grounds for its complaint.

14 But I just don't see -- when the plaintiff bills the CPT codes,
15 it doesn't put a burden on the defendant to make the plaintiff prove
16 what was actually done clinically. On a rate of -- in the rate of
17 payment type of case, it's the plaintiffs' burden to prove that the rate
18 was wrong.

19 So I don't see where the clinical records matter.
20 Everything here is based upon the bills that were provided by the
21 plaintiff.

22 Now, that takes us to the Plaintiffs' Motion to Compel.
23 And then we have a status check.

24 MR. ROBERTS: Your Honor, just to clarify for the record,
25 are you also refusing to compel them to give us the documents that

1 they relied upon to compile their spreadsheet?

2 THE COURT: At this time, yes. And that's why it's without
3 prejudice so that you have a meaningful meet and confer with
4 regard to a protocol to match data points.

5 And I'm looking for the next hearings we have for a report
6 on that. It can be individual or status -- joint status reports. I believe
7 that there -- well, we've got two other hearings set on October 29th,
8 November 4th. I'm not sure that either of these is going to go
9 forward. So I can give you a return date in three weeks, if that's
10 amenable to everyone.

11 MR. ROBERTS: Yes, Your Honor.

12 MS. GALLAGHER: That's agreeable, Your Honor.

13 THE COURT: You know, I am supposed to go to the
14 American College of Business Court Judges. If I get up the nerve to
15 board an airplane on the 28th and 29th of this month. So can we set
16 it -- let's set it on Wednesday, November 4th on the -- just on a -- at
17 10:30 a.m., just a stacked calendar for status?

18 And Nicole McDevitt, did you get that date?

19 THE CLERK: November 4th at 10:30 for status.

20 THE COURT: Very good. All right.

21 So I believe next is the Plaintiffs' Motion to Excel.

22 MS. GALLAGHER: Yes, Your Honor. Thank you.

23 This is Kristen Gallagher. So this is our Motion to Compel
24 witnesses, answers to interrogatories, and responsive documents.

25 As Your Honor has probably seen, through the

1 declarations submitted, that we have engaged in multi-hour meet
2 and confers with United in order to try and just basically move this
3 case forward and get information that we need in order to prosecute
4 this case.

5 As you know, we have significant specific allegations in
6 the first amended complaint that are not, you know, general in the
7 sense. We know what we're looking for, and we have been opposed
8 in trying to get that information.

9 You know, I wish in some regards you could sit in on
10 some of these, because I feel like I'm on a merry-go-round. We get
11 on a call. Think that things are moving forward. United's going to --
12 council is going to talk to United and then when we get back on the
13 next call, it sort of is like we've started over again.

14 So the frustration level, I don't know if it came through our
15 papers. I'm expressing it now that it has been frustrating because --

16 THE COURT: Well, I can tell you -- whoa, whoa -- hang on.

17 THE WITNESS: -- we know there's information about
18 certain strategies --

19 THE COURT: I'm going to stop you, Ms. Gallagher. I have
20 never seen the word sophistry and baloney in the same pleading,
21 ever, in 10 years of the bench or 27 years of being a lawyer on top of
22 that.

23 Anyways, so go ahead, please.

24 MS. GALLAGHER: Well, and I'll follow along to that, I
25 certainly haven't been practicing as long as in the context of being a

1 judge, but, you know, I engage in commercial litigation, and
2 generally speaking this is probably the most frustrated I've been in
3 terms of trying to get substantive information. And I don't say that
4 lightly.

5 You know, certainly, I like to get along with my opposing
6 counsel. I look to work forward on merits, and you know, have that
7 as a legal discussion. But some of this isn't just advocacy,
8 unfortunately, what we've seen.

9 We identified a few instances in our opening papers, in
10 terms of sort of the unbelievable position that United will take, like,
11 for example, the fair health database. We all know that it has
12 [indiscernible] that along with some other payers. It uses it. It says
13 it uses it on its legal web site, and then we get into meet and confer
14 efforts, and we get responses like, oh, you want us to ask if they're
15 using it? And oh, we didn't understand that's what you requested
16 when your request for production asked if you stopped using it, why
17 did you stop using it?

18 So that's just but one example. I certainly don't want to
19 belabor the point, because I think our motion lays it out. But I would
20 like to respond because there was an opposition that was filed, I
21 would like to make sure that I have an opportunity to respond to
22 that.

23 So with respect to witnesses, United as indicated that
24 they've taken some moves at this point because since we filed the
25 motion, they have supplemented with five new witnesses, which

1 simply isn't sufficient. We know that United has a significant
2 number of people that are involved, both at the strategy and
3 decision-making level, all the way down to claims representatives
4 who have information about the methodology, the procedures, the
5 Data iSight interplay. And none of these people have been identified
6 for us. One of the five new witnesses that were identified just a few
7 days ago, on September 30th, there -- it's former employee, no
8 information about how to contact that person.

9 I also note that United doesn't tell us what that witness
10 may have information about. What we see is a generalized
11 statement about this person may have [indiscernible] information
12 relating to the claims and defenses. So it doesn't help us in terms of
13 targeting -- you know, do we really need to talk to this person that
14 they just disclosed or not?

15 We also with respect -- with respect to Answer to
16 Interrogatory No. 8, we've identified that. We have asked for specific
17 witness information regarding methodology and two other
18 categories of information. United has refused to provide us that
19 information.

20 We've had multiple meet and confers on it. At this point, I
21 don't know, other than maybe [indiscernible] on the same
22 information, but, you know, then we're just sort of into
23 gamesmanship. You know, we've asked the question. We are
24 entitled to know who has information about certain things that are
25 squarely within our first amended complaints.

1 You know, we're not asking for information outside the
2 four corners. We're asking for who knows about how
3 reimbursement data methodologies are set? Who has information
4 about the particular claims? So we think that the issue is not moot.
5 And we would ask that Your Honor order them to identify not only
6 the full extent of United witnesses, but also, as we've asked, third
7 parties like the iSight. We certainly know that they have a long-term
8 relationship that dates back at least 10 years. We know that there's
9 interplay and that iSight is becoming an even more important part of
10 United's business in terms -- and obviously with respect to the
11 allegations we've made in terms of the scheme, the alleged scheme
12 to basically rewrite, reimbursement rates as they please and as
13 United announced that it would, because they can.

14 So we would like that information. We need to know who
15 they are talking to so that we can test and find the evidence that will
16 support our pleadings, because this information is squarely within
17 the -- you know, within themselves. This is not something that we
18 can go out and identify otherwise. So we would ask that they be
19 compelled to identify those witnesses without any further delay.

20 With respect to the second temporary market data. United
21 says that they're going to produce it in 14 days. They say it's going
22 to be Las Vegas market data, and it simply isn't going to do,
23 Your Honor.

24 We have one entity that's Churchill. We have another
25 entity that's Elko County. So to limit it to Las Vegas, which means

1 even maybe more narrow than even a Clark County market data,
2 simply isn't something that we've agreed to. You know, I think
3 they're just trying to more narrowly narrow what we're entitled to.

4 We also are concerned, in terms of, you know, the Nevada
5 market data, because again, it's important for us to know the
6 national data, because as we have alleged, there is no difference
7 between the different markets -- even though they say there are. The
8 PRAs that have Data iSight. Data iSight says that it's based on
9 geographic, but it's not, based on our information. So it's important
10 that we have information outside of just the scope of [indiscernible]
11 trying to Las Vegas. So we would ask for all information related to
12 just market data be produced.

13 And the frustrating part is United has made a couple of
14 different arguments about that -- you know, they're in the process of
15 doing it [indiscernible] we should have brought this Motion to
16 Compel. But they're at the point where, you know, we just shouldn't
17 have to [indiscernible]. These were originally due in early January.
18 They provided substantive responses at the end of January. And so
19 here we are in October, [indiscernible] end of the year cutoff, and I
20 don't know how much patience there can be.

21 I'm afraid maybe we've been too patient, based on timing.
22 But to hear continually that we will be going to, just at this point
23 doesn't cut it.

24 With respect to the third category of requests and answers
25 to interrogatories, the methodology is really an important piece of

1 this. United tries to hide behind a plan. And we've heard this, you
2 know, they refer to the administrative marker, they refer this plan,
3 the plans are their guide. But we know that that's not actually true.

4 There are a few documents that we've managed to get.
5 And the administrative document from United -- is not plan specific
6 in the sense that for each of the 20,000 claims there's going to be a
7 different language in there. No. United has different plans, you
8 know, a gold plan, a choice plan. And so within their type of plan,
9 they may offer information about, you know, what they're going to
10 pay.

11 But the methodology of how they determine what they're
12 going to pay is not plan specific. In fact, some of the documents that
13 United has produced, talks about, the iSight and the methodology. If
14 you choose this plan, you're going to have this methodology. So the
15 methodology is how do they calculate? What is the data? What
16 information? What market they are using? Are they using
17 information that is complete? Are they skewing the information
18 that's in their data set? That's methodology.

19 We also want the strategy making, decision making,
20 behind how United has set up methodology. This is the largest, if
21 not the largest, public insurance carrier in the nation. And so to
22 think that there are no documents that have detailed or set out or
23 recorded what the plan is, there is a plan here. There is a structured
24 plan that has taken years to implement, and we know that from just
25 the [indiscernible] agreement that we've gotten, and so we are

1 entitled to that information because it falls squarely within the
2 allegations in the complaint.

3 We also know that the PRAs -- that the provider remittance
4 advise forms -- that United issues and generates does refer to cost
5 data or paid data, when they indicated using Data iSight. But again,
6 this methodology is something that can't be hidden behind at undue
7 burden declaration of Sandra [indiscernible]. It doesn't need to be
8 down to the claim-by-claim level. This is a higher level look at what
9 United's plan strategy is that we certainly know is at play.

10 And that reference that I missed, Your Honor, to the cost
11 [indiscernible] and multiplan data information is at our Exhibit 8, just
12 for your reference, so that you can see that there is discussion about
13 Data iSight's patented reference to based methodology. Apparently
14 United is not using Data iSight without knowing what that
15 methodology is. There's some indication that United is directing and
16 dictating that methodology as well. So we would expect to have
17 those documents produced as soon as possible.

18 That leads me into the next section, which is still decision
19 making and strategy. They say it's in the process of applying those
20 terms. To me this means they haven't done anything.

21 And again, the time line, I don't want to, you know,
22 [indiscernible] it too often, but we are here many months of these
23 were due. And for them to be just in the process of applying search
24 terms tells me they haven't done anything. United also tries to use
25 the ESI protocol as a way for sort of allowing them to continue to

1 push this out.

2 However, I think the Court was very clear at the last
3 hearing, that the ESI protocol discussion that the parties are in
4 process with would not alleviate anybody's discovery obligations.
5 Just to hear that they don't even -- they're not even reviewing,
6 there's not even an imminent rolling production is a little bit
7 disconcerting, so we would ask that the Court compel production of
8 documents and interrogatories in those categories.

9 United makes a distinction between in-network and
10 out-of-network. And I would like to say that it's a distinction that is
11 not something that is appropriate in terms of at this discovery stage.
12 Certainly if they want to make that argument later, let them. But it's
13 informative that United has asked us for both in-network and
14 out-of-network reimbursement data. We are in the process of
15 getting that information and producing it. And so I think United
16 recognizes that the commercial payer data, as sort of a general
17 description, is what is going to be -- at least what the parties are
18 going to look at, whether or not, you know, down the road in terms
19 of evidentiary perspective, we can deal with that later. But we are
20 entitled to both in-network and out-of-network. And that was --
21 [indiscernible] Request For Production No. 87 is where they asked for
22 in-network data.

23 United also objects to some -- some of the issues with
24 respect to trade secrets under the Nevada statute, and it's
25 proprietary information as well as their customer information. I

1 think, you know, we're well established at this point that we have a
2 protective order. United is not shy about identifying things that is
3 attorneys' eyes only. So I think that provides the most protection.
4 We did discuss during meet and confer efforts that we might do a
5 blinded exchange where its blinded and attorney's eyes only set and
6 then perhaps a confidential set, and then maybe an unblinded set
7 that would be attorney's eyes only. Those were discussions we had.
8 Obviously United hasn't gone forward and produced any
9 information, so we haven't gotten to that point.

10 The next section is rental, wrap, and shared savings
11 program. United has now used the delay of a retained consultant to
12 indicate that they have matched data points and trying to figure out
13 whether or not there's any information on whether or not there
14 should have been a wrap or shared savings program applied to the
15 litigation claims.

16 This is sort of a distraction and perhaps not understanding
17 what the request is. But we'd asked United to tell us if you -- if any
18 of the litigation claims you didn't pay because you think there's a
19 shared savings or a rental or rent network, let us know.

20 We have actually produced a second set of data that
21 provides information about, in the same time period, claims that
22 were paid by a shared savings program or pursuant to a shared
23 savings program. So United actually already has the data. We just
24 wanted them to come forward and say, hey, if there's any in this
25 litigation set, tell us now or forever hold your peace.

