Case Nos. 85525 & 85656

In the Supreme Court of Nevada

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

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CERTIFICATE OF SERVICE

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

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by the Nevada Supreme Court, if you wish for me to walk you through it. But in sum --

THE COURT: You know, it's a --

MS. LUNDVALL: I guess the point -- I'm sorry.

THE COURT: I guess the point is, if you feel you need to make a record on it, feel free to take the time. But I did read everything, and I'm a good listener.

MS. LUNDVALL: Thank you, Your Honor.

I guess, in sum, what I would say is this, is that, Did United embrace or address or try to argue against the -- the exceptions that occasionally are recognized by the Nevada Supreme Court? Did they bring to you the fact or the contention that somehow there are undisputed factual predicate upon which the Nevada Supreme Court could review this case? No.

And did it bring to you then any clear statutory authority or rule-based authority that mandates a dismissal of our claims? No.

In fact, what it did is it brought to you the case law that embraced the authority and the analysis that was employed by the Court.

So what did they actually do in their brief? They did give you a couple of new additions. And those new admissions are a helpful tool then in the analytical framework then so the Court can reach the same conclusion in denying this renewed Motion for Stay, as it did in the original Motion for Stay.

United acknowledges that there's four factors to be

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analyzed. And number one, that first factor is whether or not that there's a likelihood of success on appeal. We've already identified that in the very case that they cite and they embrace and that they suggested somehow that helps them in arguing then for a stay the -- the *Western Cab* case, that is a case then that embraces the same analysis the Court did.

Number 2, what they entirely do is that they gloss over the fact that complete preemption is a jurisdictional tool. And complete preemption is a tool that was employed by Judge Mahan to deny -- or to grant our Motion for Remand and to state that the federal court did not have jurisdiction over this case.

So what is United actually asking our Nevada Supreme Court to do? The same thing that they asked you to do, and that is to overturn Judge Mahan and to state that the federal court does have jurisdiction over this case.

And I think this Court is well aware of the case law and the basic premise that a state court doesn't have the authority to define or determine the jurisdictional parameters of the federal court, and it doesn't have the authority by which to overrule a federal court.

And the simplest way of looking at that is what is the procedural vehicle by which that this case could ever get back to federal court? And if there is no procedural vehicle for this case to get back to federal court, a complete preemption is not an argument that is available to United.

So let's turn then, as far as to the second issue, and that is

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whether or not that the object of the writ would be defeated if a stay was denied.

Now, this is where United makes two admissions. And I'm going to quote both of these admissions, because I think that they're helpful tools for the Court to look at.

In their reply brief at page 5, lines 21 through 23, United takes the position, and I'm going to quote here -- that a brief stay of discovery may eliminate concerns of significant wasted resources.

So in other words, what are they trying to do? They're trying to save some money.

What did they include in their declaration asking for this Court to order or to enter an order shortening time then? I go to Paragraph No. 12 from the declaration that was offered by Mr. Balkenbush to the Court in support of an order shortening time. And once again I quote, Because discovery is ongoing, time intensive and costly, and because of the pending writ, it may curtail the need for discovery.

So in other words, once again, what is United admitting? That they're trying to save money.

So if the object of their writ is to try to save them some money and to curtail, in their words [indiscernible] discovery, what this Court would have to do then is you would have to overturn or reject two decisions from our Nevada Supreme Court, that state that if that is the object of their writ or if, in fact, that that is the prejudice that is claimed by seeking a stay, then that is insufficient and may

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not be considered whether it be by the district court or by the Nevada Supreme Court in determining whether to issue a stay.

The two cases that I cite that the Court would have to either reject or overturn -- I guess reject is the proper terminology -- would be the *Micon* case and the *Fritz Hansen* case. And the *Micon Gaming* case, it was a case involving Charlie McCray [phonetic] and his employment agreement. And the District Court had determined that his employment agreement was subject to arbitration, and there was an attempt then by which to seek a stay in that case.

And in *Micon Gaming* -- I'm going to quote from the Nevada Supreme Court, finding the *Fritz Hansen* case, the Nevada Supreme Court says, We have previously explained that litigation costs, even if significant, are not irreparable harm. And then they go on to say that it is not a reason then by which to grant a stay.

And if you take a look at the *Fritz Hansen* case, our Nevada Supreme Court more extensively then looked at and evaluated whether or not the saving of money or the saving of time was a sufficient reason by which to grant a stay. In *Fritz Hansen*, the Court could not -- the Nevada Supreme Court could not have been more clear saying, no, it may not.

That was a case involving a contest as to whether or not that there was personal jurisdiction then over the defendant. And the defendant contended that he should not have to be required to participate in the expense of a lengthy and time-consuming discovery, trial prep, and trial. And the Nevada Supreme Court says,

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Such litigation expenses, while potentially substantial, are neither irreparable or serious. And they refused to use that as a foundation then for granting a stay.

In making that holding, they cited to three other Nevada Supreme Court cases, as well as cases from other jurisdictions, that enforced that same proposition.

Now, United tries to contend that somehow it's trying to do more than save money because its business people are very busy and that they should not have to be taken from their business task to focus on litigation. But that's nothing but a cost of litigation. And if, in fact, that there's any suggestion to the contrary, all you have to do is to look at the *Fritz Hansen* case because the Nevada Supreme Court goes on to identify that the time associated with litigating that case, or the business people having to litigate a case, that's nothing but a cost of litigation, and it is not a foundation then for the granting of the stay.

So one of the things that I think is another helpful acknowledgment, or helpful admission, that comes from their pleadings is that that they acknowledge that this case is not even over if the writ is granted in full.

And this is where I think that the real sophistry comes in the argument that is being advanced by United. Before you, they take the position that it is just going to take too long to do discovery and to pull all these administrative records for the claims that are at issue in this case and, therefore, they shouldn't have to do that. And

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then they go on to say, well, we should get a reprieve or a recess from having to perform that task. But we acknowledge that if the Health Care Providers replead their claims, we're going to have to do that anyway.

And so one way versus another, the discovery demands or the discovery requests that have perpetuated this case and which you're going to hear about for the balance of this hearing, those discovery disputes are going to continue, even if United is 100 percent successful on its motion.

THE COURT: Okay. Looks like we lost --

Ms. Lundvall, you're back?

MS. LUNDVALL: My apologies, Your Honor, I didn't mean to --

THE COURT: No problem.

MS. LUNDVALL: -- but the one last point, I guess that I'd like to make about that is this -- there are two additional factors that United didn't even address in their -- either in their renewed motion or, in fact, in their reply papers as to whether or not that there was some type of irreparable harm to United or the irreparable harm that was found by this Court then in granting or in denying their Motion for Stay in the first place. They didn't even touch those two factors. And so there's nothing really new for this Court to reconsider.

The only thing that is really before you is better admissions and a better record underscoring what it is and why it is that United wants to have this case stayed.

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And so therefore, Your Honor, we would ask for the same result that the Court had issued when you denied their original Motion to Stay.

Thank you, Your Honor.

THE COURT: Thank you.

And Mr. Roberts, your reply, please.

MR. ROBERTS: Thank you, Your Honor.

Addressing first the point raised by Ms. Lundvall that there is no proper basis for reconsideration, I'm going to say again that we're relying on this Court's own words that said, If there is a briefing request, I would reconsider this. This is why we delayed seeking a stay from the Supreme Court, and this is what we believe does change the Court's calculus.

In denying the Motion for Stay, this Court stated that with all due respect to the defendants, I do not think there's a likelihood of success on the matter even being considered by the Nevada Supreme Court. And the fact that the Nevada Supreme Court has requested briefing, and they have requested briefing with knowledge of all of the issues, which plaintiffs continue to raise as to the unlikelihood of success, does considerably change the calculus.

Going to the argument on the irreparable harm, this Court did find that the irreparable harm [indiscernible] on defendants in denying the original Motion to Stay. And therefore, I think it would be appropriate to take at least another look at those arguments in -- with regard to the length of the stay, because while plaintiffs argue

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that the only irreparable harm United can point to is money and the fact that we're going to have to spend money -- in essence, the only irreparable harm the plaintiffs are alleging is money -- money that this Court has not even found that they're entitled to.

And therefore, to the extent that the Court does think that an indefinite stay of a year or longer would be too long, I know of no prohibition that would prevent this Court from ordering a shorter stay to minimize any harm to the plaintiffs from a stay in the case.

But while plaintiffs minimize it, United doesn't argue something that merely the cost of discovery. In the affidavit with regard to the discovery that was sought by the plaintiffs in their Motion to Compel that was heard at the last hearing by the Court, we outline that even in order to comply with a delayed schedule for production of those documents, it would take four of our employees, working full time. That is a significant disruption of United's business. These are not people whose only job is to do discovery in connection with litigation. It is harming United and their attempts to continue their business under these strained circumstances that everyone is currently going through. Therefore, there is something merely beyond litigation costs.

But I think the Court can also consider that really, the factor, as far as irreparable harm, which is the Court is considering now, is very parallel to the irreparable harm in connection with whether or not a party has a speedy and adequate remedy.

And typically, yes, the Nevada Supreme Court says, hey, if

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you've got a future appeal, that's a sufficient adequate speedy remedy. And the fact that you have to do discovery doesn't alter that.

But in this case, the Supreme Court, nevertheless, has requested briefing on the stay. And in our writ to the Supreme Court, at page 21, we cited to *International Game Technology*, where the Court noted that an appeal is not adequate and speedy, given the early stages of litigation and the policies of judicial administration. In other words, it's not an absolute rule.

And in this case, where we're so early in the litigation, and a Supreme Court order on the dismissal could dispose of the entire matter, the analysis is a little bit different. And the Supreme Court has recognized that if there is complex litigation and you're early in the litigation, and the writ could dispose of the case and eliminate all of those costs, it can change that analysis.

And while Ms. Lundvall did a very nice job of pointing out words in our brief that were less than unconditional, but that doesn't change the fact that we do contend in our briefing that we're entitled, if we win at the Supreme Court, to a complete dismissal of the entire case.

It's something that we have asked for. We have cited authority to the Court in supporting that that is a potential remedy that we could get. And the mere fact that they could potentially replead after a complete dismissal to assert ERISA claims doesn't alter the fact that as the litigation currently stands before this Court,

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if the Supreme Court grants our writ petition, all of the plaintiffs' claims could be dismissed.

As far as Judge Mahan's decision, as this Court is well aware, in a decision on a Motion to Remand, there are no appellate rights. We had no right to appeal that decision to the Ninth Circuit. And Judge Mahan's analysis with regard to complete preemption is not binding in any way on this Court, and it also does not go to the issue of conflict preemption which is one of the primary bases of our writ to the Supreme Court.

In summary, Your Honor, we believe that this Court recognized at the prior hearing that it would change the way of the four factors under Rule 8 if the Supreme Court requested briefing; that it would indicate that we have a higher probability of success than this Court found at the prior hearing. And we believe that that factor would weigh in favor of granting a stay in this case, a brief stay, simply to give the Supreme Court a chance to resolve the writ on the merits, if they intend to do so.

Thank you, Your Honor.

THE COURT: Thank you, both.

The matter is now submitted, and this is the ruling of the Court. I read everything. I listened with an open mind, but for all of the reasons that I denied the stay previously, I'm going to deny this motion.

The Supreme Court orders talked about propriety of writ relief. And the *Dignity Health* case is law in Nevada where they've

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already said they rarely grant writs on motions to dismiss.

I don't find that the object of the litigation would be defeated without a stay. I think still the defendant has a low likelihood of success on the merits on the writ.

I'm concerned about the delay in this case. I do not believe that the motion was filed for any dilatory purpose. But clearly the extensive litigation doesn't equal irreparable harm in Nevada. I'm concerned about the delay in the case itself. April 15 of 2019 is when the complaint goes back to. It is already a year and a half old.

So for those reasons, I am going to deny the motion, Mr. Roberts.

Ms. Lundvall to prepare the order. See if you can agree as to form. If you can't, outline your issues for me. This may be a simple order -- and let me know if you can't agree on the form of an order. But I don't accept any competing orders.

Any questions, with regard to the ruling?

MS. LUNDVALL: No questions, Your Honor. Thank you.

THE COURT: All right.

MR. ROBERTS: No questions, Your Honor.

THE COURT: Thank you.

So the next motion I have briefed is the Defendant's Motion to Compel the political documents.

MR. ROBERTS: Yes, Your Honor. This is Lee Roberts. I'll be handling that motion for the defendant.

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The plaintiffs in this matter seek to foreclose United from taking discovery and offering proof with regard to the clinical records which describe the services that are actually -- that were actually performed for which the plaintiffs are now taking additional payment.

The clinical records, the medical records, will demonstrate what services were performed. Perhaps they will demonstrate the need for those services, the medical necessity of those services. They will demonstrate how long it took in order for those services to be performed in certain cases. And it will also demonstrate whether or not the services for which the plaintiffs seek payment are indeed the services that are identified in the claims they submitted to United for payment.

Based on our meet and confers and the papers filed by plaintiffs, plaintiffs seem to be essentially arguing that because United has partially paid those claims, that United cannot now dispute whether the services were performed, that United cannot dispute how the services were coded, and that United cannot defend in any way whether or not those services were necessary or properly coded.

The opposition to the Motion to Compel is essentially asking this Court to grant summary judgment on United's defenses and to grant summary judgment on whether or not United can dispute at this point in the litigation whether the services were performed and whether they were properly submitted for payment.

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And one of the factors that the Court should consider is the public policy of encouraging insurers to pay claims based on the representations of the providers who perform medical services. Under the Prompt Payment Act -- and which would not necessarily apply if these were ERISA claims -- but the argument which is being asserted is that they're not ERISA claims, and therefore you would have to look to the Prompt Payment Act.

But regardless, it's the public policy in Nevada to encourage insurers to pay high volumes of claims in a short period of time. And it's the public policy to encourage those claims to be paid based on the representations made by the providers when they submitted claim for pay.

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In this case, we know that part of what is in dispute here is emergency room services. And we know that emergency room services are subject to significant abuse in the industry for upcoding. We know, based on the sampling, that it would appear that a very large percentage of claims are coded Level 4 and 5 for emergency services, which are subjective standards based on whether or not the illness for which the patient is being treated was life threatening, whether or not it involves a moderate or high complexity of medical reasoning. There are lots of things that are in the medical records which would be relevant to determine the reasonable value of the services.

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And in this case, the Court cannot ignore the fact that plaintiffs have pled *quantum meruit*. They have pled the unjust

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enrichment of United. And without admitting that the -- those claims are valid, at this point in the litigation, the Court has to recognize that in an unjust enrichment claim, the Court can look at a number of different factors, such as the reasonable value of the services that are performed. And the Court is entitled to know, and we're entitled to know, what services were actually performed, even if we never requested those records in the beginning.

Just because an insurance company pays a certain amount under the representation that services were properly coded to a certain CPT code does not mean that everything is not back opened when the plaintiffs refuse to accept that payment and move to compel a reasonable payment of a reasonable value.

Once they refuse to accept our payment, they place the reasonable value of the services in dispute. And while there's not a lot of case law on this issue in the country, we have cited the case to -- the Court to a case in Florida, which outlines the logic of that exact issue.

Now that they have placed their entitlement to be paid more than what they were paid, they have put at issue whether the work was performed, whether the services are the same as that were identified in their claim form, and whether or not they were billed and coded appropriately.

There is one argument which was not reached in the brief, but I think it is somewhat applicable by analogy, and that is NRS 48.105, which they said accepting or offering or promising to accept

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a valuable consideration and compromising or attempting to compromise a claim which was disputed either as to validity or amount, is not admissible to prove liability for or invalidity of the claim for its amount.

And really that's exactly what they're asking the Court to do. We disputed the amount of the claim that they submitted. We paid a lower amount. And now they're trying to use that payment, which Nevada policy encourages, to estop us from contesting the validity of the claim itself. And that's just not proper, and they have not gotten summary judgment on that issue. They have not precluded us from asserting that defense.

And this is a discovery motion, and as long as that defense still exists, then they have not file that had motion and the Court has not grant that had relief, it is inappropriate for the Court to refuse to order relevant discovery on the basis -- on their claim that they will be able to get summary judgment on the actual coding of the claims for services and that it was proper and that the services were performed.

They haven't gotten that yet, and United is entitled to discovery on this issue. And there's a claim that this is simply retaliatory for the Motion to Compel that was filed by the plaintiffs, but the fact is that this discovery was requested long before they moved to compel discovery from us. We put this at issue because we thought it was relevant to the value of the services that were performed, that whether or not we requested medical records in

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initially paying a smaller amount is simply not relevant or probative to whether or not we're entitled to see the records of what they did now that they are claiming that our payment was insufficient.

So we would ask the Court to compel the clinical records for the claims that they are seeking. And as we said before, to the extent that the plaintiffs contend this would be overly burdensome and time-consuming, we are more than willing to meet and confer with them with regard to sampling methodologies or other mediums that would allow both sides to prove or to defend their case in a statistically significant reasonable manner. But at this point in the litigation, these items are relevant, and they are likely to lead to admissible evidence. And United is entitled to receive.

THE COURT: I just have --

MR. ROBERTS: Thank you, Your Honor.

THE COURT: Just one question, Mr. Roberts. Are you asking for EOBs in addition to clinical records?

MR. ROBERTS: Yes. And I was focused on the clinical records. But we are asking for all of the records which would support their spreadsheets. They have created around the spreadsheet. They have asked the Court do deem that everything in the spreadsheet is accurate, if United doesn't dispute it.

But the fact is, Your Honor, a chart, a spreadsheet is only admissible at trial and is only admissible in evidence to the extent that it is based on admissible evidence and the other party is offered an opportunity to review and copy the information summarized in

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the spreadsheet.

And in this case, we have been provided a spreadsheet, but the plaintiffs have not provided any of the underlying data or documents from which those spreadsheet entries are drawn. We believe that should have been provided initially, under Rule 16.1. And we are asking that the Court compel all documents upon which the spreadsheet is drawn so that we can review those and verify that the spreadsheet entries are correct.

THE COURT: Thank you.

MR. ROBERTS: And in going through -- and the Court may hear more of this with regard to Plaintiffs' Motion to Compel, which is on today -- but in going through and trying to compile clinical records and trying to match claims, United has already found many errors in the spreadsheets, which have made it difficult to research and align the issues. So we are asking for the COBs and all other documents which plaintiffs intend to use to show that the spreadsheet is admissible and that it correctly reflects and correctly summarizes is underlying admissible documents.

THE COURT: Thank you.

And the opposition, please.

MS. GALLAGHER: Good afternoon, Your Honor. This is Kristen Gallagher. And I'll be responding in connection with the clinical records.

What I'd like to start with is just an overview.

THE COURT: Hang on just a second.

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MS. GALLAGHER: What we heard is really just United conflating this case into something it's not. This is consistent with what we [indiscernible] from the beginning.

THE COURT: Ms. Gallagher, Ms. Gallagher, hang on just a second.

I just need the court reporter to change the screen so that I can see you on the screen. Can you -- you can't increase. Okay. Sorry. Good enough.

So go ahead then again, please.

MS. GALLAGHER: Sure. Thank you, your Honor.

So as I was saying, is that this is a consistent effort by United to conflate what this case is actually about. We know from our first amended complaint in paragraph 1 that this case is specific. This is not a right-to-payment case. This is a rate-of-payment case.

And so what you're seeing with the clinical records is language and using terminology that is trying to transform this into a right-to-payment case.

And we saw that in the moving papers, but particularly with Mr. Roberts's presentation today. And I'd like to hit on a few points and then the rest I'll address as we go forward.

But when Mr. Roberts talks about the top case statutes as being something that they denied part of a payment or made a partial payment, that is actually a misnomer of what this case is about. What happened is that United accepted the emergency department services at the level coded. They paid the claim. They

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either asked for information or they didn't, as they're entitled to do under the prompt case statutes in Nevada, and then they paid the claim. But what they represented when they paid the claim is that it was full payment for the claims that had been submitted.

Now what we're hearing in an effort to try and expand this case to something it's not, now they're saying what they did is they made partial payment. And so that's important if they want to stand on that, saying that they made partial payments under Nevada law, we'll certainly take that admission. But what we're seeing is language being used inappropriately and not forthcoming in terms of how these claims are adjudicated and how they're paid. So this case, make no mistake about it is the rate of payment.

So what has happened is that United accepted the claims. They processed them at the level coded. And then they paid them based on that level -- based on documentation.

We know from United's declaration of standard way, that they do have clinical records. They've represented to the Court they have clinical records. They have produced, although it's only nine claims to date. We have produced clinical records. So we know that United has that in their possession. And if they asked for it, they have it.

But what I want to make clear as I go through my opposition is that the terminology being used about clinical records and how we have to prove our claims because they have been partially paid is an inaccurate description of this case, Your Honor.

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And it's important for the lay of the land because as the plaintiffs we are entitled to bring certain claims. Had we wanted to challenge denied claims, that would be a different action, but this is clear. We have received -- well, let me go back, United has accepted and allowed at the level that has been paid. There's no denial of the level that's been paid. There's no partial payment because they thought it should have been paid at a different level.

And so to suggest that somehow this is different than the prompt pay statute or that this somehow opens the door to clinical records, I just want to make that record clear that it is an opportunity to United is trying to use this language and morph this case into something it's not.

But before I get too far down the road, I wanted to start by providing the Court an update on the meet and confer efforts. We did raise this issue in our opposing papers, because we thought it was significant that we had provided these responses more than a year ago now, I believe -- somewhat a year ago. We did not hear from United in terms of them having any issues with our responses until there became other discovery disputes in the federal -- while the case was pending in federal court.

At that time, the issue was raised specific to No. 6, which is the subject of this particular motion. And it's important in terms of timing, because at the time that the request was asked, United did not have an answer on file. United did not have any affirmative defenses that were provided, and so when we went to the meet and

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confer, what we were brought forward with is, well, you have a claim for unjust enrichment, and so as a result the clinical records are required.

Then sometimes after that, not too long ago, in July of this year, United filed their answer, which included the recruitment or an option. And so that timing is really important because United is trying to cut off our objections by virtue of this timing that they're trying to take advantage of.

So it's important for the Court to see sort of that timing, when the meet and confer came forward, what the lay of the landscape was at the time we made objections. And when we went to the meet and confer, what we were confronted with or what we were told is that, well, it's your unjust enrichment claim, you have to show the value of services.

And so those were the conversations that is we were having, subsequently then United filed an answer, and then brought this motion without regrouping with the Health Care Providers. And why that's important is you have a declaration indicating that had there been a reconvening on the meet and confer, perhaps United expected that there would be some outcome of compromise. We heard Mr. Roberts talk about perhaps a phantom compromise.

However, what's important is that that's the first that we've heard of it. We didn't hear about it before. And in fact, when United saw our opposition, they reached back out to us to say, Would there be an opportunity for a compromise?

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And our response was, well, you suggested that there was in -- in your moving papers, and so if you have a compromise that you had in mind when you filed your moving papers suggesting you had a compromise in mind, we would be open to discussing that.

And so we received information that counsel was going to be talking with United on Tuesday, I believe it was, and expected to be able to chat with us on Wednesday with regard to what an acceptable compromise might be.

The timing is important because it just goes to show that there was actually no reasonable compromise that United had in its mindset when it filed the motion, even though it sort of suggested that it had one.

I hate to say we have not been contacted since then, Your Honor. So the first we're hearing of this sampling potential compromise is with the presentation today. At this point, I'll leave that as it is, just because we haven't had the opportunity and it hasn't been presented to us. But that meet and confer is important, because it does set the landscape for where we were in terms of the meet and confer in our objections and opposition and sort of the forthcoming nature of how we got here today.

THE COURT: And can I -- can I interrupt?

MS. GALLAGHER: So now [indiscernible].

THE COURT: I'm going to interrupt. You know, this motion was only filed on September 21. My inclination is to give you guys a chance to try to work this out and come back. Is that

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something the plaintiff is amenable to?

MS. GALLAGHER: Well, Your Honor, I would like to finish the presentation in terms of why we think that this discovery is not appropriate and why it shouldn't be permitted.

THE COURT: I'll allow you to complete your entire argument. I just want to hear if the parties are amenable -- plaintiff and then defendant.

MS. GALLAGHER: And Your Honor, of course, depending on your outcome, we will definitely consider a compromise. We have often reached out. As you know, we've had a compromise pending since February that would have addressed a lot of these matters, that United has not responded to. And unfortunately, it seems evident with this moving papers and the reply that the reason they haven't responded is because they simply want to try and press the Health Care Providers for discovery that isn't necessary.

As Your Honor may recall, we have proposed a protocol where United would match our data points for the very reason that was raised by Mr. Roberts. If there is a data point that doesn't match, that then tells the parties they need to further discuss it. If the data points match, then it's clear the Health Care Providers submitted a claim and United paid it at the level based on the information it had.

So definitely we are open to compromise positions as may be appropriate, given the Court's ruling.

And I appreciate the opportunity to address the

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substantive piece of it, Your Honor.

THE COURT: Thank you.

Mr. Roberts, are -- is the defendant, or are the defendants, amenable to trying to resolve this?

MR. ROBERTS: Your Honor, the defendants are amenable to trying to resolve this. However, if we are only amenable if the plaintiffs indicate that they're willing to discuss a reasonable way to relieve the burden on both sides.

THE COURT: I think that's --

MR. ROBERTS: And so the -- the Court --

THE COURT: -- that's what she just said.

MR. ROBERTS: The Court may recall that part of our moving papers in the Motion to Compel, our documents, indicated and mentioned in argument that one way to resolve it might be to order the parties to meet and confer on some sort of sampling that could allow the parties to prove their case. And that's been rejected.

And we would not be willing to meet and confer on a sampling methodology that would relieve the burden on plaintiffs, unless they were willing to entertain the same relief for us on our claims.

THE COURT: Okay. All right.

So then, Ms. Gallagher, let me hear the rest of your argument.

MS. GALLAGHER: Thank you, Your Honor.

And I could just note, you know, the timing of a request for

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relief for United's discovery -- it obviously comes long after we've had to Move to Compel, long after the Court has ordered them to produce documents.

So but with respect to the specific clinical records at issue, United tries to convince the Court that there are three reasons why clinical records are needed.

And if I could just spend a moment discussing clinical records -- so those are going to be the doctor's notes on the ground, the nurse's notes on the ground. Those are, you know, actually what is taken at the hospital, at the time that the services are provided.

As this Court is aware, the Health Care Providers are obligated to treat -- not only treat, but to evaluate and -- take a look at and evaluate when somebody presents to the emergency room what is happening and then treat them accordingly. They don't have the luxury of turning somebody away or only treating them and not evaluating them when somebody presents with a heart -- you know, heart chest pain or, you know, something that looks to be an emergency situation -- they are eligible and required to evaluate those situations.

And so when a United member presents to the emergency room, that essentially is the triggering piece of when a claim is right. And a claim then becomes something that if the United member is going to be obligated by United to pay.

And so if United says that we have to establish the burden of proof that the claims are even valid. However, that is trying to

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revise history, in terms of what has happened already. So United's member already presented, the professional services were already provided. And then what happens after that is the appropriate billing forms are filled out and submitted to United.

And then United has their procedures in terms of what they review, how quickly they're supposed to review, and guided by Nevada Prompt Payment statutes.

And so when they look at claims and they see them allowable, the allowable piece of it is at the level -- CPT code level that has been submitted.

We know from United that they may deny a claim. We know that they may partially pay a claim based on perhaps multiple CPT codes that are submitted based on the services provided.

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But what we're not dealing with in this case and what we made clear in our complaint and in our list of claims is that those claims we are seeking payment of are ones that United already deemed allowable at the level -- they were not denied based on the level. And United represented that that was full payment, based on prevailing market rates.

Well, what we've uncovered is that that is not accurate in terms of full -- the full payment.

So now they're trying to say it's a partial payment. But that's not actually true, based on the allegations in the complaint. It was full payment -- representative full payment, but to which the Health Care Providers had uncovered is not full payment because

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they have allegedly manipulated market rates with some of their third-party friends that we've identified in the complaint.

The next reason that United tries to convince the Court that clinical records are needed is that they say that it's important for the reasonable value of services. But in our opposition, we've identified that the case law indicates that is not the case.

What a market rate is, is what are people willing to pay for that level of service? So, for example, the most emergent care is coded at a CPT code 99285. What is the prevailing market rate? What is the usual and customary rate for that in the market that's applicable?

We know here we're going to have a dispute in a little bit about what should be the appropriate geography because we have alleged that even though Data iSight and United are saying that rates are market or a specific geographic locations, we know, in fact, based on data, that it's a national data. So we're going to have a little bit of a dispute about what the right geographic area is.

However, the reasonable value of services is going to be the market value. What are people willing to pay for a level 99285? That has nothing to do with the underlying clinical records, because United has already made that determination.

Again, I sound like I'm beating a dead horse, but our complaint, at paragraph 1, makes that abundantly clear. And we know that United consistently tries the change this into an ERISA claim. And they're doing it here by trying to categorize or

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characterize or try and classify it as something that is a denial of a claim or a partial payment because of levelling -- and that is a right to benefits, not a rate of payment.

So for that reason, we think, under the reasonable value of services, the Health Care Providers don't have a burden of proof issue with respect to producing underlying clinical records.

The last category that United tries to indicate that it's entitled to clinical records are in connection with its recruitment defense.

We know from the opposition, where we indicated that recruitment means something -- first of all, they can't recover more than what they paid, so it sort of seems like if they want to revisit every CPT code, that is outside the bounds of what recruitment is permitted from a legal perspective.

The other piece of it is that, again, we have framed this case, specifically -- which we are entitled to do, which means that this is a right to the amount of the payment because United has manipulated that payment reimbursement rate. And so that's what this case is about, not about a denial of any of the claims, but about the manipulation of the rate that is being paid.

And so it's important to know that United has already said in its answer, in Paragraphs 26, 193, 194, and 196, that it has paid for covered services.

And so that is really the end of the inquiry for the Court, because if there is an admission that that piece of what they are now

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claiming, which is they want to revisit levelling, has been closed -- foreclosed by their own admissions.

They also make a similar statement in answer to Interrogatories Nos. 6 and 7. And so the Court should be able to rely on their statement in terms of what the state of affairs and what the history is, and them trying to turn this into an ERISA case, essentially, by asking for clinical records and revisiting every level -- CPT level.

I wanted to address a couple of points if I could, Your Honor, still.

