

Case Nos. 85525 & 85656

**In the Supreme Court of Nevada**

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

Appellants,

*vs.*

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

Respondents.

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Case No. 85525

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

Petitioners,

*vs.*

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

Respondents,

*vs.*

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

Real Parties in Interest.

Case No. 85656

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469	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 2) (Filed Under Seal)	10/07/22	130 131	32,208–32,393 32,394–32,476
470	Appendix B to Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits (Volume 3) (Filed Under Seal)	10/07/22	131 132	32,477–32,643 32,644–32,751
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280	Appendix in Support of Plaintiffs' Opposition to Defendants' Motion to Apply Statutory Cap on Punitive Damages and Plaintiffs' Cross Motion for Entry of Judgment	01/20/22	52	12,791–12,968
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296	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 2	03/14/22	54 55	13,465–13,500 13,501–13,719
297	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 3	03/14/22	55 56	13,720–13,750 13,751–13,976
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36	Defendants' Reply in Support of Motion to Dismiss Plaintiffs' First Amended Complaint	06/03/20	6	1310–1339
325	Defendants' Reply in Support of Motion to Retax Costs	05/04/22	69	17,122–17,150
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225	Defendants’ Response to TeamHealth Plaintiffs’ Trial Brief Regarding Defendants’ Prompt Pay Act Jury Instruction Re: Failure to Exhaust Administrative Remedies	11/16/21	40	9799–9806
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176	Notice of Entry of Order Denying Defendants' Motion in Limine No. 5 Regarding Argument or Evidence that Amounts TeamHealth Plaintiffs Billed for Services are Reasonable [An Alternative Motion to Motion in Limine No. 6]	11/01/21	29	7100–7111
177	Notice of Entry of Order Denying Defendants' Motion in Limine No. 7 to Authorize Defendants to Offer Evidence of the Costs of the Services that Plaintiffs Provided	11/01/21	29	7112–7123
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181	Notice of Entry of Order Denying Defendants' Motion in Limine No. 13 Motion to Authorize Defendants to Offer Evidence Relating to Plaintiffs' Collection Practices for Healthcare Claims	11/01/21	29	7160–7171
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185	Notice of Entry of Order Denying Defendants' Motion in Limine No. 20 to Exclude Defendants' Lobbying Efforts	11/01/21	29	7208–7219
186	Notice of Entry of Order Denying Defendants' Motion in Limine No. 24 to Preclude Plaintiffs from Referring to Themselves as Healthcare Professionals	11/01/21	29	7220–7231
187	Notice of Entry of Order Denying Defendants' Motion in Limine No. 27 to Preclude Evidence of Complaints Regarding Defendants' Out-Of-Network Rates or Payments	11/01/21	29	7232–7243
188	Notice of Entry of Order Denying Defendants' Motion in Limine No. 29 to Preclude Evidence Only Relating to Defendants' Evaluation and Development of a Company that Would Offer a Service Similar to Multiplan and Data iSight	11/01/21	29 30	7244–7250 7251–7255
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293	Notice of Entry of Order Denying Defendants' Motion to Apply Statutory Cap on Punitive Damages	03/09/22	53	13,179–13,197
62	Notice of Entry of Order Denying Defendants' Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiff to Supplement Their NRCP 16.1 Initial Disclosures on Order Shortening Time	10/27/20	11	2671–2683
78	Notice of Entry of Order Denying Defendants' Motion to Compel Responses to Defendants' First and Second Requests for Production on Order Shortening Time	02/04/21	15	3703–3713
193	Notice of Entry of Order Denying Defendants' Motion to Strike Supplement Report of David Leathers	11/01/21	30	7355–7366
353	Notice of Entry of Order Denying Defendants' Renewed Motion for Judgment as a Matter of Law	10/12/22	73	18,087–18,114
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203	Notice of Entry of Order Granting Defendants' Motion in Limine No. 25	11/04/21	33	8104–8115
204	Notice of Entry of Order Granting Defendants' Motion in Limine No. 37	11/04/21	33	8116–8127
205	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion in Limine No. 9	11/04/21	33	8128–8140
206	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion in Limine No. 21	11/04/21	33	8141–8153
207	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion in Limine No. 22	11/04/21	33	8154–8165
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358	Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion to Seal Certain Confidential Trial Exhibits	10/18/22	75 76	18,609–18,750 18,751–18,755
215	Notice of Entry of Order Granting in Part and Denying in Part Plaintiffs' Motion in Limine to Exclude Evidence Subject to the	11/12/21	37	9162–9173



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192	Notice of Entry of Order Granting Plaintiffs' Motion in Limine to Exclude Evidence, Testimony And-Or Argument Regarding the Fact that Plaintiff have Dismissed Certain Claims	11/01/21	30	7292–7354
63	Notice of Entry of Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	10/27/20	11	2684–2695
335	Notice of Entry of Order Granting Plaintiffs' Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time	06/29/22	71	17,594–17,609
281	Notice of Entry of Order Granting Plaintiffs' Proposed Schedule for Submission of Final Redactions	01/31/22	52	12,969–12,979
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102	Notice of Entry of Order of Report and Recommendation #6 Regarding Defendants' Motion to Compel Further Testimony from Deponents Instructed Not to Answer Question	05/26/21	17	4157–4165
22	Notice of Entry of Order Re: Remand	02/27/20	3	543–552
142	Notice of Entry of Order Regarding Defendants' Objection to Special Master's Report and Recommendation No. 11 Regarding Defendants' Motion to Compel Plaintiffs' Production of Documents about which Plaintiffs' Witnesses Testified on Order Shortening Time	09/29/21	21	5104–5114
66	Notice of Entry of Order Setting Defendants' Production & Response Schedule Re: Order Granting Plaintiffs' Motion to Compel Defendants' List of Witnesses, Production of Documents and Answers to Interrogatories on Order Shortening Time	11/09/20	12	2775–2785
285	Notice of Entry of Order Shortening Time for Hearing Re: Plaintiffs' Motion to Unlock Certain Admitted Trial Exhibits	02/14/22	53	13,029–13,046
354	Notice of Entry of Order Unsealing Trial Transcripts and Restoring Public Access to Docket	10/12/22	73	18,115–18,125
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120	Notice of Entry of Report and Recommendation #11 Regarding Defendants' Motion to Compel Plaintiffs' Production of Documents About Which Plaintiffs'	08/11/21	18	4487–4497

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95	Notice of Entry of Report and Recommendation #3 Regarding Defendants' Motion to Compel Responses to Defendants' Second Set of Requests for Production on Order Shortening Time	04/15/21	17	4080–4091
104	Notice of Entry of Report and Recommendation #7 Regarding Defendants' Motion to Compel Plaintiffs' Responses to Defendants' Amended Third Set of Requests for Production of Documents	06/03/21	17	4173–4184
41	Notice of Entry of Stipulated Confidentiality and Protective Order	06/24/20	7	1517–1540
69	Notice of Entry of Stipulated Electronically Stored Information Protocol Order	01/08/21	12	2860–2874
289	Notice of Entry of Stipulation and Order Regarding Certain Admitted Trial Exhibits	02/17/22	53	13,074–13,097
360	Notice of Entry of Stipulation and Order Regarding Expiration of Temporary Stay for Sealed Redacted Transcripts	10/25/22	76	18,759–18,769
282	Notice of Entry of Stipulation and Order Regarding Schedule for Submission of Redactions	02/08/22	52	12,980–12,996
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24	Notice of Intent to Take Default as to: (1) Defendant UnitedHealth Group, Inc. on All Claims; and (2) All Defendants on the First Amended Complaint's Eighth Claim for Relief	03/13/20	3 4	699–750 751
324	Notice of Posting <i>Supersedeas</i> Bond	04/29/22	69	17,114–17,121
10	Notice of Removal to Federal Court	05/14/19	1	42–100
333	Notice of Supplemental Attorneys Fees Incurred After Submission of Health Care Providers' Motion for Attorneys Fees	06/24/22	70 71	17,470–17,500 17,501–17,578
291	Objection to Plaintiffs' Proposed Judgment and Order Denying Motion to Apply Statutory Cap on Punitive Damages	03/04/22	53	13,161–13,167
345	Objection to Plaintiffs' Proposed Orders Denying Renewed Motion for Judgment as a Matter of Law and Motion for New Trial	09/13/22	72	17,941–17,950
377	Objection to R&R #11 Regarding United's (Filed Under Seal) Motion to Compel Documents About Which Plaintiffs' Witnesses Testified (Filed Under Seal)	08/25/21	84 85	20,864–20,893 20,894–20,898
320	Opposition to Defendants' Motion to Retax Costs	04/13/22	68	16,856–16,864
153	Opposition to Plaintiffs' Motion in Limine to Exclude Evidence, Testimony and/or Argument Regarding the Fact that Plaintiffs have Dismissed Certain Claims and Parties on Order Shortening Time	10/12/21	22	5301–5308

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

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

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

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



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366	Plaintiffs' Response to Defendants Objection to the Special Master's Report and Recommendation No. 2 Regarding Plaintiffs' Objection to Notice of Intent to Issue Subpoena Duces Tecum to TeamHealth Holdings, Inc. and Collect Rx, Inc. Without Deposition and Motion for Protective Order (Filed Under Seal)	04/19/21	78 79	19,389–19,393 19,394–19,532
195	Plaintiffs' Response to Defendants' Objection to Media Requests	11/01/21	30	7393–7403
371	Plaintiffs' Response to Defendants' Objection to Report and Recommendation #6 Regarding Defendants' Motion to Compel Further Testimony from Deponents Instructed Not to Answer Questions (Filed Under Seal)	06/16/21	82	20,212–20,265
376	Plaintiffs' Response to Defendants' Objection to Special Master Report and Recommendation No. 9 Regarding Defendants' Renewed Motion to Compel Further Testimony from Deponents Instructed not to Answer Questions (Filed Under Seal)	07/22/21	84	20,751–20,863
110	Plaintiffs' Response to Defendants' Objection to Special Master's Report and Recommendation #7 Regarding Defendants' Motion to Compel Responses to Amended	06/24/21	18	4281–4312

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426	Plaintiffs' Response to Defendants' Trial Brief Regarding Evidence and Argument Relating to Out-of-State Harms to Non-Parties (Filed Under Seal)	11/08/21	109	26,965–26,997
246	Plaintiffs' Second Supplemental Jury Instructions (Contested)	11/20/21	46	11,255–11,261
261	Plaintiffs' Supplement to Proposed Second Phase Jury Instructions	12/06/21	49	12,072–12,077
236	Plaintiffs' Supplemental Jury Instruction (Contested)	11/17/21	42	10,308–10,313
248	Plaintiffs' Third Supplemental Jury Instructions (Contested)	11/21/21	46	11,267–11,272
216	Plaintiffs' Trial Brief Regarding Defendants' Prompt Payment Act Jury Instruction Re: Failure to Exhaust Administrative Remedies	11/12/21	37	9174–9184
223	Plaintiffs' Trial Brief Regarding Punitive Damages for Unjust Enrichment Claim	11/15/21	39	9514–9521
218	Plaintiffs' Trial Brief Regarding Specific Price Term	11/14/21	38	9417–9425
428	Preliminary Motion to Seal Attorneys' Eyes Documents Used at Trial (Filed Under Seal)	11/11/21	109	27,004–27,055
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31	Recorder's Transcript of Hearing All Pending Motions	05/15/20	5	1022–1026
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90	Recorder's Transcript of Hearing All Pending Motions	03/25/21	16	3967–3970
96	Recorder's Transcript of Hearing All Pending Motions	04/21/21	17	4092–4095
82	Recorder's Transcript of Hearing Defendants' Motion to Extend All Case Management Deadlines and Continue Trial Setting on Order Shortening Time (Second Request)	03/03/21	16	3824–3832
101	Recorder's Transcript of Hearing Motion for Leave to File Opposition to Defendants' Motion to Compel Responses to Second Set of Requests for Production on Order Shortening Time in Redacted and Partially Sealed Form	05/12/21	17	4155–4156
107	Recorder's Transcript of Hearing Motion for Leave to File Plaintiffs' Response to Defendants' Objection to the Special Master's Report and Recommendation No. 3 Regarding Defendants' Second Set of Request for Production on Order Shortening Time in Redacted and Partially Sealed Form	06/09/21	17	4224–4226
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213	Recorder's Transcript of Jury Trial – Day 10	11/10/21	36 37	8933–9000 9001–9152
217	Recorder's Transcript of Jury Trial – Day 11	11/12/21	37 38	9185–9250 9251–9416
224	Recorder's Transcript of Jury Trial – Day 12	11/15/21	39 40	9522–9750 9751–9798
228	Recorder's Transcript of Jury Trial – Day 13	11/16/21	40 41	9820–10,000 10,001–10,115
237	Recorder's Transcript of Jury Trial – Day 14	11/17/21	42 43	10,314–10,500 10,501–10,617
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93	Recorder's Transcript of Proceedings Re: Motions	04/09/21	16 17	3987–4000 4001–4058
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67	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	12/23/20	12	2786–2838
68	Recorder's Transcript of Proceedings Re: Motions (via Blue Jeans)	12/30/20	12	2839–2859
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123	Recorder's Transcript of Proceedings Re: Motions Hearing	09/02/21	19	4610–4633
121	Recorder's Transcript of Proceedings Re: Motions Hearing (Unsealed Portion Only)	08/17/21	18 19	4498–4500 4501–4527
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124	Reply Brief on “Motion for Order to Show	09/08/21	19	4634–4666

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57	Reply in Support of Defendants’ Motion to Compel Production of Clinical Documents for the At-Issue Claims and Defenses and to Compel Plaintiff to Supplement Their NRCP 16.1 Initial Disclosures	10/07/20	10	2337–2362
331	Reply in Support of Defendants’ Renewed Motion for Judgment as a Matter of Law	06/22/22	70	17,386–17,411
332	Reply in Support of Motion for New Trial	06/22/22	70	17,412–17,469
87	Reply in Support of Motion for Reconsideration of Order Denying Defendants’ Motion to Compel Plaintiffs Responses to Defendants’ First and Second Requests for Production	03/16/21	16	3895–3909
344	Reply in Support of Supplemental Attorney’s Fees Request	08/22/22	72	17,935–17,940
229	Reply in Support of Trial Brief Regarding Evidence and Argument Relating to Out-Of-State Harms to Non-Parties	11/16/21	41	10,116–10,152
318	Reply on “Defendants’ Rule 62(b) Motion for Stay Pending Resolution of Post-Trial Motions” ( <i>on Order Shortening Time</i> )	04/07/22	68	16,832–16,836
245	Response to Plaintiffs’ Trial Brief Regarding Punitive Damages for Unjust Enrichment Claim	11/19/21	45 46	11,242–11,250 11,251–11,254