1 So to transform it into that they need to look at each line I
2 don't think is necessarily accurate. I think they know what's in this
3 market with respect to these particular emergency departments, if
4 they have access to a shared network, that they would know that,
5 and they don't need to look line by line.

6 But regardless, we would ask that they also be required to
7 produce information if they have any. If they don't, we're sort of
8 looking to say -- for them to say, no, we don't have that information
9 or we don't have that applicability to the litigation claims.
10 Everything that had a network shared savings program is
11 appropriately listed in your other spreadsheet. It's --

12 Again, it's -- just sometimes we're just looking for simple
13 information that we just are getting one roadblock after the other
14 after the other. United, I think now, has used the consultant
15 explanations for several different rounds of motions. I'm not sure
16 exactly how many -- how many days at this point that we're waiting
17 for the consultant to finish looking at the data points, but I guess
18 we'll find out in the meet and confer effort sort of where that expert
19 is at.

20 Okay. The next section are the Data iSight-related
21 documents. Obviously, this is really one of the core issues of our
22 complaint in terms of, you know, what are they doing? What have
23 they done? What have they strategized? What have they decided to
24 do? What plans have they implemented?

25 We've gotten really just the paucity of information. We've

1 gotten the network access agreement, and I think eight or nine pages
2 of documents that were identified as attorney's eyes only, but what I
3 would describe as like a science preference checklist, nothing really
4 substantive. We have asked for a list of how many claims have been
5 processed by Data iSight. We've offered to have them run a time
6 period so that we can then go back and pull which ones.

7 None of those offers of compromise have been met with,
8 you know, any sort of engagement by United.

9 But at the end of the day, we have all their documents, and
10 we would like them. We would like them whether they're in meeting
11 minutes, whether they're in e-mails, whether they're in -- you know,
12 whatever form or format they're in, we know they exist, and we
13 would like that information as soon as possible.

14 The other point I would make with regard to the Data
15 iSight is they often are talking about, We're not entitled to
16 information because it's national data, and that this is just a Nevada
17 case. Again, I want to reiterate, those are squarely within the
18 allegations that we're saying that we need to be able to prepare. If
19 they're saying this is Nevada and that this is the same as national
20 market data, that's important. That goes directly to our claims, and
21 so we would be entitled to that and they shouldn't be able to omit
22 just because they're calling something national data.

23 And that's an important piece too, when we finally got the
24 unredacted multiple plan agreement, you know, I won't go into it
25 because it's AEO, and I want to be very cautious, but there really

1 were some -- there was some information in there that was on this
2 national level that sort of was sleight of hand, if you will, in terms of
3 why they said we shouldn't have been able to get it in the first place.

4 Okay. So the next category of documents regarding the at
5 issues claims, United said they're already producing administrative
6 records.

7 Again, you know, we take issue with this term
8 administrative records every time.

9 And it's important, though, because I want to quote from a
10 case, a Ninth Circuit case, it says quote, In the ERISA context, the
11 administrative record consists of the papers the insured had when
12 [indiscernible] claim, end quote. And I'm quoting from a case called
13 *Montour versus Hartford Life*, 588 F.3d 623 at 632. Ninth Circuit
14 2009. And that's really important. You know, we've sort of belabor
15 this point, but. It just goes to show you how important when United
16 keeps referring to the administrative record, this is very specific. If
17 they -- and in this case they had to deny the claims. We're not after
18 any claims that are being denied.

19 So they keep hiding behind this administrative records.
20 We think that are other platforms, [indiscernible] administrative
21 policeman forms, claims management system -- other documents
22 and information that exists outside of what would be considered an
23 ERISA administrative record.

24 And so in terms of when United says it's already
25 producing administrative records, we need more information than

1 from that. We haven't asked for just administrative records, and we
2 go round and round on this in meet and confer efforts, but it's
3 important again, because this is our case and this is not an
4 administrative ERISA case.

5 And so in that context, I also want to bring out perhaps the
6 status on United's production, which they have produced nine
7 administrative records, detailing, like, nine dates of service for their
8 numbers. As of the Court's last hearing, we think that the point that
9 they are not in compliance with the order, because they were
10 supposed to have produced documents by September 23rd. I realize
11 that we will take this up perhaps in a status check at another time.

12 However -- I think it's important for the Court to know that
13 in a month, almost exactly, since the last hearing, we've gotten nine
14 administrative and nothing else. We know that United has 100,000
15 e-mails that it had been reviewing. We haven't received any of
16 those. And so, you know, it also is interesting to see, you know what
17 we're getting. We thought maybe we'd see it in order, how it
18 appeared on a spreadsheet or maybe [indiscernible] intuitive like last
19 name, date of service. It doesn't appear to be that way, so we're
20 interested to see, you know, sort of how it plays out. You know, are
21 these the only documents that United is going to find favorable?
22 Does it favor -- you know, what the situation? So, you know, we're
23 just sort of holding -- holding by, but just for the Court to understand
24 that we certainly haven't gotten a lot of information since the last
25 hearing.

1 Negotiations, United says it's working to [indiscernible] --
2 United says it's working to collect and search. This is actually a
3 retreat from what it told us before. And this is my reference to the
4 hundred thousand e-mails that back in June we understood counsel
5 had on a platform and was reviewing.

6 To now say that it's working to collect and search,
7 certainly is disheartening because it suggests that, you know, one of
8 the two situations wasn't accurate at the time. So we just -- we
9 would like the documents. We're entitled to them about the
10 negotiations. It's not just between our client and United, even
11 though that's how they framed it in the opposition. We asked for
12 documents relating to the negotiations.

13 So we want to know, you know, in addition what was
14 their -- what were the e-mails going back and forth offline, you know,
15 internally, not forward facing to the representatives of the plaintiffs.
16 So we would ask for an order compelling that as well, Your Honor.

17 I know there's a lot here. I appreciate your time,
18 Your Honor. But this sort of tells you that we haven't gotten a lot of
19 information that we've been asking for -- document --

20 Next category of documents about complaints that other
21 network providers performing emergency department services have
22 made on United. We think this is important. I mean, we think this is
23 a nationwide plan and scheme to reduce reimbursement rates. And
24 we would be surprised to -- if there weren't other providers in our
25 same situation making the same complaints and would be interested

1 in that information. We think it's relevant, and we think it goes to the
2 allegations that are in the complaint.

3 Next are prompt settlement claims. United refers again to
4 the administrative records in an attempt to limit the records that we
5 are entitled to get. So we want information about, you know, I'm
6 sure they have some reporting. Are they, you know, meeting the
7 Nevada prompt payment statutes in terms of asking for information,
8 getting information, and making claims. That's what we would
9 expect to see out of a company like United. We haven't gotten
10 anything. And again, the administrative record is not the only
11 personal information that United has, and we continue to object to it
12 trying to use that as the framework for this case.

13 Finally, United's affirmative defenses, they have basically
14 said they're not really working on it right now because they're
15 working on the administrative record piece of it. I don't think those
16 two go hand in hand. We had [indiscernible] meet and confer
17 discussions about how only Sandra [indiscernible] and her
18 department could handle the administrative record piece of it.

19 We had actually asked if there were other departments,
20 other people that could work on pulling information about these
21 things. And so when we were told only this one department can do
22 it, that suggests to me, well, only they're working on it. That means
23 there's, you know, other teams and is other groups that can work on
24 the e-mails, that work on the strategy and those sort of documents.

25 So Your Honor, we would respectfully ask that you order

1 everything that we've asked for because it all falls squarely within
2 the allegations. And we really would just like to get to the heart of
3 the matter and start looking at documents, and -- and moving this
4 case forward. Thank you.

5 THE COURT: Thank you.

6 And Mr. Roberts, Mr. Balkenbush, before I hear the
7 opposition to this motion, we've gone for about two hours. I need a
8 five-minute break for my personal comfort so that I can continue to
9 attentively listen to all of the arguments.

10 So court will be in recess until about, let's say 3:33. Thank
11 you.

12 [Recess taken from 3:28 p.m., until 3:34 p.m.]

13 THE COURT: Okay. I'm recalling the case of Fremont
14 versus United. And I note the presence of all counsel.

15 I believe we are ready to hear the Defendant's Opposition
16 to the Plaintiffs' Motion to Compel.

17 MR. BALKENBUSH: Thank you, Your Honor. And this is
18 Colby Balkenbush for the defendants. I'll be presenting the
19 opposition on this motion.

20 You know, this is a difficult motion to respond to because
21 the truth is, as we set forth in our opposition papers, we have agreed
22 to produce 90 or 95 percent of what they are seeking to compel us to
23 produce.

24 The dispute is really over timing and the argument that
25 United should just be doing this faster than it has been.

1 So let me address the timing issue, and then I'll address
2 the few areas where there is a dispute as far as whether or not the
3 Team Health Providers are entitled to the information they're
4 seeking.

5 As to the timing issues, so what United has been
6 attempting to do is respond to multiple requests and prioritize things
7 that the Court has ordered it to produce already. So for example,
8 this Court has ordered United to produce the administrative records
9 for all 22,000-plus claims. We've been trying to prioritize that and a
10 lot of these other requests -- the other information that we had
11 hoped to produce sooner, but frankly we've fallen a little behind on
12 because of some of the other discovery we're being pressed to
13 produce.

14 What we've tried to do in our opposition is give dates
15 when we believe we'll be able to produce those documents to Team
16 Health. So, for example, we've listed the Data iSight closure reports.
17 We state we believe we'll be able to produce those by October 23rd.
18 For the market data for in-network and out-of-network
19 reimbursement rates, we've stated we should be able to produce
20 that in 14 business days.

21 And so we've tried to give some dates to show the Court
22 that we are trying to comply with our discovery obligations. But
23 frankly, there are a lot of documents at issue --

24 THE COURT: Mr. Balkenbush, Mr. Balkenbush, let me --
25 Mr. Balkenbush, I'm sorry, but I have to interrupt you. It doesn't

1 appear as though your client is taking a rational approach to its
2 obligation to engage in discovery. Why couldn't things have been
3 produced already?

4 MR. BALKENBUSH: So let me address -- I mean, there's a
5 number of different document requests that are at issue,
6 Your Honor. Let me just address some of them then, specifically.

7 So for example, they're looking for documents that would
8 show the methodology that was used to determine the amount of
9 reimbursement paid on each of the claims at issue. Those
10 documents would essentially -- the documents that show that would
11 essentially be, one, the administrative records that this Court has
12 already ordered United to produce. We produced approximately
13 1800 pages of those on September 30th. And we believe we're
14 going to be able to produce another 35 administrative records next
15 week. That production we believe will also be in the thousands of
16 pages.

17 But one of the issues we've run into that has slowed
18 things down is when we're trying to match this claims data -- match
19 Team Health's claims data to our own is that there are errors in their
20 spreadsheet. So for example, we've found instances where a patient
21 will be listed with a date of service, and their spreadsheet will list in
22 different places that patient being enrolled in different health plans.
23 And so to find the data underlying that claim, the administrative
24 records, for example, we have to look in the database that
25 corresponds to the health plan the member was enrolled in.

1 And so we have had instances already as we've been
2 trying to do this is that, you know, we've looked under a particular
3 plan's database and haven't found the documents and have had to
4 go look at another plan's database to try to find it. So that has
5 slowed things down. That's one issue we're facing.

6 You know, another is just that this -- there is litigation all
7 over the country very similar to this, between United and the Team
8 Health Providers. And so United's business units that are tasked
9 with trying to find and gather these documents aren't just dealing
10 with requests from this case. Based on my conversations with our
11 client, I believe that United is working hard to gather these
12 documents and is putting pressure where it needs to be put to
13 accelerate this process, but it is difficult given the number of
14 documents at issue and the number of different requests, so I think
15 that's, I guess, part of the explanation.

16 Another is just that these documents, many of these
17 documents are not stored in a format that is easily -- easy to
18 access -- the access and then produce.

19 As an example, Your Honor, the administrative records are
20 not even stored in a TIF or PDF format. My understanding is they're
21 actually -- the only way we can retrieve them is either to take a
22 screenshot of the screen showing the record, or to essentially print
23 the TIF or PDF, and then produce them. And so that also has slowed
24 down the process.

25 So let me go into some of these, I guess, topics that

1 they've raised. A lot of these would be resolved with United
2 producing a claim-matching spreadsheet and the administrative
3 records. The methodology used to determine payment is going to
4 be shown either by a claims spreadsheet, which should have a
5 column showing essentially whether or not what plan was at issue
6 and whether or not any wrap or shared savings program impacted
7 the amount of reimbursement on that claim.

8 There should be a column for each of the claims that could
9 show that, and the amount of reimbursement, how it was calculated,
10 would also be shown in the administrative records we are trying --
11 we're in the process of producing or have started producing.

12 Another issue that they have raised are the negotiations
13 between United and Fremont. More information on Data iSight.
14 That's -- that information would be in custodian's e-mail inboxes.
15 We have started gathering those and working on producing those.
16 It's just frankly, Your Honor, there's so many discovery requests at
17 issue here, it has -- we have been slowed down a little bit by the
18 order to produce the administrative records.