The other point of the recruitment piece that I wanted to talk about is about how United is trying to circumvent the Prompt Pay statutes with its recruitment defense. Now they said that it's due process and that they need to be able to go back and revisit these claims. But it's important that the only case that they -- that they point to is an unpublished decision from Florida. And it involves a government payer and it involves a contracted or a network hospital facility.

And so we're dealing with a different set of circumstances. The Court in that case discussed that there was a right to a post-audit review of claims that were submitted. And so it seems as though the Court was simply interpreting [indiscernible] contract between those -- those two entities in terms of the due process.

But here United has gotten due process. They had that opportunity to either deny a claim or ask for additional documents

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before deeming a claim allowable, pursuant to the Nevada Prompt Pay statute. And so that due process that they now claim that they're entitled to is something that they already received and were able and aptly able to follow that in terms of whether to allow a claim or not. Again, only allowable claims are part of this particular claim -- litigation.

THE COURT: Did that conclude your argument, Ms. Gallagher?

MS. GALLAGHER: Just one point I wanted to revisit on Mr. Roberts's presentation, if I could, just in terms of, you know, trying to characterize this as a denial or a partial payment.

With respect to the statutes, I think it's, you know, cautious on their part. They should be cautious about basically saying that they're circumventing by partially paying. But again, like I said, we will take any admission that they want to make.

And I guess the last point is with respect to the settlement statute that Mr. Roberts referred to. Sort of a little bit of a head scratcher in terms of how United partially paying a claim in the normal course of business would have any sort of coverage under Nevada's statutory scheme for evidentiary compromise in terms of submission to the Court for liability. And also I think it gives the Health Care Providers a little bit of pause if United is purposely short-paying or partial-paying claims that they've allowed, knowingly. I think that speaks volumes.

So again, I would just like to close that we think that

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clinical records are not appropriate in this case. This is not in terms of what the Health Care Providers as burden of proof or in terms of what United is entitled to on a defense, in light of the admissions made and in light of United trying to transform this into what it has tried to do from the beginning -- which is something different than what the Health Care Providers have alleged. And for that reason we would ask that you deny the claim -- or deny the motion, Your Honor.

THE COURT: Okay. I would like your response to something Mr. Roberts said -- that he claims that in the compilation that you provided that some of the CPT codes are incorrect. He wanted to match up with the EOBs and the CPTs.

Can you respond to that?

MS. GALLAGHER: Yes, Your Honor.

So with respect to any issue about matching data points, certainly that was an opportunity that we tried and we made that offer of compromise back on February 10th of this year. United has given every reason why they can't substantively respond to it. I find it interesting that it's raised now, but we certainly had offered that.

But yes, we want to engage in a data point comparison. If they find one they think isn't right, then we are certainly willing to have that discussion. That's what discovery is all about.

But one point I do want to make about the EOBs and the PRAs and Mr. Roberts's attempt to try and get the Health Care Providers to produce those is that United has already been ordered

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to produce those, I believe, as part of the administrative record. I imagine that comes along with it.

But I also find it interesting that those are United generated documents. United generates the explanation of benefits. United generates the provider [indiscernible] forms.

So to try and put it on the Health Care Providers just seems to be another effort to try and circumvent its discovery obligations and certainly try and avoid a court order that is already -- that it is already facing and is in the process of trying to comply with.

THE COURT: Thank you, Ms. Gallagher.

Mr. Roberts, your response, please.

MR. ROBERTS: On everything or just on the question the Court just asked?

THE COURT: Everything.

MR. ROBERTS: Okay. Very good. Thank you, Your Honor.

The first point I would like to address is the mischaracterization of my argument that United has somehow admitted they made partial payment in the sense of paying less than the amount United believes was due. That's a complete mischaracterization of my argument.

Under NRS 48.105, where a claim, which they submitted to us, was disputed as to either validity or amount is paid, then the evidence of payment is not admissible to prove liabilities for the claim. So what we are saying is that we disputed the amount of the

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claim that was submitted to us by the plaintiffs. We paid less than the amount submitted, which was the amount we thought was due, based on the certifications they provided in their claim forms. There is not an admission that United paid less than the amount due.

United paid less than the amount claimed. And now they're trying to use the fact that we paid something promptly, in reliance on their representations in the claim form, as an admission that their representations in the claim form were correct and accurate.

Now that they have put in issue whether or not we paid a proper amount for these claims, they should be required to demonstrate that they performed the services and that they were correctly coded in order to get paid. That's certainly part of their burden.

Now, I don't blame them for not wanting to prove they performed services. I don't want to blame them for not wanting to avoid proving that the services were accurately coded on their claim forms. But now that they have placed the issue of the amount they were entitled to be paid for those services, as part of this litigation, they can't be relieved of their burden of proving all elements of their cause of action, including their cause of action for unjust enrichment.

The answer filed by United -- and counsel mentioned that we had filed an answer -- I would point the Court to Affirmative Defense No. 9 where the defendants stated, To the extent that plaintiffs have any right to receive plan benefits, that right is subject

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to basic preconditions and prerequisites that have not been established, such that patients are members of United on the date of service, that the coordination of benefits have been applied, that the services were medically necessary, that an emergency medical condition was present, that plaintiffs timely submitted correctly coded claims, and that all necessary authorizations were obtained. United reserves all rights with respect to asserting any and all such defenses, once plaintiffs have adequately identified the specific claims they contend were underpaid.

Again, their argument seeks to have the Court disregard this affirmative defense, grant summary judgment on this affirmative defense, and find that they don't have to prove that they performed any service or that they performed the service at the level for which they are seeking pay. And that simply is not appropriate at this stage of the litigation.

THE COURT: So I --

MR. ROBERTS: All of this information goes to the proof of that.

THE COURT: Okay. Go ahead, sorry.

MR. ROBERTS: And I may have misspoken, Your Honor. And I believe that the problem we're having is that the insurance provider and the employee -- the patient's benefit plan was incorrectly identified in some of the spreadsheets which have had us searching multiple databases.

The CPT issue was not that it doesn't match on their

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spreadsheet versus what's on their claim form. The CPT issue is that what we're saying is we're entitled to the clinical records to see if, indeed, the services were provided at the appropriate level and at the appropriate CPT code for which we were billed.

And now that they put in issue whether or not they were underpaid, they should have to prove that -- and we -- even as they don't want to have to prove it, we should be able to do discovery to assert the defense that the services were not provided.

THE COURT: Right.

MR. ROBERTS: And if, for example, discovery reveals that they were overpaid by millions of dollars because what we paid at Level 5 should have been submitted at Level 3 or 4, we submit a right to recoupment. And that's still an affirmative defense. It's still what we've raised. And we're entitled to discovery on that issue.

THE COURT: Right. All right. So Mr. Roberts --

MR. ROBERTS: I think that the issue of the chart --

THE COURT: I'm sorry. I keep interrupting.

MR. ROBERTS: -- and the summary, I need to address that again, Your Honor.

The whole idea that if we dispute something in their chart, that we can raise that and they'll try to prove it, is just totally contrary to Nevada law. NRS 52.275 summaries says that the contents of voluminous writings, recordings, or photographs, which cannot be conveniently examined in Court may be presented in the form of a chart summary for calculations. Item 2 is, The originals

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shall be made available for examination or copy or both -- both parties at a reasonable time and place.

So it essentially would be the same thing as me standing up in Court with a big chart, and them objecting to it because they haven't gotten the underlying documents. And -- and I would point to them and say, which one do you dispute? And I'll get you that document, but otherwise it's admissible.

That's not the way evidence goes, and that doesn't comply with 16.1. If they want to use this chart in support of their claims, we are entitled to a copy of every document upon which they base that chart. And the fact that we may be able to dig out documents and our own records and attempt to match those up ourselves, doesn't relieve them of their obligation under 16.1 to give us the documents that they obviously have already compiled in order to prepare that chart. They don't get to hide those documents from us. They don't get to refuse to produce those documents. They must be already compiled. Assuming they just didn't make up this chart out of thin air, they already have those documents compiled and in a form that allowed them to compare it. And we are seeking to have the Court to compel them to what they should have already done in their initial disclosures, without us even asking for it.

And unless the Court has any questions, [indiscernible].

THE COURT: No. Well, I guess my question is, the plaintiff in its bills gave the CPT codes. And this is a rate of pay case. There is no counterclaim.

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If you are trying to recover money from them, you had the ability to do that when you filed your answer. I just don't see how the records you're seeking here are relevant to the plaintiffs' complaint. So if -- one last bite at the apple.

MR. ROBERTS: Yes, Your Honor. I think those are two separate issues. We've raised an affirmative defense of recoupment that if we overpaid on one claim, we should be able to use that to offset amounts owed on another claim. That's an affirmative defense and not a counterclaim.

But I would go further and just say again, Your Honor, the fact that they say it's a rate of payment case, doesn't mean that's all it is. The fact that they want to avoid the need to prove that they performed the services for which they're seeking to be paid should not eliminate the requirement to prove that. The simple due process entitles us to have them prove their entire case and not simply the one element that they want to place at issue -- the rate of pay, because you never get to the rate of payment, if you haven't proved that the services were performed and that they were performed at the level for which they were coded.

And the fact that United chose not to request those documents and make a payment instead, doesn't mean United waived the right to challenge it once they brought this lawsuit. You could make the same time argument as waiver, that their quiet acceptance for years of the payments they now dispute should preclude them from contending that they were underpaid.

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The fact that the -- they submitted a claim in reliance on that coding we paid the amounts they now dispute should not prevent United from requiring them to prove their entire case, not just the part of their case which they would like to focus on.

THE COURT: Thank you, Mr. Roberts. This is the Defendant's Motion to Compel clinical documents.

The motion will be denied without prejudice. However, the parties will be required to meet and confer meaningfully, and within the next two weeks on a protocol to match data points, and for the reasons that I've brought up in my questions to both of you.

Mr. Roberts, I do see it as a rate-of-pay case. The two of you are trying completely different theories -- the defendant, of course, continues to resist the plaintiffs' grounds for its complaint.

But I just don't see -- when the plaintiff bills the CPT codes, it doesn't put a burden on the defendant to make the plaintiff prove what was actually done clinically. On a rate of -- in the rate of payment type of case, it's the plaintiffs' burden to prove that the rate was wrong.

So I don't see where the clinical records matter. Everything here is based upon the bills that were provided by the plaintiff.

Now, that takes us to the Plaintiffs' Motion to Compel. And then we have a status check.

MR. ROBERTS: Your Honor, just to clarify for the record, are you also refusing to compel them to give us the documents that

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they relied upon to compile their spreadsheet?

THE COURT: At this time, yes. And that's why it's without prejudice so that you have a meaningful meet and confer with regard to a protocol to match data points.

And I'm looking for the next hearings we have for a report on that. It can be individual or status -- joint status reports. I believe that there -- well, we've got two other hearings set on October 29th, November 4th. I'm not sure that either of these is going to go forward. So I can give you a return date in three weeks, if that's amenable to everyone.

MR. ROBERTS: Yes, Your Honor.

MS. GALLAGHER: That's agreeable, Your Honor.

THE COURT: You know, I am supposed to go to the American College of Business Court Judges. If I get up the nerve to board an airplane on the 28th and 29th of this month. So can we set it -- let's set it on Wednesday, November 4th on the -- just on a -- at 10:30 a.m., just a stacked calendar for status?

And Nicole McDevitt, did you get that date?

THE CLERK: November 4th at 10:30 for status.

THE COURT: Very good. All right.

So I believe next is the Plaintiffs' Motion to Excel.

MS. GALLAGHER: Yes, Your Honor. Thank you.

This is Kristen Gallagher. So this is our Motion to Compel witnesses, answers to interrogatories, and responsive documents.

As Your Honor has probably seen, through the

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declarations submitted, that we have engaged in multi-hour meet and confers with United in order to try and just basically move this case forward and get information that we need in order to prosecute this case.

As you know, we have significant specific allegations in the first amended complaint that are not, you know, general in the sense. We know what we're looking for, and we have been opposed in trying to get that information.

You know, I wish in some regards you could sit in on some of these, because I feel like I'm on a merry-go-round. We get on a call. Think that things are moving forward. United's going to -- council is going to talk to United and then when we get back on the next call, it sort of is like we've started over again.

So the frustration level, I don't know if it came through our papers. I'm expressing it now that it has been frustrating because --

THE COURT: Well, I can tell you -- whoa, whoa -- hang on.

THE WITNESS: -- we know there's information about certain strategies --

THE COURT: I'm going to stop you, Ms. Gallagher. I have never seen the word sophistry and baloney in the same pleading, ever, in 10 years of the bench or 27 years of being a lawyer on top of that.

Anyways, so go ahead, please.

MS. GALLAGHER: Well, and I'll follow along to that, I certainly haven't been practicing as long as in the context of being a

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judge, but, you know, I engage in commercial litigation, and generally speaking this is probably the most frustrated I've been in terms of trying to get substantive information. And I don't say that lightly.

You know, certainly, I like to get along with my opposing counsel. I look to work forward on merits, and you know, have that as a legal discussion. But some of this isn't just advocacy, unfortunately, what we've seen.

We identified a few instances in our opening papers, in terms of sort of the unbelievable position that United will take, like, for example, the fair health database. We all know that it has [indiscernible] that along with some other payers. It uses it. It says it uses it on its legal web site, and then we get into meet and confer efforts, and we get responses like, oh, you want us to ask if they're using it? And oh, we didn't understand that's what you requested when your request for production asked if you stopped using it, why did you stop using it?

So that's just but one example. I certainly don't want to belabor the point, because I think our motion lays it out. But I would like to respond because there was an opposition that was filed, I would like to make sure that I have an opportunity to respond to that.

So with respect to witnesses, United as indicated that they've taken some moves at this point because since we filed the motion, they have supplemented with five new witnesses, which

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simply isn't sufficient. We know that United has a significant number of people that are involved, both at the strategy and decision-making level, all the way down to claims representatives who have information about the methodology, the procedures, the Data iSight interplay. And none of these people have been identified for us. One of the five new witnesses that were identified just a few days ago, on September 30th, there -- it's former employee, no information about how to contact that person.

I also note that United doesn't tell us what that witness may have information about. What we see is a generalized statement about this person may have [indiscernible] information relating to the claims and defenses. So it doesn't help us in terms of targeting -- you know, do we really need to talk to this person that they just disclosed or not?

We also with respect -- with respect to Answer to Interrogatory No. 8, we've identified that. We have asked for specific witness information regarding methodology and two other categories of information. United has refused to provide us that information.

We've had multiple meet and confers on it. At this point, I don't know, other than maybe [indiscernible] on the same information, but, you know, then we're just sort of into gamesmanship. You know, we've asked the question. We are entitled to know who has information about certain things that are squarely within our first amended complaints.

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You know, we're not asking for information outside the four corners. We're asking for who knows about how reimbursement data methodologies are set? Who has information about the particular claims? So we think that the issue is not moot. And we would ask that Your Honor order them to identify not only the full extent of United witnesses, but also, as we've asked, third parties like the iSight. We certainly know that they have a long-term relationship that dates back at least 10 years. We know that there's interplay and that iSight is becoming an even more important part of United's business in terms -- and obviously with respect to the allegations we've made in terms of the scheme, the alleged scheme to basically rewrite, reimbursement rates as they please and as United announced that it would, because they can.

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So we would like that information. We need to know who they are talking to so that we can test and find the evidence that will support our pleadings, because this information is squarely within the -- you know, within themselves. This is not something that we can go out and identify otherwise. So we would ask that they be compelled to identify those witnesses without any further delay.

With respect to the second temporary market data. United says that they're going to produce it in 14 days. They say it's going to be Las Vegas market data, and it simply isn't going to do, Your Honor.

We have one entity that's Churchill. We have another entity that's Elko County. So to limit it to Las Vegas, which means

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even maybe more narrow than even a Clark County market data, simply isn't something that we've agreed to. You know, I think they're just trying to more narrowly narrow what we're entitled to.

We also are concerned, in terms of, you know, the Nevada market data, because again, it's important for us to know the national data, because as we have alleged, there is no difference between the different markets -- even though they say there are. The PRAs that have Data iSight. Data iSight says that it's based on geographic, but it's not, based on our information. So it's important that we have information outside of just the scope of [indiscernible] trying to Las Vegas. So we would ask for all information related to just market data be produced.

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And the frustrating part is United has made a couple of different arguments about that -- you know, they're in the process of doing it [indiscernible] we should have brought this Motion to Compel. But they're at the point where, you know, we just shouldn't have to [indiscernible]. These were originally due in early January. They provided substantive responses at the end of January. And so here we are in October, [indiscernible] end of the year cutoff, and I don't know how much patience there can be.

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I'm afraid maybe we've been too patient, based on timing. But to hear continually that we will be going to, just at this point doesn't cut it.

With respect to the third category of requests and answers to interrogatories, the methodology is really an important piece of

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this. United tries to hide behind a plan. And we've heard this, you know, they refer to the administrative marker, they refer this plan, the plans are their guide. But we know that that's not actually true.

There are a few documents that we've managed to get. And the administrative document from United -- is not plan specific in the sense that for each of the 20,000 claims there's going to be a different language in there. No. United has different plans, you know, a gold plan, a choice plan. And so within their type of plan, they may offer information about, you know, what they're going to pay.

But the methodology of how they determine what they're going to pay is not plan specific. In fact, some of the documents that United has produced, talks about, the iSight and the methodology. If you choose this plan, you're going to have this methodology. So the methodology is how do they calculate? What is the data? What information? What market they are using? Are they using information that is complete? Are they skewing the information that's in their data set? That's methodology.

We also want the strategy making, decision making, behind how United has set up methodology. This is the largest, if not the largest, public insurance carrier in the nation. And so to think that there are no documents that have detailed or set out or recorded what the plan is, there is a plan here. There is a structured plan that has taken years to implement, and we know that from just the [indiscernible] agreement that we've gotten, and so we are

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entitled to that information because it falls squarely within the allegations in the complaint.

We also know that the PRAs -- that the provider remittance advise forms -- that United issues and generates does refer to cost data or paid data, when they indicated using Data iSight. But again, this methodology is something that can't be hidden behind at undue burden declaration of Sandra [indiscernible]. It doesn't need to be down to the claim-by-claim level. This is a higher level look at what United's plan strategy is that we certainly know is at play.

And that reference that I missed, Your Honor, to the cost [indiscernible] and multiplan data information is at our Exhibit 8, just for your reference, so that you can see that there is discussion about Data iSight's patented reference to based methodology. Apparently United is not using Data iSight without knowing what that methodology is. There's some indication that United is directing and dictating that methodology as well. So we would expect to have those documents produced as soon as possible.

That leads me into the next section, which is still decision making and strategy. They say it's in the process of applying those terms. To me this means they haven't done anything.

And again, the time line, I don't want to, you know, [indiscernible] it too often, but we are here many months of these were due. And for them to be just in the process of applying search terms tells me they haven't done anything. United also tries to use the ESI protocol as a way for sort of allowing them to continue to

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push this out.

However, I think the Court was very clear at the last hearing, that the ESI protocol discussion that the parties are in process with would not alleviate anybody's discovery obligations. Just to hear that they don't even -- they're not even reviewing, there's not even an imminent rolling production is a little bit disconcerting, so we would ask that the Court compel production of documents and interrogatories in those categories.

United makes a distinction between in-network and out-of-network. And I would like to say that it's a distinction that is not something that is appropriate in terms of at this discovery stage. Certainly if they want to make that argument later, let them. But it's informative that United has asked us for both in-network and out-of-network reimbursement data. We are in the process of getting that information and producing it. And so I think United recognizes that the commercial payer data, as sort of a general description, is what is going to be -- at least what the parties are going to look at, whether or not, you know, down the road in terms of evidentiary perspective, we can deal with that later. But we are entitled to both in-network and out-of-network. And that was -- [indiscernible] Request For Production No. 87 is where they asked for in-network data.

United also objects to some -- some of the issues with respect to trade secrets under the Nevada statute, and it's proprietary information as well as their customer information. I

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think, you know, we're well established at this point that we have a protective order. United is not shy about identifying things that is attorneys' eyes only. So I think that provides the most protection. We did discuss during meet and confer efforts that we might do a blinded exchange where its blinded and attorney's eyes only set and then perhaps a confidential set, and then maybe an unblinded set that would be attorney's eyes only. Those were discussions we had. Obviously United hasn't gone forward and produced any information, so we haven't gotten to that point.

The next section is rental, wrap, and shared savings program. United has now used the delay of a retained consultant to indicate that they have matched data points and trying to figure out whether or not there's any information on whether or not there should have been a wrap or shared savings program applied to the litigation claims.

This is sort of a distraction and perhaps not understanding what the request is. But we'd asked United to tell us if you -- if any of the litigation claims you didn't pay because you think there's a shared savings or a rental or rent network, let us know.

We have actually produced a second set of data that provides information about, in the same time period, claims that were paid by a shared savings program or pursuant to a shared savings program. So United actually already has the data. We just wanted them to come forward and say, hey, if there's any in this litigation set, tell us now or forever hold your peace.

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So to transform it into that they need to look at each line I don't think is necessarily accurate. I think they know what's in this market with respect to these particular emergency departments, if they have access to a shared network, that they would know that, and they don't need to look line by line.

But regardless, we would ask that they also be required to produce information if they have any. If they don't, we're sort of looking to say -- for them to say, no, we don't have that information or we don't have that applicability to the litigation claims. Everything that had a network shared savings program is appropriately listed in your other spreadsheet. It's --

Again, it's -- just sometimes we're just looking for simple information that we just are getting one roadblock after the other after the other. United, I think now, has used the consultant explanations for several different rounds of motions. I'm not sure exactly how many -- how many days at this point that we're waiting for the consultant to finish looking at the data points, but I guess we'll find out in the meet and confer effort sort of where that expert is at.

Okay. The next section are the Data iSight-related documents. Obviously, this is really one of the core issues of our complaint in terms of, you know, what are they doing? What have they done? What have they strategized? What have they decided to do? What plans have they implemented?

We've gotten really just the paucity of information. We've

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gotten the network access agreement, and I think eight or nine pages of documents that were identified as attorney's eyes only, but what I would describe as like a science preference checklist, nothing really substantive. We have asked for a list of how many claims have been processed by Data iSight. We've offered to have them run a time period so that we can then go back and pull which ones.

None of those offers of compromise have been met with, you know, any sort of engagement by United.

But at the end of the day, we have all their documents, and we would like them. We would like them whether they're in meeting minutes, whether they're in e-mails, whether they're in -- you know, whatever form or format they're in, we know they exist, and we would like that information as soon as possible.

The other point I would make with regard to the Data iSight is they often are talking about, We're not entitled to information because it's national data, and that this is just a Nevada case. Again, I want to reiterate, those are squarely within the allegations that we're saying that we need to be able to prepare. If they're saying this is Nevada and that this is the same as national market data, that's important. That goes directly to our claims, and so we would be entitled to that and they shouldn't be able to omit just because they're calling something national data.

And that's an important piece too, when we finally got the unredacted multiple plan agreement, you know, I won't go into it because it's AEO, and I want to be very cautious, but there really

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were some -- there was some information in there that was on this national level that sort of was sleight of hand, if you will, in terms of why they said we shouldn't have been able to get it in the first place.

Okay. So the next category of documents regarding the at issues claims, United said they're already producing administrative records.

Again, you know, we take issue with this term administrative records every time.

And it's important, though, because I want to quote from a case, a Ninth Circuit case, it says quote, In the ERISA context, the administrative record consists of the papers the insured had when [indiscernible] claim, end quote. And I'm quoting from a case called *Montour versus Hartford Life*, 588 F.3d 623 at 632. Ninth Circuit 2009. And that's really important. You know, we've sort of belabor this point, but. It just goes to show you how important when United keeps referring to the administrative record, this is very specific. If they -- and in this case they had to deny the claims. We're not after any claims that are being denied.

So they keep hiding behind this administrative records. We think that are other platforms, [indiscernible] administrative policeman forms, claims management system -- other documents and information that exists outside of what would be considered an ERISA administrative record.

And so in terms of when United says it's already producing administrative records, we need more information than

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from that. We haven't asked for just administrative records, and we go round and round on this in meet and confer efforts, but it's important again, because this is our case and this is not an administrative ERISA case.

And so in that context, I also want to bring out perhaps the status on United's production, which they have produced nine administrative records, detailing, like, nine dates of service for their numbers. As of the Court's last hearing, we think that the point that they are not in compliance with the order, because they were supposed to have produced documents by September 23rd. I realize that we will take this up perhaps in a status check at another time.

However -- I think it's important for the Court to know that in a month, almost exactly, since the last hearing, we've gotten nine administrative and nothing else. We know that United has 100,000 e-mails that it had been reviewing. We haven't received any of those. And so, you know, it also is interesting to see, you know what we're getting. We thought maybe we'd see it in order, how it appeared on a spreadsheet or maybe [indiscernible] intuitive like last name, date of service. It doesn't appear to be that way, so we're interested to see, you know, sort of how it plays out. You know, are these the only documents that United is going to find favorable? Does it favor -- you know, what the situation? So, you know, we're just sort of holding -- holding by, but just for the Court to understand that we certainly haven't gotten a lot of information since the last hearing.

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Negotiations, United says it's working to [indiscernible] -- United says it's working to collect and search. This is actually a retreat from what it told us before. And this is my reference to the hundred thousand e-mails that back in June we understood counsel had on a platform and was reviewing.

To now say that it's working to collect and search, certainly is disheartening because it suggests that, you know, one of the two situations wasn't accurate at the time. So we just -- we would like the documents. We're entitled to them about the negotiations. It's not just between our client and United, even though that's how they framed it in the opposition. We asked for documents relating to the negotiations.

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So we want to know, you know, in addition what was their -- what were the e-mails going back and forth offline, you know, internally, not forward facing to the representatives of the plaintiffs. So we would ask for an order compelling that as well, Your Honor.

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I know there's a lot here. I appreciate your time, Your Honor. But this sort of tells you that we haven't gotten a lot of information that we've been asking for -- document --

Next category of documents about complaints that other network providers performing emergency department services have made on United. We think this is important. I mean, we think this is a nationwide plan and scheme to reduce reimbursement rates. And we would be surprised to -- if there weren't other providers in our same situation making the same complaints and would be interested

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in that information. We think it's relevant, and we think it goes to the allegations that are in the complaint.

Next are prompt settlement claims. United refers again to the administrative records in an attempt to limit the records that we are entitled to get. So we want information about, you know, I'm sure they have some reporting. Are they, you know, meeting the Nevada prompt payment statutes in terms of asking for information, getting information, and making claims. That's what we would expect to see out of a company like United. We haven't gotten anything. And again, the administrative record is not the only personal information that United has, and we continue to object to it trying to use that as the framework for this case.

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Finally, United's affirmative defenses, they have basically said they're not really working on it right now because they're working on the administrative record piece of it. I don't think those two go hand in hand. We had [indiscernible] meet and confer discussions about how only Sandra [indiscernible] and her department could handle the administrative record piece of it.

We had actually asked if there were other departments, other people that could work on pulling information about these things. And so when we were told only this one department can do it, that suggests to me, well, only they're working on it. That means there's, you know, other teams and is other groups that can work on the e-mails, that work on the strategy and those sort of documents.

So Your Honor, we would respectfully ask that you order

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everything that we've asked for because it all falls squarely within the allegations. And we really would just like to get to the heart of the matter and start looking at documents, and -- and moving this case forward. Thank you.

THE COURT: Thank you.

And Mr. Roberts, Mr. Balkenbush, before I hear the opposition to this motion, we've gone for about two hours. I need a five-minute break for my personal comfort so that I can continue to attentively listen to all of the arguments.

So court will be in recess until about, let's say 3:33. Thank you.

[Recess taken from 3:28 p.m., until 3:34 p.m.]

THE COURT: Okay. I'm recalling the case of Fremont versus United. And I note the presence of all counsel.

I believe we are ready to hear the Defendant's Opposition to the Plaintiffs' Motion to Compel.

MR. BALKENBUSH: Thank you, Your Honor. And this is Colby Balkenbush for the defendants. I'll be presenting the opposition on this motion.

You know, this is a difficult motion to respond to because the truth is, as we set forth in our opposition papers, we have agreed to produce 90 or 95 percent of what they are seeking to compel us to produce.

The dispute is really over timing and the argument that United should just be doing this faster than it has been.

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So let me address the timing issue, and then I'll address the few areas where there is a dispute as far as whether or not the Team Health Providers are entitled to the information they're seeking.

As to the timing issues, so what United has been attempting to do is respond to multiple requests and prioritize things that the Court has ordered it to produce already. So for example, this Court has ordered United to produce the administrative records for all 22,000-plus claims. We've been trying to prioritize that and a lot of these other requests -- the other information that we had hoped to produce sooner, but frankly we've fallen a little behind on because of some of the other discovery we're being pressed to produce.

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What we've tried to do in our opposition is give dates when we believe we'll be able to produce those documents to Team Health. So, for example, we've listed the Data iSight closure reports. We state we believe we'll be able to produce those by October 23rd. For the market data for in-network and out-of-network reimbursement rates, we've stated we should be able to produce that in 14 business days.

And so we've tried to give some dates to show the Court that we are trying to comply with our discovery obligations. But frankly, there are a lot of documents at issue --

THE COURT: Mr. Balkenbush, Mr. Balkenbush, let me -- Mr. Balkenbush, I'm sorry, but I have to interrupt you. It doesn't

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appear as though your client is taking a rational approach to its obligation to engage in discovery. Why couldn't things have been produced already?

MR. BALKENBUSH: So let me address -- I mean, there's a number of different document requests that are at issue, Your Honor. Let me just address some of them then, specifically.

So for example, they're looking for documents that would show the methodology that was used to determine the amount of reimbursement paid on each of the claims at issue. Those documents would essentially -- the documents that show that would essentially be, one, the administrative records that this Court has already ordered United to produce. We produced approximately 1800 pages of those on September 30th. And we believe we're going to be able to produce another 35 administrative records next week. That production we believe will also be in the thousands of pages.

But one of the issues we've run into that has slowed things down is when we're trying to match this claims data -- match Team Health's claims data to our own is that there are errors in their spreadsheet. So for example, we've found instances where a patient will be listed with a date of service, and their spreadsheet will list in different places that patient being enrolled in different health plans. And so to find the data underlying that claim, the administrative records, for example, we have to look in the database that corresponds to the health plan the member was enrolled in.

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And so we have had instances already as we've been trying to do this is that, you know, we've looked under a particular plan's database and haven't found the documents and have had to go look at another plan's database to try to find it. So that has slowed things down. That's one issue we're facing.