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148	Second Amended Complaint	10/07/21	21 22	5246–5250 5251–5264
458	Second Supplemental Appendix of Exhibits to Motion to Seal Certain Confidential Trial Exhibits (Filed Under Seal)	01/05/22	126 127	31,309–31,393 31,394–31,500
231	Special Verdict Form	11/16/21	41	10,169–10,197
257	Special Verdict Form	11/29/21	49	12,035–12,046
265	Special Verdict Form	12/07/21	49	12,150–12,152
6	Summons – Health Plan of Nevada, Inc.	04/30/19	1	29–31
9	Summons – Oxford Health Plans, Inc.	05/06/19	1	38–41
8	Summons – Sierra Health and Life Insurance Company, Inc.	04/30/19	1	35–37
7	Summons – Sierra Health-Care Options, Inc.	04/30/19	1	32–34
3	Summons - UMR, Inc. dba United Medical Resources	04/25/19	1	20–22
4	Summons – United Health Care Services Inc. dba UnitedHealthcare	04/25/19	1	23–25
5	Summons – United Healthcare Insurance Company	04/25/19	1	26–28
433	Supplement to Defendants' Motion to Seal Certain Confidential Trial Exhibits (Filed	12/08/21	110 111	27,383–27,393 27,394–27,400



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

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

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467	Transcript of Proceedings re Status Check (Filed Under Seal)	10/06/22	129	31,944–31,953
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160	Transcript of Proceedings Re: Motions	10/22/21	24 25	5908–6000 6001–6115
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460	Transcript of Proceedings Re: Motions (Filed Under Seal)	01/20/22	127 128	31,597–31,643 31,644–31,650
461	Transcript of Proceedings Re: Motions (Filed Under Seal)	01/27/22	128	31,651–31,661
146	Transcript of Proceedings Re: Motions (Via Blue Jeans)	10/06/21	21	5202–5234
290	Transcript of Proceedings Re: Motions Hearing	02/17/22	53	13,098–13,160
319	Transcript of Proceedings Re: Motions Hearing	04/07/22	68	16,837–16,855
323	Transcript of Proceedings Re: Motions Hearing	04/21/22	69	17,102–17,113
336	Transcript of Proceedings Re: Motions Hearing	06/29/22	71	17,610–17,681
463	Transcript of Proceedings Re: Motions Hearing (Filed Under Seal)	02/10/22	128	31,673–31,793

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

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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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1 185. Defendants and Data iSight expected that those unreasonable payments would be  
2 accepted in full satisfaction of the Health Care Providers' claims.

3 186. Defendants and Data iSight have received, and continue to receive, financial gains  
4 from their scheme to defraud the Health Care Providers.

5 187. For the services that the Health Care Providers provided to Defendants' Members  
6 in 2019, only 13% of the non-participating claims have, to date, been reimbursed at reasonable  
7 rates, resulting in millions of dollars in financial loss to the Health Care Providers.

8 188. The purpose of, and the direct and proximate result of the above-alleged  
9 Enterprise and scheme was, and continues to be, to unlawfully reimburse the Health Care  
10 Providers at unreasonable rates, to the harm of the Health Care Providers, and to the benefit of  
11 the Enterprise.

#### 12 **FIRST CLAIM FOR RELIEF**

##### 13 **(Breach of Implied-in-Fact Contract)**

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

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

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

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

24 193. From July 1, 2017 to the present, Fremont has undertaken to provide emergency  
25 medicine services to UH Parties' Patients, and the UH Parties have undertaken to pay for such  
26 services provided to UH Parties' Patients. And from prior to May 2015 to the present, Team  
27 Physicians and Ruby Crest have undertaken to provide emergency medicine services to UH  
28



1 Parties' Patients, and the UH Parties have undertaken to pay for such services provided to UH  
2 Parties' Patients.

3 194. From approximately March 1, 2019 to the present Fremont has undertaken to  
4 provide emergency medicine services to the Sierra Affiliates' and HPN's Patients, and Sierra  
5 Affiliates and HPN have undertaken to pay for such services provided to their Patients. And  
6 from prior to May 2015 to the present, Team Physicians and Ruby Crest have undertaken to  
7 provide emergency medicine services to Sierra Affiliates' and HPN's Patients, and Sierra  
8 Affiliates and HPN have undertaken to pay for such services provided to their Patients.

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

12 196. At all material times, Defendants have received the Health Care Providers' bills  
13 for the emergency medicine services the Health Care Providers have provided and continue to  
14 provide to Defendants' Patients, and Defendants have consistently adjudicated and paid, and  
15 continue to adjudicate and pay, the Health Care Providers directly for the non-participating  
16 claims, albeit at amounts less than usual and customary.

17 197. Through the parties' conduct and respective undertaking of obligations  
18 concerning emergency medicine services provided by the Health Care Providers to Defendants'  
19 Patients, the parties implicitly agreed, and the Health Care Providers had a reasonable  
20 expectation and understanding, that Defendants would reimburse the Health Care Providers for  
21 non-participating claims at rates in accordance with the standards acceptable under Nevada law  
22 and in accordance with rates Defendants pay for other substantially identical claims also  
23 submitted by the Health Care Providers.

24 198. Under Nevada common law, including the doctrine of quantum meruit, the  
25 Defendants, by undertaking responsibility for payment to the Health Care Providers for the  
26 services rendered to Defendants' Patients, impliedly agreed to reimburse the Health Care  
27 Providers at rates, at a minimum, equivalent to the reasonable value of the professional  
28 emergency medical services provided by the Health Care Providers.

1           199. Defendants, by undertaking responsibility for payment to the Health Care  
2 Providers for the services rendered to the Defendants' Patients, impliedly agreed to reimburse  
3 the Health Care Providers at rates, at a minimum, equivalent to the usual and customary rate or  
4 alternatively for the reasonable value of the professional emergency medical services provided  
5 by the Health Care Providers.

6           200. In breach of its implied contract with the Health Care Providers, Defendants have  
7 and continue to unreasonably and systemically adjudicate the non-participating claims at rates  
8 substantially below both the usual and customary fees in the geographic area and the reasonable  
9 value of the professional emergency medical services provided by the Health Care Providers to  
10 the Defendants' Patients.

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

14           202. At all material times, all conditions precedent have occurred that were necessary  
15 for Defendants to perform their obligations under their implied contract to pay the Health Care  
16 Providers for the non-participating claims, at a minimum, based upon the "usual and customary  
17 fees in that locality" or the reasonable value of the Health Care Providers' professional  
18 emergency medicine services

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

22           204. The Health Care Providers have suffered damages in an amount equal to the  
23 difference between the amounts paid by Defendants and the usual and customary fees  
24 professional emergency medicine services in the same locality, that remain unpaid by  
25 Defendants through the date of trial, plus the Health Care Providers' loss of use of that money;  
26 or in an amount equal to the difference between the amounts paid by Defendants and the  
27 reasonable value of their professional emergency medicine services, that remain unpaid by the  
28 Defendants through the date of trial, plus the Health Care Providers' loss of use of that money.



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

**(Alternative Claim for Unjust Enrichment)**

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

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

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

Page 36 of 47

1 emergency medicine services that the Health Care Providers will continue to provide to  
2 Defendants' Members.

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

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

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

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

#### 18 **FOURTH CLAIM FOR RELIEF**

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

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

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

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

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

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

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

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

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

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

#### 17 **FIFTH CLAIM FOR RELIEF**

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

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

21 236. The Nevada Insurance Code requires an HMO, MCO or other health insurer to  
22 pay a healthcare provider's claim within 30 days of receipt of a claim. NRS 683A.0879 (third  
23 party administrator), NRS 689A.410 (Individual Health Insurance), NRS 689B.255 (Group and  
24 Blanket Health Insurance), NRS 689C.485 (Health Insurance for Small Employers), NRS  
25 695C.185 (HMO), NAC 686A.675 (all insurers) (collectively, the "NV Prompt Pay Laws").  
26 Thus, for all submitted claims, Defendants were obligated to pay the Health Care Providers the  
27 usual and customary rate within 30 days of receipt of the claim.  
28

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1 transaction”; and (4) knowingly misrepresent the “legal rights, obligations or remedies of a party  
2 to a transaction.” NRS 598.0915(15), 598.0923(3), 598.0923(4), NRS 598.092(8), respectively.

3 245. The Nevada Consumer Fraud Statute provides that a legal action “may be  
4 brought by any person who is a victim of consumer fraud.” NRS 41.600(1). “Consumer fraud”  
5 includes a deceptive trade practice as defined by the DTPA.

6 246. Defendants have violated the DTPA and the Consumer Fraud Statute through  
7 their acts, practices, and omissions described above, including but not limited to (a) wrongfully  
8 refusing to pay the Health Care Providers for the medically necessary, covered emergency  
9 services the Health Care Providers provided to Members in order to gain unfair leverage against  
10 the Health Care Providers now that they are out-of-network and in contract negotiations to  
11 potentially become a participating provider under a new contract in an effort to force the Health  
12 Care Providers to accept lower amounts than it is entitled for its services; and (b) engaging in  
13 systematic efforts to delay adjudication and payment of the Health Care Providers’ claims for its  
14 services provided to UH Parties’ members in violation of their legal obligations

15 247. As a result of Defendants’ violations of the DTPA and the Consumer Fraud  
16 Statute, the Health Care Providers are entitled to damages in an amount in excess of \$15,000.00  
17 to be determined at trial.

18 248. Due to the willful and knowing engagement in deceptive trade practices, the  
19 Health Care Providers are entitled to recover treble damages and all profits derived from the  
20 knowing and willful violation.

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

## 25 SEVENTH CLAIM FOR RELIEF

### 26 (Declaratory Judgment)

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



1           251. This is a claim for declaratory judgment and actual damages pursuant to NRS  
2 30.010 *et seq.*

3           252. As explained above, pursuant to federal and Nevada law, Defendants are required  
4 to cover and pay the Health Care Providers for the medically necessary, covered emergency  
5 medicine services the Health Care Providers have provided and continue to provide to  
6 Defendants' members.

7           253. Under Nevada law, Defendants are required to pay the Health Care Providers the  
8 usual and customary rate for that emergency care. Instead of reimbursing the Health Care  
9 Providers at the usual and customary rate or for the reasonable value of the professional medical  
10 services, Defendants have reimbursed them at reduced rates with no relation to the usual and  
11 customary rate.

12           254. Beginning in or about July 2017, Fremont became out-of-network with the UH  
13 Parties; and Team Physicians and Ruby Crest have never been in-network with the UH Parties.  
14 Since then, the UH Parties have demonstrated their refusal to timely settle insurance claims  
15 submitted by the Health Care Providers and have failed to pay the usual and customary rate  
16 based on this locality in violation of UH Parties' obligations under the Nevada Insurance Code,  
17 the parties' implied-in-fact contract and pursuant to Nevada law of unjust enrichment and  
18 quantum merit.

19           255. Beginning in or about March 2019, Fremont became out-of-network with the  
20 Sierra Affiliates and HPN and Physicians and Ruby Crest have never been in-network with the  
21 Sierra Affiliates or HPN. Upon information and belief, the Sierra Affiliates and HPN are failing  
22 to timely settle insurance claims submitted by the Health Care Providers and to pay the usual  
23 and customary rate based on this locality in violation of the Sierra Affiliates' and HPN's  
24 obligations under the Nevada Insurance Code, the parties' implied-in-fact contract and pursuant  
25 to Nevada law of unjust enrichment and quantum merit.

26           256. An actual, justiciable controversy therefore exists between the parties regarding  
27 the rate of payment for the Health Care Providers' emergency care that is the usual and  
28 customary rate that Defendants are obligated to pay.

1           257. Pursuant to NRS 30.040 and 30.050, the Health Care Providers therefore request  
2 a declaration establishing the usual and customary rates that they are entitled to receive for  
3 claims between July 1, 2017 and trial, as well as a declaration that the UH Parties are required to  
4 pay to the Health Care Providers at a usual and customary rate for claims submitted thereafter.

5           258. Pursuant to NRS 30.040 and 30.050, Team Physicians and Ruby Crest therefore  
6 request a declaration establishing the usual and customary rates that they are entitled to receive  
7 for claims between July 1, 2017 and trial, as well as a declaration that the Sierra Affiliates and  
8 HPN are required to pay to Team Physicians and Ruby Crest at a usual and customary rate for  
9 claims submitted thereafter.

10           259. Pursuant to NRS 30.040 and 30.050, Fremont therefore request a declaration  
11 establishing the usual and customary rates that Fremont is entitled to receive for claims between  
12 March 1, 2019 and trial, as well as a declaration that the Sierra Affiliates and HPN are required  
13 to pay to Fremont at a usual and customary rate for claims submitted thereafter.

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

#### 18                                   **EIGHTH CLAIM FOR RELIEF**

#### 19                                   **(Violation of NRS 207.350 *et seq.*)**

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

22           262. Nevada RICO allows a private cause of action for racketeering. NRS 207.470  
23 provides in pertinent part that:

24                   Any person who is injured in his or her business or property by  
25                   reason of any violation of NRS 207.400 has a cause of action  
26                   against a person causing such injury for three times the actual  
27                   damages sustained. An injured person may also recover attorney's  
28                   fees in the trial and appellate courts and costs of investigation and  
                    litigation reasonably incurred.

263. This claim arises under NRS 207.400(b), (c), (d) and (j).

1           264. The Defendants committed the following crimes of racketeering activity: NRS  
2           207.360(28) (obtaining possession of money or property valued at \$650 or more), NRS  
3           207.360(35) (any violation of NRS 205.377), and NRS 207.360(36) (involuntary servitude).