19 Let me address the -- let me address some of the issues
20 we dispute, because, again, a lot of the arguments Ms. Gallagher
21 raised, we haven't argued that these documents are irrelevant or not
22 discoverable. We just said we need more time. But there are a few
23 where we do stand on our objections and are refusing to produce
24 documents because we believe our objections have merit.

25 The first one is Request For Production 31. This is a

1 request where Fremont is seeking documents related to strategy and
2 discussions regarding reimbursement rates. And we've agreed to
3 produce those, but we've asked that it be limited to only documents
4 that relate to plaintiffs' claims.

5 Their request, as written, seeks documents not only
6 related to discussions about reimbursement rates for the plaintiffs,
7 but for any other out-of-network providers. And that's just
8 overbroad and seeks irrelevant information. So again, we're not
9 refusing to produce, we just believe that request should be limited in
10 that way.

11 The other issue that -- the other request we take issue with
12 is in regard to certain Data iSight documents. So we've agreed to
13 produce the closure reports. We've already produced the contracts
14 with Data iSight. And we've produced the preference checklist.

15 But we have objected to producing national level
16 multi[indiscernible] Data iSight data. And the reason we've objected
17 is that there is no way to use that national level data and extrapolate
18 to Nevada and the claims that are at issue here.

19 This data doesn't show reimbursement data for
20 specification regions, like focused on Nevada; and it doesn't show
21 reimbursement data focused on specific out-of-network providers
22 like plaintiffs. This is national aggregate level data, and so our
23 objection is just it would be -- that that would be irrelevant
24 information for purposes of this lawsuit, would be meaningless
25 because the rates shown there can't be extrapolated to the claims

1 that are at issue here.

2 The third discovery request that we object to is Request
3 For Production 41. And so this seeks documents related to
4 challenges to United's rate of reimbursement by other
5 out-of-network emergency medicine groups. And our objection is
6 that this does not relate to the claims at issue. This is seeking
7 documents for any challenges by other nonparty out-of-network
8 providers.

9 Now, again, if they are asking for documents, we're not
10 objecting to producing documents from Team Healths, you know, or
11 Fremont's challenges to United's rate of reimbursement. But they're
12 asking something much broader. They're asking for any
13 out-of-network provider that we be ordered to produce all
14 documents related to challenges those providers have brought.
15 Obviously, that would be an enormous number of documents. And
16 it would also be difficult to limit -- and in fact, I think the request is
17 not limited -- it's also not limited to the full time frame at issue here,
18 which is July 2017 to present. It goes back beyond that.

19 So we do have limited objections to those three issues,
20 Your Honor. But for the other ones, we essentially have agreed to
21 produce the documents. We're just struggling to produce them as
22 fast as plaintiffs would like us to produce them. And we're trying to
23 give dates to the plaintiffs and to the Court when we think we can
24 comply with our discovery obligations, but it's just difficult given the
25 number of documents at issue and the different types of documents.

1 THE COURT: Thank you, Mr. Balkenbush.

2 The reply then in support, please.

3 MS. GALLAGHER: Thank you, Your Honor. So I wanted to
4 address those points in terms of the timing. You know,
5 Mr. Balkenbush indicated that United is focusing on its production
6 obligations for the administrative record.

7 As Your Honor knows, that order came out last month.
8 And so we have this long period of time since January when these
9 were originally due and most of the meet and confers where, you
10 know, they're saying now, they've agreed to produce 90 to
11 95 percent, but sort of not, as indicated, the state of affairs. We've
12 gotten push back and narrowing that we heard just a moment ago,
13 as well, unilaterally narrowing what we've asked for.

14 So the timing, I just don't see how there's been an effort
15 before now to try and comply and get us the information that we
16 asked for. One point about the closure reports that's now being --
17 with respect to data iSight, now being promised on October 23rd.
18 We've had meet and confer efforts back in June that said that we
19 would have them by September 5th. We never got any. Now
20 they're promised to 10/23.

21 You know, we just see this line in the sand being pushed
22 further and further back until there's an actual order, you know,
23 compelling United to participate reasonably in the discovery
24 process, and not trying to just put a box around anything other than
25 the administrative record, which we've heard again here in

1 opposition.

2 You know, United talks about market data in 14 business
3 days. It would have been nice to have that information or that
4 commitment before now; right? We had to bring a Motion to
5 Compel before now. The spreadsheet on [indiscernible], you know,
6 certainly if there's a particular issue, they've had our spreadsheets,
7 the original ones, since last fall. So now we're just getting into a
8 discussion on data points and had that compromise offered a while
9 ago.

10 But what I'm hearing that's concerning is the
11 methodology, and again trying to point to the plan. We know
12 United's methodology is not in the plan. We know that when Dan --
13 Dennis [*sic*] Schumacher said, you know, because we can -- in
14 response to why are you going to reduce reimbursement rates, we
15 know that that is not in the plan. United does not look to the plan
16 when it had negotiations with the health providers, when it says it
17 was going to reduce the reimbursement rates. That's because it's a
18 high level decision and strategy that is implemented. And that is the
19 information that we want and that we're entitled to get, based on the
20 allegations in the complaint.

21 So again, when you're hearing it firsthand, Your Honor,
22 the administrative record is their go-to for everything. And I can tell
23 you that it is only limited under federal law as to why an insurer
24 denied a claim that has no application in this case. And to so
25 suggest that there are e-mails about strategy, suggest that there's

1 information involving highest levels at United that's going to be in
2 the administrative record is just -- it's not accurate, and it's not what
3 we've limited our complaints to. It's not what we've limited these
4 requests and interrogatories to. And so when representations that
5 we've gotten some Data iSight information, it is so limited,
6 Your Honor -- like the fact that we're getting a closure report is
7 probably only because we accidentally hit on that name of a report.

8 And meet and confer efforts, we -- you know, we were met
9 with, Well, you know, we don't know what you need. What do you
10 think we might have? You know, and those are things that -- why we
11 also objected to the e-mail protocol is we don't know what United
12 calls them. We have a little bit more information from the multiplan
13 agreement, because there are reports that are called out. We haven't
14 gotten those reports, Your Honor.

15 So we know this exists. We know that when there is, you
16 know, lots of money -- I won't use the exact amount because I don't
17 want to be revealing anything -- but there is a lot of money involved
18 in the multiplan and independent agreement. And so there is no
19 chance that money is exchanged without reporting and without
20 e-mails and without discussion about how it's going and what they
21 should do to change it.

22 In fact, there's [indiscernible] in that agreement that tells
23 us that we think plans were changed to accommodate the iSight
24 entities.

25 And so to sit here and tell us that there isn't information,

1 other than a closure report, is simply not accurate, and not being
2 even honest to the documents that we have gotten, which aren't
3 very many.

4 So we would expect a full disclosure, not just limited to
5 what United as indicated as closure reports. We know that there are
6 performance reports, and they've actually objected to those as not
7 being relevant. I don't know how they're not relevant. We have
8 placed this scheme at issue and directly with specific allegations,
9 and so we should be entitled to see what sort of performance
10 reports, because as part of the scheme, they are shared, right, they
11 are sharing in the profits when they artificially identify what they
12 want the reimbursement rate to be.

13 And so any of that information relating to that would be
14 related to [indiscernible].

15 With respect to Request for Production No. 31, that
16 Mr. Balkenbush indicated, again, this is the high-level strategy.
17 Plaintiffs' claim, you know, he only wants it with respect to plaintiffs'
18 claims. That simply isn't going to work for us, Your Honor. We need
19 the high level. We know that this isn't planned level specific. This is
20 strategy at the highest levels of this company -- and its affiliates. I
21 mean, really, all of these affiliates, Data iSight, and we expect that
22 there is information.

23 With respect to Request For Production 41, I believe is the
24 other one Mr. Balkenbush indicated, is relating to any challenges and
25 complaints by other out-of-network emergency department service

1 providers -- this is absolutely relevant. We think this is a plan that
2 would -- has been set out across the nation.

3 If there are other providers that are having similar
4 experiences and making the same complaints that they can't believe
5 or asking why that these reimbursement rates have been all of a
6 sudden reduced without any demonstrable data to support it, I think
7 that's relevant. And I think that we should be entitled to that,
8 Your Honor.

9 So I think overall, you're seeing a little bit -- hearing a little
10 bit of that administrative record talk again. Really, that is one piece
11 of this case. It's important. I don't want to minimize the information
12 that we're going to get. But it's also a misnomer. We want, like we
13 said in our claims, Motions to Compel claims filed, we want all
14 claims information -- not just what United is deeming is an
15 administrative record.

16 We want e-mails. We know they exist. They haven't been
17 produced on any level.

18 And we're just ready to get this information so we can get
19 moving.

20 THE COURT: Okay.

21 MS. GALLAGHER: Thank you.

22 THE COURT: Just a couple of questions, Ms. Gallagher.

23 Have you ever prioritized for the defendant what you want
24 to have produced first, next, last?

25 MS. GALLAGHER: I have not, Your Honor.

1 THE COURT: You have not?

2 MS. GALLAGHER: I have not, you know, prioritized for --

3 THE COURT: Okay.

4 MS. GALLAGHER: -- United. You know, I certainly haven't
5 made that request either.

6 THE COURT: And how long would it take you to prioritize
7 it?

8 MS. GALLAGHER: By tomorrow or Monday.

9 THE COURT: I was going to say the 13th or 14th. Today is
10 the 8th.

11 MS. GALLAGHER: I can meet that.

12 THE COURT: Which day?

13 MS. GALLAGHER: I can meet that, Your Honor.

14 THE COURT: Which day?

15 MS. GALLAGHER: I'll go with the earlier of the two, the
16 13th.

17 THE COURT: October 13th. Thank you.

18 All right. This is the Plaintiffs' Motion to Compel.

19 The motion will be granted in all respects.

20 I overrule the objections to RFP 31, the objection to
21 providing national Data iSight data; and overrule the objections to
22 rule -- Request For Production 41. So all of the objections are
23 overruled. The motion is granted in its entirety.

24 The plaintiff will incorporate into the order the deadlines in
25 the opposition with regard to willingness and the defendant will be

1 held to those deadlines.

2 By the 13th of October, the plaintiff will prioritize the
3 remaining issues for the defendant, and the defendant will respond
4 by the 20th of October -- that gives you a week, Mr. Balkenbush.
5 And this will be back on calendar on October 22 at 10 a.m.

6 And I am not usually so forthcoming, but with COVID I feel
7 like these business court cases you need to know what I'm thinking.

8 Mr. Balkenbush, if your client can't meet the deadlines, I
9 will have no choice to make -- but to make negative inferences.

10 I don't fault you in any way. I understand that it is a
11 problem with your client, and I don't blame you in any respect.

12 But this case has just gone on too long with not enough
13 effort.

14 So Ms. Gallagher to prepare the order.

15 Mr. Balkenbush, you will approve the form of that order, if
16 you can. If you can't, explain why. I'll either sign, interlineate, or
17 hold a telephonic. But you'll have to have a reasonable time, and I
18 will not accept a competing order.

19 Any questions from either of you on that?

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

21 MR. BALKENBUSH: Your Honor, no question in regards to
22 the process of submitting the order or objecting to the proposed
23 order.

24 I guess in regard to the October 22nd status check, would
25 the Court take into consideration if a rolling production has been

1 made of, I guess, the categories of documents that Ms. Gallagher
2 identifies for us in her, I guess, October 13th e-mail or letter to us?
3 Or is it the Court's position that everything needs to be produced?

4 What I'm trying to get -- understand is that, for example --

5 THE COURT: Sure.

6 MR. BALKENBUSH: -- you know, a rolling production of
7 e-mails is one thing. Producing every single responsive e-mail, I do
8 think would be unworkable by October 22nd.

9 THE COURT: It's not my intent to require all of the
10 production by the 22nd, but to determine what the priority is and set
11 deadlines for each category. And that will be set in stone as of the
12 22nd.

13 MR. BALKENBUSH: Understood, Your Honor. Thank you
14 for that clarification.

15 THE COURT: Okay. And your timeline, Mr. Balkenbush,
16 should say when things can be done and explain, based upon the
17 order of priority given to you by the plaintiff.

18 Now, anything further?

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

20 THE COURT: Okay. Now, I -- we have on calendar today a
21 motion -- the Defendant's Motion for a Protective Order with regard
22 to protocols, retrieval, and production of e-mail? Is that still on?

23 MR. BALKENBUSH: So, Your Honor, that motion, the
24 Court denied without prejudice, I believe. And then ordered the
25 parties to meet and confer on an ESI protocol.

1 THE COURT: Mm-hmm.

2 MR. BALKENBUSH: We have spoken with plaintiffs'
3 counsel about that. They've requested some additional information
4 from us regarding the format, certain files are stored in that we have.

5 And I believe the next step there is that plaintiffs are going
6 to send us a draft ESI protocol that they are comfortable with, and
7 then we'll respond to that. I don't believe we've received that yet.

8 So I think that is an issue that can probably be maybe
9 tabled and brought up again at the October 22nd status check.

10 THE COURT: Thank you, Mr. Balkenbush.

11 The plaintiff, is there a response to that?

12 MS. GALLAGHER: Just a brief response. That's generally
13 accurate in terms of our discussions. And we are taking the laboring
14 or the Health Care Providers in drafting the ESI.