You know, another is just that this -- there is litigation all over the country very similar to this, between United and the Team Health Providers. And so United's business units that are tasked with trying to find and gather these documents aren't just dealing with requests from this case. Based on my conversations with our client, I believe that United is working hard to gather these documents and is putting pressure where it needs to be put to accelerate this process, but it is difficult given the number of documents at issue and the number of different requests, so I think that's, I guess, part of the explanation.

Another is just that these documents, many of these documents are not stored in a format that is easily -- easy to access -- the access and then produce.

As an example, Your Honor, the administrative records are not even stored in a TIF or PDF format. My understanding is they're actually -- the only way we can retrieve them is either to take a screenshot of the screen showing the record, or to essentially print the TIF or PDF, and then produce them. And so that also has slowed down the process.

So let me go into some of these, I guess, topics that

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they've raised. A lot of these would be resolved with United producing a claim-matching spreadsheet and the administrative records. The methodology used to determine payment is going to be shown either by a claims spreadsheet, which should have a column showing essentially whether or not what plan was at issue and whether or not any wrap or shared savings program impacted the amount of reimbursement on that claim.

There should be a column for each of the claims that could show that, and the amount of reimbursement, how it was calculated, would also be shown in the administrative records we are trying -- we're in the process of producing or have started producing.

Another issue that they have raised are the negotiations between United and Fremont. More information on Data iSight. That's -- that information would be in custodian's e-mail inboxes. We have started gathering those and working on producing those. It's just frankly, Your Honor, there's so many discovery requests at issue here, it has -- we have been slowed down a little bit by the order to produce the administrative records.

Let me address the -- let me address some of the issues we dispute, because, again, a lot of the arguments Ms. Gallagher raised, we haven't argued that these documents are irrelevant or not discoverable. We just said we need more time. But there are a few where we do stand on our objections and are refusing to produce documents because we believe our objections have merit.

The first one is Request For Production 31. This is a

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request where Fremont is seeking documents related to strategy and discussions regarding reimbursement rates. And we've agreed to produce those, but we've asked that it be limited to only documents that relate to plaintiffs' claims.

Their request, as written, seeks documents not only related to discussions about reimbursement rates for the plaintiffs, but for any other out-of-network providers. And that's just overbroad and seeks irrelevant information. So again, we're not refusing to produce, we just believe that request should be limited in that way.

The other issue that -- the other request we take issue with is in regard to certain Data iSight documents. So we've agreed to produce the closure reports. We've already produced the contracts with Data iSight. And we've produced the preference checklist.

But we have objected to producing national level multi[indiscernible] Data iSight data. And the reason we've objected is that there is no way to use that national level data and extrapolate to Nevada and the claims that are at issue here.

This data doesn't show reimbursement data for specification regions, like focused on Nevada; and it doesn't show reimbursement data focused on specific out-of-network providers like plaintiffs. This is national aggregate level data, and so our objection is just it would be -- that that would be irrelevant information for purposes of this lawsuit, would be meaningless because the rates shown there can't be extrapolated to the claims

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that are at issue here.

The third discovery request that we object to is Request For Production 41. And so this seeks documents related to challenges to United's rate of reimbursement by other out-of-network emergency medicine groups. And our objection is that this does not relate to the claims at issue. This is seeking documents for any challenges by other nonparty out-of-network providers.

Now, again, if they are asking for documents, we're not objecting to producing documents from Team Healths, you know, or Fremont's challenges to United's rate of reimbursement. But they're asking something much broader. They're asking for any out-of-network provider that we be ordered to produce all documents related to challenges those providers have brought. Obviously, that would be an enormous number of documents. And it would also be difficult to limit -- and in fact, I think the request is not limited -- it's also not limited to the full time frame at issue here, which is July 2017 to present. It goes back beyond that.

So we do have limited objections to those three issues, Your Honor. But for the other ones, we essentially have agreed to produce the documents. We're just struggling to produce them as fast as plaintiffs would like us to produce them. And we're trying to give dates to the plaintiffs and to the Court when we think we can comply with our discovery obligations, but it's just difficult given the number of documents at issue and the different types of documents.

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THE COURT: Thank you, Mr. Balkenbush.

The reply then in support, please.

MS. GALLAGHER: Thank you, Your Honor. So I wanted to address those points in terms of the timing. You know, Mr. Balkenbush indicated that United is focusing on its production obligations for the administrative record.

As Your Honor knows, that order came out last month. And so we have this long period of time since January when these were originally due and most of the meet and confers where, you know, they're saying now, they've agreed to produce 90 to 95 percent, but sort of not, as indicated, the state of affairs. We've gotten push back and narrowing that we heard just a moment ago, as well, unilaterally narrowing what we've asked for.

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So the timing, I just don't see how there's been an effort before now to try and comply and get us the information that we asked for. One point about the closure reports that's now being -- with respect to data iSight, now being promised on October 23rd. We've had meet and confer efforts back in June that said that we would have them by September 5th. We never got any. Now they're promised to 10/23.

You know, we just see this line in the sand being pushed further and further back until there's an actual order, you know, compelling United to participate reasonably in the discovery process, and not trying to just put a box around anything other than the administrative record, which we've heard again here in

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opposition.

You know, United talks about market data in 14 business days. It would have been nice to have that information or that commitment before now; right? We had to bring a Motion to Compel before now. The spreadsheet on [indiscernible], you know, certainly if there's a particular issue, they've had our spreadsheets, the original ones, since last fall. So now we're just getting into a discussion on data points and had that compromise offered a while ago.

But what I'm hearing that's concerning is the methodology, and again trying to point to the plan. We know United's methodology is not in the plan. We know that when Dan -- Dennis [*sic*] Schumacher said, you know, because we can -- in response to why are you going to reduce reimbursement rates, we know that that is not in the plan. United does not look to the plan when it had negotiations with the health providers, when it says it was going to reduce the reimbursement rates. That's because it's a high level decision and strategy that is implemented. And that is the information that we want and that we're entitled to get, based on the allegations in the complaint.

So again, when you're hearing it firsthand, Your Honor, the administrative record is their go-to for everything. And I can tell you that it is only limited under federal law as to why an insurer denied a claim that has no application in this case. And to so suggest that there are e-mails about strategy, suggest that there's

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information involving highest levels at United that's going to be in the administrative record is just -- it's not accurate, and it's not what we've limited our complaints to. It's not what we've limited these requests and interrogatories to. And so when representations that we've gotten some Data iSight information, it is so limited, Your Honor -- like the fact that we're getting a closure report is probably only because we accidentally hit on that name of a report.

And meet and confer efforts, we -- you know, we were met with, Well, you know, we don't know what you need. What do you think we might have? You know, and those are things that -- why we also objected to the e-mail protocol is we don't know what United calls them. We have a little bit more information from the multiplan agreement, because there are reports that are called out. We haven't gotten those reports, Your Honor.

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So we know this exists. We know that when there is, you know, lots of money -- I won't use the exact amount because I don't want to be revealing anything -- but there is a lot of money involved in the multiplan and independent agreement. And so there is no chance that money is exchanged without reporting and without e-mails and without discussion about how it's going and what they should do to change it.

In fact, there's [indiscernible] in that agreement that tells us that we think plans were changed to accommodate the iSight entities.

And so to sit here and tell us that there isn't information,

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other than a closure report, is simply not accurate, and not being even honest to the documents that we have gotten, which aren't very many.

So we would expect a full disclosure, not just limited to what United as indicated as closure reports. We know that there are performance reports, and they've actually objected to those as not being relevant. I don't know how they're not relevant. We have placed this scheme at issue and directly with specific allegations, and so we should be entitled to see what sort of performance reports, because as part of the scheme, they are shared, right, they are sharing in the profits when they artificially identify what they want the reimbursement rate to be.

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And so any of that information relating to that would be related to [indiscernible].

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With respect to Request for Production No. 31, that Mr. Balkenbush indicated, again, this is the high-level strategy. Plaintiffs' claim, you know, he only wants it with respect to plaintiffs' claims. That simply isn't going to work for us, Your Honor. We need the high level. We know that this isn't planned level specific. This is strategy at the highest levels of this company -- and its affiliates. I mean, really, all of these affiliates, Data iSight, and we expect that there is information.

With respect to Request For Production 41, I believe is the other one Mr. Balkenbush indicated, is relating to any challenges and complaints by other out-of-network emergency department service

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providers -- this is absolutely relevant. We think this is a plan that would -- has been set out across the nation.

If there are other providers that are having similar experiences and making the same complaints that they can't believe or asking why that these reimbursement rates have been all of a sudden reduced without any demonstrable data to support it, I think that's relevant. And I think that we should be entitled to that, Your Honor.

So I think overall, you're seeing a little bit -- hearing a little bit of that administrative record talk again. Really, that is one piece of this case. It's important. I don't want to minimize the information that we're going to get. But it's also a misnomer. We want, like we said in our claims, Motions to Compel claims filed, we want all claims information -- not just what United is deeming is an administrative record.

We want e-mails. We know they exist. They haven't been produced on any level.

And we're just ready to get this information so we can get moving.

THE COURT: Okay.

MS. GALLAGHER: Thank you.

THE COURT: Just a couple of questions, Ms. Gallagher.

Have you ever prioritized for the defendant what you want to have produced first, next, last?

MS. GALLAGHER: I have not, Your Honor.

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THE COURT: You have not?

MS. GALLAGHER: I have not, you know, prioritized for --

THE COURT: Okay.

MS. GALLAGHER: -- United. You know, I certainly haven't made that request either.

THE COURT: And how long would it take you to prioritize it?

MS. GALLAGHER: By tomorrow or Monday.

THE COURT: I was going to say the 13th or 14th. Today is the 8th.

MS. GALLAGHER: I can meet that.

THE COURT: Which day?

MS. GALLAGHER: I can meet that, Your Honor.

THE COURT: Which day?

MS. GALLAGHER: I'll go with the earlier of the two, the 13th.

THE COURT: October 13th. Thank you.

All right. This is the Plaintiffs' Motion to Compel.

The motion will be granted in all respects.

I overrule the objections to RFP 31, the objection to providing national Data iSight data; and overrule the objections to rule -- Request For Production 41. So all of the objections are overruled. The motion is granted in its entirety.

The plaintiff will incorporate into the order the deadlines in the opposition with regard to willingness and the defendant will be

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held to those deadlines.

By the 13th of October, the plaintiff will prioritize the remaining issues for the defendant, and the defendant will respond by the 20th of October -- that gives you a week, Mr. Balkenbush. And this will be back on calendar on October 22 at 10 a.m.

And I am not usually so forthcoming, but with COVID I feel like these business court cases you need to know what I'm thinking.

Mr. Balkenbush, if your client can't meet the deadlines, I will have no choice to make -- but to make negative inferences.

I don't fault you in any way. I understand that it is a problem with your client, and I don't blame you in any respect.

But this case has just gone on too long with not enough effort.

So Ms. Gallagher to prepare the order.

Mr. Balkenbush, you will approve the form of that order, if you can. If you can't, explain why. I'll either sign, interlineate, or hold a telephonic. But you'll have to have a reasonable time, and I will not accept a competing order.

Any questions from either of you on that?

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

MR. BALKENBUSH: Your Honor, no question in regards to the process of submitting the order or objecting to the proposed order.

I guess in regard to the October 22nd status check, would the Court take into consideration if a rolling production has been

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made of, I guess, the categories of documents that Ms. Gallagher identifies for us in her, I guess, October 13th e-mail or letter to us? Or is it the Court's position that everything needs to be produced?

What I'm trying to get -- understand is that, for example --

THE COURT: Sure.

MR. BALKENBUSH: -- you know, a rolling production of e-mails is one thing. Producing every single responsive e-mail, I do think would be unworkable by October 22nd.

THE COURT: It's not my intent to require all of the production by the 22nd, but to determine what the priority is and set deadlines for each category. And that will be set in stone as of the 22nd.

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MR. BALKENBUSH: Understood, Your Honor. Thank you for that clarification.

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THE COURT: Okay. And your timeline, Mr. Balkenbush, should say when things can be done and explain, based upon the order of priority given to you by the plaintiff.

Now, anything further?

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

THE COURT: Okay. Now, I -- we have on calendar today a motion -- the Defendant's Motion for a Protective Order with regard to protocols, retrieval, and production of e-mail? Is that still on?

MR. BALKENBUSH: So, Your Honor, that motion, the Court denied without prejudice, I believe. And then ordered the parties to meet and confer on an ESI protocol.

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THE COURT: Mm-hmm.

MR. BALKENBUSH: We have spoken with plaintiffs' counsel about that. They've requested some additional information from us regarding the format, certain files are stored in that we have.

And I believe the next step there is that plaintiffs are going to send us a draft ESI protocol that they are comfortable with, and then we'll respond to that. I don't believe we've received that yet.

So I think that is an issue that can probably be maybe tabled and brought up again at the October 22nd status check.

THE COURT: Thank you, Mr. Balkenbush.

The plaintiff, is there a response to that?

MS. GALLAGHER: Just a brief response. That's generally accurate in terms of our discussions. And we are taking the laboring or the Health Care Providers in drafting the ESI.

I think what would be helpful is just additional information from United. We have engaged in the discussion about their claims management system and where we might find additional information. And we sort of were stalled in that regard and got only information, again, regarding where administrative records may be kept. So it would be helpful.

We're trying to craft something, not knowing what United's various platforms are, you know, and we ask -- they either, you know, didn't know at the time and we haven't gotten that follow-up.

So I think if there could be just a push for additional

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information that we can fill in so that we can get it going and perhaps have an agreement by the 22nd, that would be helpful.

THE COURT: Thank you.

Is there a reply, Mr. Balkenbush?

MR. BALKENBUSH: Yeah. I think it would just be helpful -- once we have the draft ESI protocol from the plaintiffs, and we will expedite our review of that, I think it's -- we just need to receive that to know, you know, how close we are apart, as far as terms, instead -- but would the Court rejected our ESI protocol or e-mail protocol in the prior motion. So we've essentially asked the plaintiffs to give us something that they're -- they're comfortable with.

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THE COURT: Okay. Do both of you think you can give me an update on the 22nd of October on this issue?

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MS. GALLAGHER: Yes, Your Honor.

MR. BALKENBUSH: Yes, Your Honor.

THE COURT: Thank you, both.

This Motion for Protective Order then will be continued for status only on October 22nd.

And we also have a status check, and I did see a status report this morning from the plaintiff.

Is it necessary to discuss that today?

MS. GALLAGHER: Your Honor, I was able to weave that in with the argument about the status of the administrative record production to date. Thank you.

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THE COURT: Good enough.

And will Mr. Balkenbush, or Mr. Roberts, do you both agree that we don't need to have the status check in lieu of the fact that we've already argued everything else?

MR. BALKENBUSH: I agree, Your Honor.

THE COURT: Okay. Very good.

So I guess I'll be seeing you guys a lot in October and November. So until then, stay safe and healthy.

And are you guys working full time on this case?

Don't answer that. Okay.

MS. GALLAGHER: Appreciate your time this afternoon. Thank you.

THE COURT: Never make -- never should make an attempt at humor. Thank you both.

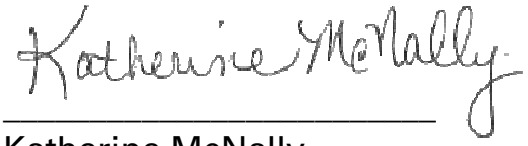
MS. GALLAGHER: All right.

MR. BALKENBUSH: Thank you, Your Honor.

[Proceeding concluded at 4:02 p.m.]

* * * * * * *

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



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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

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

Defendants UnitedHealth Group, Inc., UnitedHealthcare Insurance Company ("UHIC"), United HealthCare Services, Inc. ("UHS"), UMR, Inc. ("UMR"), Oxford Health Plans LLC, (incorrectly named as Oxford Health Plans, Inc.), Sierra Health and Life Insurance Co., Inc.

("SHL"), Sierra Health-Care Options, Inc. ("SHO"), and Health Plan of Nevada, Inc. ("HPN") (collectively "Defendants"), by and through their attorneys of the law firm of Weinberg Wheeler Hudgins Gunn & Dial, LLC, hereby lodge the following objections to Plaintiffs' proposed "Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time" ("Proposed Order").

On October 8, 2020, the Court held a hearing on *Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time* ("Motion"), granted Plaintiffs' Motion, and directed Plaintiffs to prepare the order (the "At-Issue Proposed Order"). The hearing transcript is attached hereto as **Exhibit 1**. At the hearing on Plaintiffs' Motion, **this Court adopted the dates set forth in Defendants' Opposition as the controlling dates** for which Defendants were to produce the documents identified in the parties' briefing. Specifically, the Court stated as follows:

> The plaintiff will incorporate into the order the deadlines in the opposition with regard to willingness and the defendant will be held to those deadlines.

See October 8, 2020 Transcript, at 79:24-25. As to market data for the Las Vegas Metropolitan area, Defendants stated in its Opposition briefing that they would produce market data for that region on or before October 26, 2020. The Court adopted that date at the October 8, 2020 hearing. *See* October 8, 2020 Transcript, at 79:24-25. The Court did not otherwise address Plaintiffs' requests to expand the scope of market data, as Plaintiffs try to suggest in the At-Issue Proposed Order. Plaintiffs' submissions of the At-Issue Proposed Order suggests an attempt to rewrite history by using the At-Issue Proposed Order to expand—improperly and without justification—the scope of the data ordered by the Court and briefed by the parties.

Nor have Plaintiffs ***ever*** submitted a specific request for United to produce "national-level" market data, as suggested by the At-Issue Proposed Order—"national-level" market data has no relevance to the claims and defenses in this litigation. In sum, Plaintiffs' erroneous inclusions in the At-Issue Proposed Order, including ordering "national market data," is inappropriate and has the purpose of severely prejudicing Defendants.

Plaintiffs submitted the At-Issue Proposed Order to Defendants for review, and because

Plaintiffs included findings of facts and orders of the Court that were ***not*** specifically addressed or ruled upon, Defendants were not able to agree to the form of the At-Issue Proposed Order. The parties conferred in a series of emails, attached hereto as **Exhibit 2**, but Plaintiffs nevertheless incorporated in the At-Issue Proposed Order that national-level market data should be produced according to the schedule "as set by the Court at the October 22, 2020 status check." (Proposed order at 6:3–6). As noted *supra*, the parties have never briefed the issue of the production of "national level market data," because (1) such data is not responsive to the issues in the case, (2) Plaintiffs have not specifically asked for it in written discovery requests or in any discovery conference, and (3) the Court has only heretofore issued a ruling regarding market data for the Las Vegas Metropolitan area. Plaintiffs cannot use the Court's proposed order submission protocol to expand the Court's discovery holdings and severely prejudice United.

On October 23, 2020, Plaintiffs submitted the At-Issue Proposed Order to the Court via email. Defendants hereby submit the following objections to Plaintiffs' At-Issue Proposed Order and respectfully request that the Court revise the At-Issue Proposed Order as set forth below:

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OBJECTIONS

Defendants set forth herein their objections to Plaintiffs' At-Issue Proposed Order, which includes findings of facts and conclusions of law that were not addressed by the Court. Plaintiffs' attempt to expand the scope of the Court's holding is improper and severely prejudices Defendants. Defendants further submit that any of Plaintiffs' inclusions that fall outside the scope of what was addressed at the time of the hearing and issues that the parties have not briefed for the Court to consider should be stricken. Defendants' specific objections to Plaintiffs' proposed order are as follows:

1. At Paragraph 10 of Plaintiffs' Proposed Order, Defendants submit that the paragraph should be revised to include the following text in bold:

- "In the event that United does not meet the deadlines of the Court **that will be set by the Court at the October 22, 2020 status check hearing**, the Court will have no choice but to make negative inferences."

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2. At page 6:3–6 of Plaintiffs' Proposed Order, United submits that the At-Issue Proposed Order should be revised as follows to accurately reflect the Court's adoption of Defendants' deadlines as set forth in its Opposition:

- The Market and reimbursement data for out-of-network and in-network providers for the Las Vegas, Nevada market by October 26, 2020, and for the ~~all~~ other ~~responsive Nevada and national level~~ market and reimbursement data as ~~set~~ ordered by the Court at the October 22, 2020 status check.

CONCLUSION

For the foregoing reasons, the Court should refrain from entering Plaintiffs' Proposed Order without making the adjustments indicated above.

Dated this 26th day of October, 2020.

/s/ Colby L. Balkenbush

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UMR, Inc., Oxford Health Plans, Inc.,
Sierra Health and Life Insurance Co., Inc.,
Sierra Health-Care Options, Inc., and
Health Plan of Nevada, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on the 26th day of October, 2020, a true and correct copy of the foregoing **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** 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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EXHIBIT 1

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EXHIBIT 1

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

002579

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

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LAS VEGAS, NEVADA, THURSDAY, OCTOBER 8, 2020

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

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

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

Thank you.

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

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

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

THE COURT: Thank you.

Other appearances for the plaintiff, please.

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

THE COURT: Yes.

MS. LUNDVALL: This is Pat Lundvall.

THE COURT: Yes.

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

THE COURT: Thank you.

Is that all of the plaintiffs' counsel?

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

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

THE COURT: Thank you.

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

THE COURT: Thank you.

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

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

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

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

The Court previously heard and denied United's --

Did you say something, Your Honor?

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

MR. ROBERTS: Okay. No problem.

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

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

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

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

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

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

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

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that those changed the analysis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Thank you.

And the opposition, please.

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

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

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

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

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

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The one thing that I want to address is a couple of the arguments that they made in their reply brief, and that were at least tangentially addressed then by Mr. Roberts.

One of the things that, in their reply brief, is that United contended that we never addressed any of the exceptions to the general rule that the Nevada Supreme Court has employed -- and that is it will not renew or review on a writ a denial of a Motion to Dismiss. [Indiscernible] not only did we address that -- not only did [indiscernible] renewed [indiscernible] findings of conclusion of law as to how those exceptions did not apply in this case.

And the two exceptions that were previously discussed in the original briefing is whether or not that there -- this was a case

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where there were no disputed facts and where clear statutory or rule baked authority of the dismissal -- and this is discussed in the briefing [indiscernible] with prejudice.

So if you take a look then at our opposition brief, and to the renewed motion on page 4, we discussed both of those exceptions. If you look at your order denying the Motion to Stay, you discuss both of those exceptions. And you made specific findings, specific Conclusions of Law No. 2 and No. 3. And if you look at our original opposition, we addressed both exceptions.

So what I did is I tried to scour then the renewed motion that had been filed by United, as well as their reply brief.

And do they contend anywhere within either of those briefs, or before you now on oral argument, that somehow that this case involves no disputed factual issues? No. They haven't given you any argument, any contention. They haven't [indiscernible] as far as any set statement of facts by which that are undisputed before the parties and upon which the Nevada Supreme Court then could review under a pure issue of law.

If you go to your order denying the Motion to Dismiss, I could go through probably about 40 different findings of fact and conclusions of law that you made in the original Motion to Dismiss identifying the factual issues that have been alleged in our complaint for which United disputes.

And so to the extent that the Court has already made extensive findings that there are disputed issues of fact, that limited

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exception that has been recognized in a handful of cases by the Nevada Supreme Court does not exist.

And so if you take a look at their second argument that they claim, or second exception that they claim, it is whether or not that there is clear statutory or rule-based authority that obligates dismissal.

Once again, we address this in our opposition to their renewed motion. The Court addressed this issue in denying their Motion to Stay, and we address it in our original opposition brief. There is not clear statutory or rule-based authority that obligates a dismissal with prejudice of the claims that have been asserted by the Health Care Providers in this case.

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And even United acknowledges that any dismissal, even if they were 100 percent successful before the Nevada Supreme Court, that any remand would give opportunity then to the Health Care Providers by which to replead their claims. And so therefore, this case is not over. And the repleading of the claims then would fall within the scope of ERISA claims and that those discovery issues are front and center before the court, have been before, and are again today, and so to the extent that those discovery disputes will continue, even if they are 100 percent successful before the Nevada Supreme Court.

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One of the things I think is a helpful tool also the look at, and that is the case that they cited in their reply brief contending that somehow that we didn't address in any form or the issues raised in

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any form. And it's the *Western Cab case versus Eighth Judicial*, is the 2017 case, that was decided then by Judge Bare, went below, and that was reviewed then by the Nevada Supreme Court.

One of the things that I found interesting about that analysis in the case that they brought to the Court's attention was the fact that the Nevada Supreme Court found that the minimum wage amendment was not ERISA preempted. And when you look at the analysis that was employed by the Nevada Supreme Court in finding that the Nevada's Minimum Wage Amendment was not preempted by ERISA, and look at the case law that they employ, it is the very case law that we have utilized in arguing against their Motion to Dismiss. It's the very case law that the Court embraced in denying their motion to dismiss. And it's the very case law upon which that demonstrates that they do not have a likelihood of success before the Nevada Supreme Court. Why? Because the Nevada Supreme Court expressly rejected in the *Western Cab Company* case, the analysis that United wishes to employ defined conflict preemption for the claims that we have asserted.

And so I find that their recitation and their bringing to the Court's attention that case to be a bit perplexing because it underscores the fact that the Nevada Supreme Court has employed the same conflict preemption argument that this Court embraced and relied upon in denying their Motion to Dismiss.

And I could go through the cases that they cite and the cases that were rejected and the analysis that was expressly rejected

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by the Nevada Supreme Court, if you wish for me to walk you through it. But in sum --

THE COURT: You know, it's a --

MS. LUNDVALL: I guess the point -- I'm sorry.

THE COURT: I guess the point is, if you feel you need to make a record on it, feel free to take the time. But I did read everything, and I'm a good listener.

MS. LUNDVALL: Thank you, Your Honor.

I guess, in sum, what I would say is this, is that, Did United embrace or address or try to argue against the -- the exceptions that occasionally are recognized by the Nevada Supreme Court? Did they bring to you the fact or the contention that somehow there are undisputed factual predicate upon which the Nevada Supreme Court could review this case? No.

And did it bring to you then any clear statutory authority or rule-based authority that mandates a dismissal of our claims? No.

In fact, what it did is it brought to you the case law that embraced the authority and the analysis that was employed by the Court.

So what did they actually do in their brief? They did give you a couple of new additions. And those new admissions are a helpful tool then in the analytical framework then so the Court can reach the same conclusion in denying this renewed Motion for Stay, as it did in the original Motion for Stay.

United acknowledges that there's four factors to be

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analyzed. And number one, that first factor is whether or not that there's a likelihood of success on appeal. We've already identified that in the very case that they cite and they embrace and that they suggested somehow that helps them in arguing then for a stay the -- the *Western Cab* case, that is a case then that embraces the same analysis the Court did.

Number 2, what they entirely do is that they gloss over the fact that complete preemption is a jurisdictional tool. And complete preemption is a tool that was employed by Judge Mahan to deny -- or to grant our Motion for Remand and to state that the federal court did not have jurisdiction over this case.

So what is United actually asking our Nevada Supreme Court to do? The same thing that they asked you to do, and that is to overturn Judge Mahan and to state that the federal court does have jurisdiction over this case.

And I think this Court is well aware of the case law and the basic premise that a state court doesn't have the authority to define or determine the jurisdictional parameters of the federal court, and it doesn't have the authority by which to overrule a federal court.

And the simplest way of looking at that is what is the procedural vehicle by which that this case could ever get back to federal court? And if there is no procedural vehicle for this case to get back to federal court, a complete preemption is not an argument that is available to United.

So let's turn then, as far as to the second issue, and that is

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whether or not that the object of the writ would be defeated if a stay was denied.

Now, this is where United makes two admissions. And I'm going to quote both of these admissions, because I think that they're helpful tools for the Court to look at.

In their reply brief at page 5, lines 21 through 23, United takes the position, and I'm going to quote here -- that a brief stay of discovery may eliminate concerns of significant wasted resources.

So in other words, what are they trying to do? They're trying to save some money.

What did they include in their declaration asking for this Court to order or to enter an order shortening time then? I go to Paragraph No. 12 from the declaration that was offered by Mr. Balkenbush to the Court in support of an order shortening time. And once again I quote, Because discovery is ongoing, time intensive and costly, and because of the pending writ, it may curtail the need for discovery.

So in other words, once again, what is United admitting? That they're trying to save money.

So if the object of their writ is to try to save them some money and to curtail, in their words [indiscernible] discovery, what this Court would have to do then is you would have to overturn or reject two decisions from our Nevada Supreme Court, that state that if that is the object of their writ or if, in fact, that that is the prejudice that is claimed by seeking a stay, then that is insufficient and may

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not be considered whether it be by the district court or by the Nevada Supreme Court in determining whether to issue a stay.

The two cases that I cite that the Court would have to either reject or overturn -- I guess reject is the proper terminology -- would be the *Micon* case and the *Fritz Hansen* case. And the *Micon Gaming* case, it was a case involving Charlie McCray [phonetic] and his employment agreement. And the District Court had determined that his employment agreement was subject to arbitration, and there was an attempt then by which to seek a stay in that case.

And in *Micon Gaming* -- I'm going to quote from the Nevada Supreme Court, finding the *Fritz Hansen* case, the Nevada Supreme Court says, We have previously explained that litigation costs, even if significant, are not irreparable harm. And then they go on to say that it is not a reason then by which to grant a stay.

And if you take a look at the *Fritz Hansen* case, our Nevada Supreme Court more extensively then looked at and evaluated whether or not the saving of money or the saving of time was a sufficient reason by which to grant a stay. In *Fritz Hansen*, the Court could not -- the Nevada Supreme Court could not have been more clear saying, no, it may not.

That was a case involving a contest as to whether or not that there was personal jurisdiction then over the defendant. And the defendant contended that he should not have to be required to participate in the expense of a lengthy and time-consuming discovery, trial prep, and trial. And the Nevada Supreme Court says,

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Such litigation expenses, while potentially substantial, are neither irreparable or serious. And they refused to use that as a foundation then for granting a stay.

In making that holding, they cited to three other Nevada Supreme Court cases, as well as cases from other jurisdictions, that enforced that same proposition.

Now, United tries to contend that somehow it's trying to do more than save money because its business people are very busy and that they should not have to be taken from their business task to focus on litigation. But that's nothing but a cost of litigation. And if, in fact, that there's any suggestion to the contrary, all you have to do is to look at the *Fritz Hansen* case because the Nevada Supreme Court goes on to identify that the time associated with litigating that case, or the business people having to litigate a case, that's nothing but a cost of litigation, and it is not a foundation then for the granting of the stay.