4           265. The Defendants engaged in racketeering enterprises as defined by NRS 207.380  
5           involving their fraudulent misrepresentations to the Health Care Providers, and failing to pay  
6           and retaining significant sums of money that should have been paid to them for emergency  
7           medicine services provided to the Defendants' Members, but instead were directed to  
8           themselves and/or Data iSight.

9           266. As set forth above, since at least January 2019, Defendants have been and  
10          continue to be, a part of an association-in-fact enterprise within the meaning of NRS 207.380,  
11          comprised of at least Defendants and Data iSight, and which Enterprise was and is engaged in  
12          activities that span multiple states and affect interstate commerce and/or committed preparatory  
13          acts in furtherance thereof.

14          267. Each of the Defendants has an existence separate and distinct from the Enterprise,  
15          in addition to directly participating and acting as a part of the Enterprise.

16          268. Defendants and Data iSight had, and continue to have, the common and  
17          continuing purpose of dramatically reducing allowed provider reimbursement rates for their own  
18          pecuniary gain, by defrauding the Health Care Providers and preventing them from obtaining  
19          reasonable payment for the services they provided to Defendants' Members, in retaliation for the  
20          Health Care Providers' lawful refusal to agree to Defendants' massively discounted and  
21          unreasonable proposed contractual rates.

22          269. Since at least January 2019, the Defendants, have been and continue to be,  
23          engaged in preparations and implementation of a scheme to defraud the Health Care Providers  
24          by committing a series of unlawful acts designed to obtain a financial benefit by means of false  
25          or fraudulent pretenses, representations, promises or material omissions which constitute  
26          predicate unlawful activity under NRS 207.390 involving multiple instances of obtaining  
27          possession of money or property valued at \$650 or more; multiple transactions involving fraud  
28          or deceit in course of enterprise or occupation and involuntary servitude in violation of NRS

1 200.463. The Defendants have engaged in more than two related and continuous acts amounting  
2 to racketeering activity in violation of NRS 207.400(1)(a)-(d), (1)(f), (1)(h)-(i) pursuant to a  
3 scheme or artifice to defraud and to which the Defendants have committed for financial benefit  
4 and gain to the detriment of the Health Care Providers. The Defendants, on more than two  
5 occasions, have schemed with Data iSight to artificially and, without foundation, substantially  
6 decrease non-participating provider reimbursement rates while continuing to represent that the  
7 reimbursement rates are based on legitimate cost data or paid data.

8 270. The foregoing acts establish racketeering activity and are related to each other in  
9 that they further the joint goal of unfairly and illegally retaining financial benefit to the  
10 detriment of the Health Care Providers. In each of the examples provided herein, the acts  
11 alleged to establish a pattern of unlawful activity are related because they have the same or  
12 similar pattern, intents, results, accomplices, victims or methods of commission, or are otherwise  
13 interrelated by distinguishing characteristics and are not isolated incidents.

14 271. Each Defendant provides benefits to insured members, processes claims for  
15 services provided to members, and/or issues payments for services and knows and willingly  
16 participates in the scheme to defraud the Health Care Providers.

17 272. As a direct and proximate result of Defendants' violations of NRS 207.360(28),  
18 (35) and (36), the Health Care Providers have sustained a reasonably foreseeable injury in their  
19 business or property by a pattern of racketeering activity, suffering substantial financial losses,  
20 in an amount to be proven at trial, in violation of NRS 207.470.

21 273. Pursuant to NRS 207.470, the Health Care Providers are entitled to damages for  
22 three times the actual damages sustained, recovery of attorneys' fees in the trial and appellate  
23 courts and costs of investigation and litigation reasonably incurred.

#### 24 REQUEST FOR RELIEF

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

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

28 B. Judgment in their favor on the First Amended Complaint;

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

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

4 E. A declaratory judgment that Defendants' failure to pay the Health Care Providers  
5 a usual and customary fee or rate for this locality or alternatively, for the reasonable value of  
6 their services violates the Nevada law, breaches the parties' implied-in-fact contract, is a tortious  
7 breach of the implied covenant of good faith and fair dealing, and violates Nevada common law;

8 F. An order permanently enjoining Defendants from paying rates that do not  
9 represent usual and customary fees or rates for this locality or alternatively, that do not  
10 compensate the Health Care Providers for the reasonable value of their services; and enjoining  
11 Defendants and enjoining Defendants from engaging in acts or omissions that are violative of  
12 Nevada law;

13 G. Judgment against the Defendants and in favor of the Health Care Providers  
14 pursuant to the Eighth Claim for Relief in an amount constituting treble damages resulting from  
15 Defendants' underpayments to the Health Care Providers for the reasonable value of the  
16 emergency services provided to Defendants' Members and reasonable attorneys' fees and costs  
17 incurred in bringing this action;

18 H. The Health Care Providers costs and reasonable attorneys' fees pursuant to NRS  
19 207.470;

20 I. Reasonable attorneys' fees and court costs;

21 J. Pre-judgment and post-judgment interest at the highest rates permitted by law;  
22 and

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

24 ...

25 ...

26 ...

27 ...

28 ...

**JURY DEMAND**

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

DATED this 7th day of January, 2020.

McDONALD CARANO LLP

By: /s/ Pat Lundvall

Pat Lundvall (NSBN 3761)  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 7th day of January, 2020, I caused a true and correct copy of the foregoing **FIRST AMENDED COMPLAINT** to be served via the U.S. District Court's Notice of Electronic Filing system ("NEF") in the above-captioned case, upon the following:

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

/s/ Marianne Carter  
 An employee of McDonald Carano LLP

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003516

# EXHIBIT 24

003517

003517

# EXHIBIT 24



*Heather S. Hume*

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ENTERED kl

*Attorneys for Defendants*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-19-792978-B

Dept. No.: 27

**HEARING REQUESTED**

**DEFENDANTS' MOTION TO COMPEL  
PRODUCTION OF CLINICAL  
DOCUMENTS FOR THE AT-ISSUE  
CLAIMS AND DEFENSES AND TO  
COMPEL PLAINTIFFS TO  
SUPPLEMENT THEIR NRCP 16.1  
INITIAL DISCLOSURES ON AN ORDER  
SHORTENING TIME**



1 Defendants UnitedHealth Group, Inc.; UnitedHealthcare Insurance Company; United  
 2 HealthCare Services, Inc.; UMR, Inc.; Oxford Health Plans LLC (incorrectly named as  
 3 “Oxford Health Plans, Inc.”); Sierra Health and Life Insurance Company, Inc.; Sierra Health-  
 4 Care Options, Inc. and Health Plan of Nevada, Inc. (collectively, “United” or “Defendants”),  
 5 hereby move to compel Plaintiffs’ responses to certain of Defendants’ document requests and  
 6 to compel Plaintiffs to supplement their NRCP 16.1 Initial Disclosures. As explained in the  
 7 following Memorandum of Points and Authorities, the Declaration of Colby L. Balkenbush,  
 8 the exhibits attached thereto, the pleadings and papers on file herein, and any argument  
 9 presented at the time of hearing on this matter, this motion should be granted.

10 Dated this 18th day of September, 2020.

11 /s/ Colby L. Balkenbush

12 D. Lee Roberts, Jr., Esq.

13 Colby L. Balkenbush, Esq.

14 Brittany M. Llewellyn, Esq.

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17 *Attorneys for Defendants*



**DECLARATION OF COLBY L. BALKENBUSH, ESQ. IN SUPPORT  
OF DEFENDANTS' MOTION TO COMPEL**

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

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

3. On June 28, 2019, Defendants served their first set of written discovery on Plaintiffs, inclusive of Requests for Production of Documents. **Exhibit 1.**

4. On July 29, 2019, Fremont responded to Defendants' First Set of Requests for Production of Documents. **Exhibit 2.**

5. In response to Defendants' Request for Production No. 6 ("Request No. 6") seeking discovery of Clinical Records,<sup>1</sup> Plaintiffs produced only an Excel spreadsheet stamped FESM000344 (the "Claims Spreadsheet") and a litany of boilerplate objections. **Exhibit 2.** The Claims Spreadsheet, however, merely summarizes the claims Plaintiffs contend are at issue and includes very basic data points, such as (1) the amount billed by Plaintiffs, (2) the amount of plan benefits paid, (3) the patient name, (4) the date of service, and (5) CPT codes<sup>2</sup> to describe the type of services Plaintiffs allegedly rendered to participants of Defendant-administered health plans.

---

<sup>1</sup> As used in this Motion, the term "Clinical Records" is intended to be consistent with the definition of "health care records" in NRS 629.021 to mean Plaintiffs' provider or facility records, including, but not limited to, medical charts, patient medical history, patient files, medical records, providers' notes, treatment plans, assessments, diagnoses, pharmacy and medication records, testing and laboratory records and results, radiology images and reports, and providers' orders, and records of all procedures, treatments, and services rendered related to a specific claim. This definition also encompasses electronic medical and health records.

<sup>2</sup> The Current Procedural Terminology ("CPT") code set is a medical code set maintained by the American Medical Association through the CPT Editorial Panel.





1           6.       On January 23, 2020, I sent a letter detailing the deficiencies in Plaintiffs'  
2 responses to Defendants' written discovery requests discussed in paragraph 3 *supra*, including a  
3 request that Plaintiffs "provide an estimate of the amount of time it would take to compile the  
4 documents at issue in this Request and the accompanying costs." **Exhibit 3.** I also requested  
5 that the parties attend a telephonic conference to discuss the issues. *Id.*

6           7.       On February 13, 2020, I and my colleague, Brittany M. Llewellyn, attended a  
7 telephonic meet and confer with Plaintiffs' counsel, Kristen Gallagher and Amanda Perach,  
8 regarding the issues stated in Defendants' January 23, 2020 correspondence. During that  
9 conference, Plaintiffs confirmed that they would not supplement their responses to Request No. 6  
10 or produce discovery of any Clinical Records.

11           8.       Later that same day, Ms. Llewellyn sent correspondence to Ms. Gallagher and  
12 Ms. Perach summarizing our conference call and the parties' respective positions. **Exhibit 4.** In  
13 the February 13, 2020 email correspondence, Ms. Llewellyn advised Ms. Gallagher and Ms.  
14 Perach that, without any agreement to supplement, Defendants would be filing a motion to  
15 compel as to Plaintiffs' deficient response to Request No. 6. **Exhibit 4.**

16           9.       To date, Plaintiffs have not produced discovery of *any* Clinical Records for *any* of  
17 their claims in the Claims Spreadsheet, despite receiving Defendants' Request No. 6 on June 28,  
18 2019. This amounts to a delay of over 14 months.

19           10.      Defendants hoped to avoid this Motion by reaching a reasonable compromise, but  
20 it is now apparent that Plaintiffs do not intend to produce discovery of Clinical Records for *any*  
21 of their claims in the Claims Spreadsheet, which will severely prejudice Defendants' ability to  
22 defend against Plaintiffs' claims

23           11.      In addition, Plaintiffs' initial disclosures were produced on October 2, 2019.  
24 However, to date, Plaintiffs have not produced any Explanation of Benefits ("EOB") or Provider  
25 Remittance Advice ("PRA") documents. Despite this, Plaintiffs have produced the Claims  
26 Spreadsheet that contains damages calculations based on data allegedly pulled from EOBs and  
27 PRAs. Thus, such documents should have been produced with Plaintiffs' initial disclosures.

28           12.      The discovery cutoff in this matter is December 31, 2020.

003522

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

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

**ORDER SHORTENING TIME**

Good cause appearing therefor, IT IS HEREBY ORDERED that the hearing on DEFENDANTS' MOTION TO COMPEL PRODUCTION OF CLINICAL DOCUMENTS FOR AT-ISSUE CLAIMS AND DEFENSES AND TO COMPEL PLAINTIFFS' TO SUPPLEMENT THEIR NRCP 16.1 INITIAL DISCLOSURES shall be shortened and heard before the above-entitled Court in Department XXVII on the 30<sup>th</sup> day of September 2020 at 1:30 ~~am~~ p.m., or as soon thereafter as counsel may be heard; that Plaintiffs' opposition, if any, shall be electronically filed and served on or before the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

Dated this 21st day of September, 2020

Nancy L Alf  
DISTRICT COURT JUDGE

Submitted By:

F28 481 989B 127A  
Nancy Alf  
District Court Judge

WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC

/s/ Colby L. Balkenbush

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*Attorneys for Defendants*

## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

This Court is familiar with the basics of the dispute before it. The TeamHealth Nevada Plaintiffs (“Plaintiffs”) are private-equity backed out-of-network healthcare providers who have asserted an unjust enrichment claim alleging that Defendants have underpaid plan benefits for emergency medical services provided to participants of health plans administered by Defendants. Conversely, Defendants contend that Plaintiffs’ charges were grossly inflated, improperly “up-coded,” and that Plaintiffs are not entitled to anything more than what has already been paid. Thus, a core question that needs to be resolved under Plaintiffs’ legal theory is: What was the reasonable value of the services that Plaintiffs provided and did Defendants adequately reimburse Plaintiffs for that value? *See, e.g.*, First Amended Complaint at ¶ 62 (“Defendants are obligated to reimburse the Health Care Providers . . . for the reasonable value of the services provided.”).<sup>3</sup> The instant Motion seeks discovery of the Clinical Records, as defined in Section II, *infra*, to assist in resolving that core question and to allow for a determination as to whether Plaintiffs are entitled to any additional reimbursement for the medical services that they allege underlie each of the at-issue claims.

Plaintiffs’ refusal to produce the requested discovery goes hand-in-hand with Plaintiffs’ attempts to discharge their burden to prove that they actually performed the services for which they seek over \$26 million dollars in additional reimbursements. They seek to only rely on unverified summary claims data in a spreadsheet stamped FESM000344 (the “Claims Spreadsheet”),<sup>4</sup> which is simply not enough.

In addition, Defendants, for their part, have specifically asserted setoff and other affirmative defenses specifically challenging Plaintiffs’ right to the millions of dollars in

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<sup>3</sup> As detailed more fully in Defendants’ May 26, 2020 Motion to Dismiss, and in their pending writ petition, Defendants contend that they were only required to pay Plaintiffs in accordance with Plaintiffs’ patients’ controlling health plans, but will not reiterate those arguments here in this narrow Motion.

<sup>4</sup> The Claims Spreadsheet is being produced via email to the Court for *in-camera* review because it contains confidential protected health information that may not be filed in open court pursuant to the Stipulated Protective Order entered on June 24, 2020.