15 I think what would be helpful is just additional information
16 from United. We have engaged in the discussion about their claims
17 management system and where we might find additional
18 information. And we sort of were stalled in that regard and got only
19 information, again, regarding where administrative records may be
20 kept. So it would be helpful.

21 We're trying to craft something, not knowing what
22 United's various platforms are, you know, and we ask -- they either,
23 you know, didn't know at the time and we haven't gotten that
24 follow-up.

25 So I think if there could be just a push for additional

1 information that we can fill in so that we can get it going and
2 perhaps have an agreement by the 22nd, that would be helpful.

3 THE COURT: Thank you.

4 Is there a reply, Mr. Balkenbush?

5 MR. BALKENBUSH: Yeah. I think it would just be
6 helpful -- once we have the draft ESI protocol from the plaintiffs, and
7 we will expedite our review of that, I think it's -- we just need to
8 receive that to know, you know, how close we are apart, as far as
9 terms, instead -- but would the Court rejected our ESI protocol or
10 e-mail protocol in the prior motion. So we've essentially asked the
11 plaintiffs to give us something that they're -- they're comfortable
12 with.

13 THE COURT: Okay. Do both of you think you can give me
14 an update on the 22nd of October on this issue?

15 MS. GALLAGHER: Yes, Your Honor.

16 MR. BALKENBUSH: Yes, Your Honor.

17 THE COURT: Thank you, both.

18 This Motion for Protective Order then will be continued for
19 status only on October 22nd.

20 And we also have a status check, and I did see a status
21 report this morning from the plaintiff.

22 Is it necessary to discuss that today?

23 MS. GALLAGHER: Your Honor, I was able to weave that in
24 with the argument about the status of the administrative record
25 production to date. Thank you.

1 THE COURT: Good enough.

2 And will Mr. Balkenbush, or Mr. Roberts, do you both
3 agree that we don't need to have the status check in lieu of the fact
4 that we've already argued everything else?

5 MR. BALKENBUSH: I agree, Your Honor.

6 THE COURT: Okay. Very good.

7 So I guess I'll be seeing you guys a lot in October and
8 November. So until then, stay safe and healthy.

9 And are you guys working full time on this case?

10 Don't answer that. Okay.

11 MS. GALLAGHER: Appreciate your time this afternoon.
12 Thank you.

13 THE COURT: Never make -- never should make an attempt
14 at humor. Thank you both.

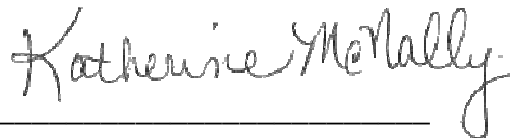
15 MS. GALLAGHER: All right.

16 MR. BALKENBUSH: Thank you, Your Honor.

17 [Proceeding concluded at 4:02 p.m.]

18 * * * * *

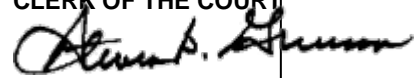
19 ATTEST: I do hereby certify that I have truly and correctly
20 transcribed the audio/video proceedings in the above-entitled case
21 to the best of my ability.

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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

FREMONT EMERGENCY
SERVICES (MANDAVIA) LTD.,

Plaintiff(s),

vs.

UNITED HEALTHCARE
INSURANCE COMPANY,

Defendant(s).

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

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE
THURSDAY, OCTOBER 22, 2020

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

APPEARANCES (Attorneys appeared via Blue Jeans):

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

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

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

1 **LAS VEGAS, NEVADA, THURSDAY, OCTOBER 22, 2020**

2 [Proceeding commenced at 10:10 a.m.]

3
4 THE COURT: Okay. The last matter we have at 10:00 this
5 morning is Fremont versus United.

6 And I had hoped for a status check on that, an update
7 yesterday. I don't think I received that.

8 So all right. Let's have appearances, please, starting first
9 with the plaintiff.

10 Are the parties present on Fremont versus United? Let's
11 take appearances, please. Please unmute yourself for your
12 appearances.

13 Okay. Ms. Perach, I see you. I see Lee Roberts.

14 MS. PERACH: Good morning, Your Honor. Amanda
15 Perach, appearing on behalf of the Health Care Providers. I also
16 believe Kristy Gallagher is on the line.

17 THE COURT: Thank you.

18 And for the defendants, please.

19 MR. ROBERTS: Good morning, Your Honor. Lee Roberts
20 for the defendants.

21 THE COURT: Thank you. And do you have anyone with
22 you?

23 MR. ROBERTS: Yes, Ms. Llewellyn.

24 MS. LLEWELLYN: Good morning [indiscernible]. Yes.
25 Brittany Llewellyn for the defendants. Thank you.

1 THE COURT: Okay. And because I've been seeing so
2 much of you guys lately, I'm going to thank Mr. Roberts for getting
3 his video on Blue Jeans. It makes it much easier to be -- at least see
4 your faces.

5 So we continued this --

6 MR. ROBERTS: It turns out it was my new virus protection
7 software was blocking the connection because Blue Jeans is
8 apparently an unknown app, so I had to go in and give it permission.
9 I don't know if anyone else has had that problem, but it happened
10 with my new virus software.

11 THE COURT: Okay.

12 MR. ROBERTS: But it's good to see you, Your Honor.

13 THE COURT: All right. So this was a status from last week
14 with regard to the priorities, responses, deadlines. And so let me
15 have an update first from the plaintiff.

16 Ms. Perach or Ms. Gallagher? You'll have to unmute
17 yourself, guys.

18 MS. GALLAGHER: Your Honor, can you hear me?

19 THE COURT: I can now.

20 MS. GALLAGHER: Great. I don't know exactly what's
21 happening. But good morning, Your Honor. Kristen Gallagher on
22 behalf of the plaintiffs.

23 So we did file a --

24 THE COURT: All right. Let me first preface this -- my
25 apologies to both of you. I haven't read your status reports. They

1 were filed fairly late, and so I apologize to both of you. So you'll
2 have to spoon feed me.

3 MS. GALLAGHER: No problem, Your Honor. I
4 understand.

5 So this is Kristen Gallagher. I'm going start first with the
6 production, United's production of at-issue claims file. We can start
7 with that update.

8 So as Your Honor recalled, you ordered United to produce
9 certain, what they referred to, as administrative records by
10 September 23rd. As of the October 8th hearing, they had produced 7
11 files and just this weekend produced an approximately another 41,
12 bridging the total to 50. You know, the required production by the
13 23rd, obviously, at 50, and there's tens of thousands of claims at
14 issue, is that this is a slow-roll claims production, for sure,
15 Your Honor.

16 What we think is happening is basically the attempt to get
17 the extended discovery that they set forth at the outset that they
18 wanted by slowly producing and trying to show the Court, perhaps,
19 that they just can't do it, despite the Court's orders. And so we think
20 this is a deliberate strategy, much like what happened that led to this
21 litigation, in terms of we're doing things because we can do them.

22 So it's frustrating from our position, especially because in
23 United's status report, they have asked for an extension of the
24 discovery deadline with respect to the at-issue claims files.

25 One it's improper to do so in a status report. Second, they

1 haven't approached us about extending discovery. I think they
2 probably know that we're not amenable to that, given our positions
3 that we've taken in this case.

4 But at this point, they, you know, basically are not
5 complying with the Court's order on this point. And we would ask
6 for expedited production and not this slow-rolling production that
7 we have been seeing.

8 I'm happy to go through the other points, but if you want
9 to take these one by one, I'll let you talk to Mr. Roberts on that point.

10 THE COURT: Good enough. Do you -- so you want to
11 bounce back and forth on each issue?

12 MS. GALLAGHER: I think that's probably the best way to
13 do it, Your Honor.

14 THE COURT: Okay. So Mr. Roberts, Ms. Llewellyn, your
15 response, please.

16 MR. ROBERTS: Thank you, Your Honor.

17 Ms. Llewellyn has been dealing primarily with the
18 plaintiff's counsel and our client on these issues, so I'm going to let
19 her address the Court as to our efforts. Thank you, Your Honor.

20 MS. LLEWELLYN: Your Honor, speaking to the
21 administrative record production, I believe there was a
22 representation at the last hearing that we were endeavoring to
23 produce somewhere between 200 to 250 records per month.

24 There are certainly no deliberate efforts to stall the
25 process. And we are undertaking, amongst various business entities

1 and departments, to get these records produced in an expedited
2 manner. Unfortunately, there are just a lot of moving parts. It
3 requires the review and verification from various departments and
4 business people within those departments. And then for counsel to
5 then review and produce those documents as well. So we are
6 attempting to meet what we previously said we would be working
7 toward, which is, I believe, between 200 and 250 records per month.

8 The representations as to the intentional delay are simply
9 incorrect.

10 And I also just want to make a point that we are also
11 simultaneously working on responding to plaintiffs' other numerous
12 discovery requests. And, Your Honor, we are simply doing our best.

13 And speaking to the comments about our request for an
14 extension, we did not request an extension in our status report. We
15 simply noted that it might be a reasonable possibility simply
16 because we are not going to be able to produce 22,000 records
17 before December of this year.

18 THE COURT: Okay. And so then how are we going to
19 maintain the March 15th, 2021, jury trial, Ms. Llewellyn?

20 MS. LLEWELLYN: And Your Honor, that's a separate issue
21 that we had also addressed in our status report and that we had
22 spoken with the department about.

23 We believe that -- both parties believe that the trial date
24 will likely need to change with the expert deadlines set as they
25 currently are. As it stands, the initial expert deadline was set for

1 October 1st of 2020, which has already passed; and the rebuttal
2 expert deadline was set for November 1st of 2021, which is, of
3 course, after the trial date.

4 So we were attempting to work with the department on a
5 new scheduling order that would accommodate the experts'
6 discovery schedule which we had previously agreed would come
7 after the fact discovery cutoff of December 30th, 2020.

8 THE COURT: And for both parties, I regularly grant,
9 especially now, extensions. The close of discovery is what triggers
10 your trial date. There's a program on the JEA's computer.

11 So if you are going to stipulate to alter of those deadlines,
12 start with close of discovery, and I'll be happy to issue a new trial
13 order.

14 MS. GALLAGHER: Your Honor, if I may speak to that
15 briefly, that there is an agreement with respect to staggered
16 discovery. And that is one point that we are in agreement on and
17 had reached out to chambers.

18 There is another point that United has raised that we don't
19 think is proper to raise it in this context, but -- with respect to other
20 deadlines.

21 But with respect to the facts discovery deadline of
22 December 30th, you know, that's what the Health Care Providers are
23 focusing on, because what we're dealing with in terms of the
24 at-issue claims is fact discovery.

25 And so our concern here is basically they did not get what

1 they wanted at the Rule 16 conference for a lengthy discovery
2 period. And so what we're seeing is just sort of this incremental
3 push; right? It's one delay after the other. And we've unfortunately
4 had to present that to the Court from the beginning because that's
5 what we have seen and what we have been trying to put a backstop
6 to.

7 And so the argument that Ms. Llewellyn made about the
8 time that it takes -- that was part of the Court's consideration in
9 granting our Motion to Compel the at-issue claims. So that is not
10 new information. And, in fact, the Court was specific and considered
11 that, and still ordered production by a date certain, the 23rd of
12 September.

13 And so when we see this unilateral decision by United to
14 take this, you know, on a claim by claim, and we don't know quite
15 exactly how they're producing documents, because they don't follow
16 our claims list, they don't seem to be in any particular order that we
17 can yet tell. I'm sure at some point they will reveal which -- in what
18 order they've decided to produce them.

19 But it is on this issue -- and you'll see throughout the
20 status check -- that it is the incremental push that is just not
21 acceptable. You know, unfortunately, United made this situation
22 happen by deciding that they weren't going to do anything for
23 almost, what are we? 10 months after we served this discovery.

24 And so it really -- from the Health Care Providers
25 perspective, it sort of is a little bit too late in terms of them asking for

1 relief based on their own failure to do the work at the outset. And so
2 we would ask that the Court not entertain the extension.

3 Obviously, they indicated they're not officially asking for it
4 at this point. But we would like to press and have them abide by the
5 Court's rules, which at this point, they're actually outside of the
6 auspices of the order to compel the at-issue claims.

7 I suppose the Health Care Providers will need to revisit
8 that issue through a separate motion, perhaps an order to show
9 cause. But, you know, the excuse that they just can't do, it just isn't
10 sufficient at this time, Your Honor.

11 THE COURT: And Ms. Llewellyn, did you respond in full
12 with regard to that administrative records part? Or did we get
13 sidetracked with regard to the trial setting?

14 MS. LLEWELLYN: Your Honor, as an additional issue, I
15 just wanted to note that the parties have an additional meet and
16 confer scheduled for this Friday to discuss a potential
17 claims-matching protocol that the plaintiffs had proposed to us, that
18 would perhaps alleviate some of the issues with respect to the
19 administrative record production. That's just a final note that I
20 would make on that point.