So one of the things that I think is another helpful acknowledgment, or helpful admission, that comes from their pleadings is that that they acknowledge that this case is not even over if the writ is granted in full.

And this is where I think that the real sophistry comes in the argument that is being advanced by United. Before you, they take the position that it is just going to take too long to do discovery and to pull all these administrative records for the claims that are at issue in this case and, therefore, they shouldn't have to do that. And

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then they go on to say, well, we should get a reprieve or a recess from having to perform that task. But we acknowledge that if the Health Care Providers replead their claims, we're going to have to do that anyway.

And so one way versus another, the discovery demands or the discovery requests that have perpetuated this case and which you're going to hear about for the balance of this hearing, those discovery disputes are going to continue, even if United is 100 percent successful on its motion.

THE COURT: Okay. Looks like we lost --

Ms. Lundvall, you're back?

MS. LUNDVALL: My apologies, Your Honor, I didn't mean to --

THE COURT: No problem.

MS. LUNDVALL: -- but the one last point, I guess that I'd like to make about that is this -- there are two additional factors that United didn't even address in their -- either in their renewed motion or, in fact, in their reply papers as to whether or not that there was some type of irreparable harm to United or the irreparable harm that was found by this Court then in granting or in denying their Motion for Stay in the first place. They didn't even touch those two factors. And so there's nothing really new for this Court to reconsider.

The only thing that is really before you is better admissions and a better record underscoring what it is and why it is that United wants to have this case stayed.

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And so therefore, Your Honor, we would ask for the same result that the Court had issued when you denied their original Motion to Stay.

Thank you, Your Honor.

THE COURT: Thank you.

And Mr. Roberts, your reply, please.

MR. ROBERTS: Thank you, Your Honor.

Addressing first the point raised by Ms. Lundvall that there is no proper basis for reconsideration, I'm going to say again that we're relying on this Court's own words that said, If there is a briefing request, I would reconsider this. This is why we delayed seeking a stay from the Supreme Court, and this is what we believe does change the Court's calculus.

In denying the Motion for Stay, this Court stated that with all due respect to the defendants, I do not think there's a likelihood of success on the matter even being considered by the Nevada Supreme Court. And the fact that the Nevada Supreme Court has requested briefing, and they have requested briefing with knowledge of all of the issues, which plaintiffs continue to raise as to the unlikelihood of success, does considerably change the calculus.

Going to the argument on the irreparable harm, this Court did find that the irreparable harm [indiscernible] on defendants in denying the original Motion to Stay. And therefore, I think it would be appropriate to take at least another look at those arguments in -- with regard to the length of the stay, because while plaintiffs argue

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that the only irreparable harm United can point to is money and the fact that we're going to have to spend money -- in essence, the only irreparable harm the plaintiffs are alleging is money -- money that this Court has not even found that they're entitled to.

And therefore, to the extent that the Court does think that an indefinite stay of a year or longer would be too long, I know of no prohibition that would prevent this Court from ordering a shorter stay to minimize any harm to the plaintiffs from a stay in the case.

But while plaintiffs minimize it, United doesn't argue something that merely the cost of discovery. In the affidavit with regard to the discovery that was sought by the plaintiffs in their Motion to Compel that was heard at the last hearing by the Court, we outline that even in order to comply with a delayed schedule for production of those documents, it would take four of our employees, working full time. That is a significant disruption of United's business. These are not people whose only job is to do discovery in connection with litigation. It is harming United and their attempts to continue their business under these strained circumstances that everyone is currently going through. Therefore, there is something merely beyond litigation costs.

But I think the Court can also consider that really, the factor, as far as irreparable harm, which is the Court is considering now, is very parallel to the irreparable harm in connection with whether or not a party has a speedy and adequate remedy.

And typically, yes, the Nevada Supreme Court says, hey, if

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you've got a future appeal, that's a sufficient adequate speedy remedy. And the fact that you have to do discovery doesn't alter that.

But in this case, the Supreme Court, nevertheless, has requested briefing on the stay. And in our writ to the Supreme Court, at page 21, we cited to *International Game Technology*, where the Court noted that an appeal is not adequate and speedy, given the early stages of litigation and the policies of judicial administration. In other words, it's not an absolute rule.

And in this case, where we're so early in the litigation, and a Supreme Court order on the dismissal could dispose of the entire matter, the analysis is a little bit different. And the Supreme Court has recognized that if there is complex litigation and you're early in the litigation, and the writ could dispose of the case and eliminate all of those costs, it can change that analysis.

And while Ms. Lundvall did a very nice job of pointing out words in our brief that were less than unconditional, but that doesn't change the fact that we do contend in our briefing that we're entitled, if we win at the Supreme Court, to a complete dismissal of the entire case.

It's something that we have asked for. We have cited authority to the Court in supporting that that is a potential remedy that we could get. And the mere fact that they could potentially replead after a complete dismissal to assert ERISA claims doesn't alter the fact that as the litigation currently stands before this Court,

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if the Supreme Court grants our writ petition, all of the plaintiffs' claims could be dismissed.

As far as Judge Mahan's decision, as this Court is well aware, in a decision on a Motion to Remand, there are no appellate rights. We had no right to appeal that decision to the Ninth Circuit. And Judge Mahan's analysis with regard to complete preemption is not binding in any way on this Court, and it also does not go to the issue of conflict preemption which is one of the primary bases of our writ to the Supreme Court.

In summary, Your Honor, we believe that this Court recognized at the prior hearing that it would change the way of the four factors under Rule 8 if the Supreme Court requested briefing; that it would indicate that we have a higher probability of success than this Court found at the prior hearing. And we believe that that factor would weigh in favor of granting a stay in this case, a brief stay, simply to give the Supreme Court a chance to resolve the writ on the merits, if they intend to do so.

Thank you, Your Honor.

THE COURT: Thank you, both.

The matter is now submitted, and this is the ruling of the Court. I read everything. I listened with an open mind, but for all of the reasons that I denied the stay previously, I'm going to deny this motion.

The Supreme Court orders talked about propriety of writ relief. And the *Dignity Health* case is law in Nevada where they've

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already said they rarely grant writs on motions to dismiss.

I don't find that the object of the litigation would be defeated without a stay. I think still the defendant has a low likelihood of success on the merits on the writ.

I'm concerned about the delay in this case. I do not believe that the motion was filed for any dilatory purpose. But clearly the extensive litigation doesn't equal irreparable harm in Nevada. I'm concerned about the delay in the case itself. April 15 of 2019 is when the complaint goes back to. It is already a year and a half old.

So for those reasons, I am going to deny the motion, Mr. Roberts.

Ms. Lundvall to prepare the order. See if you can agree as to form. If you can't, outline your issues for me. This may be a simple order -- and let me know if you can't agree on the form of an order. But I don't accept any competing orders.

Any questions, with regard to the ruling?

MS. LUNDVALL: No questions, Your Honor. Thank you.

THE COURT: All right.

MR. ROBERTS: No questions, Your Honor.

THE COURT: Thank you.

So the next motion I have briefed is the Defendant's Motion to Compel the political documents.

MR. ROBERTS: Yes, Your Honor. This is Lee Roberts. I'll be handling that motion for the defendant.

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The plaintiffs in this matter seek to foreclose United from taking discovery and offering proof with regard to the clinical records which describe the services that are actually -- that were actually performed for which the plaintiffs are now taking additional payment.

The clinical records, the medical records, will demonstrate what services were performed. Perhaps they will demonstrate the need for those services, the medical necessity of those services. They will demonstrate how long it took in order for those services to be performed in certain cases. And it will also demonstrate whether or not the services for which the plaintiffs seek payment are indeed the services that are identified in the claims they submitted to United for payment.

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Based on our meet and confers and the papers filed by plaintiffs, plaintiffs seem to be essentially arguing that because United has partially paid those claims, that United cannot now dispute whether the services were performed, that United cannot dispute how the services were coded, and that United cannot defend in any way whether or not those services were necessary or properly coded.

The opposition to the Motion to Compel is essentially asking this Court to grant summary judgment on United's defenses and to grant summary judgment on whether or not United can dispute at this point in the litigation whether the services were performed and whether they were properly submitted for payment.

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And one of the factors that the Court should consider is the public policy of encouraging insurers to pay claims based on the representations of the providers who perform medical services. Under the Prompt Payment Act -- and which would not necessarily apply if these were ERISA claims -- but the argument which is being asserted is that they're not ERISA claims, and therefore you would have to look to the Prompt Payment Act.

But regardless, it's the public policy in Nevada to encourage insurers to pay high volumes of claims in a short period of time. And it's the public policy to encourage those claims to be paid based on the representations made by the providers when they submitted claim for pay.

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In this case, we know that part of what is in dispute here is emergency room services. And we know that emergency room services are subject to significant abuse in the industry for upcoding. We know, based on the sampling, that it would appear that a very large percentage of claims are coded Level 4 and 5 for emergency services, which are subjective standards based on whether or not the illness for which the patient is being treated was life threatening, whether or not it involves a moderate or high complexity of medical reasoning. There are lots of things that are in the medical records which would be relevant to determine the reasonable value of the services.

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And in this case, the Court cannot ignore the fact that plaintiffs have pled *quantum meruit*. They have pled the unjust

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enrichment of United. And without admitting that the -- those claims are valid, at this point in the litigation, the Court has to recognize that in an unjust enrichment claim, the Court can look at a number of different factors, such as the reasonable value of the services that are performed. And the Court is entitled to know, and we're entitled to know, what services were actually performed, even if we never requested those records in the beginning.

Just because an insurance company pays a certain amount under the representation that services were properly coded to a certain CPT code does not mean that everything is not back opened when the plaintiffs refuse to accept that payment and move to compel a reasonable payment of a reasonable value.

Once they refuse to accept our payment, they place the reasonable value of the services in dispute. And while there's not a lot of case law on this issue in the country, we have cited the case to -- the Court to a case in Florida, which outlines the logic of that exact issue.

Now that they have placed their entitlement to be paid more than what they were paid, they have put at issue whether the work was performed, whether the services are the same as that were identified in their claim form, and whether or not they were billed and coded appropriately.

There is one argument which was not reached in the brief, but I think it is somewhat applicable by analogy, and that is NRS 48.105, which they said accepting or offering or promising to accept

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a valuable consideration and compromising or attempting to compromise a claim which was disputed either as to validity or amount, is not admissible to prove liability for or invalidity of the claim for its amount.

And really that's exactly what they're asking the Court to do. We disputed the amount of the claim that they submitted. We paid a lower amount. And now they're trying to use that payment, which Nevada policy encourages, to estop us from contesting the validity of the claim itself. And that's just not proper, and they have not gotten summary judgment on that issue. They have not precluded us from asserting that defense.

And this is a discovery motion, and as long as that defense still exists, then they have not file that had motion and the Court has not grant that had relief, it is inappropriate for the Court to refuse to order relevant discovery on the basis -- on their claim that they will be able to get summary judgment on the actual coding of the claims for services and that it was proper and that the services were performed.

They haven't gotten that yet, and United is entitled to discovery on this issue. And there's a claim that this is simply retaliatory for the Motion to Compel that was filed by the plaintiffs, but the fact is that this discovery was requested long before they moved to compel discovery from us. We put this at issue because we thought it was relevant to the value of the services that were performed, that whether or not we requested medical records in

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initially paying a smaller amount is simply not relevant or probative to whether or not we're entitled to see the records of what they did now that they are claiming that our payment was insufficient.

So we would ask the Court to compel the clinical records for the claims that they are seeking. And as we said before, to the extent that the plaintiffs contend this would be overly burdensome and time-consuming, we are more than willing to meet and confer with them with regard to sampling methodologies or other mediums that would allow both sides to prove or to defend their case in a statistically significant reasonable manner. But at this point in the litigation, these items are relevant, and they are likely to lead to admissible evidence. And United is entitled to receive.

THE COURT: I just have --

MR. ROBERTS: Thank you, Your Honor.

THE COURT: Just one question, Mr. Roberts. Are you asking for EOBs in addition to clinical records?

MR. ROBERTS: Yes. And I was focused on the clinical records. But we are asking for all of the records which would support their spreadsheets. They have created around the spreadsheet. They have asked the Court do deem that everything in the spreadsheet is accurate, if United doesn't dispute it.

But the fact is, Your Honor, a chart, a spreadsheet is only admissible at trial and is only admissible in evidence to the extent that it is based on admissible evidence and the other party is offered an opportunity to review and copy the information summarized in

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the spreadsheet.

And in this case, we have been provided a spreadsheet, but the plaintiffs have not provided any of the underlying data or documents from which those spreadsheet entries are drawn. We believe that should have been provided initially, under Rule 16.1. And we are asking that the Court compel all documents upon which the spreadsheet is drawn so that we can review those and verify that the spreadsheet entries are correct.

THE COURT: Thank you.

MR. ROBERTS: And in going through -- and the Court may hear more of this with regard to Plaintiffs' Motion to Compel, which is on today -- but in going through and trying to compile clinical records and trying to match claims, United has already found many errors in the spreadsheets, which have made it difficult to research and align the issues. So we are asking for the COBs and all other documents which plaintiffs intend to use to show that the spreadsheet is admissible and that it correctly reflects and correctly summarizes is underlying admissible documents.

THE COURT: Thank you.

And the opposition, please.

MS. GALLAGHER: Good afternoon, Your Honor. This is Kristen Gallagher. And I'll be responding in connection with the clinical records.

What I'd like to start with is just an overview.

THE COURT: Hang on just a second.

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MS. GALLAGHER: What we heard is really just United conflating this case into something it's not. This is consistent with what we [indiscernible] from the beginning.

THE COURT: Ms. Gallagher, Ms. Gallagher, hang on just a second.

I just need the court reporter to change the screen so that I can see you on the screen. Can you -- you can't increase. Okay. Sorry. Good enough.

So go ahead then again, please.

MS. GALLAGHER: Sure. Thank you, your Honor.

So as I was saying, is that this is a consistent effort by United to conflate what this case is actually about. We know from our first amended complaint in paragraph 1 that this case is specific. This is not a right-to-payment case. This is a rate-of-payment case.

And so what you're seeing with the clinical records is language and using terminology that is trying to transform this into a right-to-payment case.

And we saw that in the moving papers, but particularly with Mr. Roberts's presentation today. And I'd like to hit on a few points and then the rest I'll address as we go forward.

But when Mr. Roberts talks about the top case statutes as being something that they denied part of a payment or made a partial payment, that is actually a misnomer of what this case is about. What happened is that United accepted the emergency department services at the level coded. They paid the claim. They

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either asked for information or they didn't, as they're entitled to do under the prompt case statutes in Nevada, and then they paid the claim. But what they represented when they paid the claim is that it was full payment for the claims that had been submitted.

Now what we're hearing in an effort to try and expand this case to something it's not, now they're saying what they did is they made partial payment. And so that's important if they want to stand on that, saying that they made partial payments under Nevada law, we'll certainly take that admission. But what we're seeing is language being used inappropriately and not forthcoming in terms of how these claims are adjudicated and how they're paid. So this case, make no mistake about it is the rate of payment.

So what has happened is that United accepted the claims. They processed them at the level coded. And then they paid them based on that level -- based on documentation.

We know from United's declaration of standard way, that they do have clinical records. They've represented to the Court they have clinical records. They have produced, although it's only nine claims to date. We have produced clinical records. So we know that United has that in their possession. And if they asked for it, they have it.

But what I want to make clear as I go through my opposition is that the terminology being used about clinical records and how we have to prove our claims because they have been partially paid is an inaccurate description of this case, Your Honor.

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And it's important for the lay of the land because as the plaintiffs we are entitled to bring certain claims. Had we wanted to challenge denied claims, that would be a different action, but this is clear. We have received -- well, let me go back, United has accepted and allowed at the level that has been paid. There's no denial of the level that's been paid. There's no partial payment because they thought it should have been paid at a different level.

And so to suggest that somehow this is different than the prompt pay statute or that this somehow opens the door to clinical records, I just want to make that record clear that it is an opportunity to United is trying to use this language and morph this case into something it's not.

But before I get too far down the road, I wanted to start by providing the Court an update on the meet and confer efforts. We did raise this issue in our opposing papers, because we thought it was significant that we had provided these responses more than a year ago now, I believe -- somewhat a year ago. We did not hear from United in terms of them having any issues with our responses until there became other discovery disputes in the federal -- while the case was pending in federal court.

At that time, the issue was raised specific to No. 6, which is the subject of this particular motion. And it's important in terms of timing, because at the time that the request was asked, United did not have an answer on file. United did not have any affirmative defenses that were provided, and so when we went to the meet and

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confer, what we were brought forward with is, well, you have a claim for unjust enrichment, and so as a result the clinical records are required.

Then sometimes after that, not too long ago, in July of this year, United filed their answer, which included the recruitment or an option. And so that timing is really important because United is trying to cut off our objections by virtue of this timing that they're trying to take advantage of.

So it's important for the Court to see sort of that timing, when the meet and confer came forward, what the lay of the landscape was at the time we made objections. And when we went to the meet and confer, what we were confronted with or what we were told is that, well, it's your unjust enrichment claim, you have to show the value of services.

And so those were the conversations that is we were having, subsequently then United filed an answer, and then brought this motion without regrouping with the Health Care Providers. And why that's important is you have a declaration indicating that had there been a reconvening on the meet and confer, perhaps United expected that there would be some outcome of compromise. We heard Mr. Roberts talk about perhaps a phantom compromise.

However, what's important is that that's the first that we've heard of it. We didn't hear about it before. And in fact, when United saw our opposition, they reached back out to us to say, Would there be an opportunity for a compromise?

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And our response was, well, you suggested that there was in -- in your moving papers, and so if you have a compromise that you had in mind when you filed your moving papers suggesting you had a compromise in mind, we would be open to discussing that.

And so we received information that counsel was going to be talking with United on Tuesday, I believe it was, and expected to be able to chat with us on Wednesday with regard to what an acceptable compromise might be.

The timing is important because it just goes to show that there was actually no reasonable compromise that United had in its mindset when it filed the motion, even though it sort of suggested that it had one.

I hate to say we have not been contacted since then, Your Honor. So the first we're hearing of this sampling potential compromise is with the presentation today. At this point, I'll leave that as it is, just because we haven't had the opportunity and it hasn't been presented to us. But that meet and confer is important, because it does set the landscape for where we were in terms of the meet and confer in our objections and opposition and sort of the forthcoming nature of how we got here today.

THE COURT: And can I -- can I interrupt?

MS. GALLAGHER: So now [indiscernible].

THE COURT: I'm going to interrupt. You know, this motion was only filed on September 21. My inclination is to give you guys a chance to try to work this out and come back. Is that

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something the plaintiff is amenable to?

MS. GALLAGHER: Well, Your Honor, I would like to finish the presentation in terms of why we think that this discovery is not appropriate and why it shouldn't be permitted.

THE COURT: I'll allow you to complete your entire argument. I just want to hear if the parties are amenable -- plaintiff and then defendant.

MS. GALLAGHER: And Your Honor, of course, depending on your outcome, we will definitely consider a compromise. We have often reached out. As you know, we've had a compromise pending since February that would have addressed a lot of these matters, that United has not responded to. And unfortunately, it seems evident with this moving papers and the reply that the reason they haven't responded is because they simply want to try and press the Health Care Providers for discovery that isn't necessary.

As Your Honor may recall, we have proposed a protocol where United would match our data points for the very reason that was raised by Mr. Roberts. If there is a data point that doesn't match, that then tells the parties they need to further discuss it. If the data points match, then it's clear the Health Care Providers submitted a claim and United paid it at the level based on the information it had.

So definitely we are open to compromise positions as may be appropriate, given the Court's ruling.

And I appreciate the opportunity to address the

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substantive piece of it, Your Honor.

THE COURT: Thank you.

Mr. Roberts, are -- is the defendant, or are the defendants, amenable to trying to resolve this?

MR. ROBERTS: Your Honor, the defendants are amenable to trying to resolve this. However, if we are only amenable if the plaintiffs indicate that they're willing to discuss a reasonable way to relieve the burden on both sides.

THE COURT: I think that's --

MR. ROBERTS: And so the -- the Court --

THE COURT: -- that's what she just said.

MR. ROBERTS: The Court may recall that part of our moving papers in the Motion to Compel, our documents, indicated and mentioned in argument that one way to resolve it might be to order the parties to meet and confer on some sort of sampling that could allow the parties to prove their case. And that's been rejected.

And we would not be willing to meet and confer on a sampling methodology that would relieve the burden on plaintiffs, unless they were willing to entertain the same relief for us on our claims.

THE COURT: Okay. All right.

So then, Ms. Gallagher, let me hear the rest of your argument.

MS. GALLAGHER: Thank you, Your Honor.

And I could just note, you know, the timing of a request for

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relief for United's discovery -- it obviously comes long after we've had to Move to Compel, long after the Court has ordered them to produce documents.

So but with respect to the specific clinical records at issue, United tries to convince the Court that there are three reasons why clinical records are needed.

And if I could just spend a moment discussing clinical records -- so those are going to be the doctor's notes on the ground, the nurse's notes on the ground. Those are, you know, actually what is taken at the hospital, at the time that the services are provided.

As this Court is aware, the Health Care Providers are obligated to treat -- not only treat, but to evaluate and -- take a look at and evaluate when somebody presents to the emergency room what is happening and then treat them accordingly. They don't have the luxury of turning somebody away or only treating them and not evaluating them when somebody presents with a heart -- you know, heart chest pain or, you know, something that looks to be an emergency situation -- they are eligible and required to evaluate those situations.

And so when a United member presents to the emergency room, that essentially is the triggering piece of when a claim is right. And a claim then becomes something that if the United member is going to be obligated by United to pay.

And so if United says that we have to establish the burden of proof that the claims are even valid. However, that is trying to

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revise history, in terms of what has happened already. So United's member already presented, the professional services were already provided. And then what happens after that is the appropriate billing forms are filled out and submitted to United.

And then United has their procedures in terms of what they review, how quickly they're supposed to review, and guided by Nevada Prompt Payment statutes.

And so when they look at claims and they see them allowable, the allowable piece of it is at the level -- CPT code level that has been submitted.

We know from United that they may deny a claim. We know that they may partially pay a claim based on perhaps multiple CPT codes that are submitted based on the services provided.

But what we're not dealing with in this case and what we made clear in our complaint and in our list of claims is that those claims we are seeking payment of are ones that United already deemed allowable at the level -- they were not denied based on the level. And United represented that that was full payment, based on prevailing market rates.

Well, what we've uncovered is that that is not accurate in terms of full -- the full payment.

So now they're trying to say it's a partial payment. But that's not actually true, based on the allegations in the complaint. It was full payment -- representative full payment, but to which the Health Care Providers had uncovered is not full payment because

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they have allegedly manipulated market rates with some of their third-party friends that we've identified in the complaint.

The next reason that United tries to convince the Court that clinical records are needed is that they say that it's important for the reasonable value of services. But in our opposition, we've identified that the case law indicates that is not the case.

What a market rate is, is what are people willing to pay for that level of service? So, for example, the most emergent care is coded at a CPT code 99285. What is the prevailing market rate? What is the usual and customary rate for that in the market that's applicable?

We know here we're going to have a dispute in a little bit about what should be the appropriate geography because we have alleged that even though Data iSight and United are saying that rates are market or a specific geographic locations, we know, in fact, based on data, that it's a national data. So we're going to have a little bit of a dispute about what the right geographic area is.

However, the reasonable value of services is going to be the market value. What are people willing to pay for a level 99285? That has nothing to do with the underlying clinical records, because United has already made that determination.

Again, I sound like I'm beating a dead horse, but our complaint, at paragraph 1, makes that abundantly clear. And we know that United consistently tries the change this into an ERISA claim. And they're doing it here by trying to categorize or

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characterize or try and classify it as something that is a denial of a claim or a partial payment because of levelling -- and that is a right to benefits, not a rate of payment.

So for that reason, we think, under the reasonable value of services, the Health Care Providers don't have a burden of proof issue with respect to producing underlying clinical records.

The last category that United tries to indicate that it's entitled to clinical records are in connection with its recruitment defense.

We know from the opposition, where we indicated that recruitment means something -- first of all, they can't recover more than what they paid, so it sort of seems like if they want to revisit every CPT code, that is outside the bounds of what recruitment is permitted from a legal perspective.

The other piece of it is that, again, we have framed this case, specifically -- which we are entitled to do, which means that this is a right to the amount of the payment because United has manipulated that payment reimbursement rate. And so that's what this case is about, not about a denial of any of the claims, but about the manipulation of the rate that is being paid.

And so it's important to know that United has already said in its answer, in Paragraphs 26, 193, 194, and 196, that it has paid for covered services.

And so that is really the end of the inquiry for the Court, because if there is an admission that that piece of what they are now

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claiming, which is they want to revisit levelling, has been closed -- foreclosed by their own admissions.

They also make a similar statement in answer to Interrogatories Nos. 6 and 7. And so the Court should be able to rely on their statement in terms of what the state of affairs and what the history is, and them trying to turn this into an ERISA case, essentially, by asking for clinical records and revisiting every level -- CPT level.

I wanted to address a couple of points if I could, Your Honor, still.

The other point of the recruitment piece that I wanted to talk about is about how United is trying to circumvent the Prompt Pay statutes with its recruitment defense. Now they said that it's due process and that they need to be able to go back and revisit these claims. But it's important that the only case that they -- that they point to is an unpublished decision from Florida. And it involves a government payer and it involves a contracted or a network hospital facility.

And so we're dealing with a different set of circumstances. The Court in that case discussed that there was a right to a post-audit review of claims that were submitted. And so it seems as though the Court was simply interpreting [indiscernible] contract between those -- those two entities in terms of the due process.

But here United has gotten due process. They had that opportunity to either deny a claim or ask for additional documents

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before deeming a claim allowable, pursuant to the Nevada Prompt Pay statute. And so that due process that they now claim that they're entitled to is something that they already received and were able and aptly able to follow that in terms of whether to allow a claim or not. Again, only allowable claims are part of this particular claim -- litigation.

THE COURT: Did that conclude your argument, Ms. Gallagher?

MS. GALLAGHER: Just one point I wanted to revisit on Mr. Roberts's presentation, if I could, just in terms of, you know, trying to characterize this as a denial or a partial payment.

With respect to the statutes, I think it's, you know, cautious on their part. They should be cautious about basically saying that they're circumventing by partially paying. But again, like I said, we will take any admission that they want to make.

And I guess the last point is with respect to the settlement statute that Mr. Roberts referred to. Sort of a little bit of a head scratcher in terms of how United partially paying a claim in the normal course of business would have any sort of coverage under Nevada's statutory scheme for evidentiary compromise in terms of submission to the Court for liability. And also I think it gives the Health Care Providers a little bit of pause if United is purposely short-paying or partial-paying claims that they've allowed, knowingly. I think that speaks volumes.

So again, I would just like to close that we think that

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clinical records are not appropriate in this case. This is not in terms of what the Health Care Providers as burden of proof or in terms of what United is entitled to on a defense, in light of the admissions made and in light of United trying to transform this into what it has tried to do from the beginning -- which is something different than what the Health Care Providers have alleged. And for that reason we would ask that you deny the claim -- or deny the motion, Your Honor.

THE COURT: Okay. I would like your response to something Mr. Roberts said -- that he claims that in the compilation that you provided that some of the CPT codes are incorrect. He wanted to match up with the EOBs and the CPTs.

Can you respond to that?

MS. GALLAGHER: Yes, Your Honor.

So with respect to any issue about matching data points, certainly that was an opportunity that we tried and we made that offer of compromise back on February 10th of this year. United has given every reason why they can't substantively respond to it. I find it interesting that it's raised now, but we certainly had offered that.

But yes, we want to engage in a data point comparison. If they find one they think isn't right, then we are certainly willing to have that discussion. That's what discovery is all about.

But one point I do want to make about the EOBs and the PRAs and Mr. Roberts's attempt to try and get the Health Care Providers to produce those is that United has already been ordered

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to produce those, I believe, as part of the administrative record. I imagine that comes along with it.

But I also find it interesting that those are United generated documents. United generates the explanation of benefits. United generates the provider [indiscernible] forms.

So to try and put it on the Health Care Providers just seems to be another effort to try and circumvent its discovery obligations and certainly try and avoid a court order that is already -- that it is already facing and is in the process of trying to comply with.

THE COURT: Thank you, Ms. Gallagher.

Mr. Roberts, your response, please.

MR. ROBERTS: On everything or just on the question the Court just asked?

THE COURT: Everything.

MR. ROBERTS: Okay. Very good. Thank you, Your Honor.

The first point I would like to address is the mischaracterization of my argument that United has somehow admitted they made partial payment in the sense of paying less than the amount United believes was due. That's a complete mischaracterization of my argument.

Under NRS 48.105, where a claim, which they submitted to us, was disputed as to either validity or amount is paid, then the evidence of payment is not admissible to prove liabilities for the claim. So what we are saying is that we disputed the amount of the

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claim that was submitted to us by the plaintiffs. We paid less than the amount submitted, which was the amount we thought was due, based on the certifications they provided in their claim forms. There is not an admission that United paid less than the amount due.

United paid less than the amount claimed. And now they're trying to use the fact that we paid something promptly, in reliance on their representations in the claim form, as an admission that their representations in the claim form were correct and accurate.

Now that they have put in issue whether or not we paid a proper amount for these claims, they should be required to demonstrate that they performed the services and that they were correctly coded in order to get paid. That's certainly part of their burden.

Now, I don't blame them for not wanting to prove they performed services. I don't want to blame them for not wanting to avoid proving that the services were accurately coded on their claim forms. But now that they have placed the issue of the amount they were entitled to be paid for those services, as part of this litigation, they can't be relieved of their burden of proving all elements of their cause of action, including their cause of action for unjust enrichment.

The answer filed by United -- and counsel mentioned that we had filed an answer -- I would point the Court to Affirmative Defense No. 9 where the defendants stated, To the extent that plaintiffs have any right to receive plan benefits, that right is subject

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to basic preconditions and prerequisites that have not been established, such that patients are members of United on the date of service, that the coordination of benefits have been applied, that the services were medically necessary, that an emergency medical condition was present, that plaintiffs timely submitted correctly coded claims, and that all necessary authorizations were obtained. United reserves all rights with respect to asserting any and all such defenses, once plaintiffs have adequately identified the specific claims they contend were underpaid.

Again, their argument seeks to have the Court disregard this affirmative defense, grant summary judgment on this affirmative defense, and find that they don't have to prove that they performed any service or that they performed the service at the level for which they are seeking pay. And that simply is not appropriate at this stage of the litigation.