1 additional reimbursements they claim are due and owing. To prove those defenses, Defendants  
2 are entitled to challenge Plaintiffs' performance of the alleged medical services they reported in  
3 each of their claims forms, as well as the validity of their claims data. Thus, for Plaintiffs to  
4 carry their burden and for Defendants to support their defenses, it is critical that discovery of the  
5 Clinical Records be ordered. There is no dispute that claims-specific discovery is appropriate in  
6 this case. Indeed, Plaintiffs have already demanded claim-specific discovery from the  
7 Defendants and moved to compel Defendants to produce 22,153 administrative records, a motion  
8 this Court granted. Defendants now seek a reciprocal and equivalent order from the Court—  
9 without it, Defendants will be severely and unfairly prejudiced.

10 Accordingly, Defendants move to compel Plaintiffs to produce documents responsive to  
11 Defendants' Request for Production No. 6 ("Request No. 6"), which was served upon Plaintiffs  
12 on June 28, 2019, seeking discovery of the Clinical Records for each of the claims in the Claims  
13 Spreadsheet, as well as an order directing Plaintiffs to comply with NRCP 16.1.

## 14 **II. REQUEST NO. 6 AND PROCEDURAL BACKGROUND**

15 Request No. 6 seeks:

16 6. Please produce all documents concerning the medical treatment that  
17 Fremont allegedly provided to the more than 10,800 patients referenced in  
18 paragraph 25 of the Complaint.<sup>5</sup>

19 Request No. 6 was served prior to the filing of Plaintiffs' First Amended Complaint, and prior to  
20 Plaintiffs placing nearly 7,000 more claims at issue in this case. Request No. 6 should therefore  
21 be construed to conform to the pleadings. (Balkenbush Decl. at ¶ 3.) Request No. 6 therefore  
22 seeks discovery of the Clinical Records<sup>6</sup> for the medical services related to all 22,153 claims in  
23 the Claims Spreadsheet. *Id.*

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24 <sup>5</sup> See Defendants' First Set of Requests for Production, **Exhibit 1**.

25 <sup>6</sup> As used in this Motion, the term "Clinical Records" is intended to be consistent with the definition of  
26 "health care records" in NRS 629.021 to mean Plaintiffs' provider or facility records, including, but not  
27 limited to, medical charts, patient medical history, patient files, medical records, providers' notes,  
28 treatment plans, assessments, diagnoses, pharmacy and medication records, testing and laboratory records  
and results, radiology images and reports, and providers' orders, and records of all procedures, treatments,  
and services rendered related to a specific claim. This definition also encompasses electronic medical and  
health records.



As of this date, Plaintiffs have failed to produce discovery for a single Clinical Record for *any* of the claims in the Claim Spreadsheet. Balkenbush Decl. at ¶¶ 10-11. Instead, Plaintiffs have offered boilerplate burden objections, including, in relevant part, that:

The request is overly broad, irrelevant and not 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 as this case concerns a dispute over the rate of payment rather than a coverage determination and, consequently, does not concern the medical treatment provided to particular patients. In particular, the medical records of the 10,800 patients referenced in paragraph 25 of the Complaint are records unrelated to the dispute at issue, making such information unimportant to the issues at stake in this action.

Finally, the burden and expense of gathering thousands of medical records, adequately redacting confidential and information protected by HIPAA and producing this exceedingly large file outweighs any benefit.<sup>7</sup>

In lieu of producing the relevant Clinical Records underlying the at-issue claims, Plaintiffs first offered a spreadsheet of an initial 15,210 claims.<sup>8</sup> Then, when they later supplemented their responses, they produced the Claims Spreadsheet containing 22,153 claims.<sup>9</sup> (Balkenbush Decl. at ¶ 5.) The information in the Claims Spreadsheet was solely compiled by Plaintiffs and is otherwise unverified.

Separately, as discussed in Section III(D), Defendants seek an order requiring Plaintiffs to comply with NRCP 16.1 and to supplement their initial disclosures from October 2019 by producing certain documents that demonstrate (1) what was billed and paid for each claim in the Claims Spreadsheet, and (2) the values utilized by Plaintiffs for their computation of damages.

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<sup>7</sup> See Plaintiffs' initial responses to Defendants' First Set of Requests for Production, **Exhibit 1**.

<sup>8</sup> *Id.* and FESM000011.

<sup>9</sup> See Plaintiffs' supplemental responses to Defendants' First Set of Requests for Production, **Exhibit 6** and FESM000344.



### III. LEGAL ARGUMENT

#### A. Legal Standard for Motion to Compel

NRCP 26(b)(1) allows parties to discover any non-privileged matter “which is relevant to the subject matter involved in the action,” including any documents relating to either party’s claims and defenses. NRCP 26(b)(1). Because of the broad discovery rules, the party resisting discovery must carry the heavy burden of showing why discovery should be denied. *See Daisy Tr. v. JP Morgan Chase Bank, N.A.*, 2017 WL 3037427, at \*2 (D. Nev. July 18, 2017). To meet this burden, “the resisting party must specifically detail the reasons why each request is improper.” *Magdaluyo v. MGM Grand Hotel, LLC*, 2016 WL 2731672, at \*3 (D. Nev. May 9, 2016).

Defendants’ request for discovery of Clinical Records responsive to Request No. 6 is appropriate and proper here because: (1) Plaintiffs have failed to provide support for their undue burden objections; (2) Plaintiffs necessarily must rely on the Clinical Records to carry their burden in proving an entitlement to additional reimbursements on an unjust enrichment theory; and (3) Defendants’ defenses require the essential discovery sought by this Motion.

#### B. Plaintiffs Have Failed to Provide Support For Their Undue Burden Objections By Way of An Affidavit or Declaration

Plaintiffs have objected to producing discovery of Clinical Records on the basis that, *inter alia*, “the burden and expense of gathering thousands of medical records, adequately redacting confidential and information protected by HIPAA and producing this exceedingly large file outweighs any benefit.”<sup>10</sup> Defendants, in response, have requested that Plaintiffs provide an estimate of the amount of time it would take to compile the documents and the accompanying costs.<sup>11</sup> Plaintiffs, however, have refused to do so.<sup>12</sup>

<sup>10</sup> See Plaintiffs’ initial responses to Defendants’ First Set of Requests for Production, **Exhibit 1**.

<sup>11</sup> Declaration of Colby L. Balkenbush ¶ 6; **Exhibit 3**.

<sup>12</sup> Plaintiffs are for-profit, private equity-backed out-of-network medical providers affiliated with one of the largest national physician management companies in the United States, TeamHealth Holdings, Inc. (“TeamHealth”). They have not offered any affirmation in support of their contention that the production of these records would amount to an undue burden or expense, which is difficult to understand given their TeamHealth affiliation.





As the party resisting discovery, Plaintiffs must demonstrate that the information sought by Defendants is not reasonably accessible because of undue burden or cost. *See* NRCp 26(b)(2)(B). “[A]n objection that a discovery request is ‘unduly burdensome’ must be supported by a declaration to carry weight.” *Bresk v. Unimerica Ins. Co.*, 2017 WL 10439831, at \*3 (C.D. Cal. Nov. 16, 2017); *see also Jackson v. Montgomery Ward & Co.*, 173 F.R.D. 524, 528–29 (D. Nev. 1997) (“party claiming that a discovery request is unduly burdensome must allege specific facts which indicate the nature and extent of the burden, usually by affidavit or other reliable evidence.”). “[T]he fact that discovery may involve some inconvenience or expenses is not sufficient, standing alone, to avoid the discovery process.” *Martinez v. James River Ins. Co.*, 2020 WL 1975371, at \*1 (D. Nev. Apr. 24, 2020). Plaintiffs should not be allowed to avoid their obligation to demonstrate burden with respect to Request No. 6.<sup>13</sup>

As of this date, Plaintiffs have not withdrawn their burden objections to Request No. 6. Because Plaintiffs’ objections lack any evidentiary support, they should be stricken or overruled, and Plaintiffs should be ordered to produce discovery of the Clinical Records for the claims identified in the Claims Spreadsheet, which Plaintiffs put at issue when they filed their Complaint.

**C. Plaintiffs Should be Compelled to Produce Discovery of Clinical Records Because They are Critical to the Claims and Defenses in the Case**

In addition to their stated burden objections, Plaintiffs have also objected to producing documents responsive to Request No. 6 as “unrelated to the dispute” **Exhibit X**. Plaintiffs’ objection is incorrect for a several reasons discussed below.

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<sup>13</sup> Of note, on September 9, 2020, the Court ordered Defendants to produce the administrative records for the 22,153 at-issue claims *despite* Defendants’ detailed 5 page burden declaration. Here, no burden declaration has been produced making the case even stronger for ordering production.

1                   **1. Defendants have the right to contest the value and performance of the**  
 2                   **underlying medical services at issue in each of Plaintiffs' claims in the**  
 3                   **Claims Spreadsheet.**

4                   Plaintiffs must prove that the services for which they seek additional reimbursement were  
 5                   actually performed as billed. *See Sacred Heart Health Sys., Inc. v Humana Military Healthcare*  
 6                   *Serv.'s, Inc.*, No. 3:07-cv-00062-MCR-EMT at \*32 (N.D. Fla. Oct. 21, 2011) (plaintiffs who  
 7                   have placed in issue the underpayments "will be required to demonstrate that they performed  
 8                   services identified in the individual claim forms[,] . . . not just that the [p]laintiffs reported the  
 9                   services"). Plaintiffs cannot carry this burden with the "generalized proof" provided in the form  
 10                  of summary claims data alone. *See Sacred Heart*, No. 3:07-cv-00062-MCR-EMT at \*17 (N.D.  
 11                  Fla. Mar. 30, 2012) (requiring production of clinical records supporting underpayment claims on  
 12                  the grounds that the claims forms do not "certify that the claim form was accurately coded, that it  
 13                  accurately described the services or the medical need for them, or that the services were *actually*  
 14                  *performed*") (emphasis added). **Exhibit 7** (Oct. 21, 2011 Order and Mar. 30, 2012 Order).

15                  Even if Plaintiffs' claims data in the Claims Spreadsheet could serve as sufficient  
 16                  evidence for proving performance of the underlying medical services, Defendants have a right to  
 17                  contest that evidence and explore Plaintiffs' contentions through other evidence, including  
 18                  through Plaintiffs' Clinical Records. *See Sacred Heart*, No. 3:07-cv-00062-MCR-EMT at \*16-  
 19                  17 (N.D. Fla. Oct. 21, 2011) ("As a matter of due process Defendant [health plan] should be  
 20                  entitled to investigate . . . services not provided or [] monies paid for services for which Plaintiffs  
 21                  were not entitled."). Plaintiffs' objections and refusal to produce discovery of the Clinical  
 22                  Records thus deprives Defendants of that "due process" right. *See id at 21; see also In re*  
 23                  *Managed Care Litigation*, MDL No. 1334, Master File No. 00-1334-MD-MORENO (S.D. Fla.  
 24                  July 24, 2003 (recognizing that health insurers have a right to discovery on claim-specific  
 25                  documents, such as medical records, in the context of physicians' allegation that the health plan  
 26                  improperly reimbursed their claims).<sup>14</sup>

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27                  <sup>14</sup> The U.S. District Court for the Southern District of Florida's decision in the *In re Managed*  
 28                  *Care* litigation also provides a good example of a decision recognizing a health insurer's right to contest  
                 performance. *In re Managed Care* involved, among other things, a breach of contract action by  
                 thousands of doctors against the nation's largest health insurers over claims for services allegedly





1 Plaintiffs effectively ask this Court to *assume* the validity of their claims and the  
2 accuracy of their claims data in the Claims Spreadsheet. But by seeking additional  
3 reimbursement of plan benefits for the claims for which they have already been paid, Plaintiffs  
4 have placed “the accuracy of those claims . . . directly in issue.” *Sacred Heart*, No. 3:07-cv-  
5 00062-MCR-EMT at \*31 (N.D. Fla. Oct. 21, 2011). Defendants are entitled to discovery that  
6 may allow them to “challenge the validity of the individual claims,” including in the Claims  
7 Records. *Sacred Heart*, No. 3:07-cv-00062-MCR-EMT at \*31 (N.D. Fla. Mar. 30, 2012)  
8 (rejecting plaintiff hospitals’ argument that “[the defendant-insurer] should not be permitted to  
9 challenge the underlying validity of the claims at issue,” and holding that “[the defendant-  
10 insurer] has a legal right to go beyond the claim forms” and take discovery on the underlying  
11 claims).

12 Moreover, absent claim-specific proof, it is impossible to know whether there are any  
13 errors—be they relatively minor or systemic—in Plaintiffs’ claims data in the Claims  
14 Spreadsheet. Plaintiffs cannot guarantee the accuracy of the unverified claims data and the  
15 performance of the underlying services by their own say-so; rather, they must produce discovery  
16 of the Clinical Records relating to the disputed claims that allow Defendants to examine the  
17 integrity of their claims data and pursue proof to support their defenses.

18 In a case where Plaintiffs are seeking over \$26 million dollars in additional  
19 reimbursements, there is no good-faith basis for avoiding discovery of their Clinical Records.

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24 rendered by the doctors to members of the defendant health plans. In that case, the health insurers sought  
25 discovery of clinical records in order to investigate the accuracy of the claim forms the doctors put at  
26 issue. The physicians in that case, like Plaintiffs here, refused to produce those clinical records; however,  
27 the district court made short work of that argument and compelled production of the  
28 requested clinical records. (Order Adopting in Part Rep. & Recs., *In re Managed Care Litig.*, MDL No.  
1334, Master File No. 00-1334-MD-MORENO (S.D. Fla. July 24, 2003); Rep. & Rec., *In re Managed  
Care Litig.*, MDL No. 1334, Master File No. 00-1334-MDL-MORENO (July 3, 2003) (both orders  
attached as **Exhibit 8**).

2. **Plaintiffs' cause of action for unjust enrichment requires discovery of Plaintiffs' Clinical Records.**

Plaintiffs contend that “this case concerns a dispute over the rate of payment rather than a coverage determination and, consequently, does not concern the medical treatment provided to particular patients.”<sup>15</sup> But Plaintiffs call into question the reasonable value “of the services provided” in their First Amended Complaint:

Defendants accepted and retained the benefit of the services provided by the Health Care Providers at the request of the members of its Health Plans, knowing that the Health Care Providers expected to be paid a usual and customary fee based on locality, or alternatively for *the reasonable value of services provided*, for the medically necessary, covered emergency medicine services it performed for Defendants' Patients.