21 THE COURT: Good enough.

22 So let me politely remind you that I've already compelled
23 the responses by order on September 28th, 2020.

24 Let's move to the next issue. Ms. Gallagher.

25 MS. GALLAGHER: Yes, Your Honor. Thank you.

1 The next issue is the denial of the United's Motion to
2 Compel clinical records. And so the Court had ordered the parties to
3 meet and confer on matching data points. As Your Honor may
4 recall, we had proposed a protocol back in February, and so that is
5 what we took up at the meet and confer earlier this week.

6 We were initially encouraged. We found out from
7 Mr. Balkenbush that Natasha Fedder had been working on data-point
8 matching for several -- for a while -- I don't want to put a specific
9 timeline, because I didn't get a specific timeline. But it sounded like
10 for a while. And her representation to us during that meet and
11 confer was that there were 3,000 claims that they had not matched.
12 That seemed to be, you know, moving things forward.

13 But when we started to ask for details, there were none.
14 So when we asked about, Well, what data points do you need? What
15 is missing? What are you having trouble matching? The response
16 was, We don't know. We need to talk to our client about that.

17 And then we were made -- proposed an offer by United to
18 provide additional information. And so I said -- and they asked if I
19 would agree. And I said, Well, I need to know a what additional
20 information you need. You know, what are we talking about?
21 Because our spreadsheet had upwards of, I think, it's 20 data points
22 that we have already provided to United.

23 So I wasn't sure what additional information might be
24 needed. So I asked the question, What do you propose in terms of
25 additional information? And again was met with, I'm not sure what

1 else we might need.

2 And so to me, you know, it sounded good. But sort of
3 when you pull it back, it's more of the same. We don't know. And
4 then they ask to meet and confer at the end of the week for them to
5 get more information from the client.

6 And so in other words, they came to the meet and confer,
7 not having a response or specific counterproposal to the data-point
8 proposal that will the Health Care Providers made in February.

9 Instead what we got was sort of a general proposal that
10 would essentially be similar to the e-mail protocol and trying to limit
11 our access to people and limit our access to documents. And what
12 that was was a proposal that they put up a witness of their choosing
13 to talk about 10 to 15 claims, and then that would be in lieu of
14 production of all of the at-issue claims.

15 And so you can imagine that is not sufficient. I mean, that
16 would be a discovery tool that we would be able to use for sure, but
17 it isn't the sum universe of the discovery tools that the Health Care
18 Providers are allowed to use in litigation like this.

19 And so, you know, our response to that was that doesn't
20 really sound like something we would be interested in. But if you
21 have another proposal or a proposal that makes sense and that
22 would be adequate to the issues that are at stake with the at-issue
23 claims files, then, of course, we'll be willing to listen.

24 So we were asked to have another meet and confer on
25 Friday. So I just -- in response to Ms. Llewellyn, I just want to make

1 it clear that that meet and confer is a long way away from reaching
2 any sort of amenable compromise, only because there has been no
3 compromise with specific points that have been made by United to
4 the Health Care Providers.

5 And so again, this is the theme of it sounds good and it
6 looks like they're trying to cooperate, but when you peel it back, it's
7 just more of the same delay, you know. And now what I see is
8 they're trying to convince the Court that we have somehow relieved
9 them or are okay with them not complying with the original at-issue
10 claims order.

11 And I just want to be clear -- and I've been clear with
12 them -- but I just -- for purposes of the court and the record, that
13 Health Care Providers are not inclined at this point, without
14 something concrete, something specific that will get them
15 information, we're simply just not going to be able to agree to that.

16 THE COURT: And Mr. Roberts or Ms. Llewellyn?

17 MS. LLEWELLYN: Your Honor, speaking to the data-point
18 matching, we did indeed ask for an additional four days to get the
19 information that Ms. Gallagher was requesting. It wasn't an attempt
20 to delay. It was simply we had not anticipated those questions at the
21 meet and confer. But we are attempting to work in conjunction with
22 the plaintiffs on a claims matching -- an agreed claims-matching
23 protocol between the parties.

24 With respect to the contention that we are, again,
25 intentionally attempting to delay, we are not. We simply need to get

1 more information about the data points that we were unable to
2 match.

3 We intend to have a full conversation tomorrow when the
4 meet and confer has been set about the information, the additional
5 data that we would need from plaintiffs to complete the claims
6 matching.

7 THE COURT: Okay. So Mr. Roberts and Ms. Llewellyn, the
8 conduct of your client is unacceptable to the Court. You guys are --
9 your client is putting you -- you in a very awkward position, and I've
10 had to say that at almost every hearing.

11 You have to realize that at some point I'll be asked either
12 to strike your answer or to take a negative inference. They are
13 building that record with every one of these hearings.

14 All right. Ms. Gallagher, anything on the denial of the
15 Motion to Compel on the clinical records? Or do we move to the
16 next issue?

17 MS. GALLAGHER: The next issue, Your Honor. Thank
18 you.

19 So the next issue is the status on the prioritization list for
20 the Motion to Compel that the Court granted in favor of the Health
21 Care Providers.

22 I will tell you that I think it's important for the Court to look
23 at our Exhibit 1 to our status report because that is us setting out, on
24 October 13th, our priority and dates and then the response from
25 United.

1 And so I'd like to just say, overall, the response was really
2 sort of disheartening in the sense that, again, it looks like the
3 opportunity to push this out. Even on things that United
4 represented, it was able to produce within a certain time period now
5 has been extended by virtue of the counterproposal.

6 And I'll go through a few examples just because I think it's
7 important for the Court to see what's happening. So with respect to
8 market data and reimbursement data, the Court ordered that to be
9 produced at both the Nevada and the national level.

10 United represented that it could produce a smaller market,
11 Las Vegas market data within a certain time period by October 26th.
12 And so what we saw was a request for us to do something different
13 than accept them at their word.

14 So they asked us to agree to, in lieu of that market
15 reimbursement data -- in lieu of -- and that was going to be
16 aggregated data -- to wait longer to get claims-by-claims data for
17 more information, to provide more data.

18 But when you look at the specifics -- and I've called this
19 out on page 3 of our Exhibit 1 -- what they did is they want to inject
20 managed Medicare and Medicaid into the data.

21 And our complaint made clear we do not have any claims
22 with respect to any managed Medicare or Medicaid -- and that's in
23 paragraph 1, note 1.

24 And the reason for this is quite obvious to us is that that
25 data will skew the overall data, because our clients have a

1 commercial-payer situation. And so they're trying to inject
2 irrelevant, unrelated information into the datasets, sort of sleight of
3 hand, if you will -- not coming to the Court and asking for a ruling on
4 whether or not it's relevant or not. The Court will see that we've
5 objected to that sort of data in response to United.

6 So it's sort of disheartening to see, hey, it looks like --
7 we're going to -- we want to provide you more is sort of the
8 messaging. But then when you look at the actual specifics of what
9 they've offered, it's something that is only to their advantage -- how
10 about that? That's probably the best way to say it -- and to the
11 Health Care Providers' disadvantage.

12 They asked for an additional meet and confer yesterday on
13 that particular point. We discussed -- and there was quite a push by
14 United to have us agree to, in lieu of the aggregate data, to wait for
15 claims by claim. And we just -- we weren't willing to do that. In fact,
16 we think we're deserving of both. We're deserving of the aggregate
17 data that they said they would produce, and we're deserving of the
18 claims by claim at the Nevada and the national level, but without this
19 injected irrelevant information. So that's one of the things that we
20 have a problem with.

21 Their dates also go, in some instances, into the middle of
22 December. They often ask to do an initial production, with no
23 specifics, and then a rolling production to hit either before -- right
24 before Thanksgiving or -- and/or through the middle of December.
25 Some of these include topics that they said they were prepared to

1 produce; some of these include topics that during the meet and
2 confer efforts they said they were already working on.

3 And this, you know, as Your Honor may recall, our meet
4 and confer efforts go back to June and July. And so now what we're
5 hearing is that they just aren't able to meet the schedule that we
6 would like because of -- due to the press of other business.

7 And respectfully that doesn't cut it from our perspective.
8 We have a December 31st deadline for fact discovery. We need the
9 information. And the idea that we should be able to be
10 accommodating to them into December based on the history; right?
11 I mean, this isn't sort of the first time we've been here and we're
12 pushing unreasonably.

13 We've had to come back to the Court -- I think this is our
14 third or fourth Motion to Compel at this point. And we've seen
15 objections that are just, you know, not within the realm of
16 reasonableness. And so we would like the proposed order of priority
17 and dates; we would like to have the Court enter.

18 And I'd be happy to go through additional ones. Like, the
19 other one, if you look at just even at the first one which talks about
20 United's witnesses, I think it gives you a pretty clear view of where
21 they're headed. They don't want to do a supplemental answer to
22 interrogatory asking for witness identification until, let's see,
23 December 15th.

24 So they don't want to tell us; and then they only want to
25 tell us who they want to tell us. In other words, they're trying to

1 manipulate who we get to know. They're saying, We'll put this
2 person forward on this topic.

3 And we can do that on a 30(b)6, only we get to choose the
4 topic and then they can choose the witness. But from a 16.1
5 perspective and a 26 perspective, the scope of discovery requires
6 them to produce witnesses who have information, tell us what
7 information they have, and then we get to decide who we're going to
8 talk to and when.

9 But this effectively puts all of this information weeks and
10 months out, again sort of in the same vein as that e-mail protocol
11 did, which was trying to prevent us from getting information.

12 So, you know, I would encourage Your Honor to look at
13 Exhibit 1. I think, you know, it's not my words; it's their words. I
14 think it makes it pretty clear where they're headed.

15 But partial productions, rolling productions, and
16 completion of productions into December just isn't going to work for
17 us. And in some cases, they tried to lodge additional objections to
18 the discovery, which, again, goes against the Court's order in an
19 earlier hearing. They also tried to say that they wouldn't produce
20 anything until we gave them more information.

21 So these are just additional obstacles. I can tell you we've
22 spent several hours this week already, you know, trying to be open
23 and amenable to reasonable compromises, but we just don't get
24 anywhere. You know, they push on us to ask to move our dates, but
25 yet have no willingness to hurry this process up. Because this is

1 unfortunately, you know, a situation that they had created by failing
2 to produce documents. And this is especially troubling because
3 they've indicated that they started collection and review, and we still
4 haven't seen any of those types of documents.

5 So we would -- you know, I'd be happy to, again, go
6 through each of the categories. But I think I hit on the ones that were
7 probably the most concerning to us. But I think all you have to know
8 is that, you know, it's a -- it's pushing out again into December with a
9 15-day period of time before the close of fact discovery, trying to set
10 us up, I'm sure, to extend discovery. But we're just not interested in
11 that.

12 We're interested in moving this case forward on the
13 merits. We would like to get the information about strategy,
14 decision making, how, what we allege to be the scheme works
15 behind the scenes. And that information is unfortunately in United's
16 sole control and we haven't seen it yet.

17 So we would ask the Court to adopt our protocol and our
18 prioritization list that we set out in our status report. Thank you.

19 THE COURT: I have one question. I assume the
20 reimbursement rate is lower for Medicare and Medicaid?

21 MS. GALLAGHER: That would be generally correct,
22 Your Honor, yes.

23 THE COURT: Thank you.

24 All right. Then Mr. Roberts or Ms. Llewellyn.

25 MS. LLEWELLYN: Your Honor, after the last hearing, I just

1 want to make clear that we met with our client on numerous
2 occasions. We have both discussed and stressed the importance in
3 complying with this Court's orders and in getting plaintiffs what they
4 have stated that they need in order to fairly try their case.

5 THE COURT: Ms. Llewellyn, I claim -- I put no blame on
6 any of my words on you, Mr. Roberts, Mr. Balkenbush. I want to
7 make that really clear. I believe it is your client who is conveying the
8 delay issue. I don't place any blame on the lawyers.

9 MS. LLEWELLYN: I understand. And what I mean to say,
10 Your Honor, is that we are working with our client to do what we can
11 to move this case forward. We are using our best efforts to meet
12 and comply with this Court's orders.

13 It is just physically impossible to meet certain of the
14 deadlines that plaintiffs are asking for. And just as a -- as one point
15 of clarification, one of the defendants is actually looking into new
16 technology in order to try to expedite production of these
17 documents.

18 Looking to the schedule that United has proposed, we
19 think it's ambitious. And while Ms. Gallagher is making note of a
20 date that's in December, I mean, some of the dates that we proposed
21 fall within the next couple of weeks. And these dates are the result
22 of numerous discussions with the several defendant entities and
23 various departments within each of those entities.

24 And these are the dates that United believes in -- in good
25 faith that it can meet for production of these multiple categories of

1 documents, keeping in mind that it requires our business people to
2 obtain the documents, to review and verify the information in the
3 documents, and then for counsel to review the documents for
4 production.

5 And these dates do precede the fact discovery cut off. But
6 we have also made clear to plaintiffs that if we are able to make
7 production sooner than stated in our proposed dates, we are
8 absolutely endeavoring to do so.

9 Just turning to the two points that Ms. Gallagher made --
10 one regarding the managed Medicare and Medicaid. That's with
11 respect to the market data.