THE COURT: So I --

MR. ROBERTS: All of this information goes to the proof of that.

THE COURT: Okay. Go ahead, sorry.

MR. ROBERTS: And I may have misspoken, Your Honor. And I believe that the problem we're having is that the insurance provider and the employee -- the patient's benefit plan was incorrectly identified in some of the spreadsheets which have had us searching multiple databases.

The CPT issue was not that it doesn't match on their

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spreadsheet versus what's on their claim form. The CPT issue is that what we're saying is we're entitled to the clinical records to see if, indeed, the services were provided at the appropriate level and at the appropriate CPT code for which we were billed.

And now that they put in issue whether or not they were underpaid, they should have to prove that -- and we -- even as they don't want to have to prove it, we should be able to do discovery to assert the defense that the services were not provided.

THE COURT: Right.

MR. ROBERTS: And if, for example, discovery reveals that they were overpaid by millions of dollars because what we paid at Level 5 should have been submitted at Level 3 or 4, we submit a right to recoupment. And that's still an affirmative defense. It's still what we've raised. And we're entitled to discovery on that issue.

THE COURT: Right. All right. So Mr. Roberts --

MR. ROBERTS: I think that the issue of the chart --

THE COURT: I'm sorry. I keep interrupting.

MR. ROBERTS: -- and the summary, I need to address that again, Your Honor.

The whole idea that if we dispute something in their chart, that we can raise that and they'll try to prove it, is just totally contrary to Nevada law. NRS 52.275 summaries says that the contents of voluminous writings, recordings, or photographs, which cannot be conveniently examined in Court may be presented in the form of a chart summary for calculations. Item 2 is, The originals

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shall be made available for examination or copy or both -- both parties at a reasonable time and place.

So it essentially would be the same thing as me standing up in Court with a big chart, and them objecting to it because they haven't gotten the underlying documents. And -- and I would point to them and say, which one do you dispute? And I'll get you that document, but otherwise it's admissible.

That's not the way evidence goes, and that doesn't comply with 16.1. If they want to use this chart in support of their claims, we are entitled to a copy of every document upon which they base that chart. And the fact that we may be able to dig out documents and our own records and attempt to match those up ourselves, doesn't relieve them of their obligation under 16.1 to give us the documents that they obviously have already compiled in order to prepare that chart. They don't get to hide those documents from us. They don't get to refuse to produce those documents. They must be already compiled. Assuming they just didn't make up this chart out of thin air, they already have those documents compiled and in a form that allowed them to compare it. And we are seeking to have the Court to compel them to what they should have already done in their initial disclosures, without us even asking for it.

And unless the Court has any questions, [indiscernible].

THE COURT: No. Well, I guess my question is, the plaintiff in its bills gave the CPT codes. And this is a rate of pay case. There is no counterclaim.

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If you are trying to recover money from them, you had the ability to do that when you filed your answer. I just don't see how the records you're seeking here are relevant to the plaintiffs' complaint. So if -- one last bite at the apple.

MR. ROBERTS: Yes, Your Honor. I think those are two separate issues. We've raised an affirmative defense of recoupment that if we overpaid on one claim, we should be able to use that to offset amounts owed on another claim. That's an affirmative defense and not a counterclaim.

But I would go further and just say again, Your Honor, the fact that they say it's a rate of payment case, doesn't mean that's all it is. The fact that they want to avoid the need to prove that they performed the services for which they're seeking to be paid should not eliminate the requirement to prove that. The simple due process entitles us to have them prove their entire case and not simply the one element that they want to place at issue -- the rate of pay, because you never get to the rate of payment, if you haven't proved that the services were performed and that they were performed at the level for which they were coded.

And the fact that United chose not to request those documents and make a payment instead, doesn't mean United waived the right to challenge it once they brought this lawsuit. You could make the same time argument as waiver, that their quiet acceptance for years of the payments they now dispute should preclude them from contending that they were underpaid.

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The fact that the -- they submitted a claim in reliance on that coding we paid the amounts they now dispute should not prevent United from requiring them to prove their entire case, not just the part of their case which they would like to focus on.

THE COURT: Thank you, Mr. Roberts. This is the Defendant's Motion to Compel clinical documents.

The motion will be denied without prejudice. However, the parties will be required to meet and confer meaningfully, and within the next two weeks on a protocol to match data points, and for the reasons that I've brought up in my questions to both of you.

Mr. Roberts, I do see it as a rate-of-pay case. The two of you are trying completely different theories -- the defendant, of course, continues to resist the plaintiffs' grounds for its complaint.

But I just don't see -- when the plaintiff bills the CPT codes, it doesn't put a burden on the defendant to make the plaintiff prove what was actually done clinically. On a rate of -- in the rate of payment type of case, it's the plaintiffs' burden to prove that the rate was wrong.

So I don't see where the clinical records matter. Everything here is based upon the bills that were provided by the plaintiff.

Now, that takes us to the Plaintiffs' Motion to Compel. And then we have a status check.

MR. ROBERTS: Your Honor, just to clarify for the record, are you also refusing to compel them to give us the documents that

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they relied upon to compile their spreadsheet?

THE COURT: At this time, yes. And that's why it's without prejudice so that you have a meaningful meet and confer with regard to a protocol to match data points.

And I'm looking for the next hearings we have for a report on that. It can be individual or status -- joint status reports. I believe that there -- well, we've got two other hearings set on October 29th, November 4th. I'm not sure that either of these is going to go forward. So I can give you a return date in three weeks, if that's amenable to everyone.

MR. ROBERTS: Yes, Your Honor.

MS. GALLAGHER: That's agreeable, Your Honor.

THE COURT: You know, I am supposed to go to the American College of Business Court Judges. If I get up the nerve to board an airplane on the 28th and 29th of this month. So can we set it -- let's set it on Wednesday, November 4th on the -- just on a -- at 10:30 a.m., just a stacked calendar for status?

And Nicole McDevitt, did you get that date?

THE CLERK: November 4th at 10:30 for status.

THE COURT: Very good. All right.

So I believe next is the Plaintiffs' Motion to Excel.

MS. GALLAGHER: Yes, Your Honor. Thank you.

This is Kristen Gallagher. So this is our Motion to Compel witnesses, answers to interrogatories, and responsive documents.

As Your Honor has probably seen, through the

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declarations submitted, that we have engaged in multi-hour meet and confers with United in order to try and just basically move this case forward and get information that we need in order to prosecute this case.

As you know, we have significant specific allegations in the first amended complaint that are not, you know, general in the sense. We know what we're looking for, and we have been opposed in trying to get that information.

You know, I wish in some regards you could sit in on some of these, because I feel like I'm on a merry-go-round. We get on a call. Think that things are moving forward. United's going to -- council is going to talk to United and then when we get back on the next call, it sort of is like we've started over again.

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So the frustration level, I don't know if it came through our papers. I'm expressing it now that it has been frustrating because --

THE COURT: Well, I can tell you -- whoa, whoa -- hang on.

THE WITNESS: -- we know there's information about certain strategies --

THE COURT: I'm going to stop you, Ms. Gallagher. I have never seen the word sophistry and baloney in the same pleading, ever, in 10 years of the bench or 27 years of being a lawyer on top of that.

Anyways, so go ahead, please.

MS. GALLAGHER: Well, and I'll follow along to that, I certainly haven't been practicing as long as in the context of being a

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judge, but, you know, I engage in commercial litigation, and generally speaking this is probably the most frustrated I've been in terms of trying to get substantive information. And I don't say that lightly.

You know, certainly, I like to get along with my opposing counsel. I look to work forward on merits, and you know, have that as a legal discussion. But some of this isn't just advocacy, unfortunately, what we've seen.

We identified a few instances in our opening papers, in terms of sort of the unbelievable position that United will take, like, for example, the fair health database. We all know that it has [indiscernible] that along with some other payers. It uses it. It says it uses it on its legal web site, and then we get into meet and confer efforts, and we get responses like, oh, you want us to ask if they're using it? And oh, we didn't understand that's what you requested when your request for production asked if you stopped using it, why did you stop using it?

So that's just but one example. I certainly don't want to belabor the point, because I think our motion lays it out. But I would like to respond because there was an opposition that was filed, I would like to make sure that I have an opportunity to respond to that.

So with respect to witnesses, United as indicated that they've taken some moves at this point because since we filed the motion, they have supplemented with five new witnesses, which

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simply isn't sufficient. We know that United has a significant number of people that are involved, both at the strategy and decision-making level, all the way down to claims representatives who have information about the methodology, the procedures, the Data iSight interplay. And none of these people have been identified for us. One of the five new witnesses that were identified just a few days ago, on September 30th, there -- it's former employee, no information about how to contact that person.

I also note that United doesn't tell us what that witness may have information about. What we see is a generalized statement about this person may have [indiscernible] information relating to the claims and defenses. So it doesn't help us in terms of targeting -- you know, do we really need to talk to this person that they just disclosed or not?

We also with respect -- with respect to Answer to Interrogatory No. 8, we've identified that. We have asked for specific witness information regarding methodology and two other categories of information. United has refused to provide us that information.

We've had multiple meet and confers on it. At this point, I don't know, other than maybe [indiscernible] on the same information, but, you know, then we're just sort of into gamesmanship. You know, we've asked the question. We are entitled to know who has information about certain things that are squarely within our first amended complaints.

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You know, we're not asking for information outside the four corners. We're asking for who knows about how reimbursement data methodologies are set? Who has information about the particular claims? So we think that the issue is not moot. And we would ask that Your Honor order them to identify not only the full extent of United witnesses, but also, as we've asked, third parties like the iSight. We certainly know that they have a long-term relationship that dates back at least 10 years. We know that there's interplay and that iSight is becoming an even more important part of United's business in terms -- and obviously with respect to the allegations we've made in terms of the scheme, the alleged scheme to basically rewrite, reimbursement rates as they please and as United announced that it would, because they can.

So we would like that information. We need to know who they are talking to so that we can test and find the evidence that will support our pleadings, because this information is squarely within the -- you know, within themselves. This is not something that we can go out and identify otherwise. So we would ask that they be compelled to identify those witnesses without any further delay.

With respect to the second temporary market data. United says that they're going to produce it in 14 days. They say it's going to be Las Vegas market data, and it simply isn't going to do, Your Honor.

We have one entity that's Churchill. We have another entity that's Elko County. So to limit it to Las Vegas, which means

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even maybe more narrow than even a Clark County market data, simply isn't something that we've agreed to. You know, I think they're just trying to more narrowly narrow what we're entitled to.

We also are concerned, in terms of, you know, the Nevada market data, because again, it's important for us to know the national data, because as we have alleged, there is no difference between the different markets -- even though they say there are. The PRAs that have Data iSight. Data iSight says that it's based on geographic, but it's not, based on our information. So it's important that we have information outside of just the scope of [indiscernible] trying to Las Vegas. So we would ask for all information related to just market data be produced.

And the frustrating part is United has made a couple of different arguments about that -- you know, they're in the process of doing it [indiscernible] we should have brought this Motion to Compel. But they're at the point where, you know, we just shouldn't have to [indiscernible]. These were originally due in early January. They provided substantive responses at the end of January. And so here we are in October, [indiscernible] end of the year cutoff, and I don't know how much patience there can be.

I'm afraid maybe we've been too patient, based on timing. But to hear continually that we will be going to, just at this point doesn't cut it.

With respect to the third category of requests and answers to interrogatories, the methodology is really an important piece of

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this. United tries to hide behind a plan. And we've heard this, you know, they refer to the administrative marker, they refer this plan, the plans are their guide. But we know that that's not actually true.

There are a few documents that we've managed to get. And the administrative document from United -- is not plan specific in the sense that for each of the 20,000 claims there's going to be a different language in there. No. United has different plans, you know, a gold plan, a choice plan. And so within their type of plan, they may offer information about, you know, what they're going to pay.

But the methodology of how they determine what they're going to pay is not plan specific. In fact, some of the documents that United has produced, talks about, the iSight and the methodology. If you choose this plan, you're going to have this methodology. So the methodology is how do they calculate? What is the data? What information? What market they are using? Are they using information that is complete? Are they skewing the information that's in their data set? That's methodology.

We also want the strategy making, decision making, behind how United has set up methodology. This is the largest, if not the largest, public insurance carrier in the nation. And so to think that there are no documents that have detailed or set out or recorded what the plan is, there is a plan here. There is a structured plan that has taken years to implement, and we know that from just the [indiscernible] agreement that we've gotten, and so we are

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entitled to that information because it falls squarely within the allegations in the complaint.

We also know that the PRAs -- that the provider remittance advise forms -- that United issues and generates does refer to cost data or paid data, when they indicated using Data iSight. But again, this methodology is something that can't be hidden behind at undue burden declaration of Sandra [indiscernible]. It doesn't need to be down to the claim-by-claim level. This is a higher level look at what United's plan strategy is that we certainly know is at play.

And that reference that I missed, Your Honor, to the cost [indiscernible] and multiplan data information is at our Exhibit 8, just for your reference, so that you can see that there is discussion about Data iSight's patented reference to based methodology. Apparently United is not using Data iSight without knowing what that methodology is. There's some indication that United is directing and dictating that methodology as well. So we would expect to have those documents produced as soon as possible.

That leads me into the next section, which is still decision making and strategy. They say it's in the process of applying those terms. To me this means they haven't done anything.

And again, the time line, I don't want to, you know, [indiscernible] it too often, but we are here many months of these were due. And for them to be just in the process of applying search terms tells me they haven't done anything. United also tries to use the ESI protocol as a way for sort of allowing them to continue to

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push this out.

However, I think the Court was very clear at the last hearing, that the ESI protocol discussion that the parties are in process with would not alleviate anybody's discovery obligations. Just to hear that they don't even -- they're not even reviewing, there's not even an imminent rolling production is a little bit disconcerting, so we would ask that the Court compel production of documents and interrogatories in those categories.

United makes a distinction between in-network and out-of-network. And I would like to say that it's a distinction that is not something that is appropriate in terms of at this discovery stage. Certainly if they want to make that argument later, let them. But it's informative that United has asked us for both in-network and out-of-network reimbursement data. We are in the process of getting that information and producing it. And so I think United recognizes that the commercial payer data, as sort of a general description, is what is going to be -- at least what the parties are going to look at, whether or not, you know, down the road in terms of evidentiary perspective, we can deal with that later. But we are entitled to both in-network and out-of-network. And that was -- [indiscernible] Request For Production No. 87 is where they asked for in-network data.

United also objects to some -- some of the issues with respect to trade secrets under the Nevada statute, and it's proprietary information as well as their customer information. I

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think, you know, we're well established at this point that we have a protective order. United is not shy about identifying things that is attorneys' eyes only. So I think that provides the most protection. We did discuss during meet and confer efforts that we might do a blinded exchange where its blinded and attorney's eyes only set and then perhaps a confidential set, and then maybe an unblinded set that would be attorney's eyes only. Those were discussions we had. Obviously United hasn't gone forward and produced any information, so we haven't gotten to that point.

The next section is rental, wrap, and shared savings program. United has now used the delay of a retained consultant to indicate that they have matched data points and trying to figure out whether or not there's any information on whether or not there should have been a wrap or shared savings program applied to the litigation claims.

This is sort of a distraction and perhaps not understanding what the request is. But we'd asked United to tell us if you -- if any of the litigation claims you didn't pay because you think there's a shared savings or a rental or rent network, let us know.

We have actually produced a second set of data that provides information about, in the same time period, claims that were paid by a shared savings program or pursuant to a shared savings program. So United actually already has the data. We just wanted them to come forward and say, hey, if there's any in this litigation set, tell us now or forever hold your peace.

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So to transform it into that they need to look at each line I don't think is necessarily accurate. I think they know what's in this market with respect to these particular emergency departments, if they have access to a shared network, that they would know that, and they don't need to look line by line.

But regardless, we would ask that they also be required to produce information if they have any. If they don't, we're sort of looking to say -- for them to say, no, we don't have that information or we don't have that applicability to the litigation claims. Everything that had a network shared savings program is appropriately listed in your other spreadsheet. It's --

Again, it's -- just sometimes we're just looking for simple information that we just are getting one roadblock after the other after the other. United, I think now, has used the consultant explanations for several different rounds of motions. I'm not sure exactly how many -- how many days at this point that we're waiting for the consultant to finish looking at the data points, but I guess we'll find out in the meet and confer effort sort of where that expert is at.

Okay. The next section are the Data iSight-related documents. Obviously, this is really one of the core issues of our complaint in terms of, you know, what are they doing? What have they done? What have they strategized? What have they decided to do? What plans have they implemented?

We've gotten really just the paucity of information. We've

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gotten the network access agreement, and I think eight or nine pages of documents that were identified as attorney's eyes only, but what I would describe as like a science preference checklist, nothing really substantive. We have asked for a list of how many claims have been processed by Data iSight. We've offered to have them run a time period so that we can then go back and pull which ones.

None of those offers of compromise have been met with, you know, any sort of engagement by United.

But at the end of the day, we have all their documents, and we would like them. We would like them whether they're in meeting minutes, whether they're in e-mails, whether they're in -- you know, whatever form or format they're in, we know they exist, and we would like that information as soon as possible.

The other point I would make with regard to the Data iSight is they often are talking about, We're not entitled to information because it's national data, and that this is just a Nevada case. Again, I want to reiterate, those are squarely within the allegations that we're saying that we need to be able to prepare. If they're saying this is Nevada and that this is the same as national market data, that's important. That goes directly to our claims, and so we would be entitled to that and they shouldn't be able to omit just because they're calling something national data.

And that's an important piece too, when we finally got the unredacted multiple plan agreement, you know, I won't go into it because it's AEO, and I want to be very cautious, but there really

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were some -- there was some information in there that was on this national level that sort of was sleight of hand, if you will, in terms of why they said we shouldn't have been able to get it in the first place.

Okay. So the next category of documents regarding the at issues claims, United said they're already producing administrative records.

Again, you know, we take issue with this term administrative records every time.

And it's important, though, because I want to quote from a case, a Ninth Circuit case, it says quote, In the ERISA context, the administrative record consists of the papers the insured had when [indiscernible] claim, end quote. And I'm quoting from a case called *Montour versus Hartford Life*, 588 F.3d 623 at 632. Ninth Circuit 2009. And that's really important. You know, we've sort of belabor this point, but. It just goes to show you how important when United keeps referring to the administrative record, this is very specific. If they -- and in this case they had to deny the claims. We're not after any claims that are being denied.

So they keep hiding behind this administrative records. We think that are other platforms, [indiscernible] administrative policeman forms, claims management system -- other documents and information that exists outside of what would be considered an ERISA administrative record.

And so in terms of when United says it's already producing administrative records, we need more information than

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from that. We haven't asked for just administrative records, and we go round and round on this in meet and confer efforts, but it's important again, because this is our case and this is not an administrative ERISA case.

And so in that context, I also want to bring out perhaps the status on United's production, which they have produced nine administrative records, detailing, like, nine dates of service for their numbers. As of the Court's last hearing, we think that the point that they are not in compliance with the order, because they were supposed to have produced documents by September 23rd. I realize that we will take this up perhaps in a status check at another time.

However -- I think it's important for the Court to know that in a month, almost exactly, since the last hearing, we've gotten nine administrative and nothing else. We know that United has 100,000 e-mails that it had been reviewing. We haven't received any of those. And so, you know, it also is interesting to see, you know what we're getting. We thought maybe we'd see it in order, how it appeared on a spreadsheet or maybe [indiscernible] intuitive like last name, date of service. It doesn't appear to be that way, so we're interested to see, you know, sort of how it plays out. You know, are these the only documents that United is going to find favorable? Does it favor -- you know, what the situation? So, you know, we're just sort of holding -- holding by, but just for the Court to understand that we certainly haven't gotten a lot of information since the last hearing.

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Negotiations, United says it's working to [indiscernible] -- United says it's working to collect and search. This is actually a retreat from what it told us before. And this is my reference to the hundred thousand e-mails that back in June we understood counsel had on a platform and was reviewing.

To now say that it's working to collect and search, certainly is disheartening because it suggests that, you know, one of the two situations wasn't accurate at the time. So we just -- we would like the documents. We're entitled to them about the negotiations. It's not just between our client and United, even though that's how they framed it in the opposition. We asked for documents relating to the negotiations.

So we want to know, you know, in addition what was their -- what were the e-mails going back and forth offline, you know, internally, not forward facing to the representatives of the plaintiffs. So we would ask for an order compelling that as well, Your Honor.

I know there's a lot here. I appreciate your time, Your Honor. But this sort of tells you that we haven't gotten a lot of information that we've been asking for -- document --

Next category of documents about complaints that other network providers performing emergency department services have made on United. We think this is important. I mean, we think this is a nationwide plan and scheme to reduce reimbursement rates. And we would be surprised to -- if there weren't other providers in our same situation making the same complaints and would be interested

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in that information. We think it's relevant, and we think it goes to the allegations that are in the complaint.

Next are prompt settlement claims. United refers again to the administrative records in an attempt to limit the records that we are entitled to get. So we want information about, you know, I'm sure they have some reporting. Are they, you know, meeting the Nevada prompt payment statutes in terms of asking for information, getting information, and making claims. That's what we would expect to see out of a company like United. We haven't gotten anything. And again, the administrative record is not the only personal information that United has, and we continue to object to it trying to use that as the framework for this case.

Finally, United's affirmative defenses, they have basically said they're not really working on it right now because they're working on the administrative record piece of it. I don't think those two go hand in hand. We had [indiscernible] meet and confer discussions about how only Sandra [indiscernible] and her department could handle the administrative record piece of it.

We had actually asked if there were other departments, other people that could work on pulling information about these things. And so when we were told only this one department can do it, that suggests to me, well, only they're working on it. That means there's, you know, other teams and is other groups that can work on the e-mails, that work on the strategy and those sort of documents.

So Your Honor, we would respectfully ask that you order

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everything that we've asked for because it all falls squarely within the allegations. And we really would just like to get to the heart of the matter and start looking at documents, and -- and moving this case forward. Thank you.

THE COURT: Thank you.

And Mr. Roberts, Mr. Balkenbush, before I hear the opposition to this motion, we've gone for about two hours. I need a five-minute break for my personal comfort so that I can continue to attentively listen to all of the arguments.

So court will be in recess until about, let's say 3:33. Thank you.

[Recess taken from 3:28 p.m., until 3:34 p.m.]

THE COURT: Okay. I'm recalling the case of Fremont versus United. And I note the presence of all counsel.

I believe we are ready to hear the Defendant's Opposition to the Plaintiffs' Motion to Compel.

MR. BALKENBUSH: Thank you, Your Honor. And this is Colby Balkenbush for the defendants. I'll be presenting the opposition on this motion.

You know, this is a difficult motion to respond to because the truth is, as we set forth in our opposition papers, we have agreed to produce 90 or 95 percent of what they are seeking to compel us to produce.

The dispute is really over timing and the argument that United should just be doing this faster than it has been.

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So let me address the timing issue, and then I'll address the few areas where there is a dispute as far as whether or not the Team Health Providers are entitled to the information they're seeking.

As to the timing issues, so what United has been attempting to do is respond to multiple requests and prioritize things that the Court has ordered it to produce already. So for example, this Court has ordered United to produce the administrative records for all 22,000-plus claims. We've been trying to prioritize that and a lot of these other requests -- the other information that we had hoped to produce sooner, but frankly we've fallen a little behind on because of some of the other discovery we're being pressed to produce.

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What we've tried to do in our opposition is give dates when we believe we'll be able to produce those documents to Team Health. So, for example, we've listed the Data iSight closure reports. We state we believe we'll be able to produce those by October 23rd. For the market data for in-network and out-of-network reimbursement rates, we've stated we should be able to produce that in 14 business days.

And so we've tried to give some dates to show the Court that we are trying to comply with our discovery obligations. But frankly, there are a lot of documents at issue --

THE COURT: Mr. Balkenbush, Mr. Balkenbush, let me -- Mr. Balkenbush, I'm sorry, but I have to interrupt you. It doesn't

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appear as though your client is taking a rational approach to its obligation to engage in discovery. Why couldn't things have been produced already?

MR. BALKENBUSH: So let me address -- I mean, there's a number of different document requests that are at issue, Your Honor. Let me just address some of them then, specifically.

So for example, they're looking for documents that would show the methodology that was used to determine the amount of reimbursement paid on each of the claims at issue. Those documents would essentially -- the documents that show that would essentially be, one, the administrative records that this Court has already ordered United to produce. We produced approximately 1800 pages of those on September 30th. And we believe we're going to be able to produce another 35 administrative records next week. That production we believe will also be in the thousands of pages.

But one of the issues we've run into that has slowed things down is when we're trying to match this claims data -- match Team Health's claims data to our own is that there are errors in their spreadsheet. So for example, we've found instances where a patient will be listed with a date of service, and their spreadsheet will list in different places that patient being enrolled in different health plans. And so to find the data underlying that claim, the administrative records, for example, we have to look in the database that corresponds to the health plan the member was enrolled in.

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And so we have had instances already as we've been trying to do this is that, you know, we've looked under a particular plan's database and haven't found the documents and have had to go look at another plan's database to try to find it. So that has slowed things down. That's one issue we're facing.

You know, another is just that this -- there is litigation all over the country very similar to this, between United and the Team Health Providers. And so United's business units that are tasked with trying to find and gather these documents aren't just dealing with requests from this case. Based on my conversations with our client, I believe that United is working hard to gather these documents and is putting pressure where it needs to be put to accelerate this process, but it is difficult given the number of documents at issue and the number of different requests, so I think that's, I guess, part of the explanation.

Another is just that these documents, many of these documents are not stored in a format that is easily -- easy to access -- the access and then produce.

As an example, Your Honor, the administrative records are not even stored in a TIF or PDF format. My understanding is they're actually -- the only way we can retrieve them is either to take a screenshot of the screen showing the record, or to essentially print the TIF or PDF, and then produce them. And so that also has slowed down the process.

So let me go into some of these, I guess, topics that

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they've raised. A lot of these would be resolved with United producing a claim-matching spreadsheet and the administrative records. The methodology used to determine payment is going to be shown either by a claims spreadsheet, which should have a column showing essentially whether or not what plan was at issue and whether or not any wrap or shared savings program impacted the amount of reimbursement on that claim.

There should be a column for each of the claims that could show that, and the amount of reimbursement, how it was calculated, would also be shown in the administrative records we are trying -- we're in the process of producing or have started producing.

Another issue that they have raised are the negotiations between United and Fremont. More information on Data iSight. That's -- that information would be in custodian's e-mail inboxes. We have started gathering those and working on producing those. It's just frankly, Your Honor, there's so many discovery requests at issue here, it has -- we have been slowed down a little bit by the order to produce the administrative records.

Let me address the -- let me address some of the issues we dispute, because, again, a lot of the arguments Ms. Gallagher raised, we haven't argued that these documents are irrelevant or not discoverable. We just said we need more time. But there are a few where we do stand on our objections and are refusing to produce documents because we believe our objections have merit.

The first one is Request For Production 31. This is a

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request where Fremont is seeking documents related to strategy and discussions regarding reimbursement rates. And we've agreed to produce those, but we've asked that it be limited to only documents that relate to plaintiffs' claims.

Their request, as written, seeks documents not only related to discussions about reimbursement rates for the plaintiffs, but for any other out-of-network providers. And that's just overbroad and seeks irrelevant information. So again, we're not refusing to produce, we just believe that request should be limited in that way.

The other issue that -- the other request we take issue with is in regard to certain Data iSight documents. So we've agreed to produce the closure reports. We've already produced the contracts with Data iSight. And we've produced the preference checklist.

But we have objected to producing national level multi[indiscernible] Data iSight data. And the reason we've objected is that there is no way to use that national level data and extrapolate to Nevada and the claims that are at issue here.

This data doesn't show reimbursement data for specification regions, like focused on Nevada; and it doesn't show reimbursement data focused on specific out-of-network providers like plaintiffs. This is national aggregate level data, and so our objection is just it would be -- that that would be irrelevant information for purposes of this lawsuit, would be meaningless because the rates shown there can't be extrapolated to the claims

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that are at issue here.

The third discovery request that we object to is Request For Production 41. And so this seeks documents related to challenges to United's rate of reimbursement by other out-of-network emergency medicine groups. And our objection is that this does not relate to the claims at issue. This is seeking documents for any challenges by other nonparty out-of-network providers.

Now, again, if they are asking for documents, we're not objecting to producing documents from Team Healths, you know, or Fremont's challenges to United's rate of reimbursement. But they're asking something much broader. They're asking for any out-of-network provider that we be ordered to produce all documents related to challenges those providers have brought. Obviously, that would be an enormous number of documents. And it would also be difficult to limit -- and in fact, I think the request is not limited -- it's also not limited to the full time frame at issue here, which is July 2017 to present. It goes back beyond that.

So we do have limited objections to those three issues, Your Honor. But for the other ones, we essentially have agreed to produce the documents. We're just struggling to produce them as fast as plaintiffs would like us to produce them. And we're trying to give dates to the plaintiffs and to the Court when we think we can comply with our discovery obligations, but it's just difficult given the number of documents at issue and the different types of documents.

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THE COURT: Thank you, Mr. Balkenbush.

The reply then in support, please.

MS. GALLAGHER: Thank you, Your Honor. So I wanted to address those points in terms of the timing. You know, Mr. Balkenbush indicated that United is focusing on its production obligations for the administrative record.

As Your Honor knows, that order came out last month. And so we have this long period of time since January when these were originally due and most of the meet and confers where, you know, they're saying now, they've agreed to produce 90 to 95 percent, but sort of not, as indicated, the state of affairs. We've gotten push back and narrowing that we heard just a moment ago, as well, unilaterally narrowing what we've asked for.

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So the timing, I just don't see how there's been an effort before now to try and comply and get us the information that we asked for. One point about the closure reports that's now being -- with respect to data iSight, now being promised on October 23rd. We've had meet and confer efforts back in June that said that we would have them by September 5th. We never got any. Now they're promised to 10/23.

You know, we just see this line in the sand being pushed further and further back until there's an actual order, you know, compelling United to participate reasonably in the discovery process, and not trying to just put a box around anything other than the administrative record, which we've heard again here in

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opposition.

You know, United talks about market data in 14 business days. It would have been nice to have that information or that commitment before now; right? We had to bring a Motion to Compel before now. The spreadsheet on [indiscernible], you know, certainly if there's a particular issue, they've had our spreadsheets, the original ones, since last fall. So now we're just getting into a discussion on data points and had that compromise offered a while ago.