(FAC at ¶ 225 (emphasis added).) Plaintiffs further allege that they are “entitled to recover the difference between the amount the Defendants' paid for emergency care the Health Care Providers rendered to its members and the *reasonable value* of the service that the Health Care Providers rendered . . . .” (FAC at ¶ 225 (emphasis added)).

To litigate Plaintiffs' unjust enrichment claim, discovery as to the value of the benefit allegedly conferred, which includes the reasonable value of Plaintiffs' services as a whole, is necessary. *Id.* “When a plaintiff seeks ‘as much as he . . . deserve[s]’ based on a theory of restitution . . . he must establish each element of unjust enrichment,”<sup>16</sup> *Certified Fire Prot. Inc. v. Precision Constr.*, which requires a showing that the plaintiff conferred a benefit on the defendant, the defendant appreciated such benefit, and that there is acceptance and retention of the benefit under circumstances. *Certified Fire*, 128 Nev. at 381, 283 P.3d at 257 (quoting BLACK'S LAW DICTIONARY 1361 (9th ed. 2009)).<sup>17</sup> Plaintiffs are not discharged from their obligation to demonstrate that a benefit was conferred “from [the] services provided.” *Id.*

<sup>15</sup> See Plaintiffs' initial responses to Defendants' First Set of Requests for Production, **Exhibit 1**, at 5:14–16.

<sup>16</sup> 1 Dan B. Dobbs, *Dobbs Law of Remedies* § 4.2(3) (2d ed. 1993) (plaintiff pursuing quantum meruit under unjust enrichment theory must show benefit to defendant).

<sup>17</sup> See also Restatement (Third) of Restitution and Unjust Enrichment § 49 (2011) (“Enrichment from the receipt of nonreturnable benefits may be measured by (a) the value of the benefit in advancing the





1 It is also generally accepted that “a medical care provider’s billed price for particular  
 2 services is not necessarily representative of either the cost of providing those services or their  
 3 market value.” *Howell v. Hamilton Meats & Provisions, Inc.*, 52 Cal. 4th 541, 564, 257 P.3d  
 4 1130, 1144 (2011). And, “[i]n a given case, the reasonable and customary amount that the health  
 5 care service plan has a duty to pay ‘might be the bill the [medical provider] submits, or the  
 6 amount the [health care service plan] chooses to pay, or some amount in between.’” *Children’s*  
 7 *Hosp. Cent. California v. Blue Cross of California*, 226 Cal. App. 4th 1260, 1275, 172 Cal. Rptr.  
 8 3d 861, 873 (2014) (citing *Prospect Med. Grp., Inc. v. Northridge Emergency Med. Grp.*, 45 Cal.  
 9 4th 497, 505, 198 P.3d 86, 91 (2009)). Here, because the measure of liability and damages for  
 10 Plaintiffs’ unjust enrichment claim, as alleged, requires “a determination of the value of the  
 11 goods or services at issue,” and because Plaintiffs seek damages for “the reasonable value of the  
 12 services provided,”<sup>18</sup> Defendants are entitled to independently examine and contest the “value”  
 13 of the services at issue, which necessarily includes analyzing discovery of the Clinical Records.  
 14 *See Certified Fire*, at 128 Nev. at 380, 283 P.3d at 256.<sup>19</sup>

15 In sum, discovery in the form of Clinical Records is warranted in light of Plaintiffs’  
 16 unjust enrichment claim; a determination as to “reasonable value for the services,” which is what  
 17 Plaintiffs contend they seek, simply cannot be derived from the unverified Claims Spreadsheet  
 18 generated by Plaintiffs.

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 23 purposes of the defendant, (b) the cost to the claimant of conferring the benefit, (c) the market value of  
 24 the benefit, or (d) a price the defendant has expressed a willingness to pay, if the defendant's assent may  
 be treated as valid on the question of price.”).

25 <sup>18</sup> See Plaintiffs’ First Amended Complaint at ¶¶ 62, 69, 211, 220, 225; See also Plaintiffs’ Answer to  
 26 Interrogatory No. 5, at **Exhibit 9** (“Fremont is not obligated to provide emergency services to  
 UnitedHealthcare members at rates that are not usual and customary or reflective of the reasonable value  
 of the emergency medical services provided.”).

27 <sup>19</sup> Any contention by Plaintiffs that they can unilaterally set prices for the services rendered that bears no  
 28 relationship to the reasonable value for those services is untenable.

3. **Discovery of Clinical Records is necessary for Defendants' affirmative defenses and without it, Defendants will be unfairly prejudiced.**

Defendants have asserted affirmative defenses in their answer to Plaintiffs' First Amended Complaint, two of which require discovery of the Clinical Records sought by this Motion.

For Defendants' Twenty-Fourth Affirmative Defense:

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

**Exhibit 10** at pp. 47-48 (emphasis added). For Defendants' Twenty-Fifth Affirmative Defense:

Plaintiffs' claims are subject to setoff and/or recoupment with respect to claims for which United made payment on the basis of Plaintiffs' billed charges and those billed charges exceeded the billed charges submitted to other payors, where Plaintiffs never intended to collect such charges from any other payors, or where the charges were otherwise in error.<sup>20</sup>

*Id.*

As Defendants have the burden of proof for their affirmative defenses, they are entitled to discover evidence relevant and necessary to substantiate those defenses. *See* NRCP 26(b)(1). As to Defendants' Twenty-Fourth Affirmative Defense, Defendants seek discovery of Clinical Records to determine whether such documentation supports the submission of the CPT codes that were utilized (*see* the Claims Spreadsheet), or whether different codes should have been submitted for the services rendered to Defendants' members. **Exhibit 10** at pp. 47-48. Similarly, as to Defendants' Twenty-Fifth Affirmative Defense, Defendant contend that any liability or damages is subject to setoff and/or recoupment, including in instances where overpayments of plan benefits were made as the result of Plaintiffs' improper CPT coding

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<sup>20</sup> *See* Defendants' Answer to Plaintiffs' First Amended Complaint.





1 practices. *Id.* Defendants are entitled to analyze the Clinical Records underlying Plaintiffs'  
2 billed charges to support this defense.

3 Additionally, discovery of Clinical Records will be essential to the analysis of  
4 Defendants' experts for market analyses, coding trend analyses, and their examination of  
5 Plaintiffs' inflated billed charges. Defendants should be permitted to marshal proof at trial that  
6 Plaintiffs' billed charges were grossly inflated,<sup>21</sup> that Plaintiffs billed for certain services that  
7 were never performed or did not meet "emergent" thresholds, and that CPT codes were  
8 inappropriately used relative to the services provided. *See Adventist Health Sys., Inc. v. Blue*  
9 *Cross and Blue Shield of Fla., Inc.*, 2008-CA-011145 (Fla. 9th Cir. Ct. Orange Cty., Jun. 10,  
10 2010) (in a reimbursement dispute the court ordered the provider to produce all responsive  
11 documents concerning, among other things, "evaluation of whether a patient who presents to the  
12 emergency room has an emergency condition") (attached as **Exhibit 11**). Without discovery of  
13 the Clinical Records, Defendants will be prejudiced and unable to make this showing at trial,  
14 including fundamentally challenging whether a particular claim was underpaid or overpaid, for  
15 purposes of liability and damages.

16 Plaintiffs' refusal to produce the Clinical Records prevents Defendants from taking  
17 discovery and offering proof that contests (1) whether Plaintiffs actually performed the services  
18 described on the claims as billed, (2) whether those services are indeed the services that are  
19 identified in their claims data, (3) whether Defendants are actually the party responsible for  
20 paying those claims or portions of claims, and (4) whether the at-issue claims were billed and  
21 coded appropriately under the applicable CPT coding guidelines. Plaintiffs should therefore be  
22 ordered to produce the Clinical Records.

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23  
24  
25 <sup>21</sup> Nationwide billing rates and practices for TeamHeath-affiliated providers have been the subject of  
26 investigations and lawsuits. A recent class action by patients alleges that TeamHealth charges nearly  
27 three times the median rate for in-network physicians at participating hospitals, and their billed charges  
28 are significantly higher, at more than four times the median rate. The lawsuit, brought by patients of  
TeamHealth, asserts federal racketeering claims that bring TeamHealth's rates under serious  
scrutiny. *See Fraser v. Team Health Holdings, Inc.*, Case 3:20-cv-04600-LB, Doc. 1 (N.D. Ca. Filed July  
10, 2020).



**D. Plaintiffs should be compelled to Comply with NRCP 16.1**

In addition to discovery of the Clinical Records, Defendants also seek an order requiring Plaintiffs to comply with NRCP 16.1(a)(1)(A)(ii), which provides that a party must produce, without awaiting a discovery request:

a copy — or a description by category and location — of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, including for impeachment or rebuttal, and, unless privileged or protected from disclosure, **any record**, report, or witness statement, **in any form, concerning the incident that gives rise to the lawsuit;**

NRCP 16.1(a)(1)(A)(ii) (emphasis added).

Here, the production of “Explanation of Benefits” and “Provider Remittance Advice” documents or, hereinafter “EOBs” and “PRAs,” provide a summary of the medical services for the claims at issue. Plaintiffs were therefore required to produce these documents with their Initial Disclosures in October of 2019. Instead, Plaintiffs have produced nothing more than the Claims Spreadsheet, which as noted *supra*, contains only summarized data. But the data in the Claims Spreadsheet is presumably based on the EOBs and PRAs. Therefore, the EOBs and PRAs are at the core of this dispute, and yet Plaintiffs have not produced a single one of these fundamental documents which are admittedly in their possession.<sup>22</sup>

These documents should likewise have been produced pursuant to NRCP 16.1(a)(1)(A)(iv), which requires that a party “must make available for inspection and copying as under Rule 34 *the documents or other evidentiary material, unless privileged or protected from disclosure, on which [their] computation [of damages] is based.*” NRCP 16.1(a)(1)(A)(iv) (emphasis added). Because Plaintiffs’ computation of damages—set forth in their Claims Spreadsheet—is based on the provider EOBs and PRAs, NRCP 16.1 requires production of such documents.

---

<sup>22</sup> See Transcript of Proceedings from September 9, 2020 Hearing on Plaintiffs’ Motion to Compel, **Exhibit 5**, at 27:11–13 (“**we were already in receipt of is the EOBs, the member explanation of benefits, and then the provider remittance advices, or was referred to as PRAs.**”) (emphasis added).



1 **IV. RELIEF REQUESTED**

2 Based on the foregoing, Defendants respectfully request an order that Plaintiffs be  
3 compelled to produce discovery of the Clinical Records for the 22,153 claims at issue in this  
4 litigation, as detailed in the Claims Spreadsheet. Alternatively, if this Court believes a more  
5 limited initial production of clinical records is more appropriate at this juncture, Defendants will  
6 be prepared to make a more limited request at the September 30 hearing based on further review  
7 of the Claims Spreadsheet, and based on an initial draft of the claim matching spreadsheet  
8 Defendants alluded to in their opposition brief dated September 4, 2020, which they expect to  
9 receive in the interim. Should the Court be inclined to grant a more limited request, Defendants  
10 reserve their right to move again for the complete set of Clinical Records for the total 22,153  
11 claims, based on the billing and/or coding errors, as well as other irregularities, that are  
12 discovered in the subset of Clinical Records to be produced by Plaintiffs.

13 Finally, Defendants request that Plaintiffs be ordered to produce the EOB and PRA  
14 documents pursuant to NRCP 16.1, which support the computation of damages in Plaintiffs'  
15 Claims Spreadsheet.

16 Dated this 18th day of September, 2020.

17  
18 /s/ Colby L. Balkenbush

19 D. Lee Roberts, Jr., Esq.

20 Colby L. Balkenbush, Esq.

21 Brittany M. Llewellyn, Esq.

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 18th day of September, 2020, a true and correct copy of the foregoing **DEFENDANTS' MOTION TO COMPEL PRODUCTION OF CLINICAL DOCUMENTS FOR THE AT-ISSUE CLAIMS AND DEFENSES AND TO COMPEL PLAINTIFFS TO SUPPLEMENT THEIR NRCP 16.1 INITIAL DISCLOSURES ON AN ORDER SHORTENING TIME** 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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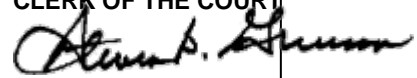


# EXHIBIT 25

003538

003538

# EXHIBIT 25



RTRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

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

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

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

APPEARANCES (Attorneys appeared via Blue Jeans):

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

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

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

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

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

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

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

9                   Thank you.

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

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

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

15                  THE COURT: Thank you.

16                  Other appearances for the plaintiff, please.

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

18                  THE COURT: Yes.

19                  MS. LUNDVALL: This is Pat Lundvall.

20                  THE COURT: Yes.

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

24                  THE COURT: Thank you.

25                  Is that all of the plaintiffs' counsel?

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

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

4 THE COURT: Thank you.

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

7 THE COURT: Thank you.

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

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

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

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

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

20 Did you say something, Your Honor?

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

22 MR. ROBERTS: Okay. No problem.

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



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

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

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

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

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

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

1 that those changed the analysis.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11           THE COURT: Thank you.

12           And the opposition, please.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

8 MS. LUNDVALL: Thank you, Your Honor.

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

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

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

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

25 United acknowledges that there's four factors to be

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 And so one way versus another, the discovery demands or  
6 the discovery requests that have perpetuated this case and which  
7 you're going to hear about for the balance of this hearing, those  
8 discovery disputes are going to continue, even if United is  
9 100 percent successful on its motion.

10 THE COURT: Okay. Looks like we lost --

11 Ms. Lundvall, you're back?

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

14 THE COURT: No problem.

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

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

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

4 Thank you, Your Honor.

5 THE COURT: Thank you.

6 And Mr. Roberts, your reply, please.

7 MR. ROBERTS: Thank you, Your Honor.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

18 Thank you, Your Honor.

19 THE COURT: Thank you, both.

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

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

1 already said they rarely grant writs on motions to dismiss.