12 We spoke with Ms. Gallagher yesterday, and these are
13 simply -- when -- just to go back to the last hearing where we
14 discussed market data. This Court ordered that we -- while we had
15 previously offered to produce aggregated data for just the Clark
16 County or Las Vegas Metropolitan area, this Court said that we need
17 to produce for the state of Nevada.

18 So we went back and we pulled this claim-by-claim data,
19 or we are in the process of pulling it since that time. And the
20 additional time is needed because of that extension from Las Vegas
21 to the state of Nevada. There isn't any other reason for delay, other
22 than the fact that we are now pulling claim-by-claim data for the
23 entire state.

24 And we spoke with Ms. Gallagher yesterday about the
25 managed Medicare, Medicaid issue. And we offered to

1 Ms. Gallagher to pull that or separately produce that data, if
2 possible.

3 We also noted that if it's not possible, they can have their
4 expert filter it out. But it's simply a part of the claims data for the
5 state of Nevada.

6 But again, we are still working to see if we can separately,
7 like, pull that data out from the emergency department data that we
8 are compiling.

9 With respect to Ms. Gallagher's discussion about a witness
10 that we intend to identify on December 15th. We had previously
11 discussed that this is because that position is currently being filled.
12 It is a vacant position and we expect it to be filled around the end of
13 November. And we had discussed that with Ms. Gallagher.

14 So that is the reason that it's going to take us, you know,
15 another month and a half or so to get that information.

16 So I just wanted to make those points clear to the Court,
17 and just to reiterate again that we are using our best efforts and we
18 are not intentionally delaying this process. It is just simply the time
19 that we understand this will all take.

20 THE COURT: Thank you.

21 And Ms. Gallagher, the reply, please.

22 MS. GALLAGHER: Thank you, Your Honor.

23 With respect to the separately produced Medicare and
24 Medicaid data or filtered, again what you heard is they have an
25 intention to produce irrelevant information. And it's just improper.

1 It goes to reduce the reasonable rate because it's not commercial
2 data. It is with respect to those managed care and Medicaid.

3 So you hear them basically acknowledging they're going
4 to include it regardless. We didn't ask for it. We expressly pled our
5 claims in our certain way, and that data is irrelevant.

6 If they think it's something other than that, they have an
7 obligation to ask the Court for a ruling and allow us to brief the
8 issue.

9 United is familiar with the fact that a Florida judge has
10 recently pegged that same data as irrelevant in a commercial payer
11 situation. So it's just improper to try and bring it in through this
12 meet-and-confer process.

13 If they can expect us to filter it, certainly they have the
14 ability to filter it. I am sure, based on the information in the e-mail
15 from Ms. Fedder, it sounds like this information is on a separate
16 platform. We don't have a lot of information about that yet because
17 United has previously declined to explain to us about claims
18 platforms.

19 But based on what Ms. Fedder indicated, this Medicaid
20 and Medicare information is separate, which would suggest that
21 they are combining it and purposely trying to inject it. And so I think
22 that's important for the Court. And by doing that what that I doing is
23 trying to get the Court to agree to a longer timeline.

24 But if they had Las Vegas market data aggregated and are
25 prepared to produce on October 26, as they represented to the Court,

1 there's no reason we have to wait for something different and
2 something manipulated and determined by United to be better.

3 You know, we get to decide what's better. We should get
4 all of the information and then we get to decide what to do with it.
5 But again, it's this manipulation of the time and the extension upon
6 extension.

7 I also want to point to the witness situation that
8 Ms. Llewellyn mentioned. They did say they expect to supplement
9 their Interrogatory No. 8 answer by December 15th. And that is the
10 request that asked for witness information about certain categories.

11 You know, this is a 16.1 obligation in some regards, that's
12 also captured within this category that the Court ordered them to
13 supplement and produce.

14 And so, you know, we're waiting, a really ridiculous
15 amount of time to just get information about who knows about our
16 claims or defenses at United. We're approaching the one-year mark
17 that we served these responses. And you're hearing a lot about the
18 depressive other business and they're doing it as fast as they can.

19 But you have to remember, they have come to this Court
20 and they have represented to us in meet and confers that they were
21 working on it. In fact, United's opposition to our Motion to Compel
22 indicated that they were almost in disbelief that we brought a motion
23 in the first place because they were on the cusp of producing
24 documents.

25 We can see now that that perhaps wasn't accurate -- or at

1 least United's counsel locally didn't have accurate information from
2 their clients in order to be making these representations.

3 But here we are. And we think that the press of business
4 and the complaints about it not being fair are simply just, you know,
5 a result of United's tactics and United's strategy in pushing all of this
6 out and making us come to the Court for relief consistently.

7 Again, we hardly have any substantive -- well, we don't
8 have, I don't think, any e-mails at this point. And the production
9 timelines that start in November, as a proposal by United, don't end
10 in November, necessarily. They're asking to start a production of
11 which we don't know.

12 In some regards they say that they still are identifying the
13 scope of discovery relating -- or the scope of where information
14 relating to negotiations. Those are documents that Mr. Balkenbush
15 indicated he had in his possession and they were reviewing, and
16 now they're coming back and saying, wait, there might be more, and
17 not even providing an end date for when those might be produced.

18 And so it's -- you know, I hate to come back to the Court
19 again on this, but this is the state of affairs that we're dealing with.
20 And we need the relief and the order to compel United to be able to
21 have a date certain that is sooner, rather than the later that they have
22 proposed, Your Honor.

23 THE COURT: On the interrogatories, didn't my prior order
24 compelling include Interrogatory No. 8?

25 MS. GALLAGHER: Yes, Your Honor. The one from the

1 last, yes.

2 THE COURT: Right. And then the production schedule,
3 did I not compel that?

4 MS. GALLAGHER: You compelled a certain production
5 schedule based on what United represented. We obviously have an
6 order that we are on the cusp of being able to submit to Your Honor.

7 There may be a dispute about one of those dates in the
8 order, and Your Honor can take a look at that.

9 But you had indicated that we were to meet and confer on
10 the priority list and that at today's hearing you would then enter that
11 as an order separately for the rest that United has indicated it
12 wasn't -- didn't indicate in the opposition it was ready to produce.

13 THE COURT: Good enough.

14 All right. Are we ready to go to the next issue?

15 MS. GALLAGHER: We are. From our perspective, that
16 concludes the points that we had on today for the status check.

17 THE COURT: And Ms. Llewellyn, do you agree with that?

18 MS. LLEWELLYN: Yes, Your Honor.

19 If I could just speak to the last question that Your Honor
20 asked about the dates that were compelled at the last hearing. I just
21 want to make clear that United is meeting all of those dates that
22 were compelled. And Ms. Gallagher's point was accurate that this
23 Court had to compel further meet and confers on plaintiffs' discovery
24 priorities, and that is the schedule that we have been discussing
25 today.

1 THE COURT: All right. So I'm going to grant --

2 MS. GALLAGHER: Your Honor, if I may.

3 THE COURT: You may.

4 MS. GALLAGHER: Excuse me. Thank you for that.

5 With respect to affirmative defenses, United has proposed
6 an extra several weeks in their proposed response to us, other than
7 what they represented in the opposition. So I just wanted to make
8 that point. But that will be in the order that is presented to the Court.

9 THE COURT: Okay. All right. So this is kind of a
10 preliminary ruling, and I'm going to give you both a chance to
11 respond.

12 But the -- I'm inclined to adopt the plaintiff's protocol
13 prioritization approach. With regard to the claims files, I would say
14 that it has to be 2,000 a month at a minimum.

15 And that with regard to the clinical matching points, that
16 the defendant has failed to properly meet and confer with regard to
17 the issue.

18 I understand you're talking again Friday. I will ask for
19 status reports on that Monday, and it will determine what to order
20 based on the status reports.

21 With regard to the market data, the Medicare and
22 Medicaid will be excluded from the defendant's obligation. I'll adopt
23 the plaintiff's schedules with regard to witnesses and aggregated
24 data.

25 The response with regard to Interrogatory No. 8, that will

1 be due on November 20th. And with regard to the production
2 schedule for the Nevada -- for the defendant in November, I reject
3 that. And I'll set the date as the last day of October.

4 And with regard -- and is there one more issue with regard
5 to an affidavit?

6 MS. GALLAGHER: I'm sorry. With respect to an affidavit?

7 THE COURT: Affidavit? I have that in my notes, but I'm
8 not sure that it needs to be ruled on.

9 So first the plaintiff and then the defendant, your response
10 to that proposed order from today's hearing.

11 MS. GALLAGHER: Your Honor, with respect to the
12 aggregated data, my understanding, just to make sure I have my
13 notes right is that by the last day of October the Nevada --

14 THE COURT: [Indiscernible] of October -- they said
15 October 26th, so I think I'm [indiscernible].

16 MS. GALLAGHER: [Indiscernible.]

17 THE COURT: October 26th, rather than the last day of
18 October. And Medicare and Medicaid will be excluded.

19 MS. GALLAGHER: And then the rest -- the promised
20 claims by claims without -- data without Medicare and Medicaid by
21 November 20th?

22 THE COURT: That's correct.

23 MS. GALLAGHER: Thank you, Your Honor.

24 THE COURT: I'm working from home today because we're
25 courtroom sharing. So let me just put you guys on mute for a

1 moment.

2 Thank you, everyone, for your patience.

3 And then Ms. Llewellyn or Mr. Roberts, do you wish to
4 respond?

5 MS. LLEWELLYN: Just another point of clarification,
6 Your Honor.

7 So the aggregated data that we had previously committed
8 to produce -- and we do still intend to produce -- that's on
9 October 26th, still?

10 THE COURT: That's correct.

11 MS. LLEWELLYN: And then you're asking for the
12 claim-by-claim market data by November 20th. And you would like a
13 Medicare and Medicaid data to be excluded from that set?

14 THE COURT: That's correct.

15 MS. LLEWELLYN: Should -- just for clarification, if
16 defendants later want to admit that -- that data for either affirmative
17 defenses or otherwise, would you want us to file a motion on that?

18 THE COURT: Well, I think when we get to the pretrial
19 motion stage, there will probably be a *motion in limine* to exclude it.
20 It will be fully briefed and we'll deal with it then.

21 MS. LLEWELLYN: Okay. So I -- we are permitted to
22 produce it separately and then --

23 THE COURT: I'm not telling you how to run your case.

24 MS. LLEWELLYN: [Indiscernible.] Okay.

25 THE COURT: And I'm not making decisions now as to

1 what is admissible. But I'm trying to narrow the discovery issues.
2 Actually, it was my hope to benefit your client, given their claim of
3 hardship.

4 MS. LLEWELLYN: Okay. I understand. I just wanted to -- I
5 understood that you were asking it be excluded from the production.
6 I just wanted to be clear on that.

7 And then as to the remainder of the proposed schedule,
8 did you address a date for that already?

9 THE COURT: I thought I ruled on everything except for the
10 last issue on the matching data points.

11 You guys can give me a status report by Monday. Include
12 in the order -- I will rule on one or the other, and that should be
13 included in this order. But I will task Ms. Gallagher with preparing
14 the order and requiring that the two of you review and approve the
15 form or not.

16 I will not accept any competing orders in this case. It
17 happened once again. I make that clear every time. And it --

18 I understand that you're trying to make your record. But I
19 will -- I will reject any competing order that is submitted when I
20 direct one party to prepare the order.

21 MS. GALLAGHER: And I -- if I could, Your Honor, I
22 understood you to say that you are preliminarily ruling that you've
23 adopted the Health Care Providers protocol and dates subject to the
24 issues that you called out separately? Is that an accurate
25 understanding?

1 THE COURT: That's correct.

2 MS. GALLAGHER: Thank you, Your Honor.

3 THE COURT: And Ms. Llewellyn, did you want to weigh in
4 on that?

5 MS. LLEWELLYN: I just wanted to, again, note that
6 these -- the dates that we had proposed were an honest attempt at a
7 good faith schedule for the production of these documents.

8 We will confer with our client. But my understanding is
9 that it was simply physically impossible to gather the thousands of
10 documents that would be included in --

11 THE COURT: I understand. And I've heard the
12 same argument from the defendant since March. It's been seven
13 months now.

14 So all right. So Ms. Gallagher to prepare the order.

15 And, Mr. Roberts, I'll give you a chance as soon as I go
16 through this.

17 Ms. Gallagher to prepare the order from today. Leave
18 open a blank with regard to the matching data points. Give me
19 status reports Monday.

20 I'll indicate to you guys by minute order what should be
21 included in a final order. And no competing orders. If you have
22 objections, that's fine.

23 Then, Mr. Roberts, you wished to say something?

24 MR. ROBERTS: I did, Your Honor.

25 And I just wanted to express a little bit more about what

1 Ms. Llewellyn said is we did get the message loud and clear from the
2 Court at the last hearing. We pressed our client to do calculations as
3 to how long it took to pull documents, what staff they could put on it.
4 And we came up with the most aggressive schedule that we thought
5 was possible.

6 And the shortened deadlines may make it impossible for
7 the client to meet those. If that happens, it won't be willful. But we
8 have challenges because they are multiple databases across multiple
9 companies. We cannot put third-party vendors into our systems
10 with full access to all personal health information.