But what I'm hearing that's concerning is the methodology, and again trying to point to the plan. We know United's methodology is not in the plan. We know that when Dan -- Dennis [*sic*] Schumacher said, you know, because we can -- in response to why are you going to reduce reimbursement rates, we know that that is not in the plan. United does not look to the plan when it had negotiations with the health providers, when it says it was going to reduce the reimbursement rates. That's because it's a high level decision and strategy that is implemented. And that is the information that we want and that we're entitled to get, based on the allegations in the complaint.

So again, when you're hearing it firsthand, Your Honor, the administrative record is their go-to for everything. And I can tell you that it is only limited under federal law as to why an insurer denied a claim that has no application in this case. And to so suggest that there are e-mails about strategy, suggest that there's

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information involving highest levels at United that's going to be in the administrative record is just -- it's not accurate, and it's not what we've limited our complaints to. It's not what we've limited these requests and interrogatories to. And so when representations that we've gotten some Data iSight information, it is so limited, Your Honor -- like the fact that we're getting a closure report is probably only because we accidentally hit on that name of a report.

And meet and confer efforts, we -- you know, we were met with, Well, you know, we don't know what you need. What do you think we might have? You know, and those are things that -- why we also objected to the e-mail protocol is we don't know what United calls them. We have a little bit more information from the multiplan agreement, because there are reports that are called out. We haven't gotten those reports, Your Honor.

So we know this exists. We know that when there is, you know, lots of money -- I won't use the exact amount because I don't want to be revealing anything -- but there is a lot of money involved in the multiplan and independent agreement. And so there is no chance that money is exchanged without reporting and without e-mails and without discussion about how it's going and what they should do to change it.

In fact, there's [indiscernible] in that agreement that tells us that we think plans were changed to accommodate the iSight entities.

And so to sit here and tell us that there isn't information,

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other than a closure report, is simply not accurate, and not being even honest to the documents that we have gotten, which aren't very many.

So we would expect a full disclosure, not just limited to what United as indicated as closure reports. We know that there are performance reports, and they've actually objected to those as not being relevant. I don't know how they're not relevant. We have placed this scheme at issue and directly with specific allegations, and so we should be entitled to see what sort of performance reports, because as part of the scheme, they are shared, right, they are sharing in the profits when they artificially identify what they want the reimbursement rate to be.

And so any of that information relating to that would be related to [indiscernible].

With respect to Request for Production No. 31, that Mr. Balkenbush indicated, again, this is the high-level strategy. Plaintiffs' claim, you know, he only wants it with respect to plaintiffs' claims. That simply isn't going to work for us, Your Honor. We need the high level. We know that this isn't planned level specific. This is strategy at the highest levels of this company -- and its affiliates. I mean, really, all of these affiliates, Data iSight, and we expect that there is information.

With respect to Request For Production 41, I believe is the other one Mr. Balkenbush indicated, is relating to any challenges and complaints by other out-of-network emergency department service

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providers -- this is absolutely relevant. We think this is a plan that would -- has been set out across the nation.

If there are other providers that are having similar experiences and making the same complaints that they can't believe or asking why that these reimbursement rates have been all of a sudden reduced without any demonstrable data to support it, I think that's relevant. And I think that we should be entitled to that, Your Honor.

So I think overall, you're seeing a little bit -- hearing a little bit of that administrative record talk again. Really, that is one piece of this case. It's important. I don't want to minimize the information that we're going to get. But it's also a misnomer. We want, like we said in our claims, Motions to Compel claims filed, we want all claims information -- not just what United is deeming is an administrative record.

We want e-mails. We know they exist. They haven't been produced on any level.

And we're just ready to get this information so we can get moving.

THE COURT: Okay.

MS. GALLAGHER: Thank you.

THE COURT: Just a couple of questions, Ms. Gallagher.

Have you ever prioritized for the defendant what you want to have produced first, next, last?

MS. GALLAGHER: I have not, Your Honor.

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THE COURT: You have not?

MS. GALLAGHER: I have not, you know, prioritized for --

THE COURT: Okay.

MS. GALLAGHER: -- United. You know, I certainly haven't made that request either.

THE COURT: And how long would it take you to prioritize it?

MS. GALLAGHER: By tomorrow or Monday.

THE COURT: I was going to say the 13th or 14th. Today is the 8th.

MS. GALLAGHER: I can meet that.

THE COURT: Which day?

MS. GALLAGHER: I can meet that, Your Honor.

THE COURT: Which day?

MS. GALLAGHER: I'll go with the earlier of the two, the 13th.

THE COURT: October 13th. Thank you.

All right. This is the Plaintiffs' Motion to Compel.

The motion will be granted in all respects.

I overrule the objections to RFP 31, the objection to providing national Data iSight data; and overrule the objections to rule -- Request For Production 41. So all of the objections are overruled. The motion is granted in its entirety.

The plaintiff will incorporate into the order the deadlines in the opposition with regard to willingness and the defendant will be

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held to those deadlines.

By the 13th of October, the plaintiff will prioritize the remaining issues for the defendant, and the defendant will respond by the 20th of October -- that gives you a week, Mr. Balkenbush. And this will be back on calendar on October 22 at 10 a.m.

And I am not usually so forthcoming, but with COVID I feel like these business court cases you need to know what I'm thinking.

Mr. Balkenbush, if your client can't meet the deadlines, I will have no choice to make -- but to make negative inferences.

I don't fault you in any way. I understand that it is a problem with your client, and I don't blame you in any respect.

But this case has just gone on too long with not enough effort.

So Ms. Gallagher to prepare the order.

Mr. Balkenbush, you will approve the form of that order, if you can. If you can't, explain why. I'll either sign, interlineate, or hold a telephonic. But you'll have to have a reasonable time, and I will not accept a competing order.

Any questions from either of you on that?

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

MR. BALKENBUSH: Your Honor, no question in regards to the process of submitting the order or objecting to the proposed order.

I guess in regard to the October 22nd status check, would the Court take into consideration if a rolling production has been

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made of, I guess, the categories of documents that Ms. Gallagher identifies for us in her, I guess, October 13th e-mail or letter to us? Or is it the Court's position that everything needs to be produced?

What I'm trying to get -- understand is that, for example --

THE COURT: Sure.

MR. BALKENBUSH: -- you know, a rolling production of e-mails is one thing. Producing every single responsive e-mail, I do think would be unworkable by October 22nd.

THE COURT: It's not my intent to require all of the production by the 22nd, but to determine what the priority is and set deadlines for each category. And that will be set in stone as of the 22nd.

MR. BALKENBUSH: Understood, Your Honor. Thank you for that clarification.

THE COURT: Okay. And your timeline, Mr. Balkenbush, should say when things can be done and explain, based upon the order of priority given to you by the plaintiff.

Now, anything further?

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

THE COURT: Okay. Now, I -- we have on calendar today a motion -- the Defendant's Motion for a Protective Order with regard to protocols, retrieval, and production of e-mail? Is that still on?

MR. BALKENBUSH: So, Your Honor, that motion, the Court denied without prejudice, I believe. And then ordered the parties to meet and confer on an ESI protocol.

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THE COURT: Mm-hmm.

MR. BALKENBUSH: We have spoken with plaintiffs' counsel about that. They've requested some additional information from us regarding the format, certain files are stored in that we have.

And I believe the next step there is that plaintiffs are going to send us a draft ESI protocol that they are comfortable with, and then we'll respond to that. I don't believe we've received that yet.

So I think that is an issue that can probably be maybe tabled and brought up again at the October 22nd status check.

THE COURT: Thank you, Mr. Balkenbush.

The plaintiff, is there a response to that?

MS. GALLAGHER: Just a brief response. That's generally accurate in terms of our discussions. And we are taking the laboring or the Health Care Providers in drafting the ESI.

I think what would be helpful is just additional information from United. We have engaged in the discussion about their claims management system and where we might find additional information. And we sort of were stalled in that regard and got only information, again, regarding where administrative records may be kept. So it would be helpful.

We're trying to craft something, not knowing what United's various platforms are, you know, and we ask -- they either, you know, didn't know at the time and we haven't gotten that follow-up.

So I think if there could be just a push for additional

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information that we can fill in so that we can get it going and perhaps have an agreement by the 22nd, that would be helpful.

THE COURT: Thank you.

Is there a reply, Mr. Balkenbush?

MR. BALKENBUSH: Yeah. I think it would just be helpful -- once we have the draft ESI protocol from the plaintiffs, and we will expedite our review of that, I think it's -- we just need to receive that to know, you know, how close we are apart, as far as terms, instead -- but would the Court rejected our ESI protocol or e-mail protocol in the prior motion. So we've essentially asked the plaintiffs to give us something that they're -- they're comfortable with.

THE COURT: Okay. Do both of you think you can give me an update on the 22nd of October on this issue?

MS. GALLAGHER: Yes, Your Honor.

MR. BALKENBUSH: Yes, Your Honor.

THE COURT: Thank you, both.

This Motion for Protective Order then will be continued for status only on October 22nd.

And we also have a status check, and I did see a status report this morning from the plaintiff.

Is it necessary to discuss that today?

MS. GALLAGHER: Your Honor, I was able to weave that in with the argument about the status of the administrative record production to date. Thank you.

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THE COURT: Good enough.

And will Mr. Balkenbush, or Mr. Roberts, do you both agree that we don't need to have the status check in lieu of the fact that we've already argued everything else?

MR. BALKENBUSH: I agree, Your Honor.

THE COURT: Okay. Very good.

So I guess I'll be seeing you guys a lot in October and November. So until then, stay safe and healthy.

And are you guys working full time on this case?

Don't answer that. Okay.

MS. GALLAGHER: Appreciate your time this afternoon. Thank you.

THE COURT: Never make -- never should make an attempt at humor. Thank you both.

MS. GALLAGHER: All right.

MR. BALKENBUSH: Thank you, Your Honor.

[Proceeding concluded at 4:02 p.m.]

* * * * * * *

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

Katherine McNally

Katherine McNally
Independent Transcriber CERT**D-323
AZ-Accurate Transcription Service, LLC

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EXHIBIT 2

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EXHIBIT 2

Bonney, Audra R.

From: Llewellyn, Brittany M.
Sent: Monday, October 26, 2020 8:51 AM
To: Bonney, Audra R.
Subject: FW: Fremont Emergency Services (Mandavia), Ltd., et al. v. UnitedHealth Group, Inc., et al. - order denying renewed motion to stay; order granting motion to compel

From: Amanda Perach [mailto:aperach@mcdonaldcarano.com]
Sent: Friday, October 23, 2020 5:22 PM
To: Llewellyn, Brittany M.; Kristen T. Gallagher; Balkenbush, Colby
Cc: Pat Lundvall; Roberts, Lee; 'Fedder, Natasha S.'; 'Genovese, Amanda L.'; 'Portnoi, Dimitri D.'
Subject: RE: Fremont Emergency Services (Mandavia), Ltd., et al. v. UnitedHealth Group, Inc., et al. - order denying renewed motion to stay; order granting motion to compel

This Message originated outside your organization.

Brittany,

We are not amenable to that change. Judge Allf made clear that Nevada and national level market and reimbursement data is being compelled. To exclude that language would leave open this issue. We will proceed with submitting our version of the proposed order, noting that you do not approve.

Thank you,

002664

Amanda M. Perach Partner

McDONALD CARANO

P: 702.873.4100 **E:** aperach@mcdonaldcarano.com

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From: Llewellyn, Brittany M. <BLlewellyn@wwhgd.com>
Sent: Friday, October 23, 2020 5:02 PM
To: Amanda Perach <aperach@mcdonaldcarano.com>; Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>; Balkenbush, Colby <CBalkenbush@wwhgd.com>
Cc: Pat Lundvall <plundvall@mcdonaldcarano.com>; Roberts, Lee <LRoberts@wwhgd.com>; 'Fedder, Natasha S.' <nfedder@omm.com>; 'Genovese, Amanda L.' <AGenovese@omm.com>; 'Portnoi, Dimitri D.' <dportnoi@omm.com>
Subject: RE: Fremont Emergency Services (Mandavia), Ltd., et al. v. UnitedHealth Group, Inc., et al. - order denying renewed motion to stay; order granting motion to compel

Amanda,

I am sorry for the delay. Please advise if you are agreeable to the following proposed changes:

- Market and reimbursement data for out-of-network and in-network providers for the Las Vegas, Nevada market by October 26, 2020, and for the ~~all~~ other ~~responsive Nevada and national level~~ market and reimbursement data as ~~set~~ ordered by the Court at the October 22, 2020 status check.

Thank you

From: Amanda Perach [mailto:aperach@mcdonaldcarano.com]
Sent: Friday, October 23, 2020 4:58 PM
To: Llewellyn, Brittany M.; Kristen T. Gallagher; Balkenbush, Colby
Cc: Pat Lundvall; Roberts, Lee; 'Fedder, Natasha S.'; 'Genovese, Amanda L.'; 'Portnoi, Dimitri D.'
Subject: RE: Fremont Emergency Services (Mandavia), Ltd., et al. v. UnitedHealth Group, Inc., et al. - order denying renewed motion to stay; order granting motion to compel

This Message originated outside your organization.

Attached is the final order incorporating the below change. Please confirm that I may affix your e-signature by 5:20 p.m. Otherwise, we will proceed with submitting without your signature and noting you have failed to respond.

Amanda M. Perach Partner

McDONALD CARANO

P: 702.873.4100 **E:** aperach@mcdonaldcarano.com

From: Amanda Perach
Sent: Friday, October 23, 2020 3:40 PM
To: 'Llewellyn, Brittany M.' <BLlewellyn@wwhgd.com>; Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>; Balkenbush, Colby <CBalkenbush@wwhgd.com>
Cc: Pat Lundvall <plundvall@mcdonaldcarano.com>; Roberts, Lee <LRoberts@wwhgd.com>; Fedder, Natasha S. <nfedder@omm.com>; Genovese, Amanda L. <AGenovese@omm.com>; Portnoi, Dimitri D. <dportnoi@omm.com>
Subject: RE: Fremont Emergency Services (Mandavia), Ltd., et al. v. UnitedHealth Group, Inc., et al. - order denying renewed motion to stay; order granting motion to compel

Brittany,

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I am looking at the exchanges on page 26-27 of the transcript. It is my understanding that Judge Allf agreed Nevada market data is due on 10/26. In order to move this order forward, I will address the NV and national market data in the subsequent order from yesterday's hearing and revise the earlier order to this:

- Market and reimbursement data for out-of-network and in-network providers for the Las Vegas, Nevada market by October 26, 2020 and for all other responsive Nevada and national level market and reimbursement data as set by the Court at the October 22, 2020 status check;

Please confirm this is acceptable and that we may indicate your approval to the Court with respect to this proposed order.

002665

Amanda M. Perach Partner

McDONALD CARANO

P: 702.873.4100 **E:** aperach@mcdonaldcarano.com

From: Llewellyn, Brittany M. <BLlewellyn@wwhgd.com>
Sent: Friday, October 23, 2020 12:31 PM
To: Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>; Balkenbush, Colby <CBalkenbush@wwhgd.com>
Cc: Pat Lundvall <plundvall@mcdonaldcarano.com>; Amanda Perach <aperach@mcdonaldcarano.com>; Roberts, Lee <LRoberts@wwhgd.com>; Fedder, Natasha S. <nfedder@omm.com>; Genovese, Amanda L. <AGenovese@omm.com>; Portnoi, Dimitri D. <dportnoi@omm.com>
Subject: RE: Fremont Emergency Services (Mandavia), Ltd., et al. v. UnitedHealth Group, Inc., et al. - order denying renewed motion to stay; order granting motion to compel

Kristen,

Can you please send us the portion of the transcript you are referencing? As you know, we had previously committed to an October 26, 2020 production of aggregated market data for the Las Vegas metropolitan area in our Opposition to your Motion to Compel. That date is what was adopted by the Court – but only for aggregated data for the Las Vegas market. I do not recall the Court, at any time, overruling her previous order. We intend to abide by that date, for the documents that were ordered. But if you can point us to something showing that the Court ordered something different, we will consider it.

Thank you,

Brittany

From: Kristen T. Gallagher [mailto:kgallagher@mcdonaldcarano.com]
Sent: Friday, October 23, 2020 12:17 PM
To: Llewellyn, Brittany M.; Balkenbush, Colby
Cc: Pat Lundvall; Amanda Perach; Roberts, Lee; Fedder, Natasha S.; Genovese, Amanda L.; Portnoi, Dimitri D.
Subject: RE: Fremont Emergency Services (Mandavia), Ltd., et al. v. UnitedHealth Group, Inc., et al. - order denying renewed motion to stay; order granting motion to compel

This Message originated outside your organization.

Based on a review of the transcript, I am comfortable that the Court ordered NV market data by October 26. Would you like me to indicate that United is agreeable to the form/content of the order and circulate for a final review?

Kristen T. Gallagher | Partner

McDONALD CARANO

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

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From: Llewellyn, Brittany M. <BLlewellyn@wwhgd.com>
Sent: Thursday, October 22, 2020 7:45 PM
To: Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>; Balkenbush, Colby <CBalkenbush@wwhgd.com>
Cc: Pat Lundvall <plundvall@mcdonaldcarano.com>; Amanda Perach <aperach@mcdonaldcarano.com>; Roberts, Lee <LRoberts@wwhgd.com>; Fedder, Natasha S. <nfedder@omm.com>; Genovese, Amanda L. <AGenovese@omm.com>; Portnoi, Dimitri D. <dportnoi@omm.com>
Subject: RE: Fremont Emergency Services (Mandavia), Ltd., et al. v. UnitedHealth Group, Inc., et al. - order denying renewed motion to stay; order granting motion to compel

Kristen,

We do not agree that the below statement is accurate, but we are conferring with our client on a proposed revision and will have a response to you tomorrow.

Thank you

002666

Brittany M. Llewellyn, Attorney
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89118
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www.wwhgd.com | vCard

From: Kristen T. Gallagher [mailto:kgallagher@mcdonaldcarano.com]
Sent: Thursday, October 22, 2020 2:10 PM
To: Balkenbush, Colby
Cc: Pat Lundvall; Amanda Perach; Llewellyn, Brittany M.; Roberts, Lee; Fedder, Natasha S.; Genovese, Amanda L.; Portnoi, Dimitri D.
Subject: RE: Fremont Emergency Services (Mandavia), Ltd., et al. v. UnitedHealth Group, Inc., et al. - order denying renewed motion to stay; order granting motion to compel

This Message originated outside your organization.

After today's status check, I think the below is appropriate with respect to market and reimbursement data. Please confirm this is agreeable and I will circulate a final version for review.

- Market and reimbursement data for out-of-network and in-network providers for the Nevada market by October 26, 2020 and for all other responsive market and reimbursement data as set by the Court at the October 22, 2020 status check;

Thank you,
Kristy

Kristen T. Gallagher Partner
McDONALD CARANO
P: 702.873.4100 **E:** kgallagher@mcdonaldcarano.com

From: Balkenbush, Colby <CBalkenbush@wwhgd.com>
Sent: Wednesday, October 21, 2020 5:07 PM
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>; Fedder, Natasha S. <nfedder@omm.com>; Genovese, Amanda L. <AGenovese@omm.com>; Portnoi, Dimitri D. <dportnoi@omm.com>
Subject: Re: Fremont Emergency Services (Mandavia), Ltd., et al. v. UnitedHealth Group, Inc., et al. - order denying renewed motion to stay; order granting motion to compel

Kristy,

The addition of the closure report language is fine. I'm also fine with leaving the second bullet point as is.

In regard to the third bullet point, could you just add some language regarding "other responsive market data" that will be produced at the deadline set by the court at the Oct. 22 hearing? I agree the court overruled our geographic objections but she also said that we would be held to the dea dlines in our opposition. The opposition was very clear that we could produce aggregate market data for Las Vegas by Oct. 26, not ALL responsive market data. I don't think it's fair to try to hold United to an Oct. 26 deadline that is different than what we stated in our opposition.

Sent from my iPhone

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On Oct 21, 2020, at 4:56 PM, Kristen T. Gallagher <kgallagher@mcdonaldcarano.com> wrote:

This Message originated outside your organization.

Please see my comments in red below. Additionally, when reviewing the transcript in connection with your comments below, United agreed to produce Data iSight closure reports by 10/23, so I intend to add that to the order. If the below and added language for closure reports is agreeable, I will circulate a final version for approval. Please advise.

-Kristy

Kristen T. Gallagher | Partner

McDONALD CARANO

P: 702.873.4100 | E: kgallagher@mcdonaldcarano.com

From: Balkenbush, Colby <CBalkenbush@wwhgd.com>
Sent: Wednesday, October 21, 2020 3:01 PM
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>; Fedder, Natasha S. <nfedder@omm.com>; Genovese, Amanda L. <agenovese@omm.com>; Portnoi, Dimitri D. <dportnoi@omm.com>
Subject: RE: Fremont Emergency Services (Mandavia), Ltd., et al. v. UnitedHealth Group, Inc., et al. - order denying renewed motion to stay; order granting motion to compel

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Kristy,

Below are our proposed revisions to the order granting Fremont's Motion to Compel. Let us know if Fremont is amenable to these. Thank you.

Order Granting Fremont's Motion to Compel

* At p. 2:11, delete "reply." Fremont never filed a reply in support of its motion to compel. This is ok.

* At paragraph 10, change the sentence to: "In the event that United does not meet the deadlines of the Court that will be set by the Court at the October 22, 2020 status check hearing, the Court will have no choice but to make negative inferences." (new material in bold). In context, Judge Allf's comments about negative inferences appeared to be generally applicable to this case, not just in connection with the instant motion.

* At p. 6:6, change to, "Market and reimbursement data for out-of-network and in-network providers for the Las Vegas metropolitan area." (new material in bold). United's proposal in its Opposition was limited to the Las Vegas metropolitan area. See Opposition at 5:23-24. Producing market data for all of Nevada may take longer and a different deadline will need to be set at the October 22 status check. We will address this deadline in our October 20 email responding to

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Fremont's Oct. 13 discovery priorities email. As you know the Health Care Providers' requests seek Nevada and national-level data. The Court overruled United's objections to limit the geographic scope of these requests; therefore, the Health Care Providers understood that market and reimbursement data, as ordered, would be on the timeline United offered.

* At p. 6:7, change the date from October 20, 2020 to October 26, 2020. The Court stated the dates proposed in United's Opposition should be incorporated into the order. United's Opposition proposed providing the Las Vegas market data within 14 "business days" of October 6. See Opposition at p. 6:1-2. This would be October 26, not October 20. This is ok.

* At p. 6:11-12, change to, "and by October 20, 2020, United shall respond to include an explanation with proposed dates of production and an explanation for same." (new material in bold). This is ok.

<image001.png>

Colby Balkenbush, Attorney

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From: Kristen T. Gallagher [mailto:kgallagher@mcdonaldcarano.com]
Sent: Friday, October 16, 2020 11:31 AM
To: Balkenbush, Colby; Llewellyn, Brittany M.; Roberts, Lee
Cc: Pat Lundvall; Amanda Perach
Subject: Fremont Emergency Services (Mandavia), Ltd., et al. v. UnitedHealth Group, Inc., et al. - order denying renewed motion to stay; order granting motion to compel

This Message originated outside your organization.

Attached are (1) a proposed order denying renewed motion to stay; and (2) a proposed order granting plaintiffs' motion to compel. Please review and provide any proposed comments by the close of business on Tuesday.

Thank you,
Kristy

Kristen T. Gallagher | Partner

McDONALD CARANO

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Las Vegas, NV 89102

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BIO<https://protect-us.mimecast.com/s/zhgRC4xkoYHBn2lYuWaqXx/> | WEBSITE<http://www.mcdonaldcarano.com> | V-CARD<http://www.mcdonaldcarano.com/vcards/kgallagher.vcf> | LINKEDIN<https://www.linkedin.com/in/kristen-gallagher-6b0b2b1a>

MERITAS®<http://www.mcdonaldcarano.com/nevada_business_law.html>

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Electronically Filed
10/27/2020 11:20 AM
Steven D. Grierson
CLERK OF THE COURT

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

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' MOTION 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

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PLEASE TAKE NOTICE that an 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 was entered on October 26, 2020, a copy of which is attached hereto.

DATED this 27th day of October, 2020.

McDONALD CARANO LLP

By: */s/ Kristen T. Gallagher*

Pat Lundvall (NSBN 3761)
Kristen T. Gallagher (NSBN 9561)
Amanda M. Perach (NSBN 12399)
2300 West Sahara Avenue, Suite 1200
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Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

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

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

Attorneys for Defendants

/s/ Marianne Carter
An employee of McDonald Carano LLP

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

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Electronically Filed
10/26/2020 4:09 PM
CLERK OF THE COURT

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

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

ORDER DENYING DEFENDANTS' MOTION 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

This matter came before the Court on October 8, 2020 on defendants UnitedHealth Group, Inc.; UnitedHealthcare Insurance Company; United HealthCare Services, Inc.; UMR,

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Inc.; Oxford Health Plans, Inc.; Sierra Health and Life Insurance Co., Inc.; Sierra Health-Care Options, Inc.; and Health Plan of Nevada, Inc.'s (collectively, "United") Motion 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 (the "Motion"). Pat Lundvall, Kristen T. Gallagher and Amanda M. Perach, McDonald Carano LLP, appeared on behalf of Plaintiffs Fremont Emergency Services (Mandavia), Ltd. ("Fremont"); Team Physicians of Nevada-Mandavia, P.C. ("Team Physicians"); Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine ("Ruby Crest" and collectively the "Health Care Providers"). Lee Roberts and Colby L. Balkenbush, Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, appeared on behalf of United.

The Court, having considered the Motion and reply, the Health Care Providers' opposition, and the argument of counsel at the hearing on this matter and good cause appearing therefor, makes the following findings of fact, conclusions of law and Order:

FINDINGS OF FACT

1. The allegations in the Health Care Providers' First Amended Complaint alleges ~~make it clear 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. On June 28, 2019, United served its First Set of Document Requests, which included RFP No. 6 stating: "Please produce all documents concerning the medical treatment that Fremont allegedly provided to the more than 10,800 patients referenced in paragraph 25 of the Complaint." 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. Fremont served its responses and objections to RFP No. 6 on July 29, 2019.

4. At the end of January 2020, United sought to meet and confer on Fremont's response to RFP No. 6.

5. On September 21, 2020, United moved to compel production of clinical records

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underlying the claims placed at-issue in FESM000344.

6. 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.

7. Specifically, on February 10, 2020, counsel for the Health Care Providers offered to reduce United's burden of producing certain Explanation of Benefits forms ("EOBs") and Providers Remittance Advice forms ("PRAs") by matching data contained in the Health Care Providers' at-issue claims spreadsheets:

> 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:
>
> 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:
>
> - Within 14 days, United provides matched spreadsheets and identifies any discrepancy in billed or allowed amounts fields;
> - 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.
> - 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.

[1] The Health Care Providers have reserved their right to supplement/revise a list of at-issue claims.

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> United produces all EOBs/provider remittances for all Data iSight processed NV claims submitted by the Health Care Providers; and
>
> 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) or a spreadsheet of payments to other providers (United) in the market which de-identifies the specific payer or provider, as applicable (for the time period 2016-Present). The parties agree to meet and confer promptly to agree on specified fields.

8. On February 13, 2020, the parties engaged in a meet and confer that included Fremont's response to RFP No. 6.

~~9. United filed its Answer to the First Amended Complaint on July 8, 2020.~~

~~10. In its Answer, United admits that it deemed the at-issue claims allowable at the submitted Current Procedural Terminology (CPT) code and subsequently issued payment that United purported was a reasonable reimbursement rate:~~

> ~~Answering paragraph 26 of the First Amended Complaint, ***United admits that health plans insured or administered by United have paid Plaintiffs for covered services*** on various claims with dates of service through July 31, 2019.~~
>
> ~~Answering paragraph 193 of the First Amended Complaint, ***United admits*** that Plaintiffs have provided medical services to some participants in health plans insured or administered by United, ***and that health plans insured or administered by United have paid Plaintiffs for covered services***.~~
>
> ~~Answering paragraph 194 of the First Amended Complaint, ***United admits*** that Plaintiffs have provided medical services to some participants in health plans insured or administered by United, and ***that health plans insured or administered by United have paid Plaintiffs for covered services***.~~
>
> ~~Answering paragraph 196 of the First Amended Complaint, ***United admits that health plans insured or administered by United have paid Plaintiffs for covered services, typically directly***.~~

~~Answer ¶¶ 26, 193, 194, 196 (emphasis added). The Provider Remittance Advice forms ("PRAs") that United generated and issued affirmatively identify the CPT code United considered and deemed allowed in connection with the at-issue claims.~~

~~11. United has admitted that when it paid each at-issue claim it was "based on the terms of the applicable health benefits plan documents specifying which medical services are~~

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covered, and, the amount of benefits the plan will pay ***for covered services.***" United's Answers to Interrogatories Nos. 6, 7.

12. Thus, United has already deemed the at-issue claims "covered services." United reviewed and allowed for the covered emergency services and care provided by the Health Care Providers at the level indicated on the United-generated PRAs.

13. Any of the foregoing factual statements that are more properly considered conclusions of law should be deemed so. Any of the following conclusions of law that are more properly considered factual statements should be deemed so.

CONCLUSIONS OF LAW

14. Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claims or defenses and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. NRCP 26(b)(1).

15. The Health Care Providers are obligated to provide emergency services to anyone that presents to an emergency room, regardless of ability to pay. *See* Emergency Medical Treatment & Labor Act ("EMTALA"), 42 U.S.C. § 1395dd; *see also* NRS 695G.170(1); 42 C.F.R. § 438.114(c)(1)(i). The "emergency services and care" required to be provided under Nevada law means:

> ***medical screening, examination and evaluation*** by a physician or, to the extent permitted by a specific statute, by a person under the supervision of a physician, to determine if an emergency medical condition or active labor exists and, if it does, the care, treatment and surgery by a physician necessary to relieve or eliminate the emergency medical condition or active labor, within the capability of the hospital.

NRS 439B.410(5). Nevada law also precludes an insurer from requiring prior authorization for emergency services. NRS 695G.170.