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

5 I'm concerned about the delay in this case. I do not  
6 believe that the motion was filed for any dilatory purpose. But  
7 clearly the extensive litigation doesn't equal irreparable harm in  
8 Nevada. I'm concerned about the delay in the case itself. April 15 of  
9 2019 is when the complaint goes back to. It is already a year and a  
10 half old.

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

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

17 Any questions, with regard to the ruling?

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

19 THE COURT: All right.

20 MR. ROBERTS: No questions, Your Honor.

21 THE COURT: Thank you.

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

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

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

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

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

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

1 And one of the factors that the Court should consider is  
2 the public policy of encouraging insurers to pay claims based on the  
3 representations of the providers who perform medical services.

4 Under the Prompt Payment Act -- and which would not necessarily  
5 apply if these were ERISA claims -- but the argument which is being  
6 asserted is that they're not ERISA claims, and therefore you would  
7 have to look to the Prompt Payment Act.

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

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

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

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

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

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

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

23 There is one argument which was not reached in the brief,  
24 but I think it is somewhat applicable by analogy, and that is NRS  
25 48.105, which they said accepting or offering or promising to accept

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

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

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

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



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

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

13 THE COURT: I just have --

14 MR. ROBERTS: Thank you, Your Honor.

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

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

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

1 the spreadsheet.

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

9 THE COURT: Thank you.

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

19 THE COURT: Thank you.

20 And the opposition, please.

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

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

25 THE COURT: Hang on just a second.

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

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

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

9 So go ahead then again, please.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22           MS. GALLAGHER: So now [indiscernible].

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

1 something the plaintiff is amenable to?

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

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

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

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

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

25 And I appreciate the opportunity to address the



1 substantive piece of it, Your Honor.

2 THE COURT: Thank you.

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

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

9 THE COURT: I think that's --

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

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

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

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

21 THE COURT: Okay. All right.

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

24 MS. GALLAGHER: Thank you, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 Can you respond to that?

14 MS. GALLAGHER: Yes, Your Honor.

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

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

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



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

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

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

10 THE COURT: Thank you, Ms. Gallagher.

11 Mr. Roberts, your response, please.

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

14 THE COURT: Everything.

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

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

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

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

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

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

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

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

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

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

16 THE COURT: So I --

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

19 THE COURT: Okay. Go ahead, sorry.

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

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

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

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

9 THE COURT: Right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 they relied upon to compile their spreadsheet?

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

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

11 MR. ROBERTS: Yes, Your Honor.

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

13 THE COURT: You know, I am supposed to go to the  
14 American College of Business Court Judges. If I get up the nerve to  
15 board an airplane on the 28th and 29th of this month. So can we set  
16 it -- let's set it on Wednesday, November 4th on the -- just on a -- at  
17 10:30 a.m., just a stacked calendar for status?

18 And Nicole McDevitt, did you get that date?

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

20 THE COURT: Very good. All right.

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

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

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

25 As Your Honor has probably seen, through the



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

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

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

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

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

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

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

23 Anyways, so go ahead, please.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 push this out.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 And it's important, though, because I want to quote from a  
10 case, a Ninth Circuit case, it says quote, In the ERISA context, the  
11 administrative record consists of the papers the insured had when  
12 [indiscernible] claim, end quote. And I'm quoting from a case called  
13 *Montour versus Hartford Life*, 588 F.3d 623 at 632. Ninth Circuit  
14 2009. And that's really important. You know, we've sort of belabor  
15 this point, but. It just goes to show you how important when United  
16 keeps referring to the administrative record, this is very specific. If  
17 they -- and in this case they had to deny the claims. We're not after  
18 any claims that are being denied.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 So Your Honor, we would respectfully ask that you order

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

5 THE COURT: Thank you.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

7 So for example, they're looking for documents that would  
8 show the methodology that was used to determine the amount of  
9 reimbursement paid on each of the claims at issue. Those  
10 documents would essentially -- the documents that show that would  
11 essentially be, one, the administrative records that this Court has  
12 already ordered United to produce. We produced approximately  
13 1800 pages of those on September 30th. And we believe we're  
14 going to be able to produce another 35 administrative records next  
15 week. That production we believe will also be in the thousands of  
16 pages.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 that are at issue here.

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

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

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

1 THE COURT: Thank you, Mr. Balkenbush.

2 The reply then in support, please.

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

7 As Your Honor knows, that order came out last month.  
8 And so we have this long period of time since January when these  
9 were originally due and most of the meet and confers where, you  
10 know, they're saying now, they've agreed to produce 90 to  
11 95 percent, but sort of not, as indicated, the state of affairs. We've  
12 gotten push back and narrowing that we heard just a moment ago,  
13 as well, unilaterally narrowing what we've asked for.

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

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

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1 opposition.

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 THE COURT: Okay.

21 MS. GALLAGHER: Thank you.

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

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

25 MS. GALLAGHER: I have not, Your Honor.

1 THE COURT: You have not?

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

3 THE COURT: Okay.

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

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

8 MS. GALLAGHER: By tomorrow or Monday.

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

11 MS. GALLAGHER: I can meet that.

12 THE COURT: Which day?

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

14 THE COURT: Which day?

15 MS. GALLAGHER: I'll go with the earlier of the two, the  
16 13th.

17 THE COURT: October 13th. Thank you.

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

19 The motion will be granted in all respects.

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

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

1 held to those deadlines.

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

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

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

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

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

14 So Ms. Gallagher to prepare the order.

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

19 Any questions from either of you on that?

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

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

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

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

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

5 THE COURT: Sure.

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

9 THE COURT: It's not my intent to require all of the  
10 production by the 22nd, but to determine what the priority is and set  
11 deadlines for each category. And that will be set in stone as of the  
12 22nd.

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

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

18 Now, anything further?

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

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

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

1 THE COURT: Mm-hmm.

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

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

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

10 THE COURT: Thank you, Mr. Balkenbush.

11 The plaintiff, is there a response to that?

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

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

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

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

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

3 THE COURT: Thank you.

4 Is there a reply, Mr. Balkenbush?

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

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

15 MS. GALLAGHER: Yes, Your Honor.

16 MR. BALKENBUSH: Yes, Your Honor.

17 THE COURT: Thank you, both.

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

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

22 Is it necessary to discuss that today?

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



1 THE COURT: Good enough.

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

5 MR. BALKENBUSH: I agree, Your Honor.

6 THE COURT: Okay. Very good.

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

9 And are you guys working full time on this case?

10 Don't answer that. Okay.

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

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

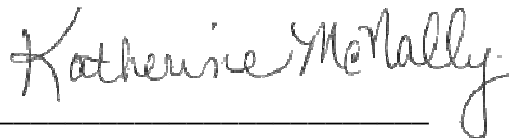
15 MS. GALLAGHER: All right.

16 MR. BALKENBUSH: Thank you, Your Honor.

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

18 \* \* \* \* \*

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

22 

23 Katherine McNally  
24 Independent Transcriber CERT\*\*D-323  
25 AZ-Accurate Transcription Service, LLC

# EXHIBIT 26

003623

003623

# EXHIBIT 26



## Kent Bristow

Senior Vice President, Revenue Management

With more than 25 years of professional experience in accounting and operations, Kent brings a wealth of knowledge to revenue management. His expertise in managed care and fiscal services puts him in the right position to lead TeamHealth across all service lines in the areas of:

- revenue projections for all mergers and acquisitions and new business opportunities
- all managed care contracting and negotiations with health plans
- supervision of fiscal responsibilities of TeamHealth disputes with health plans related to billing and reimbursement issues
- advocacy and legislative affairs associated with reimbursement policies and regulations
- management of TeamHealth's Coding Quality Assurance program
- outsourced billing services

Prior to joining TeamHealth in 1997, Kent worked at KPMG in the audit division and at Pershing Yoakley & Associates providing healthcare accounting and consulting services. He received his Bachelor of Science in Business Administration from the University of Tennessee, Knoxville.

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**Paula Dearolf, CPC**


 TeamHealth

Executive Vice President, Revenue Cycle Operations at  
TeamHealth

Knoxville, Tennessee · 49 connections

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Experience

 **Executive Vice President, Revenue Cycle Operations**  
TeamHealth

Nov 1994 - Present · 26 years 3 months


Knoxville, Tennessee Area


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**Lois Findlan**  
Billing Operations Analyst at TeamHealth  
Fort Lauderdale, FL
- 

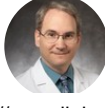
**Cindy Felty**  
Correspondence clerk at TeamHealth  
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**B. Michelle Corsaglia**  
Anesthesia Coding Manager at Vanderbilt University Medical Center  
Knoxville Metropolitan Area
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**Sarah Shaffer, MPH**  
Business Analyst at TeamHealth  
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- 

**LaTronda Gillespie-Todd**  
Assistant Director IT Client Services at TeamHealth  
Knoxville Metropolitan Area
- 

**Robin Burnette, CPC, CMPE**  
Director, Revenue Cycle Support at TeamHealth  
Knoxville, TN
- 

**Tony Vetrano**  
CFO of HCFS a division of Team Health  
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**Hamilton Lempert**  
Chief Medical Officer of Coding Policy at TeamHealth

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David Greenberg



## David Greenberg

Vice President Payer Contracting & Strategy at Vein Clinics of America

Fort Lauderdale, Florida · 500+ connections



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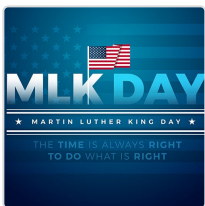
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## About

Healthcare management professional with proven track record of improving operations and maximizing revenues; managing hospital, payor and physician relations; and developing new business relationships and revenue enhancement strategies.

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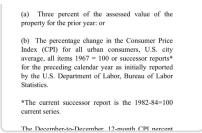


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Experience

 **Vice President Payor Contracting & Strategy**  
Vein Clinics of America  
Mar 2020 - Present · 11 months

 **Vice President, Managed Care**  
TeamHealth  
Nov 2018 - Mar 2020 · 1 year 5 months  
Vice President, Managed Care

 **VP, National Payor Contracting**  
Sound Physicians  
Jan 2017 - Nov 2018 · 1 year 11 months

 **TeamHealth**  
10 years 9 months

**Vice President, Managed Care**  
Dec 2013 - Jan 2017 · 3 years 2 months  
National managed care responsibility for professional anesthesiology services. SE regional responsibility for emergency medicine, hospital medicine, and urgent care services.

**Director, Managed Care**  
May 2006 - Nov 2013 · 7 years 7 months

David Greenberg



**Regional Vice President of Operations & COO of S. FL. Pediatric Partners**

Kelson Pediatric Partners

Sep 2003 - Oct 2005 · 2 years 2 months



**Regional Vice President of Operations**

TeamHealth

2001 - 2003 · 2 years

**Mgr. Hospital Contracts; NICU Regional Mgr.; Dir. Ped. Sub-Specialties**

Pediatrix Medical Group

1995 - 2001 · 6 years

**Director - Expansion, Acquisitions & Facilities**

PCA Family Medical Centers

1994 - 1995 · 1 year

**Manager, Physician Services**

Broward Health

1989 - 1993 · 4 years

Education

**University of Florida**

MBA, MHA · Heath Care Administration & Business Administration

1985 - 1988

**Stony Brook University**

BA · Economics and Business

1981 - 1985

Also attended FAU part-time/evenings and graduated in 2001 with a BS in Accounting.

David Greenberg

Licenses & Certifications

**Certified Public Accountant**  
State of Florida Dept. of Business and Professional Regulation

Groups

- Managed Care Connections
- Broward County Gator Club
- Healthcare & Medical Practice Professionals
- The Managed Care Leadership Network
- Managed Care Contracting Group
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Rena Harris



Rena Harris

Sr. Contract Manager at TeamHealth

Greater Los Angeles Area · 10 connections

TeamHealth

Cal State Northridge

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Experience

**Senior Contract Manager**  
TeamHealth  
Oct 2015 - Present · 5 years 4 months  
Greater Los Angeles Area

Responsible for negotiation, re-negotiation and administration of Emergency Room and Hospitalists physician groups Agreements staffed at various hospitals in the states of AZ, CA, CO, ID, KS, NV, NM OK,OR, TX, WA and WY. Negotiate with various Managed Care entities for products which includes but not limited to Commercial, Medi-Cal, Medi-Care and Exchange products. Additional responsibilities include collaborating with billing centers on resolving billing and day to day issues.

**Manager of Managed Care Contracting**  
Kindred Healthcare  
Nov 2013 - Oct 2015 · 2 years  
Greater Los Angeles Area



Jennifer (JJ) Shrader



Jennifer (JJ) Shrader

Vice President, Managed Care  
Knoxville, Tennessee Area · 127 connections

 TeamHealth

 University of Tennessee-Knoxville

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Experience

 **TeamHealth**  
24 years

Managed Care

2005 - Present · 16 years

Knoxville, TN

CFO, Regional

2000 - 2005 · 5 years

Knoxville, TN

Corporate Accounting

1997 - 2000 · 3 years

Knoxville, TN

Jennifer (JJ) Shrader

Internal Auditor

First Tennessee Bank

1993 - 1994 · 1 year

Knoxville, Tennessee Area

Education

University of Tennessee-Knoxville

MAcc

1992 - 1993

Carson-Newman University

Bachelor of Science (B.S.) · Accounting

1988 - 1992

Licenses & Certifications

CPA, Inactive

Organizations

TSCPA

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Jennifer (JJ) Shrader




Contract Manager, Market & Network Services Cleveland Clinic Florida  
Stuart, FL



**Jamie Roberts, MBA, MHSM**  
Network Relations Manager at Aetna  
Irving, TX



**Ketul Patel**  
Associate at Eximer Capital  
New York, NY



**Ronnie Gainey**  
Unix System Administrator at First Horizon Bank  
Knoxville, TN

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Children's Hospital Los Angeles

2 years 4 months

Manager, Managed Care Contracting

Aug 2011 - Aug 2013 · 2 years 1 month

Los Angeles

Responsible for negotiation and administration of Commercial, Medi-Cal and Vision Managed Care contracts, including Delegated Medical Group and Delegated Hospital contracts. Coordination and contract negotiation with out of area hospitals in transferring patients to and from CHLA. Additional responsibilities include staff management, day-to-day department operations. Collaborating with Patient Financial Services, Admitting and other internal hospital departments to streamline operational...