11 United, like other companies, is dealing with short staffing
12 due to COVID. And it -- while we understand that these dates that
13 we've proposed are beyond those that the Court would like to order,
14 at the same time, we're not having any trials.

15 A trial, given the age of this case compared to the backlog
16 of four- and five-year-old cases and preferential cases, it's just not
17 likely that even if the Court forces discovery by December 15th, that
18 we're going to be able to try the case. It's going to be hurry up and
19 wait. And there's no prejudice.

20 And we are proposing to produce these documents. And
21 December 15th is not that far away. And all of the deadlines, with
22 the exception of the claims, which the Court has ordered at 2,000 a
23 month, we're proposing to produce within the current discovery
24 period.

25 And I just wanted to just tell the Court that we are pressing

1 our client to do this as fast as they can with the resources that they
2 can devote to it.

3 THE COURT: Thank you, Mr. Roberts.

4 Is there anything else to --

5 MS. GALLAGHER: Your Honor --

6 THE COURT: Yes.

7 MS. GALLAGHER: -- if I may just respond to, you know,
8 Mr. Roberts has -- obviously his presentation and Ms. Llewellyn's is
9 compelling if you were to look at it in a bubble.

10 Unfortunately, United's strategy has been just this. And
11 we are facing the results of what they put in place from the get-go,
12 which is to delay and to try and avoid at any costs your
13 December 31st fact discovery deadline.

14 And so, you know, the unfairness part of it is really on the
15 Health Care Providers. We're the ones that have been affected by
16 the reduction in reimbursement rates without underlying authority
17 or legality.

18 And so it's just important for me to put that on the record
19 as well, that there is prejudice. Putting this information -- you know,
20 discovery sometimes produces people to relook at their claims and
21 discover that maybe they -- their position isn't as good or is better
22 than they thought.

23 So these are tools that shouldn't be put on hold because
24 of COVID. And so I just -- I have to push back against this constant
25 mantra that they're doing their best, because they haven't been.

1 And we have had to see that through time and time again these
2 meet and confers.

3 And I just -- you know, I understand counsel's position in
4 terms of their representation of a client who isn't willing to
5 participate. But it simply just can't go on, and it can't be used as an
6 excuse now to say, oh, it's okay, we'll start over.

7 And so I appreciate Your Honor's order preliminarily
8 indicating that our protocol and our priority list is the one that will be
9 entered.

10 Thank you.

11 THE COURT: And I assume when you say they, you
12 exclude the lawyers?

13 MS. GALLAGHER: I did, Your Honor. I tried to make that
14 clear. You know, there is a certain point -- I'm not saying we're
15 here -- but just generally speaking, there is a point where attorneys
16 do have an obligation, you know, to represent within the confines of
17 all of the cannons an ethical code. So I will just say that.

18 But I have been in a similar position. I can appreciate
19 being an attorney with a client that you can only do what you can do.
20 But it doesn't relieve the fact of where we're at, and it doesn't relieve
21 them of discovery obligations or informing their client what their
22 obligations are before this Court.

23 So that's -- I just wanted to make that clear, Your Honor.
24 Thank you.

25 THE COURT: Good enough.

1 I need to get this on a status to get you the order.

2 Nicole, please set it out two weeks, Nicole McDevitt on
3 chambers, to make sure I get your order entered.

4 THE CLERK: Yes, Judge. That will be November 3rd in
5 chambers.

6 THE COURT: Can you make it November -- let's make it
7 November -- you're right. November 3rd.

8 All right, you guys. The reason for the delay is that I'm
9 supposed to go to the American College of Business Court Judges
10 next week in Savannah, if I can get up the nerve to get on an
11 airplane.

12 So I'm sorry for the delay. It's purely my issue. But
13 hopefully November 3rd won't disadvantage either side.

14 All right, you guys. Until I see you next, stay safe and stay
15 healthy.

16 MS. GALLAGHER: Thank you. And you too, Your Honor.
17 Thank you.

18 MR. ROBERTS: [Indiscernible] appreciate it.

19 MS. LLEWELLYN: Thank you.

20 (11:03 AM).

21

22 [Proceeding concluded at 11:03 a.m.]

23

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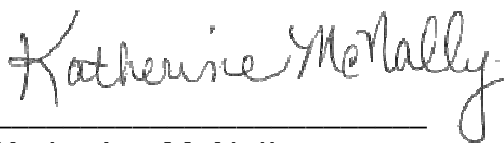
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1 ATTEST: I do hereby certify that I have truly and correctly
2 transcribed the audio/video proceedings in the above-entitled case
3 to the best of my ability.

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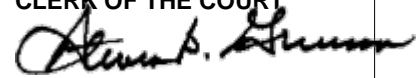
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Health Plan of Nevada, Inc.

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

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

**DEFENDANTS' OBJECTIONS TO
PLAINTIFFS' ORDER DENYING
DEFENDANTS' MOTION TO COMPEL
PRODUCTION OF CLINICAL
DOCUMENTS FOR THE AT-ISSUE
CLAIMS AND DEFENSES AND TO
COMPEL PLAINTIFFS' TO
SUPPLEMENT THEIR NRCP 16.1
INITIAL DISCLOSURES ON AN
ORDER SHORTENING TIME**



corporation; OXFORD HEALTH PLANS, INC., a Delaware corporation; SIERRA HEALTH AND LIFE INSURANCE COMPANY, INC., a Nevada corporation; SIERRA HEALTH-CARE OPTIONS, INC., a Nevada corporation; HEALTH PLAN OF NEVADA, INC., a Nevada corporation; DOES 1-10; ROE ENTITIES 11-20,

Defendants.

Defendants UnitedHealth Group, Inc., UnitedHealthcare Insurance Company (“UHIC”), United HealthCare Services, Inc. (“UHS”), UMR, Inc. (“UMR”), Oxford Health Plans, Inc. (“Oxford”), Sierra Health and Life Insurance Co., Inc. (“SHL”), Sierra Health-Care Options, Inc. (“SHO”), and Health Plan of Nevada, Inc. (“HPN”) (collectively “Defendants”), by and through their attorneys of the law firm of Weinberg Wheeler Hudgins Gunn & Dial, LLC, hereby lodge the following objections to Plaintiffs’ proposed “Order Denying Defendants’ Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiff to Supplement Their NRCP 16.1 Initial Disclosures on an Order Shortening Time” (“Proposed Order”).

On October 8, 2020, the Court held a hearing on Defendants’ Motion to Compel Clinical Documents, denied it without prejudice, and directed Plaintiffs to prepare the order. The hearing transcript is attached hereto as **Exhibit 1**. On October 23, 2020, Plaintiffs submitted a proposed order to the Court via email. Defendants hereby submit the following objections to Plaintiffs’ proposed order and request that the Court revise Plaintiffs’ proposed order as set forth below:

OBJECTIONS

Defendants set forth herein their objections to Plaintiffs’ Proposed Order. The Proposed Order submitted by Plaintiffs includes findings of facts and conclusions of law that were not addressed by the Court. Plaintiffs seek to use their Proposed Order to improperly assert merits determinations in their favor. Defendants submit that such inclusions are entirely inappropriate, not what was ordered, outside the scope of what was sought or could ever be afforded by any discovery motion, and will severely prejudice Defendants in defending themselves in this litigation. Defendants’ Motion to Compel was denied without prejudice based on the holding that because “this is a rate of pay case [and] there is no counterclaim,” the “[clinical]



records...are [not] relevant to the Plaintiffs' complaint." *See* October 8, 2020 Transcript, at 48:23-49:4.

Plaintiffs, however, are trying to seize this opportunity to impose findings of fact related to purported admissions by Defendants that do not exist and conclusions of law regarding "proportionality" of claims-specific document discovery, which was never decided by this Court and, in fact, runs counter to this Court's decision to deny the Motion to Compel without prejudice. Defendants' specific objections to Plaintiffs' proposed order are as follows:

1. Paragraph 1 in the findings of facts section should be modified as follows: The Health Care Providers' First Amended Complaint alleges that this case does not involve the "right to payment" and, in connection with the breach of implied contract and related claims, the Health Care Providers only seek the proper reimbursement rate, making this a "rate-of-payment" case.

2. The following statement should be added to the findings of fact section:

- The Court determined that because "this is a rate of pay case" and "[t]here is no counterclaim," then "the [clinical] records ... are [not] relevant to the Plaintiffs' complaint." [**Exhibit 1** at 48:23-49:4].

3. Paragraph 6 in the findings of facts section should be modified as follows: The Health Care Providers have provided United with a list of at-issue claims (FESM000344)¹ and invited United to identify data points that are not consistent. The Health care Providers have proposed that, for those claims listed on FESM000344 that match with United's data, there will be no dispute that the services rendered which underlie the claim were actually provided and that the Current Procedural Terminology (CPT) level coded for such services was the appropriate CPT level. United has not agreed to this proposal.

4. Paragraphs 9 through 12 in the findings of facts section should be stricken as irrelevant and/or superfluous and/or incorrect.

5. Paragraphs 15 through 17 in the conclusions of law section should be stricken as

¹ The Health Care Providers have reserved their right to supplement/revise a list of at-issue claims.



1 irrelevant and/or superfluous and/or incorrect.

2 6. Paragraph 18 in the conclusions of law section should be modified as follows:
 3 Because this is a “rate of payment case,” clinical records for the at-issue claims are not relevant
 4 to Plaintiffs’ Amended Complaint. [**Exhibit 1** Transcript, at 49:1-4 (“I just don’t see how the
 5 records you’re seeking here are relevant to the plaintiffs’ complaint.”); 50:11 (“I do see it as a
 6 rate-of-pay case.”)]. Because United has already deemed the claims allowed and allowable at the
 7 CPT code submitted and later adjudicated (*see* Answer ¶¶ 26, 193, 194, 196; Ex. 3, Answer to
 8 Interrogatory No. 6, 7), the relevant inquiry in this action is the proper rate of reimbursement
 9 which is based on the amount billed by the Health Care Providers and the amount paid by
 10 United. Based on Plaintiffs’ Complaint, the Health Care Providers do not have the burden to
 11 prove what was done clinically to establish their claims. [**Exhibit 1** at 50:14-16 (“[W]hen the
 12 plaintiff bills the CPT codes, it doesn’t put a burden on the defendant to make the plaintiff prove
 13 what was actually done clinically.”)].

14 7. Paragraphs 19 and 20 in the conclusions of law section should be stricken as
 15 irrelevant and/or superfluous and/or incorrect.

16 8. Defendants are also requesting that the meet and confer be scheduled for October
 17 23, 2020, and that the Order be modified as follows: **IT IS FURTHER ORDERED** that, on
 18 October 23, 2020, United and the Health Care Providers shall meet and confer meaningfully on a
 19 protocol to match data points on the Health Care Providers’ list of at-issue claims.

20 ///

21 ///

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CONCLUSION

For the foregoing reasons, the Court should refrain from entering Plaintiffs' Proposed Order without making the adjustments indicated above.

Dated this 23rd day of October, 2020.

/s/ Colby L. Balkenbush

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Sierra Health-Care Options, Inc., and

Health Plan of Nevada, Inc.



CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of October, 2020, a true and correct copy of the foregoing **DEFENDANTS' OBJECTIONS TO PLAINTIFFS' ORDER DENYING DEFENDANTS' MOTION TO COMPEL PRODUCTION OF CLINICAL DOCUMENTS FOR THE AT-ISSUE CLAIMS AND DEFENSES AND TO COMPEL PLAINTIFF TO SUPPLEMENT THEIR NRCP 16.1 INITIAL DISCLOSURES ON AN ORDER SHORTENING TIME** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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 GUNN & DIAL, LLC

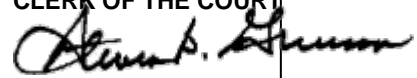


EXHIBIT 1

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EXHIBIT 1



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

FREMONT EMERGENCY
SERVICES (MANDAVIA) LTD.,

Plaintiff(s),

vs.

UNITED HEALTHCARE
INSURANCE COMPANY,

Defendant(s).

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

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE
THURSDAY, OCTOBER 8, 2020

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

APPEARANCES (Attorneys appeared via Blue Jeans):

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

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

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

1 **LAS VEGAS, NEVADA, THURSDAY, OCTOBER 8, 2020**

2 [Proceeding commenced at 1:30 p.m.]

3
4 THE CLERK: Good afternoon. This is Fremont Emergency
5 Services versus United Healthcare.

6 If I could please have all counsel please mute yourself until
7 it is your turn to speak. And if you could please state your name
8 each time you speak, so we can have a clear record.

9 Thank you.

10 THE COURT: Hello, everyone. This is the judge. And I'm
11 calling the case of Fremont Medical versus United Healthcare.

12 Let's take appearances, starting first with the plaintiff.

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

15 THE COURT: Thank you.

16 Other appearances for the plaintiff, please.

17 MS. LUNDVALL: Your Honor, can you hear me?

18 THE COURT: Yes.

19 MS. LUNDVALL: This is Pat Lundvall.

20 THE COURT: Yes.

21 MS. LUNDVALL: I'm sorry. You may not have heard
22 my appearance before. But Pat Lundvall, with McDonald Carano, on
23 behalf of the plaintiff Health Care Providers.