16. A claim for unjust enrichment requires the Health Care Providers to establish the market value of services provided and clinical records are not a component of such "value

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of the good or services at issue." *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 381 n.3, 283 P.3d 250, 257 n. 3 (2012) (citing Restatement (Third) of Restitution and Unjust Enrichment § 49(3)(c) & cmt. f (2011); *see also Massachusetts Eye and Ear Infirmary v. QLT Phototherapeutics, Inc.*, 552 F.3d 47, n.26 ((1st Cir. 2009), *decision clarified on denial of reh'g*, 559 F.3d 1 (1st Cir. 2009) (the fair market value of a requested benefit was a well-accepted measure of unjust enrichment). Or, a previous agreement between the parties may be a proper consideration in determining the reasonable value of services rendered. *See Flamingo Realty, Inc. v. Midwest Dev., Inc.*, 110 Nev. 984, 988–89, 879 P.2d 69, 71–72 (1994) *see also Children's Hosp. Cent. California v. Blue Cross of California*, 172 Cal. Rptr. 3d 861, 872 (2014) (internal citations omitted) (the true marker of the "reasonable value" of services has been described as the "going rate" for the services or the "reasonable market value at the current market prices").

17. Because this is a case that concerns the rate-of-payment, the Health Care Providers are not required to re-establish the level of emergent care provided to United's Members for purposes of determining the proper rate of reimbursement.

18. Clinical records for the at-issue claims are not relevant because United has already deemed the claims allowed and allowable at the CPT code submitted and later adjudicated. Answer ¶¶ 26, 193, 194, 196; Ex. 3, Answer to Interrogatory No. 6, 7. The relevant inquiry in this action is the proper rate of reimbursement which is based on the amount billed by the Health Care Providers and the amount paid by United. The Health Care Providers do not have the burden to prove what was done clinically to establish their claims.

19. In addition, United's demand for clinical records does not meet the proportionality test: (a) the issue of rate of payment is the underpinning of this case and United already adjudicated the claims based on the CPT level identified in the PRAs created and issued by United -- this is not a right to payment case; (b) United already has access to the clinical records; (c) the parties' relative resources likely tips in United's favor as one of, if not the, largest health insurance company in the country and the clinical records are already in its possession or are readily accessible to United; (d) the clinical records are not important in this

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~~case as United has admitted it has adjudicated the claims at the CPT level indicated on PRAs; and (e) the burden and expense of producing clinical records may expand these proceedings and delay resolution. As a result, United's request for clinical records is not proportional to the needs of the case considering the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.~~

~~20. Further, clinical records are not required to establish the reasonable value of services.~~

Accordingly, good cause appearing, therefor,

ORDER

IT IS HEREBY ORDERED that United's 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 is DENIED without prejudice.

IT IS FURTHER ORDERED that, no later than October 22, 2020, United and the Health Care Providers shall meet and confer meaningfully on a protocol to match data points on the Health Care Providers' list of at-issue claims.

IT IS FURTHER ORDERED that the Court will hold a status check on November 4, 2020 at 10:30 a.m. to address the status of the parties' meet and confer efforts.

IT IS SO ORDERED.

October 26, 2020

Dated this 26th day of October, 2020

Nancy L Allf

DISTRICT COURT JUDGE

358 CAB E656 7095
Nancy Allf
District Court Judge

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

AUTOMATED CERTIFICATE OF SERVICE

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

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If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 10/27/2020

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

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

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

DATED this 27th day of October, 2020.

McDONALD CARANO LLP

By: */s/ Kristen T. Gallagher*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 27th day of October, 2020, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING PLAINTIFFS' MOTION TO COMPEL DEFENDANTS' LIST OF WITNESSES, PRODUCTION OF DOCUMENTS AND ANSWERS TO INTERROGATORIES ON ORDER SHORTENING TIME** to be served via this Court's Electronic Filing system in the above-captioned case, upon the following:

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DISTRICT COURT

CLARK COUNTY, NEVADA

FREMONT EMERGENCY SERVICES (MANDAVIA), LTD., a Nevada professional corporation; TEAM PHYSICIANS OF NEVADA-MANDAVIA, P.C., a Nevada professional corporation; CRUM, STEFANKO AND JONES, LTD. dba RUBY CREST EMERGENCY MEDICINE, a Nevada professional corporation, Plaintiffs, vs. UNITEDHEALTH GROUP, INC., a Delaware corporation; UNITED HEALTHCARE INSURANCE COMPANY, a Connecticut corporation; UNITED HEALTH CARE SERVICES INC., dba UNITEDHEALTHCARE, a Minnesota corporation; UMR, INC., dba UNITED MEDICAL RESOURCES, a Delaware corporation; OXFORD HEALTH PLANS, INC., a Delaware corporation; SIERRA HEALTH AND LIFE INSURANCE COMPANY, INC., a Nevada corporation; SIERRA HEALTH-CARE OPTIONS, INC., a Nevada corporation; HEALTH PLAN OF NEVADA, INC., a Nevada corporation; DOES 1-10; ROE ENTITIES 11-20, Defendants.	Case No.: A-19-792978-B Dept. No.: XXVII **ORDER GRANTING PLAINTIFFS' MOTION TO COMPEL DEFENDANTS' LIST OF WITNESSES, PRODUCTION OF DOCUMENTS AND ANSWERS TO INTERROGATORIES ON ORDER SHORTENING TIME**

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

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Order Shortening Time (the "Motion") filed by Plaintiffs Fremont Emergency Services (Mandavia), Ltd. ("Fremont"); Team Physicians of Nevada-Mandavia, P.C. ("Team Physicians"); Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine ("Ruby Crest" and collectively the "Health Care Providers"). Pat Lundvall, Kristen T. Gallagher and Amanda M. Perach, McDonald Carano LLP, appeared on behalf of the Health Care Providers. Lee Roberts and Colby L. Balkenbush, Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, appeared on behalf of defendants UnitedHealth Group, Inc.; UnitedHealthcare Insurance Company; United HealthCare Services, Inc.; UMR, Inc.; Oxford Health Plans, Inc.; Sierra Health and Life Insurance Co., Inc.; Sierra Health-Care Options, Inc.; and Health Plan of Nevada, Inc.'s (collectively, "United").

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

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

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

Accordingly, good cause appearing, therefor,

ORDER

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

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

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

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

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

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

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

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

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

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

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

IT IS SO ORDERED.

Dated this 27th day of October, 2020

Nancy L Allf

DISTRICT COURT JUDGE

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

Submitted by:

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

AUTOMATED CERTIFICATE OF SERVICE

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

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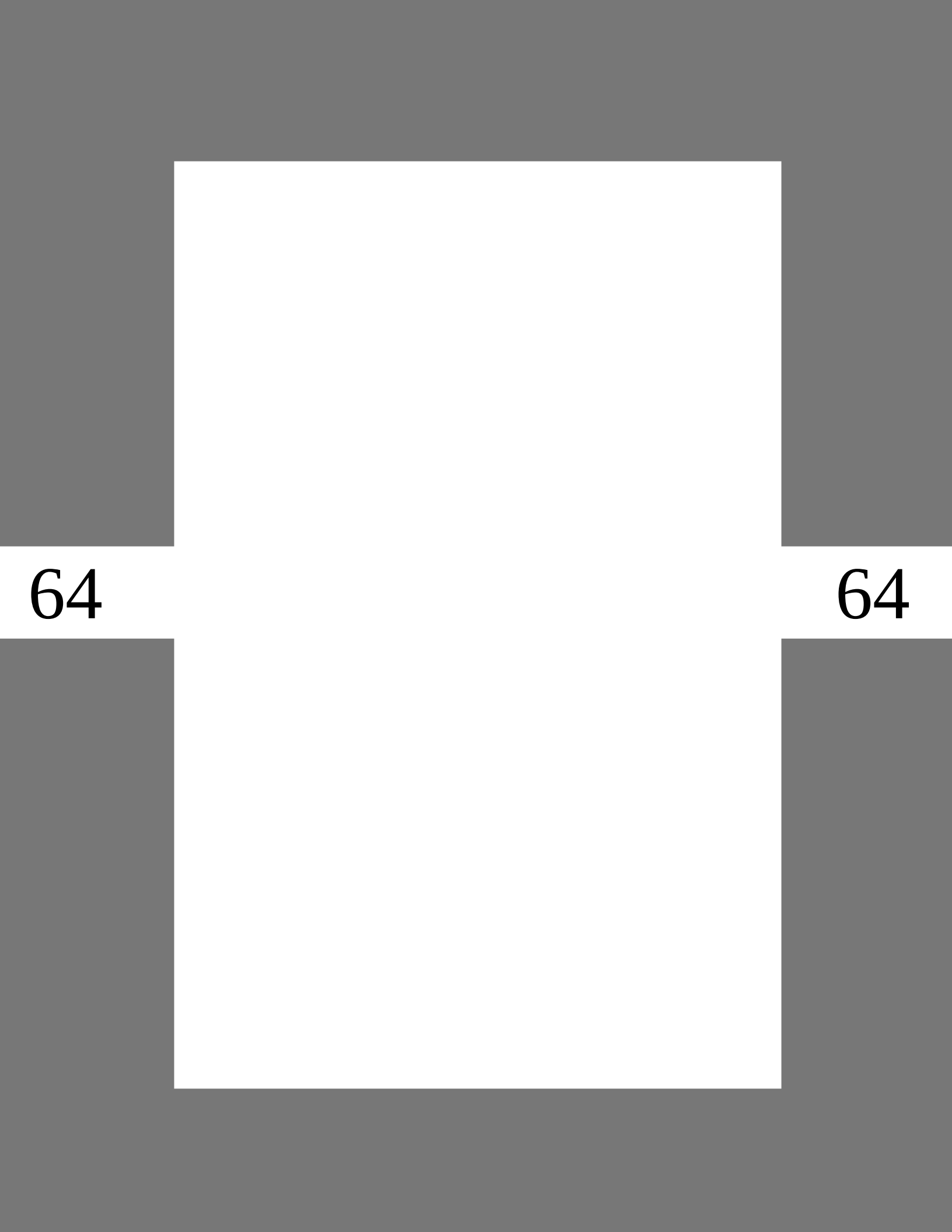
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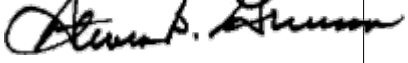

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DISTRICT COURT

CLARK COUNTY, NEVADA

FREMONT EMERGENCY SERVICES (MANDAVIA), LTD., a Nevada professional corporation; TEAM PHYSICIANS OF NEVADA-MANDAVIA, P.C., a Nevada professional corporation; CRUM, STEFANKO AND JONES, LTD. dba RUBY CREST EMERGENCY MEDICINE, a Nevada professional corporation, Plaintiffs, vs. UNITEDHEALTH GROUP, INC., a Delaware corporation; UNITED HEALTHCARE INSURANCE COMPANY, a Connecticut corporation; UNITED HEALTH CARE SERVICES INC., dba UNITEDHEALTHCARE, a Minnesota corporation; UMR, INC., dba UNITED MEDICAL RESOURCES, a Delaware corporation; OXFORD HEALTH PLANS, INC., a Delaware corporation; SIERRA HEALTH AND LIFE INSURANCE COMPANY, INC., a Nevada corporation; SIERRA HEALTH-CARE OPTIONS, INC., a Nevada corporation; HEALTH PLAN OF NEVADA, INC., a Nevada corporation; DOES 1-10; ROE ENTITIES 11-20, Defendants.	Case No.: A-19-792978-B Dept. No.: 27 **DEFENDANTS' OBJECTIONS TO PLAINTIFFS' 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**

Defendants UnitedHealth Group, Inc., UnitedHealthcare Insurance Company ("UHIC"), United HealthCare Services, Inc. ("UHS"), UMR, Inc. ("UMR"), Oxford Health Plans LLC, (incorrectly named as Oxford Health Plans, Inc.), Sierra Health and Life Insurance Co., Inc.

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("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 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" ("Plaintiffs' Proposed Order").

On October 22, 2020, the Court held a status check to set production deadlines and directed Plaintiffs to prepare the order (the "At-Issue Proposed Order"). The hearing transcript is attached hereto as **Exhibit 1**. On November 2, 2020, Plaintiffs submitted a proposed order and refused to include nearly all of Defendants' proposed changes to the order. Defendants' specific objections are set forth below. However, there are three primary issues with Plaintiffs' proposed order. Defendants' proposed redline revisions to Plaintiffs' At-Issue Proposed Order are attached hereto as **Exhibit 2**.

First, the At-Issue Proposed Order purports to require United to produce "national market data" rather than being limited to the production of Nevada market data. This was never discussed at either the October 22, 2020 hearing or the October 8, 2020 hearing on Plaintiffs' Motion to Compel. Indeed, Plaintiffs have ***never*** even submitted a specific request for United to produce "national-level" market data, as suggested by the At-Issue Proposed Order—"national-level" market data has no relevance to the claims and defenses in this litigation, which relates to Nevada reimbursement amounts. In sum, Plaintiffs' erroneous inclusions in the At-Issue Proposed Order, including ordering "national market data," is inappropriate and has the purpose of severely prejudicing Defendants. Indeed, an order requiring Defendants to produce aggregate and claim-by-claim "national" market data would require Defendants to pull data for all states with commercial membership from multiple claim platforms and likely produce hundreds of millions of lines of claims data not relevant to this matter. The burden of making such a production would be enormous and would impact United's ability to timely provide the discovery already ordered by the Court. And permitting Plaintiffs – whose private-equity backed parent company has previously engaged in contract negotiations with United – unfettered access to

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national claim reimbursement data would potentially put United at a competitive disadvantage when negotiating any future contract with plaintiffs or their corporate parent. Tellingly, Plaintiffs have not produced—nor offered to produce—any of their own national market data to Defendants. Plaintiffs cannot use the Court's proposed order submission protocol to expand the Court's discovery holdings.

Second, the At-Issue Proposed Order purports to require United to produce all Nevada market data on October 22, 2020 rather than incorporating the three-part schedule discussed at the October 8, 2020 and October 22, 2020 hearings. The Court stated that United would be held to the deadlines set forth in its October 6, 2020 Opposition to Plaintiffs' Motion to Compel and then set additional deadlines at the October 22 status check. In its Opposition, United committed to an October 26, 2020 deadline for producing aggregate market data for the Las Vegas Metropolitan area. At the October 22, 2020 hearing, the Court ordered United to produce aggregate data for *all* of Nevada by "the last day of October" (October 31, 2020) and to produce claim-by-claim data for Nevada by November 20, 2020. Therefore, the Court should reject Plaintiffs' attempts to set deadlines that are contrary to what was stated in United's Opposition and at the October 8, 2020 and October 22, 2020 hearings.

Third, the At-Issue Proposed Order includes statements that managed Medicare and Medicaid reimbursement rates are lower than commercial payer reimbursement rates. This finding was never made at the October 22, 2020 hearing nor was any evidence presented by either party to support such a finding. The At-Issue Proposed Order should be limited to setting deadlines for Defendants' to produce documents and the Court should disregard Plaintiffs' "gotcha" attempts to slip factual findings into the At-Issue Proposed Order that were never made at the hearing. This has been a consistent issue with Plaintiffs' proposed orders in this litigation.

OBJECTIONS

Defendants set forth herein their objections to Plaintiffs' At-Issue Proposed Order, which includes findings of facts and conclusions of law that were not addressed by the Court. Plaintiffs' attempt to expand the scope of the Court's holding is improper and prejudices Defendants. Defendants further submit that any of Plaintiffs' inclusions that fall outside the

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scope of what was addressed at the time of the hearing and issues that the parties have not briefed for the Court to consider should be stricken. Defendants' specific objections to Plaintiffs' proposed order are as follows:

1. At page 2 at paragraph 1 of Plaintiffs' Proposed Order, Defendants submit that the sentence that reads "*the Court finds that United's discovery conduct in this action is unacceptable to the Court*" should be deleted. This statement has no bearing on the holdings the Court made at the hearing (i.e. entering dates when various categories of documents would be produced).

2. At pages 2-3 at paragraph 4 of Plaintiffs' Proposed Order, Defendants submit that the sentence that reads "*because the [managed Medicare and Medicaid] rates are lower than commercial payer reimbursement*" should be deleted. The Court never made this finding nor was evidence presented to support such a finding at the hearing. Rather, the Court asked Plaintiffs' counsel whether the reimbursement rate is lower for Medicare and Medicaid and Plaintiffs' counsel stated that was "generally" correct. Transcript at 18:19-22.

3. At page 3 at paragraph 5 of Plaintiffs' Proposed Order, Defendants submit that a sentence should be added stating: "*except that by October 31, 2020 United shall produce aggregate market reimbursement data for the Nevada market and by November 20, 2020…*". The Court was clear at the hearing that the Nevada aggregate market data was due by the last day of October, stating as follows: "*And with regard to the production schedule for the Nevada— for the defendant in November, I reject that. And* ***I'll set the date as the last day of October***." Transcript at 27:1-3 (emphasis added). The Court has set three separate dates for United to produce market data. (1) October 26 for the production of aggregate market data for the Las Vegas metropolitan area (the date promised in United's opposition to Plaintiffs' motion to compel) (2) the last day of October for the aggregate market data for <u>all</u> of Nevada and (3) November 20 for the claim-by-claim market data for all of Nevada. The section of Plaintiffs' Proposed Order at p. 4:1-3, subsection (c) should also be stricken for the same reason as it purports to require United to produce all "market and reimbursement data" on October 22, 2020 rather than according to the three-part schedule detailed above.

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4. All references to the production of national aggregate market data and national claim-by-claim market data should be stricken. These references are at page 3, paragraph 5 and page 5 under the "November 20, 2020" heading. At no point at the October 22 hearing or at any hearing has the Court ordered United to produce "national level" market and reimbursement data. Rather, all that has been ordered is the production of both aggregate and claim-by-claim reimbursement data for all of Nevada. Indeed, none of Plaintiffs' requests for production even call for the production of national market data. Rather, all are focused on Nevada specific market data. *See* RFP Nos. 14, 19, 20, 22, 23, 24, 25, 26, 33, 34, 35, 38, 43).

5. At p. 3:19 the words "fully and completely" should be deleted. Fact discovery does not currently end until December 30 and United is not barred from disclosing additional documents and witnesses until the discovery cut-off occurs.

CONCLUSION

For the foregoing reasons, the Court should refrain from entering Plaintiffs' Proposed Order without making the adjustments indicated above.

Dated this 2nd day of November, 2020.

/s/ Colby L. Balkenbush
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WEINBERG WHEELER HUDGINS GUNN & DIAL

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of November, 2020, a true and correct copy of the foregoing **DEFENDANTS' OBJECTIONS TO PLAINTIFFS' 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** 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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EXHIBIT 1

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EXHIBIT 1

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CLERK OF THE COURT

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

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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

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LAS VEGAS, NEVADA, THURSDAY, OCTOBER 22, 2020

[Proceeding commenced at 10:10 a.m.]

THE COURT: Okay. The last matter we have at 10:00 this morning is Fremont versus United.

And I had hoped for a status check on that, an update yesterday. I don't think I received that.

So all right. Let's have appearances, please, starting first with the plaintiff.

Are the parties present on Fremont versus United? Let's take appearances, please. Please unmute yourself for your appearances.

Okay. Ms. Perach, I see you. I see Lee Roberts.

MS. PERACH: Good morning, Your Honor. Amanda Perach, appearing on behalf of the Health Care Providers. I also believe Kristy Gallagher is on the line.

THE COURT: Thank you.

And for the defendants, please.

MR. ROBERTS: Good morning, Your Honor. Lee Roberts for the defendants.

THE COURT: Thank you. And do you have anyone with you?

MR. ROBERTS: Yes, Ms. Llewellyn.

MS. LLEWELLYN: Good morning [indiscernible]. Yes. Brittany Llewellyn for the defendants. Thank you.

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THE COURT: Okay. And because I've been seeing so much of you guys lately, I'm going to thank Mr. Roberts for getting his video on Blue Jeans. It makes it much easier to be -- at least see your faces.

So we continued this --

MR. ROBERTS: It turns out it was my new virus protection software was blocking the connection because Blue Jeans is apparently an unknown app, so I had to go in and give it permission. I don't know if anyone else has had that problem, but it happened with my new virus software.

THE COURT: Okay.

MR. ROBERTS: But it's good to see you, Your Honor.

THE COURT: All right. So this was a status from last week with regard to the priorities, responses, deadlines. And so let me have an update first from the plaintiff.

Ms. Perach or Ms. Gallagher? You'll have to unmute yourself, guys.

MS. GALLAGHER: Your Honor, can you hear me?

THE COURT: I can now.

MS. GALLAGHER: Great. I don't know exactly what's happening. But good morning, Your Honor. Kristen Gallagher on behalf of the plaintiffs.

So we did file a --

THE COURT: All right. Let me first preface this -- my apologies to both of you. I haven't read your status reports. They

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were filed fairly late, and so I apologize to both of you. So you'll have to spoon feed me.

MS. GALLAGHER: No problem, Your Honor. I understand.

So this is Kristen Gallagher. I'm going start first with the production, United's production of at-issue claims file. We can start with that update.

So as Your Honor recalled, you ordered United to produce certain, what they referred to, as administrative records by September 23rd. As of the October 8th hearing, they had produced 7 files and just this weekend produced an approximately another 41, bridging the total to 50. You know, the required production by the 23rd, obviously, at 50, and there's tens of thousands of claims at issue, is that this is a slow-roll claims production, for sure, Your Honor.

What we think is happening is basically the attempt to get the extended discovery that they set forth at the outset that they wanted by slowly producing and trying to show the Court, perhaps, that they just can't do it, despite the Court's orders. And so we think this is a deliberate strategy, much like what happened that led to this litigation, in terms of we're doing things because we can do them.

So it's frustrating from our position, especially because in United's status report, they have asked for an extension of the discovery deadline with respect to the at-issue claims files.

One it's improper to do so in a status report. Second, they

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haven't approached us about extending discovery. I think they probably know that we're not amenable to that, given our positions that we've taken in this case.

But at this point, they, you know, basically are not complying with the Court's order on this point. And we would ask for expedited production and not this slow-rolling production that we have been seeing.

I'm happy to go through the other points, but if you want to take these one by one, I'll let you talk to Mr. Roberts on that point.

THE COURT: Good enough. Do you -- so you want to bounce back and forth on each issue?

MS. GALLAGHER: I think that's probably the best way to do it, Your Honor.

THE COURT: Okay. So Mr. Roberts, Ms. Llewellyn, your response, please.

MR. ROBERTS: Thank you, Your Honor.

Ms. Llewellyn has been dealing primarily with the plaintiff's counsel and our client on these issues, so I'm going to let her address the Court as to our efforts. Thank you, Your Honor.

MS. LLEWELLYN: Your Honor, speaking to the administrative record production, I believe there was a representation at the last hearing that we were endeavoring to produce somewhere between 200 to 250 records per month.

There are certainly no deliberate efforts to stall the process. And we are undertaking, amongst various business entities

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and departments, to get these records produced in an expedited manner. Unfortunately, there are just a lot of moving parts. It requires the review and verification from various departments and business people within those departments. And then for counsel to then review and produce those documents as well. So we are attempting to meet what we previously said we would be working toward, which is, I believe, between 200 and 250 records per month.

The representations as to the intentional delay are simply incorrect.

And I also just want to make a point that we are also simultaneously working on responding to plaintiffs' other numerous discovery requests. And, Your Honor, we are simply doing our best.

And speaking to the comments about our request for an extension, we did not request an extension in our status report. We simply noted that it might be a reasonable possibility simply because we are not going to be able to produce 22,000 records before December of this year.

THE COURT: Okay. And so then how are we going to maintain the March 15th, 2021, jury trial, Ms. Llewellyn?

MS. LLEWELLYN: And Your Honor, that's a separate issue that we had also addressed in our status report and that we had spoken with the department about.

We believe that -- both parties believe that the trial date will likely need to change with the expert deadlines set as they currently are. As it stands, the initial expert deadline was set for

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October 1st of 2020, which has already passed; and the rebuttal expert deadline was set for November 1st of 2021, which is, of course, after the trial date.

So we were attempting to work with the department on a new scheduling order that would accommodate the experts' discovery schedule which we had previously agreed would come after the fact discovery cutoff of December 30th, 2020.

THE COURT: And for both parties, I regularly grant, especially now, extensions. The close of discovery is what triggers your trial date. There's a program on the JEA's computer.

So if you are going to stipulate to alter of those deadlines, start with close of discovery, and I'll be happy to issue a new trial order.

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MS. GALLAGHER: Your Honor, if I may speak to that briefly, that there is an agreement with respect to staggered discovery. And that is one point that we are in agreement on and had reached out to chambers.

There is another point that United has raised that we don't think is proper to raise it in this context, but -- with respect to other deadlines.

But with respect to the facts discovery deadline of December 30th, you know, that's what the Health Care Providers are focusing on, because what we're dealing with in terms of the at-issue claims is fact discovery.

And so our concern here is basically they did not get what

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they wanted at the Rule 16 conference for a lengthy discovery period. And so what we're seeing is just sort of this incremental push; right? It's one delay after the other. And we've unfortunately had to present that to the Court from the beginning because that's what we have seen and what we have been trying to put a backstop to.

And so the argument that Ms. Llewellyn made about the time that it takes -- that was part of the Court's consideration in granting our Motion to Compel the at-issue claims. So that is not new information. And, in fact, the Court was specific and considered that, and still ordered production by a date certain, the 23rd of September.

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And so when we see this unilateral decision by United to take this, you know, on a claim by claim, and we don't know quite exactly how they're producing documents, because they don't follow our claims list, they don't seem to be in any particular order that we can yet tell. I'm sure at some point they will reveal which -- in what order they've decided to produce them.

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But it is on this issue -- and you'll see throughout the status check -- that it is the incremental push that is just not acceptable. You know, unfortunately, United made this situation happen by deciding that they weren't going to do anything for almost, what are we? 10 months after we served this discovery.

And so it really -- from the Health Care Providers perspective, it sort of is a little bit too late in terms of them asking for

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relief based on their own failure to do the work at the outset. And so we would ask that the Court not entertain the extension.

Obviously, they indicated they're not officially asking for it at this point. But we would like to press and have them abide by the Court's rules, which at this point, they're actually outside of the auspices of the order to compel the at-issue claims.

I suppose the Health Care Providers will need to revisit that issue through a separate motion, perhaps an order to show cause. But, you know, the excuse that they just can't do, it just isn't sufficient at this time, Your Honor.

THE COURT: And Ms. Llewellyn, did you respond in full with regard to that administrative records part? Or did we get sidetracked with regard to the trial setting?

MS. LLEWELLYN: Your Honor, as an additional issue, I just wanted to note that the parties have an additional meet and confer scheduled for this Friday to discuss a potential claims-matching protocol that the plaintiffs had proposed to us, that would perhaps alleviate some of the issues with respect to the administrative record production. That's just a final note that I would make on that point.

THE COURT: Good enough.

So let me politely remind you that I've already compelled the responses by order on September 28th, 2020.

Let's move to the next issue. Ms. Gallagher.

MS. GALLAGHER: Yes, Your Honor. Thank you.

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The next issue is the denial of the United's Motion to Compel clinical records. And so the Court had ordered the parties to meet and confer on matching data points. As Your Honor may recall, we had proposed a protocol back in February, and so that is what we took up at the meet and confer earlier this week.

We were initially encouraged. We found out from Mr. Balkenbush that Natasha Fedder had been working on data-point matching for several -- for a while -- I don't want to put a specific timeline, because I didn't get a specific timeline. But it sounded like for a while. And her representation to us during that meet and confer was that there were 3,000 claims that they had not matched. That seemed to be, you know, moving things forward.

But when we started to ask for details, there were none. So when we asked about, Well, what data points do you need? What is missing? What are you having trouble matching? The response was, We don't know. We need to talk to our client about that.

And then we were made -- proposed an offer by United to provide additional information. And so I said -- and they asked if I would agree. And I said, Well, I need to know a what additional information you need. You know, what are we talking about? Because our spreadsheet had upwards of, I think, it's 20 data points that we have already provided to United.

So I wasn't sure what additional information might be needed. So I asked the question, What do you propose in terms of additional information? And again was met with, I'm not sure what

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else we might need.

And so to me, you know, it sounded good. But sort of when you pull it back, it's more of the same. We don't know. And then they ask to meet and confer at the end of the week for them to get more information from the client.

And so in other words, they came to the meet and confer, not having a response or specific counterproposal to the data-point proposal that will the Health Care Providers made in February.

Instead what we got was sort of a general proposal that would essentially be similar to the e-mail protocol and trying to limit our access to people and limit our access to documents. And what that was was a proposal that they put up a witness of their choosing to talk about 10 to 15 claims, and then that would be in lieu of production of all of the at-issue claims.

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And so you can imagine that is not sufficient. I mean, that would be a discovery tool that we would be able to use for sure, but it isn't the sum universe of the discovery tools that the Health Care Providers are allowed to use in litigation like this.

And so, you know, our response to that was that doesn't really sound like something we would be interested in. But if you have another proposal or a proposal that makes sense and that would be adequate to the issues that are at stake with the at-issue claims files, then, of course, we'll be willing to listen.

So we were asked to have another meet and confer on Friday. So I just -- in response to Ms. Llewellyn, I just want to make

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it clear that that meet and confer is a long way away from reaching any sort of amenable compromise, only because there has been no compromise with specific points that have been made by United to the Health Care Providers.

And so again, this is the theme of it sounds good and it looks like they're trying to cooperate, but when you peel it back, it's just more of the same delay, you know. And now what I see is they're trying to convince the Court that we have somehow relieved them or are okay with them not complying with the original at-issue claims order.

And I just want to be clear -- and I've been clear with them -- but I just -- for purposes of the court and the record, that Health Care Providers are not inclined at this point, without something concrete, something specific that will get them information, we're simply just not going to be able to agree to that.

THE COURT: And Mr. Roberts or Ms. Llewellyn?

MS. LLEWELLYN: Your Honor, speaking to the data-point matching, we did indeed ask for an additional four days to get the information that Ms. Gallagher was requesting. It wasn't an attempt to delay. It was simply we had not anticipated those questions at the meet and confer. But we are attempting to work in conjunction with the plaintiffs on a claims matching -- an agreed claims-matching protocol between the parties.

With respect to the contention that we are, again, intentionally attempting to delay, we are not. We simply need to get

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more information about the data points that we were unable to match.

We intend to have a full conversation tomorrow when the meet and confer has been set about the information, the additional data that we would need from plaintiffs to complete the claims matching.

THE COURT: Okay. So Mr. Roberts and Ms. Llewellyn, the conduct of your client is unacceptable to the Court. You guys are -- your client is putting you -- you in a very awkward position, and I've had to say that at almost every hearing.