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Sr. Contract Specialist

May 2011 - Aug 2011 · 4 months

Los Angeles

Responsible for negotiation and administration of Medi-Cal Managed Care contracts. Additional responsibilities include day-to-day department operations collaborating with Patient Financial Services, Admitting and other internal hospital departments to streamline operational processes.

Senior Network Manager

Anthem Blue Cross

Jan 2005 - Nov 2010 · 5 years 11 months

Woodland Hills

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development, complaints/grievances, and provider database operations for...

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Manager, Managed Care Contracting

Catholic Healthcare West

Oct 2002 - Jan 2005 · 2 years 4 months

Camarillo

Responsible for the negotiation and administration of 30 managed care contracts for CHW’s Ventura Region (St. John’s Regional Medical Center and St. John’s Pleasant Valley Hospital). Additional responsibilities included maintenance and development of positive internal and external relationships, troubleshoot complex contractual issues, and manage staff.

Program Manager

Pacificare of California

Oct 2000 - Oct 2002 · 2 years 1 month

Cypress

Act as a liaison between Pacificare of California and seventy-seven (77) Los Angeles area provider groups for the evaluation, implementation and development of disease management and healthcare quality programs.

Blue Shield of California

4 years 1 month

Senior Provider Relations Coordinator/Contract Manager

Nov 1998 - Oct 2000 · 2 years

Woodland Hills

Responsible for the day-to-day contracting and operational issues for ancillary/tertiary providers, medical groups and hospitals for over 80,000 commercial and Medicare assigned members.

Rena Harris

over 40,000 commercial and Medicare members. Additional duties included network analysis, ad hoc projects, and provider contracting.

Education

Cal State Northridge  
Health Administration  
1994 - 1997

Groups

- California Managed Care (Local Initiatives)
- Managed Care Contracting Group
- Provider Relations, Payer Relations & Healthcare Contracting Group

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Rena Harris



**Ketzia Woodard**  
The "I.T." Girl for Dallas Recruitment  
Dallas-Fort Worth Metroplex



**Ken Willoughby**  
Emergency Medicine Physician Assistant  
Greater Cleveland



**Denise Strickland**  
Clinical Practice Manager at TeamHealth  
Shelby County, TN



**Jude Kotsko MD,FACEP**  
Emergency Medicine Physician at Riverside Health System  
Virginia Beach, VA



**Sandra Nichols**  
Clinical Coordinator for APRN Programs, Assistant Professor, Adult-Gero NP Concentration  
Coordinator at Northern Kentucky University  
Norfolk, VA



**Ana (Lisette) Mendoza**  
Director, Provider Network Management at Anthem, Inc.  
South Pasadena, CA



**pari khattak**  
--  
United States

**Katherine Machado**  
Practice Coordinator at TeamHealth  
Fort Lauderdale, FL

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Physician Assistant at TeamHealth  
Lancaster, KY

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Rena Harris

Rena Harris

Executive Director at Georgia Options, Inc.

Lawrenceville, GA

Rena Harris

Parking Professional with 20 years experience in design, consulting and operations

Atlanta, GA

Rena Harris

Student at Touro College

Washington DC-Baltimore Area

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# EXHIBIT 27

003649

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# EXHIBIT 27

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KRISTEN T. GALLAGHER (NSBN 9561)  
AMANDA M. PERACH (NSBN 12399)  
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Las Vegas, Nevada 89102  
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aperach@mcdonaldcarano.com

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

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

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

Plaintiff,

vs.

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

Defendants.

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

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

Fremont Emergency Services (Mandavia), Ltd. ("Fremont") hereby responds to  
defendants United HealthCare Insurance Company ("UHCIC"), United HealthCare Services, Inc.  
("UHS"), UMR, Inc. ("UMR"), Oxford Health Plans, Inc. ("Oxford"), Sierra Health and Life  
Insurance Company, Inc. ("SHL"), Sierra Health-Care Options, Inc. ("SHO") and Health Plan of  
Nevada, Inc. ("HPN") (collectively "UnitedHealthcare" or "Defendants")'s First Set of  
Interrogatories, served to Fremont's counsel pursuant to FRCP 33.

## INTERROGATORIES

### Interrogatory No. 1:

Identify and describe all of the Healthcare Claims that Fremont contends it is asserting in this Action. Your description should include, at a minimum, the following information: (a) the patient's name, (b) the patient's date of birth, (c) the patient's social security number, (d) the patient/insured's I.D. number, (e) the patient's account number, (f) the name of the medical provider, (g) the date the medical service was provided, (h) the amount billed by Fremont for the medical service, (i) the amount Defendants paid to Fremont, (j) the additional amount of reimbursement Fremont is demanding from Defendants, and (k) a brief description of the nature of the illness or injury that was being treated. This information may be provided in the form of a list, chart, spreadsheet and/or table if that is the most convenient/efficient way to provide the requested information.

### Answer to Interrogatory No. 1:

Objection. This Interrogatory seeks information that is already in UnitedHealthcare's possession, is not proportional to the needs of this case in that it seeks information not necessary to any element of proof of any claim or defense and exceeds any reasonable request related to identification of the claims at issue (e.g. the patient/insured's I.D. number and the patient's account number, the name of the medical provider and a brief description of the nature of the illness or injury). In addition, this Interrogatory is not reasonably calculated to lead to the discovery of admissible evidence because certain subparts have no relevance or bearing on the claims at issue in the litigation (e.g. the name of the medical provider or a brief description of the nature of the illness or injury that was being treated) and is compound. Further, Fremont objects to the request to provide a brief description of the nature of the illness or injury that was being treated because that information can be generally gleaned from the E/M Code, the Member's medical records, to the extent they are in UnitedHealthcare's possession, and documents that are within the possession of UnitedHealthcare.

Subject to and without waiving the foregoing objections, Fremont will produce a spreadsheet identifying the claims at issue in the litigation. Fremont further submits that the

claims at issue continue to accrue and the list being produced is only for claims in which services were provided on or before April 30, 2019.

**Interrogatory No. 2:**

Paragraph 36 of the Complaint states: "At all material times, the UH Parties were aware that Fremont was entitled to and expected to be paid at rates in accordance with the standards established by Nevada law." Identify all Nevada statutes and regulations that establish the rate of payment standards referenced in this paragraph.

**Answer to Interrogatory No. 2:**

Objection. This request improperly limits the allegations in Paragraph 36 of the Complaint (Fremont's breach of implied-in-fact contract claim) to statutory and regulatory authority as the term "Nevada law" encompasses common law and equitable remedies. Fremont further objects on the basis that this Interrogatory calls for a legal conclusion. Subject to the foregoing objections, Fremont responds, that in addition to the existence of a common law implied-in-fact contract, and other common law bases which support Fremont's claims, the following NRS and NAC provisions support its allegation: NRS 679B.152; NRS 683A.0879; NRS 686A.310; NRS 689A.0495; NRS 689A.410; NRS 689B.045; NRS 689B.255; NRS 689C.485; NRS 695C.179; NRS 695C.185; NAC 686A.270; NAC 686A.290; NAC 686A.306; NAC 686A.675; NRS 695G.170.

**Interrogatory No. 3:**

Paragraph 46 of the Complaint refers to "the rates required by Nevada law." Identify all Nevada statutes and regulations that this paragraphs is referring to.

**Answer to Interrogatory No. 3:**

*See Objections and Response to Interrogatory No. 2.*

**Interrogatory No. 4:**

To the extent Fremont contends that any of the Defendants orally promised/committed to reimburse Fremont at a particular rate for the Healthcare Claims that Fremont contends it is asserting in this Action, please identify the individual who made the oral promise/commitment, the approximate date the oral promise/commitment occurred, which Fremont employee the oral

promise/commitment was made to, and describe in detail the nature of the oral promise/commitment.

**Answer to Interrogatory No. 4:**

Objection. This request is compound and is vague and ambiguous with respect to the phrase "oral promise/commitment." Subject to and without waiving the foregoing objections, UnitedHealthcare publicly commits that it pays for out-of-network services at the lower of the out-of-network provider's actual charge billed to the member, or "the reasonable and customary amount," "the usual, customary, and reasonable amount," "the prevailing rate," or other similar terms that base payment on what other healthcare professionals in a geographic area charge for their services. *See* FESM000335-341. UnitedHealthcare further represents that "the affiliates of UnitedHealth Group most commonly refer to a schedule of charges created by FAIR Health, Inc. ('FAIR Health') to determine the amount of the payment." Despite these commitments, "UnitedHealthcare uses a service called Data iSight to review select out-of-network claims and recommend a reduced payment amount for out-of-network covered services. When UnitedHealthcare reduces payment of Fremont's billed charges, it states that the "charge exceeds fee schedule/maximum allowable or contracted/legislated fee arrangement." UnitedHealthcare seemingly admits that there if there is not a contracted fee arrangement then it is bound by a legislated fee arrangement. Upon entry of a confidentiality agreement and protective order, Fremont will produce a sample Explanation of Benefits consistent with the foregoing.

**Interrogatory No. 5:**

Identify and describe the actions taken by Defendants that led to the creation of the implied-in-fact contract alleged by Fremont in the Complaint.

**Answer to Interrogatory No. 5:**

Objection. To the extent this Interrogatory calls for a legal conclusion, it is improper. Subject to and without waiving the foregoing objection, Fremont responds as follows: Fremont is a professional practice group of emergency medicine providers that staffs certain emergency department services in Clark County, Nevada, including the emergency departments at Sunrise Hospital; Mountain View Hospital; Southern Hills Hospital; Dignity Health, St. Rose Dominican



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**MCDONALD CARANO**

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Hospital - Rose De Lima Campus; St. Rose Dominican Hospital - Siena Campus; Dignity Health, St. Rose Dominican Hospital - San Martin Campus and ER at the Lakes. UnitedHealthcare and its defendant affiliates are health care insurance companies and/or administrators that provide coverage to their Members. Federal and state laws require Fremont to treat individuals who present for treatment in emergency departments that it staffs, regardless of that person's ability to pay. *See e.g.* Emergency Medical Treatment & Labor Act ("EMTALA"), 42 U.S.C. § 1395dd; NRS 439B.410. UnitedHealthcare has opted to provide and/or administer health insurance coverage to certain individuals enrolled in its health plans in Nevada. UnitedHealthcare is required legally and contractually to cover and pay for emergency department services provided to its Members. Because Fremont has already provided emergency medicine services to UnitedHealthcare's Members and UnitedHealthcare is obligated to pay for those services as a Nevada health insurer and managed care organization, it is implicit and expected that UnitedHealthcare will pay Fremont for the billed charges. UnitedHealthcare previously paid Fremont for emergency medicine services administered to UnitedHealthcare's Members on an out-of-network basis at rates acceptable to Fremont. However, that changed when UnitedHealthcare started paying lower reimbursement rates not reflective of the billed charges, or a usual and customary rate or for the reasonable value of the services provided. In the simplest of terms: Fremont is not obligated to provide emergency services to UnitedHealthcare Members at rates that are not usual and customary or reflective of the reasonable value of the emergency medicine services provided. For purposes of this litigation, Fremont seeks additional payment from UnitedHealthcare in connection with claims that UnitedHealthcare paid at a rate lower than 75% of billed charges.

**Interrogatory No. 6:**

Identify all individuals who are or have been involved in "business discussions regarding the potential for Fremont to become a-participating provider" as referenced in paragraph 26 of the Complaint. The information should include each individual's full name, address, phone number and what entity they work for or are associated with (i.e. Fremont, Defendants, etc.).

...

**Answer to Interrogatory No. 6:**

Kent Bristow, Senior Vice President, Revenue Management for TeamHealth Holdings, Inc., 265 Brookview Centre Way Ste. 400, Knoxville, Tennessee. Fremont is part of the TeamHealth organization. **Mr. Bristow may only be contacted through Fremont's counsel of record.**

Jennifer Shrader, Vice President of Managed Care Contracting for TeamHealth Holdings, Inc., 265 Brookview Centre Way Ste. 400, Knoxville, Tennessee. **Ms. Shrader may only be contacted through Fremont's counsel of record.**

Rena Harris, Senior Contracts Manager, for TeamHealth Holdings, Inc., 8511 Fallbrook Ave, Suite 120, West Hills, CA 91304. Ms. Harris was involved with negotiations with HPN, SHO and SHL on behalf of TeamHealth Holdings, Inc. Ms. Harris may only be contacted through Fremont's counsel of record.

Mark Kline was formerly employed by TeamHealth Holdings, Inc. as a Vice President, Managed Care. Mr. Kline's email address is: mgklinetexas@sbcglobal.net. **Mr. Kline may only be contacted through Fremont's counsel of record.**

Dan Schumacher, the President and Chief Operating Officer of UnitedHealthcare and part of the Office of the Chief Executive of UnitedHealth Group, Inc. Defendants have Mr. Schumacher's contact information.

Angie Nierman, a Vice President of Networks at UnitedHealth Group, Inc. Defendants have Ms. Nierman's contact information.

Dan Rosenthal, President of UnitedHealth Networks, Inc. Defendants have Mr. Rosenthal's contact information.

John Haben, Vice President of UnitedHealth Networks, Inc. Defendants have Mr. Haben's contact information.

Jacy Jefferson, Associate Director, Network Development & Contracts for Health Plan of Nevada/Sierra Health & Life, UnitedHealthcare – Nevada. Defendants have Mr. Jefferson's contact information.

...

1 Greg Dosedel, Vice President of National Ancillary Contracting & Strategy at  
2 UnitedHealthcare Services, Inc. Defendants have Mr. Dosedel's contact information.