24 THE COURT: Thank you.

25 Is that all of the plaintiffs' counsel?

1 All right. Let's have defense counsel, please.

2 MR. ROBERTS: Good afternoon, Your Honor. This is Lee
3 Roberts, for the defendants.

4 THE COURT: Thank you.

5 MR. BALKENBUSH: Good afternoon, Your Honor. Colby
6 Balkenbush, also for the defendants.

7 THE COURT: Thank you.

8 All right, you guys. You know the drill. I'm in the
9 courtroom today, so no computer -- the computer doesn't have a
10 camera, so I -- it's voice-activated. So when I am speaking to you, I
11 try to look at one of the cameras. But your faces appear on the
12 screen, so when I'm looking away, it means I'm really looking at you.

13 So it makes sense to me to take the motion -- the renewed
14 motion for a stay, first.

15 MR. ROBERTS: Thank you, Your Honor. Lee Roberts. I'll
16 be addressing this on behalf of the defendant.

17 I apologize that you cannot see me on video. Blue Jeans
18 would not let me join the meeting on video, so I had to call in.

19 The Court previously heard and denied United's --

20 Did you say something, Your Honor?

21 THE COURT: No. I shuffled some paper. Sorry.

22 MR. ROBERTS: Okay. No problem.

23 Your Honor, as you know, the Court previously heard
24 United's motion for stay pending their writ in the Nevada Supreme
25 Court. And the Court denied that motion.

1 However, we've included a citation of the transcript where
2 this Court did say that if there was a briefing the Court would
3 reconsider the motion for stay -- if the Supreme Court requested
4 briefing on the issue, I would consider a brief stay for that purpose.

5 And although we had the opportunity to seek a stay from
6 the Nevada Supreme Court after this Court denied the stay, the
7 Court's comments struck us as reasonable. We understood that the
8 Court did not feel that our chances of success were very high, and
9 that even a request for briefing would not be ordered.

10 So we decided to wait to see if the Supreme Court did
11 request briefing on the writ, and if it did, make a renewed motion for
12 a stay in this court, rather than going up to the Nevada Supreme
13 Court at the time.

14 As we have set out for the Court, the Supreme Court has
15 indicated that an answering brief would be helpful to them in their
16 analysis.

17 We believe that, based on what the Court itself said at the
18 last hearing, that this does change the analysis on the likelihood of
19 success. And even though, just looking at general statistics, we
20 acknowledge that this doesn't mean that, based on statistics, we
21 have a 50/50 chance of success; we do believe that it increases the
22 likelihood of success greatly that the Supreme Court wants briefing
23 from the plaintiffs on the issues outlined in our writ petition.

24 In addition, you know, addressing some of the issues
25 raised in the opposition to our renewed motion, we don't believe

1 that those changed the analysis.

2 Again, the plaintiffs raise the fact that writ petitions are
3 rarely granted for an order denying a motion to dismiss, but
4 obviously the Nevada Supreme Court knew that this was a writ
5 petition seeking review of a Motion to Dismiss, and still ordered
6 briefing.

7 The opposition argues that our arguments misrepresent
8 the case law -- and it's fairly insulting, Your Honor, but we don't
9 need to get into that. But what they say simply isn't true. They say,
10 Oh, well, all you've seen are United's misrepresentations of the
11 cases.

12 Certainly the Supreme Court has the ability to read those
13 cases for themselves, before they order briefing. And even more
14 critically, the arguments raised below were all in front of the
15 Supreme Court. Our motion to dismiss and the opposing briefs filed
16 by the plaintiffs, which raise the very arguments they claim are
17 going to change the Supreme Court's mind, are all before the
18 Supreme Court as part of the record that went up with our writ
19 petition.

20 The Nevada Supreme Court is well aware of the context in
21 which the Court's order was issued. They're well aware of the
22 plaintiffs' arguments with regard to the case law we cited. And they
23 still ordered an answering brief.

24 In these circumstances, we believe that it would be
25 appropriate to issue a brief stay, and if nothing else, for purposes of

1 judicial economy. We've obviously been continuously seeking the
2 intervention of this Court to resolve discovery disputes. This Court
3 has spent an inordinate amount of time hearing issues from the
4 parties and will continue to spend an inordinate amount of time on
5 matters that will likely be resolved and never have to be considered
6 by this Court, if the Supreme Court grants the stay.

7 The argument that the Supreme Court is busy and this
8 stay is going to last a year, that's certainly not our experience. And
9 if, indeed, our arguments are so frivolous and can be summarily
10 disposed of by the plaintiffs with their answering brief, then certainly
11 it will not take that long for the Supreme Court to dispose of them, if
12 indeed they're correct.

13 But we don't believe they're correct. We think we have an
14 excellent chance of success, because ERISA is an area that the
15 Supreme Court has expressed interest in. This is an area of ERISA
16 which has not previously been dealt with by the Nevada Supreme
17 Court. It is an area that needs to be clarified.

18 And the argument that all of the discovery is going to be
19 needed any way really doesn't ring true, Your Honor. While they do
20 raise the possibility of discovery that would be allowable under
21 ERISA, the fact is they haven't pled ERISA claim -- that if the
22 Supreme Court grants the writ, the Supreme Court -- grants the
23 power to completely dispose of this lawsuit with leave for them to
24 amend. But whether or not they would amend to allege ERISA is
25 speculation at best.

1 If they believe that they had good claims under ERISA, if
2 they believe that they had exhausted their administrative remedies
3 under ERISA, and that the administrative records supported the
4 claim for the \$20 million which they put forward, they certainly could
5 have claimed that, either directly or in the alternative. And they have
6 not done so.

7 The discovery, even if they chose to amend and plead
8 under ERISA, would be significantly curtailed over what is going on
9 now.

10 And the idea that the Court can look at the sign that the
11 Supreme Court has now accepted the writ to the extent that they've
12 ordered an answer, but that this Court should ignore that issue and
13 presume that we still had very little likelihood of success -- it's
14 simply belied by the record.

15 The fact that an answering brief would -- was argued is an
16 indication that we do have significantly more success than the
17 average writ. And the fact that they filed an answering brief, despite
18 the posture of this case, is an indication that they're interested in the
19 issues. And even if the Court were to remand on less than all the
20 issues, judicial economy would still dictate that we have a brief
21 period of time.

22 And perhaps, Your Honor, if you feel that a year is simply
23 too long, this Court would certainly have the power to grant a stay
24 for, say, three months or six months; and if the Court has not ruled
25 at the end of that time, to lift the stay.

1 It's not a Hobson's choice where you either have to deny
2 the stay or issue an indefinite stay for however long the Supreme
3 Court may take to consider the writ issues.

4 And therefore, Your Honor, based on the analysis set forth
5 in our original Motion to Stay and in our renewed Motion to Stay, we
6 would ask that the Court issue a stay of these proceedings pending
7 the decision of the Supreme Court on writ or alternatively for a set
8 period of time at which -- the end of which period of the time the
9 stay would exhaust, subject to our motion before this court or the
10 Nevada Supreme Court to extend it.

11 THE COURT: Thank you.

12 And the opposition, please.

13 MS. LUNDVALL: Thank you, Your Honor. Pat Lundvall on
14 behalf of the plaintiffs, the Health Care Providers.

15 What the Court has before it is essentially a Motion for
16 Reconsideration. That Motion for Reconsideration continues to
17 [indiscernible] analyzed under the Rule of Appellate Procedure 8(c)
18 for determining whether or not a stay should issue. And when you
19 scour the briefs that have been presented then by United, you don't
20 have any different facts before you today, with one exception, than
21 you did the last time that we were before you. And so to the extent
22 that the law hasn't changed and the facts haven't changed, there is
23 no grounds then by which then to grant a Motion for
24 Reconsideration.

25 One of the things that I think is unique about the oral

1 presentation that was just made by Mr. Roberts is that he suggested
2 somehow that if the Court thought that a stay of a year was too long,
3 then the Court has the power by which to order a three-month stay
4 instead. And I have to confess, nowhere in its moving papers or in
5 its reply papers do they advance such an argument.

6 And I'm going to rely now, as far as on my own
7 experience before the Nevada Supreme Court, but I don't believe
8 that there is any legal foundation [indiscernible] for the business
9 court saying, well, if the Nevada Supreme Court hasn't done its job
10 within a three-month period of time and [indiscernible] a stay
11 doesn't work [indiscernible] that foundation of how expression by
12 which the Court should act, and they've given you no legal standard
13 by which then to do so.

14 The one thing that I want to address is a couple of the
15 arguments that they made in their reply brief, and that were at least
16 tangentially addressed then by Mr. Roberts.

17 One of the things that, in their reply brief, is that United
18 contended that we never addressed any of the exceptions to the
19 general rule that the Nevada Supreme Court has employed -- and
20 that is it will not renew or review on a writ a denial of a Motion to
21 Dismiss. [Indiscernible] not only did we address that -- not only did
22 [indiscernible] renewed [indiscernible] findings of conclusion of law
23 as to how those exceptions did not apply in this case.

24 And the two exceptions that were previously discussed in
25 the original briefing is whether or not that there -- this was a case

1 where there were no disputed facts and where clear statutory or rule
2 baked authority of the dismissal -- and this is discussed in the
3 briefing [indiscernible] with prejudice.

4 So if you take a look then at our opposition brief, and to
5 the renewed motion on page 4, we discussed both of those
6 exceptions. If you look at your order denying the Motion to Stay,
7 you discuss both of those exceptions. And you made specific
8 findings, specific Conclusions of Law No. 2 and No. 3. And if you
9 look at our original opposition, we addressed both exceptions.

10 So what I did is I tried to scour then the renewed motion
11 that had been filed by United, as well as their reply brief.

12 And do they contend anywhere within either of those
13 briefs, or before you now on oral argument, that somehow that this
14 case involves no disputed factual issues? No. They haven't given
15 you any argument, any contention. They haven't [indiscernible] as
16 far as any set statement of facts by which that are undisputed before
17 the parties and upon which the Nevada Supreme Court then could
18 review under a pure issue of law.

19 If you go to your order denying the Motion to Dismiss, I
20 could go through probably about 40 different findings of fact and
21 conclusions of law that you made in the original Motion to Dismiss
22 identifying the factual issues that have been alleged in our complaint
23 for which United disputes.

24 And so to the extent that the Court has already made
25 extensive findings that there are disputed issues of fact, that limited

1 exception that has been recognized in a handful of cases by the
2 Nevada Supreme Court does not exist.

3 And so if you take a look at their second argument that
4 they claim, or second exception that they claim, it is whether or not
5 that there is clear statutory or rule-based authority that obligates
6 dismissal.

7 Once again, we address this in our opposition to their
8 renewed motion. The Court addressed this issue in denying their
9 Motion to Stay, and we address it in our original opposition brief.
10 There is not clear statutory or rule-based authority that obligates a
11 dismissal with prejudice of the claims that have been asserted by the
12 Health Care Providers in this case.

13 And even United acknowledges that any dismissal, even if
14 they were 100 percent successful before the Nevada Supreme Court,
15 that any remand would give opportunity then to the Health Care
16 Providers by which to replead their claims. And so therefore, this
17 case is not over. And the repleading of the claims then would fall
18 within the scope of ERISA claims and that those discovery issues are
19 front and center before the court, have been before, and are again
20 today, and so to the extent that those discovery disputes will
21 continue, even if they are 100 percent successful before the Nevada
22 Supreme Court.

23 One of the things I think is a helpful tool also the look at,
24 and that is the case that they cited in their reply brief contending that
25 somehow that we didn't address in any form or the issues raised in

1 any form. And it's the *Western Cab case versus Eighth Judicial*, is
2 the 2017 case, that was decided then by Judge Bare, went below,
3 and that was reviewed then by the Nevada Supreme Court.

4 One of the things that I found interesting about that
5 analysis in the case that they brought to the Court's attention was
6 the fact that the Nevada Supreme Court found that the minimum
7 wage amendment was not ERISA preempted. And when you look at
8 the analysis that was employed by the Nevada Supreme Court in
9 finding that the Nevada's Minimum Wage Amendment was not
10 preempted by ERISA, and look at the case law that they employ, it is
11 the very case law that we have utilized in arguing against their
12 Motion to Dismiss. It's the very case law that the Court embraced in
13 denying their motion to dismiss. And it's the very case law upon
14 which that demonstrates that they do not have a likelihood of
15 success before the Nevada Supreme Court. Why? Because the
16 Nevada Supreme Court expressly rejected in the *Western Cab*
17 *Company* case, the analysis that United wishes to employ defined
18 conflict preemption for the claims that we have asserted.

19 And so I find that their recitation and their bringing to the
20 Court's attention that case to be a bit perplexing because it
21 underscores the fact that the Nevada Supreme Court has employed
22 the same conflict preemption argument that this Court embraced
23 and relied upon in denying their Motion to Dismiss.

24 And I could go through the cases that they cite and the
25 cases that were rejected and the analysis that was expressly rejected