You have to realize that at some point I'll be asked either to strike your answer or to take a negative inference. They are building that record with every one of these hearings.

All right. Ms. Gallagher, anything on the denial of the Motion to Compel on the clinical records? Or do we move to the next issue?

MS. GALLAGHER: The next issue, Your Honor. Thank you.

So the next issue is the status on the prioritization list for the Motion to Compel that the Court granted in favor of the Health Care Providers.

I will tell you that I think it's important for the Court to look at our Exhibit 1 to our status report because that is us setting out, on October 13th, our priority and dates and then the response from United.

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And so I'd like to just say, overall, the response was really sort of disheartening in the sense that, again, it looks like the opportunity to push this out. Even on things that United represented, it was able to produce within a certain time period now has been extended by virtue of the counterproposal.

And I'll go through a few examples just because I think it's important for the Court to see what's happening. So with respect to market data and reimbursement data, the Court ordered that to be produced at both the Nevada and the national level.

United represented that it could produce a smaller market, Las Vegas market data within a certain time period by October 26th. And so what we saw was a request for us to do something different than accept them at their word.

So they asked us to agree to, in lieu of that market reimbursement data -- in lieu of -- and that was going to be aggregated data -- to wait longer to get claims-by-claims data for more information, to provide more data.

But when you look at the specifics -- and I've called this out on page 3 of our Exhibit 1 -- what they did is they want to inject managed Medicare and Medicaid into the data.

And our complaint made clear we do not have any claims with respect to any managed Medicare or Medicaid -- and that's in paragraph 1, note 1.

And the reason for this is quite obvious to us is that that data will skew the overall data, because our clients have a

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commercial-payer situation. And so they're trying to inject irrelevant, unrelated information into the datasets, sort of sleight of hand, if you will -- not coming to the Court and asking for a ruling on whether or not it's relevant or not. The Court will see that we've objected to that sort of data in response to United.

So it's sort of disheartening to see, hey, it looks like -- we're going to -- we want to provide you more is sort of the messaging. But then when you look at the actual specifics of what they've offered, it's something that is only to their advantage -- how about that? That's probably the best way to say it -- and to the Health Care Providers' disadvantage.

They asked for an additional meet and confer yesterday on that particular point. We discussed -- and there was quite a push by United to have us agree to, in lieu of the aggregate data, to wait for claims by claim. And we just -- we weren't willing to do that. In fact, we think we're deserving of both. We're deserving of the aggregate data that they said they would produce, and we're deserving of the claims by claim at the Nevada and the national level, but without this injected irrelevant information. So that's one of the things that we have a problem with.

Their dates also go, in some instances, into the middle of December. They often ask to do an initial production, with no specifics, and then a rolling production to hit either before -- right before Thanksgiving or -- and/or through the middle of December. Some of these include topics that they said they were prepared to

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produce; some of these include topics that during the meet and confer efforts they said they were already working on.

And this, you know, as Your Honor may recall, our meet and confer efforts go back to June and July. And so now what we're hearing is that they just aren't able to meet the schedule that we would like because of -- due to the press of other business.

And respectfully that doesn't cut it from our perspective. We have a December 31st deadline for fact discovery. We need the information. And the idea that we should be able to be accommodating to them into December based on the history; right? I mean, this isn't sort of the first time we've been here and we're pushing unreasonably.

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We've had to come back to the Court -- I think this is our third or fourth Motion to Compel at this point. And we've seen objections that are just, you know, not within the realm of reasonableness. And so we would like the proposed order of priority and dates; we would like to have the Court enter.

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And I'd be happy to go through additional ones. Like, the other one, if you look at just even at the first one which talks about United's witnesses, I think it gives you a pretty clear view of where they're headed. They don't want to do a supplemental answer to interrogatory asking for witness identification until, let's see, December 15th.

So they don't want to tell us; and then they only want to tell us who they want to tell us. In other words, they're trying to

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manipulate who we get to know. They're saying, We'll put this person forward on this topic.

And we can do that on a 30(b)6, only we get to choose the topic and then they can choose the witness. But from a 16.1 perspective and a 26 perspective, the scope of discovery requires them to produce witnesses who have information, tell us what information they have, and then we get to decide who we're going to talk to and when.

But this effectively puts all of this information weeks and months out, again sort of in the same vein as that e-mail protocol did, which was trying to prevent us from getting information.

So, you know, I would encourage Your Honor to look at Exhibit 1. I think, you know, it's not my words; it's their words. I think it makes it pretty clear where they're headed.

But partial productions, rolling productions, and completion of productions into December just isn't going to work for us. And in some cases, they tried to lodge additional objections to the discovery, which, again, goes against the Court's order in an earlier hearing. They also tried to say that they wouldn't produce anything until we gave them more information.

So these are just additional obstacles. I can tell you we've spent several hours this week already, you know, trying to be open and amenable to reasonable compromises, but we just don't get anywhere. You know, they push on us to ask to move our dates, but yet have no willingness to hurry this process up. Because this is

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unfortunately, you know, a situation that they had created by failing to produce documents. And this is especially troubling because they've indicated that they started collection and review, and we still haven't seen any of those types of documents.

So we would -- you know, I'd be happy to, again, go through each of the categories. But I think I hit on the ones that were probably the most concerning to us. But I think all you have to know is that, you know, it's a -- it's pushing out again into December with a 15-day period of time before the close of fact discovery, trying to set us up, I'm sure, to extend discovery. But we're just not interested in that.

We're interested in moving this case forward on the merits. We would like to get the information about strategy, decision making, how, what we allege to be the scheme works behind the scenes. And that information is unfortunately in United's sole control and we haven't seen it yet.

So we would ask the Court to adopt our protocol and our prioritization list that we set out in our status report. Thank you.

THE COURT: I have one question. I assume the reimbursement rate is lower for Medicare and Medicaid?

MS. GALLAGHER: That would be generally correct, Your Honor, yes.

THE COURT: Thank you.

All right. Then Mr. Roberts or Ms. Llewellyn.

MS. LLEWELLYN: Your Honor, after the last hearing, I just

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want to make clear that we met with our client on numerous occasions. We have both discussed and stressed the importance in complying with this Court's orders and in getting plaintiffs what they have stated that they need in order to fairly try their case.

THE COURT: Ms. Llewellyn, I claim -- I put no blame on any of my words on you, Mr. Roberts, Mr. Balkenbush. I want to make that really clear. I believe it is your client who is conveying the delay issue. I don't place any blame on the lawyers.

MS. LLEWELLYN: I understand. And what I mean to say, Your Honor, is that we are working with our client to do what we can to move this case forward. We are using our best efforts to meet and comply with this Court's orders.

It is just physically impossible to meet certain of the deadlines that plaintiffs are asking for. And just as a -- as one point of clarification, one of the defendants is actually looking into new technology in order to try to expedite production of these documents.

Looking to the schedule that United has proposed, we think it's ambitious. And while Ms. Gallagher is making note of a date that's in December, I mean, some of the dates that we proposed fall within the next couple of weeks. And these dates are the result of numerous discussions with the several defendant entities and various departments within each of those entities.

And these are the dates that United believes in -- in good faith that it can meet for production of these multiple categories of

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documents, keeping in mind that it requires our business people to obtain the documents, to review and verify the information in the documents, and then for counsel to review the documents for production.

And these dates do precede the fact discovery cut off. But we have also made clear to plaintiffs that if we are able to make production sooner than stated in our proposed dates, we are absolutely endeavoring to do so.

Just turning to the two points that Ms. Gallagher made -- one regarding the managed Medicare and Medicaid. That's with respect to the market data.

We spoke with Ms. Gallagher yesterday, and these are simply -- when -- just to go back to the last hearing where we discussed market data. This Court ordered that we -- while we had previously offered to produce aggregated data for just the Clark County or Las Vegas Metropolitan area, this Court said that we need to produce for the state of Nevada.

So we went back and we pulled this claim-by-claim data, or we are in the process of pulling it since that time. And the additional time is needed because of that extension from Las Vegas to the state of Nevada. There isn't any other reason for delay, other than the fact that we are now pulling claim-by-claim data for the entire state.

And we spoke with Ms. Gallagher yesterday about the managed Medicare, Medicaid issue. And we offered to

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Ms. Gallagher to pull that or separately produce that data, if possible.

We also noted that if it's not possible, they can have their expert filter it out. But it's simply a part of the claims data for the state of Nevada.

But again, we are still working to see if we can separately, like, pull that data out from the emergency department data that we are compiling.

With respect to Ms. Gallagher's discussion about a witness that we intend to identify on December 15th. We had previously discussed that this is because that position is currently being filled. It is a vacant position and we expect it to be filled around the end of November. And we had discussed that with Ms. Gallagher.

So that is the reason that it's going to take us, you know, another month and a half or so to get that information.

So I just wanted to make those points clear to the Court, and just to reiterate again that we are using our best efforts and we are not intentionally delaying this process. It is just simply the time that we understand this will all take.

THE COURT: Thank you.

And Ms. Gallagher, the reply, please.

MS. GALLAGHER: Thank you, Your Honor.

With respect to the separately produced Medicare and Medicaid data or filtered, again what you heard is they have an intention to produce irrelevant information. And it's just improper.

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It goes to reduce the reasonable rate because it's not commercial data. It is with respect to those managed care and Medicaid.

So you hear them basically acknowledging they're going to include it regardless. We didn't ask for it. We expressly pled our claims in our certain way, and that data is irrelevant.

If they think it's something other than that, they have an obligation to ask the Court for a ruling and allow us to brief the issue.

United is familiar with the fact that a Florida judge has recently pegged that same data as irrelevant in a commercial payer situation. So it's just improper to try and bring it in through this meet-and-confer process.

If they can expect us to filter it, certainly they have the ability to filter it. I am sure, based on the information in the e-mail from Ms. Fedder, it sounds like this information is on a separate platform. We don't have a lot of information about that yet because United has previously declined to explain to us about claims platforms.

But based on what Ms. Fedder indicated, this Medicaid and Medicare information is separate, which would suggest that they are combining it and purposely trying to inject it. And so I think that's important for the Court. And by doing that what that I doing is trying to get the Court to agree to a longer timeline.

But if they had Las Vegas market data aggregated and are prepared to produce on October 26, as they represented to the Court,

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there's no reason we have to wait for something different and something manipulated and determined by United to be better.

You know, we get to decide what's better. We should get all of the information and then we get to decide what to do with it. But again, it's this manipulation of the time and the extension upon extension.

I also want to point to the witness situation that Ms. Llewellyn mentioned. They did say they expect to supplement their Interrogatory No. 8 answer by December 15th. And that is the request that asked for witness information about certain categories.

You know, this is a 16.1 obligation in some regards, that's also captured within this category that the Court ordered them to supplement and produce.

And so, you know, we're waiting, a really ridiculous amount of time to just get information about who knows about our claims or defenses at United. We're approaching the one-year mark that we served these responses. And you're hearing a lot about the depressive other business and they're doing it as fast as they can.

But you have to remember, they have come to this Court and they have represented to us in meet and confers that they were working on it. In fact, United's opposition to our Motion to Compel indicated that they were almost in disbelief that we brought a motion in the first place because they were on the cusp of producing documents.

We can see now that that perhaps wasn't accurate -- or at

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least United's counsel locally didn't have accurate information from their clients in order to be making these representations.

But here we are. And we think that the press of business and the complaints about it not being fair are simply just, you know, a result of United's tactics and United's strategy in pushing all of this out and making us come to the Court for relief consistently.

Again, we hardly have any substantive -- well, we don't have, I don't think, any e-mails at this point. And the production timelines that start in November, as a proposal by United, don't end in November, necessarily. They're asking to start a production of which we don't know.

In some regards they say that they still are identifying the scope of discovery relating -- or the scope of where information relating to negotiations. Those are documents that Mr. Balkenbush indicated he had in his possession and they were reviewing, and now they're coming back and saying, wait, there might be more, and not even providing an end date for when those might be produced.

And so it's -- you know, I hate to come back to the Court again on this, but this is the state of affairs that we're dealing with. And we need the relief and the order to compel United to be able to have a date certain that is sooner, rather than the later that they have proposed, Your Honor.

THE COURT: On the interrogatories, didn't my prior order compelling include Interrogatory No. 8?

MS. GALLAGHER: Yes, Your Honor. The one from the

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last, yes.

THE COURT: Right. And then the production schedule, did I not compel that?

MS. GALLAGHER: You compelled a certain production schedule based on what United represented. We obviously have an order that we are on the cusp of being able to submit to Your Honor.

There may be a dispute about one of those dates in the order, and Your Honor can take a look at that.

But you had indicated that we were to meet and confer on the priority list and that at today's hearing you would then enter that as an order separately for the rest that United has indicated it wasn't -- didn't indicate in the opposition it was ready to produce.

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THE COURT: Good enough.

All right. Are we ready to go to the next issue?

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MS. GALLAGHER: We are. From our perspective, that concludes the points that we had on today for the status check.

THE COURT: And Ms. Llewellyn, do you agree with that?

MS. LLEWELLYN: Yes, Your Honor.

If I could just speak to the last question that Your Honor asked about the dates that were compelled at the last hearing. I just want to make clear that United is meeting all of those dates that were compelled. And Ms. Gallagher's point was accurate that this Court had to compel further meet and confers on plaintiffs' discovery priorities, and that is the schedule that we have been discussing today.

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THE COURT: All right. So I'm going to grant --

MS. GALLAGHER: Your Honor, if I may.

THE COURT: You may.

MS. GALLAGHER: Excuse me. Thank you for that.

With respect to affirmative defenses, United has proposed an extra several weeks in their proposed response to us, other than what they represented in the opposition. So I just wanted to make that point. But that will be in the order that is presented to the Court.

THE COURT: Okay. All right. So this is kind of a preliminary ruling, and I'm going to give you both a chance to respond.

But the -- I'm inclined to adopt the plaintiff's protocol prioritization approach. With regard to the claims files, I would say that it has to be 2,000 a month at a minimum.

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And that with regard to the clinical matching points, that the defendant has failed to properly meet and confer with regard to the issue.

I understand you're talking again Friday. I will ask for status reports on that Monday, and it will determine what to order based on the status reports.

With regard to the market data, the Medicare and Medicaid will be excluded from the defendant's obligation. I'll adopt the plaintiff's schedules with regard to witnesses and aggregated data.

The response with regard to Interrogatory No. 8, that will

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be due on November 20th. And with regard to the production schedule for the Nevada -- for the defendant in November, I reject that. And I'll set the date as the last day of October.

And with regard -- and is there one more issue with regard to an affidavit?

MS. GALLAGHER: I'm sorry. With respect to an affidavit?

THE COURT: Affidavit? I have that in my notes, but I'm not sure that it needs to be ruled on.

So first the plaintiff and then the defendant, your response to that proposed order from today's hearing.

MS. GALLAGHER: Your Honor, with respect to the aggregated data, my understanding, just to make sure I have my notes right is that by the last day of October the Nevada --

THE COURT: [Indiscernible] of October -- they said October 26th, so I think I'm [indiscernible].

MS. GALLAGHER: [Indiscernible.]

THE COURT: October 26th, rather than the last day of October. And Medicare and Medicaid will be excluded.

MS. GALLAGHER: And then the rest -- the promised claims by claims without -- data without Medicare and Medicaid by November 20th?

THE COURT: That's correct.

MS. GALLAGHER: Thank you, Your Honor.

THE COURT: I'm working from home today because we're courtroom sharing. So let me just put you guys on mute for a

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moment.

Thank you, everyone, for your patience.

And then Ms. Llewellyn or Mr. Roberts, do you wish to respond?

MS. LLEWELLYN: Just another point of clarification, Your Honor.

So the aggregated data that we had previously committed to produce -- and we do still intend to produce -- that's on October 26th, still?

THE COURT: That's correct.

MS. LLEWELLYN: And then you're asking for the claim-by-claim market data by November 20th. And you would like a Medicare and Medicaid data to be excluded from that set?

THE COURT: That's correct.

MS. LLEWELLYN: Should -- just for clarification, if defendants later want to admit that -- that data for either affirmative defenses or otherwise, would you want us to file a motion on that?

THE COURT: Well, I think when we get to the pretrial motion stage, there will probably be a *motion in limine* to exclude it. It will be fully briefed and we'll deal with it then.

MS. LLEWELLYN: Okay. So I -- we are permitted to produce it separately and then --

THE COURT: I'm not telling you how to run your case.

MS. LLEWELLYN: [Indiscernible.] Okay.

THE COURT: And I'm not making decisions now as to

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what is admissible. But I'm trying to narrow the discovery issues. Actually, it was my hope to benefit your client, given their claim of hardship.

MS. LLEWELLYN: Okay. I understand. I just wanted to -- I understood that you were asking it be excluded from the production. I just wanted to be clear on that.

And then as to the remainder of the proposed schedule, did you address a date for that already?

THE COURT: I thought I ruled on everything except for the last issue on the matching data points.

You guys can give me a status report by Monday. Include in the order -- I will rule on one or the other, and that should be included in this order. But I will task Ms. Gallagher with preparing the order and requiring that the two of you review and approve the form or not.

I will not accept any competing orders in this case. It happened once again. I make that clear every time. And it --

I understand that you're trying to make your record. But I will -- I will reject any competing order that is submitted when I direct one party to prepare the order.

MS. GALLAGHER: And I -- if I could, Your Honor, I understood you to say that you are preliminarily ruling that you've adopted the Health Care Providers protocol and dates subject to the issues that you called out separately? Is that an accurate understanding?

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THE COURT: That's correct.

MS. GALLAGHER: Thank you, Your Honor.

THE COURT: And Ms. Llewellyn, did you want to weigh in on that?

MS. LLEWELLYN: I just wanted to, again, note that these -- the dates that we had proposed were an honest attempt at a good faith schedule for the production of these documents.

We will confer with our client. But my understanding is that it was simply physically impossible to gather the thousands of documents that would be included in --

THE COURT: I understand. And I've heard the same argument from the defendant since March. It's been seven months now.

So all right. So Ms. Gallagher to prepare the order.

And, Mr. Roberts, I'll give you a chance as soon as I go through this.

Ms. Gallagher to prepare the order from today. Leave open a blank with regard to the matching data points. Give me status reports Monday.

I'll indicate to you guys by minute order what should be included in a final order. And no competing orders. If you have objections, that's fine.

Then, Mr. Roberts, you wished to say something?

MR. ROBERTS: I did, Your Honor.

And I just wanted to express a little bit more about what

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Ms. Llewellyn said is we did get the message loud and clear from the Court at the last hearing. We pressed our client to do calculations as to how long it took to pull documents, what staff they could put on it. And we came up with the most aggressive schedule that we thought was possible.

And the shortened deadlines may make it impossible for the client to meet those. If that happens, it won't be willful. But we have challenges because they are multiple databases across multiple companies. We cannot put third-party vendors into our systems with full access to all personal health information.

United, like other companies, is dealing with short staffing due to COVID. And it -- while we understand that these dates that we've proposed are beyond those that the Court would like to order, at the same time, we're not having any trials.

A trial, given the age of this case compared to the backlog of four- and five-year-old cases and preferential cases, it's just not likely that even if the Court forces discovery by December 15th, that we're going to be able to try the case. It's going to be hurry up and wait. And there's no prejudice.

And we are proposing to produce these documents. And December 15th is not that far away. And all of the deadlines, with the exception of the claims, which the Court has ordered at 2,000 a month, we're proposing to produce within the current discovery period.

And I just wanted to just tell the Court that we are pressing

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our client to do this as fast as they can with the resources that they can devote to it.

THE COURT: Thank you, Mr. Roberts.

Is there anything else to --

MS. GALLAGHER: Your Honor --

THE COURT: Yes.

MS. GALLAGHER: -- if I may just respond to, you know, Mr. Roberts has -- obviously his presentation and Ms. Llewellyn's is compelling if you were to look at it in a bubble.

Unfortunately, United's strategy has been just this. And we are facing the results of what they put in place from the get-go, which is to delay and to try and avoid at any costs your December 31st fact discovery deadline.

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And so, you know, the unfairness part of it is really on the Health Care Providers. We're the ones that have been affected by the reduction in reimbursement rates without underlying authority or legality.

And so it's just important for me to put that on the record as well, that there is prejudice. Putting this information -- you know, discovery sometimes produces people to relook at their claims and discover that maybe they -- their position isn't as good or is better than they thought.

So these are tools that shouldn't be put on hold because of COVID. And so I just -- I have to push back against this constant mantra that they're doing their best, because they haven't been.

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And we have had to see that through time and time again these meet and confers.

And I just -- you know, I understand counsel's position in terms of their representation of a client who isn't willing to participate. But it simply just can't go on, and it can't be used as an excuse now to say, oh, it's okay, we'll start over.

And so I appreciate Your Honor's order preliminarily indicating that our protocol and our priority list is the one that will be entered.

Thank you.

THE COURT: And I assume when you say they, you exclude the lawyers?

MS. GALLAGHER: I did, Your Honor. I tried to make that clear. You know, there is a certain point -- I'm not saying we're here -- but just generally speaking, there is a point where attorneys do have an obligation, you know, to represent within the confines of all of the cannons an ethical code. So I will just say that.

But I have been in a similar position. I can appreciate being an attorney with a client that you can only do what you can do. But it doesn't relieve the fact of where we're at, and it doesn't relieve them of discovery obligations or informing their client what their obligations are before this Court.

So that's -- I just wanted to make that clear, Your Honor. Thank you.

THE COURT: Good enough.

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I need to get this on a status to get you the order.

Nicole, please set it out two weeks, Nicole McDevitt on chambers, to make sure I get your order entered.

THE CLERK: Yes, Judge. That will be November 3rd in chambers.

THE COURT: Can you make it November -- let's make it November -- you're right. November 3rd.

All right, you guys. The reason for the delay is that I'm supposed to go to the American College of Business Court Judges next week in Savannah, if I can get up the nerve to get on an airplane.

So I'm sorry for the delay. It's purely my issue. But hopefully November 3rd won't disadvantage either side.

All right, you guys. Until I see you next, stay safe and stay healthy.

MS. GALLAGHER: Thank you. And you too, Your Honor. Thank you.

MR. ROBERTS: [Indiscernible] appreciate it.

MS. LLEWELLYN: Thank you.

(11:03 AM).

[Proceeding concluded at 11:03 a.m.]

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

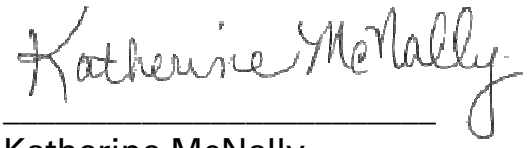

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EXHIBIT 2

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

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

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

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

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

~~1. The Court finds that United's discovery conduct in this action is unacceptable to the Court.~~

~~2.~~1. The Court finds that United has failed to properly meet and confer with regard to the Court's directive to meet and confer on a claims data matching protocol in connection with the Court's September 28, 2020 Order Granting, in part, the Health Care Providers' Motion to Compel United's Production of Claims File for At-Issue Claims, or in the Alternative, Motion in Limine ("September 28 Order").

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

~~4.~~3. United shall exclude managed Medicare and Medicaid reimbursement ~~rates from its production of market and reimbursement rates because the rates are lower than~~

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

~~5.~~4. The Court adopts the production and supplement schedule provided for in the Health Care Providers' Status Report submitted in connection with the October 22, 2020 Status Check except that by October 31, 2020 United shall produce aggregate market reimbursement data for the Nevada market and by November 20, 2020 (a) United shall produce ~~(i) Nevada aggregate market and reimbursement data and (ii)~~ Nevada~~ and national level~~ claim~~s~~-by-claim~~s~~ market and reimbursement data; and (b) United shall supplement Interrogatory No. 8.

Accordingly, good cause appearing, therefor,

ORDER

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

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

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

1. **October 22, 2020**:

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

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

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~~(c) Market and reimbursement data related to out-of-network (Interrogatory Nos. 12; RFP Nos. 14, 19, 20, 22, 23, 24, 33, 34, 35, 38,1 43) and in-network (RFP Nos. 25, 26, 29, 30) reimbursement rates and related documents and analyses;~~

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

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

2. October 26, 2020:

(a) Aggregated market and reimbursement level data related to out-of-network (Interrogatory Nos. 12; RFP Nos. 14, 19, 20, 22, 23, 24, 33, 34, 35, 38,1 43) and in-network (RFP Nos. 25, 26, 29, 30) reimbursement rates for the ~~Nevada market~~Las Vegas metropolitan area. Each provider may be de-identified for purposes of listing the reimbursement levels for each provider. This aggregated market data shall exclude managed Medicare and Medicaid data ~~because it is irrelevant and unrelated to~~as this data is not being sought by the Health Care Providers~~' claims~~.

3. October 30, 2020:

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

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

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

4. November 6, 2020:

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

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

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

5. **November 20, 2020**:

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

(b) Claim~~s~~-by-claim~~s~~ market and reimbursement level data related to out-of-network and in-network reimbursement rates ~~at the~~in Nevada.~~ and national level; and aggregated market and reimbursement level data related to out-of-network and in-network reimbursement rates at the national level.~~ Both claim~~s~~-by-claim~~s~~ and aggregated market data shall exclude managed Medicare and Medicaid data.

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

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

IT IS SO ORDERED.

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

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BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE

WEDNESDAY, NOVEMBER 4, 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

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LAS VEGAS, NEVADA, WEDNESDAY, NOVEMBER 4, 2020

[Proceeding commenced at 11:34 a.m.]

THE COURT: Let's have appearances and just from counsel who intend to speak and how long you think the matter will take.

MS. GALLAGHER: Hi. Good morning, Your Honor. Kristen Gallagher on behalf of the plaintiffs. I imagine 15 to 25 minutes.

THE COURT: Thank you.

And I see Mr. Balkenbush there or Mr. Roberts.

MR. BALKENBUSH: Good morning, Your Honor. I'll be arguing for the defendants in that matter. I agree with Ms. Gallagher's estimate of 15 to 25 minutes.

THE COURT: Thank you. And then everyone with --

MR. ROBERTS: And good morning, Your Honor. Lee Roberts is also here. Thank you.

THE COURT: Good morning.

MR. ROBERTS: Good morning.

THE COURT: Thanks.

[Recess taken from 11:05 a.m., until 11:06 a.m.]

THE COURT: Appearances -- I need new appearances for the record.

MS. GALLAGHER: Good morning, Your Honor. Kristen Gallagher on behalf of plaintiffs. Are you hearing noise in the back?

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THE COURT: I am.

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

THE COURT: Thank you. And then we have Mr. Balkenbush.

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

THE COURT: And Mr. Roberts.

MR. ROBERTS: Good morning. Good morning, Your Honor. Lee Roberts also for the defendants.

THE COURT: Thank you both. I'm going to need -- I'm getting a lot of feedback on my end, and I'm sorry for that. I know that we have the motion for leave to file redacted. Let's take that up real quick.

MS. GALLAGHER: Your Honor, this is Kristen Gallagher. And the motion for redaction --

THE CLERK: Ms. Gallagher, I'm getting you echoed. I'm going to need -- I'm not picking up anything because everything is echoing.

MS. GALLAGHER: Well, I'm not sure what's happening. Here, let me try --

THE CLERK: Do you -- do you have volume on your -- are you on your phone and a computer?

MS. GALLAGHER: Phone only, but let me see. How is that? Is that better?

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THE CLERK: Yes, that's better. Thank you.

MS. GALLAGHER: Okay. Great. Thank you.

Okay. So the -- Your Honor, the motion for redaction was filed by the plaintiffs, pursuant to a stipulated protective order because there had been some materials marked by United as attorney's eyes only. So we basically just filed the obligation under that protective order.

So we did not have any particular position on that. We -- in fact, I believe we have challenged that designation, but that is a matter for another day. I don't believe United filed an opposition. So to the extent that it should remain under seal until anything changes, I don't have any objection to that, Your Honor.

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THE COURT: Okay.

And Mr. Balkenbush and Mr. Roberts.

MR. BALKENBUSH: Good morning, Your Honor. United does not oppose the motion. As Ms. Gallagher noted, we didn't file an opposition, so we're amenable with keeping the redactions in place, since they were marked attorney's eyes only.

THE COURT: Very good. So if there's no reason for a reply, the motion can be granted.

Now, we have a status check on the Motion to Compel. And I did hear yesterday from the law clerk that you guys wanted to put objections to the order on the record. Is that correct, that the defendants --

MS. GALLAGHER: Not -- right. Not with respect to the

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plaintiffs, Your Honor. And I believe that United did file their objections. So if you would like to start with them, we'll do that, and then I'll respond appropriately, Your Honor.

THE COURT: Thank you.

And whoever is the spokesperson on the issue. I know you filed something, but we're here today. I'll give you some time to put something on the record.

MR. BALKENBUSH: Thank you, Your Honor. I will address that for the defendants. I appreciate that.

So we filed our written objections to their order. There were three main issues that we raised.

The first was with the deadlines that they inserted for United to produce market data. Our understanding of what transpired at the October 8th hearing and also the October 22nd status check was that the Court essentially set recent written deadlines for United to produce market data.

The first was the deadline that United committed to in its opposition to plaintiff's Motion to Compel, and that's where we committed to produce aggregate market data for the Las Vegas market by October 26, 2020. And the Court said that United should be held to that deadline.

In plaintiff's order there's some language that seems to indicate that the deadline for that is October 22nd. We produced on October 26, which is what we understood to be the deadline. And so we were just concerned and wanted to make sure that that date was

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accurate so that there couldn't be any accusation that United did not produce the data in a timely manner.

The two other dates that were at issue -- we understood from the hearing that for the rest of the aggregate market data for the rest of the Nevada, that is everything outside of Clark County, we understood that date to be October 31st. The last day of October was referenced in the hearing transcript. That's when we produced -- actually, we produced on October 30th, Your Honor. But we produced on that date, plaintiffs put a different earlier date in their order.

So we were requesting that the Court order October 30th and not find that we had not submitted that in a timely manner.

And then finally I believe there was agreement on the last date, November 20th, for United to submit the claim-by-claim data for all of Nevada. I think both sides agreed on that.

But that is how we saw what transpired at the hearing. There was three dates: October 26th, October 31st, and November 20th. We've been complying with those. We're going to meet the November 20th date as well. But we were just concerned when we saw that in their proposed order. We didn't want there to be to be any argument that we had not complied with the Court's findings.

The second issue was they put in their order a requirement that United produce national market data. And that is not just market data related to payments by United to providers in

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