3 DATED this 29th day of July, 2019.

4 McDONALD CARANO LLP

5 By: /s/ Kristen T. Gallagher

6 Pat Lundvall (NSBN 3761)  
7 Kristen T. Gallagher (NSBN 9561)  
8 Amanda M. Perach (NSBN 12399)  
9 2300 West Sahara Avenue, Suite 1200  
10 Las Vegas, Nevada 89102  
11 Telephone: (702) 873-4100  
12 plundvall@mcdonaldcarano.com  
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14 aperach@mcdonaldcarano.com

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

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 29th day of July, 2019, I caused a true and correct copy of the foregoing **FREMONT EMERGENCY SERVICES (MANDAVIA), LTD.'S OBJECTIONS AND ANSWERS TO DEFENDANTS' FIRST SET OF INTERROGATORIES** to be served via U.S. Mail, postage prepaid upon the following:

D. Lee Roberts, Jr., Esq.  
Colby L. Balkenbush, Esq.  
Josephine E. Groh, Esq.  
WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC  
6385 South Rainbow Blvd., Suite 400  
Las Vegas, Nevada 89118  
Telephone: (702) 938-3838  
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jgroh@wwhgd.com

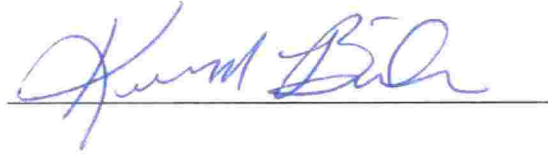
*Attorneys for Defendants UnitedHealthcare Insurance Company, United HealthCare Services, Inc., UMR, Inc., Oxford Health Plans, Inc., Sierra Health and Life Insurance Co., Inc., Sierra Health-Care Options, Inc., and Health Plan of Nevada, Inc.*

/s/ Karen Surowiec  
An employee of McDonald Carano LLP

VERIFICATION

I, Kent Bristow, have read **FREMONT EMERGENCY SERVICES (MANDAVIA), LTD.'S ANSWERS TO DEFENDANTS' FIRST SET OF INTERROGATORIES** and I believe, based on reasonable inquiry, that the responses set forth therein are true and correct to the best of my knowledge, information, and belief.

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



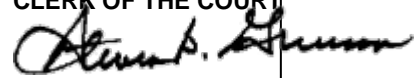
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DISTRICT COURT  
CLARK COUNTY, NEVADA

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

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

BEFORE THE HONORABLE NANCY ALLF, DISTRICT COURT JUDGE  
THURSDAY, JANUARY 21, 2021

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

APPEARANCES (Attorneys appeared via Blue Jeans):

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

For the Defendant(s): BRITTANY M. LLEWELLYN, ESQ.  
NATASHA S. FEDDER, ESQ.

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

1                   **LAS VEGAS, NEVADA, THURSDAY, JANUARY 21, 2021**

2                   [Proceeding commenced at 3:00 p.m.]

3  
4                   THE COURT: Good afternoon, everyone. Calling the case  
5 of Fremont versus United.

6                   Appearances, please, starting first with the plaintiff.

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

9                   MS. LUNDVALL: Good afternoon, Your Honor. Pat  
10 Lundvall, also on behalf of the Health Care Providers.

11                  THE COURT: Thank you, both.

12                  MS. PERACH: Good afternoon, Your Honor. Amanda  
13 Perach, also on behalf of the Health Care Providers.

14                  THE COURT: Thank you.

15                  And for the defendants, please.

16                  MS. LLEWELLYN: Good afternoon, Your Honor. Brittany  
17 Llewellyn, on behalf of the defendants.

18                  MS. FEDDER: Good afternoon, Your Honor. Natasha  
19 Fedder, on behalf of defendants.

20                  THE COURT: Thank you, both. Does that exhaust the  
21 appearances?

22                  MS. GALLAGHER: From the plaintiffs, yes, Your Honor.

23                  THE COURT: Does that exhaust for the defendants?

24                  MS. Fedder: Also for defendants, yes.

25                  THE COURT: Okay. Thank you very much.



1                   Then, Ms. Llewellyn, this was your Motion to Compel.

2                   MS. FEDDER: Your Honor, this is Natasha Fedder for  
3 defendants. I'll be arguing the motion -- taking the lead on arguing  
4 the motion, if that's all right with you.

5                   THE COURT: Of course. Certainly.

6                   MS. FEDDER: Thank you, Your Honor. Thank you for your  
7 time this afternoon.

8                   I'm going to cover three topics. I will first provide an  
9 overview of the case and the discovery we are seeking on this  
10 motion. I will then get into more specifics regarding the relevance of  
11 the discovery we seek. And finally I will touch on some of the case  
12 law the parties have cited in their papers.

13                   As you know, Your Honor, there are 22,153 at-issue claims  
14 in this case. Plaintiffs have already received payment for these  
15 claims, but they say they are entitled to more. In particular, they say  
16 that a reasonable reimbursement rate is 75 to 90 percent of their bill  
17 charges.

18                   Plaintiffs unilaterally set their bill charges. Defendants do  
19 not know how those charges are set, nor do they know whether  
20 those charges are reasonable, vis-a-vis what plaintiffs charge other  
21 payers, such as facilities and hospitals, or what Team Health itself  
22 reimburses for out-of-network emergency services. Defendants also  
23 do not know whether plaintiffs are entitled to receive compensation  
24 for the at-issue claims from facilities and hospitals they contract  
25 with.

1 To that end, Your Honor, defendants seek discovery  
2 regarding how plaintiffs' charges were set and whether they were  
3 set objectively and in good faith; whether and how Team Health and  
4 Team Health's own financial incentives influence plaintiff's bill  
5 charges; plaintiffs' contractual agreements with hospitals and  
6 facilities and the context surrounding those arrangements; and  
7 plaintiffs' costs of doing business for the disputed emergency  
8 services.

9 Plaintiffs have effectively admitted that Team Health is the  
10 decision maker regarding their unilaterally set bill charges. The only  
11 party witnesses plaintiffs have disclosed are current or former Team  
12 Health employees, in offices outside of Nevada; and a Team Health  
13 employee verified plaintiffs' interrogatory responses.

14 Without the discovery sought, defendants will be  
15 prejudiced when trying to depose party witnesses and defend  
16 themselves at trial.

17 Plaintiffs argue the defendants are not entitled to this  
18 discovery and attempt to shift the focus entirely to whether the  
19 amounts United allowed as reimbursement for the at-issue claims  
20 are reasonable. In so arguing, plaintiffs effectively ask defendants  
21 and the Court to accept that their billed charges were reasonable, but  
22 that is a determination for the Court and the finder of fact to make  
23 with the benefit of expert opinions, among other things.

24 Moreover, plaintiffs have put the reasonableness of their  
25 bill charges at issue. They have alleged that they were reimbursed

1 at rates below the billed charges and a reasonable payment for the  
2 services rendered, and they further alleged that reimbursement at a  
3 rate of 75 to 90 percent of their bill charges is reasonable.

4 Defendants have a right to discovery that allows them to  
5 test these allegations. Defendants have also put the reasonableness  
6 of plaintiffs' billed charges at issue through their defenses and  
7 affirmative defenses, including that plaintiffs' bill charges are  
8 excessive.

9 Defendants have further put at issue whether plaintiffs had  
10 other sources of compensation for the disputed claims, including  
11 their affirmative defenses that plaintiffs have already received all  
12 payments due and have failed to mitigate damages. Defendants are  
13 entitled to the discovery necessary to prove these defenses.

14 Getting into more of the specifics, Your Honor, the  
15 discovery defendants seek into plaintiffs' corporate structure and  
16 relationship with Team Health goes to how plaintiffs' billed charges  
17 are set, who sets them, and the basis for them. For example, there  
18 may be a Team Health committee that is tasked with setting the  
19 charges and directing affiliates as to what their charges must be, and  
20 corresponding plaintiff committees that are tasked with  
21 implementing the bill charges. Defendants are entitled to discovery  
22 reflecting such processes.

23 In addition to seeking discovery as to how plaintiffs' billed  
24 charges are set and by whom, defendants also seek to understand  
25 the basis for them. To that end, Team Health is a profit-driven entity.

1 It, therefore, has an incentive to inflate billed charges to drive up its  
2 profits, as opposed to basing them on, for example, the cost to  
3 plaintiffs of providing the underlying services.

4           Such incentives might be reflected in committee meeting  
5 minutes, corporate memoranda or e-mails. Discovery of such  
6 material is relevant to whether plaintiffs' billed charges are  
7 reasonable.

8           Furthermore, news articles document high-dollar figures  
9 associated with administrative services Team Health purportedly  
10 provides and management fees it charges. Whether such fees  
11 inflated plaintiffs' billed charges for the at-issue claims is relevant to  
12 whether the charges were reasonable.

13           To further gauge reasonableness, defendants seek  
14 discovery into plaintiffs' relationships with facilities and hospitals --  
15 not only their contracts, but also presentations or other materials  
16 plaintiffs may have provided to the facilities that provide context  
17 around those contracts.

18           For example, plaintiffs may be willing to offer a hospital a  
19 sweetheart deal to be the hospital's exclusive provider and may  
20 inflate their billed charges for out-of-network services to compensate  
21 for that concession.

22           On the flip side, if plaintiffs are the only providers in a  
23 given region, such that they have an effective monopoly, they may  
24 use their bargaining power to negotiate higher rates.

25           Defendants need to understand that dynamic to be able to

1 make an apples-to-apples comparison between what plaintiffs accept  
2 from hospitals and facilities and what they are demanding here.

3 This discovery regarding relationships with facilities and  
4 hospitals also goes to defendants' affirmative defenses that plaintiffs  
5 have received payment for the at-issue claims and/or have failed to  
6 mitigate damages. If plaintiffs are entitled to compensation from  
7 other sources, i.e. facilities and hospitals for the disputed claims,  
8 then that is relevant to these defenses.

9 Also to gauge reasonableness, defendants seek discovery  
10 as to what Team Health itself reimburses, pursuant to its own  
11 out-of-network program offerings. If Team Health is the decision  
12 maker regarding plaintiffs' billed charges and Team Health also  
13 sponsors its own employee benefit plan, if Team Health is, itself,  
14 reimbursing at rates that are different from the ones plaintiffs seek  
15 here, that is relevant to whether plaintiffs' billed charges are  
16 reasonable.

17 Finally, defendants seek discovery into plaintiffs' costs of  
18 care as another check on whether the billed charges to which they  
19 claim entitlement are reasonable. If, for example, plaintiffs billed  
20 charges far exceed their actual costs, that is relevant to  
21 reasonableness.

22 Defendants -- or excuse me, Your Honor, plaintiffs have  
23 attempted to reframe defendant's discovery requests as seeking  
24 clinical records. However, the at-issue requests do not seek  
25 information related to whether plaintiffs actually performed the

1 underlying emergency services and/or coded them properly.

2 As I've described, they instead explore the basis for  
3 plaintiffs' billed charges and other sources of compensation.

4 Your Honor, turning finally to a brief discussion of the case  
5 law. Plaintiffs do not cite to any Nevada case law that forecloses the  
6 discovery we seek here, and we are not aware of any such case law.

7 *Certified Fire*, for example, articulates general unjust  
8 enrichment and *quantum meruit* principles. But the Court found that  
9 the plaintiff had not enriched the defendant to begin with, and thus  
10 had no occasion to address whether or not the plaintiffs' costs were  
11 relevant.

12 Other case law plaintiffs cite does not foreclose the  
13 discovery we seek either. For example, in certain cases, like the  
14 *Gulf-to-Bay* case, the defendants did not raise the same affirmative  
15 defenses, and the Court focused its analysis on a state statute that  
16 addresses compensation for out-of-network services. Moreover, the  
17 Court in *Florida Emergency Physicians* declined to follow *Gulf-to-Bay*  
18 and granted discovery into plaintiffs' cost of care that the defendant  
19 sought there.

20 Still other case law, in fact, supports defendants' position.  
21 Children's Hospital, for example, states: A medical care providers'  
22 billed price for particular services is not necessarily representative of  
23 either the cost of providing those services or their market value.  
24 Rather, the full billed charges reflect what the provider unilaterally  
25 says it's services are worth.

1           In a given case, the reasonable and customary amount  
2 that the healthcare service plan has a duty to pay might be the bill  
3 the medical provider submits or the amount the healthcare service  
4 plan chooses to pay or some amount in between.

5           For these reasons, Your Honor, and those set forth in our  
6 papers, defendants respectfully request that the Court grant their  
7 Motion to Compel in full.

8           Thank you.

9           THE COURT: Okay. So I've got a few questions.

10          So these are Nevada corporations. And so the -- the  
11 members of the board of directors and the list of officers is available  
12 online; right, through the Secretary of State?

13          MS. FEDDER: Your Honor, I don't know the answer to that  
14 question. It may be.

15          THE COURT: Okay. So why would you be entitled,  
16 though, to know who the shareholders are or what happens at the  
17 board meetings?

18          MS. FEDDER: Understood, Your Honor. I don't -- we're  
19 not seeking discovery generally into what happens at the board  
20 meetings or who the shareholders are. We are specifically seeking  
21 discovery into how plaintiffs' billed charges are set and the basis for  
22 them and who sets them.

23          THE COURT: All right. But one of the things you have  
24 asked for is basically the financial information that -- the profitability  
25 of the business and how that affects charges, how they're set.

1 MS. FEDDER: Yes, Your Honor. We've asked for that  
2 information because we believe that as a profit-driven entity, Team  
3 Health has an incentive to inflate the billed charges.

4 We also believe, based on news articles, that Team Health  
5 provides management and administrative services. It charges a fee  
6 for those services. And we believe that the billed charges may be  
7 inflated to reflect those fees.

8 And we've requested financial information for that reason  
9 to try to understand the relationship between the billed charges and  
10 the profitability.

11 THE COURT: Okay.

12 MS. FEDDER: And whether --

13 THE COURT: Sorry. Go ahead.

14 MS. FEDDER: Excuse me. I'm sorry.

15 Oh, and whether profitability considerations are informing  
16 the basis for the billed charges, as opposed to other considerations  
17 that might inform them, such as the plaintiffs' actual cost of  
18 providing the care.

19 THE COURT: Okay. And everyone here is a for-profit  
20 entity; correct? All parties?

21 MS. FEDDER: Yes, Your Honor. That's correct.

22 THE COURT: Right. But some are public and some are  
23 private?

24 MS. FEDDER: Your Honor, I don't --

25 THE COURT: I assume that the --



1 MS. FEDDER: Oh, I'm sorry, Your Honor.

2 THE COURT: Is the defendant a public company?

3 MS. FEDDER: The parent -- the parent company.

4 THE COURT: Okay. All right.

5 MS. FEDDER: I believe --

6 THE COURT: [Indiscernible.] So I understand your  
7 argument that the costs have been inflated, but how -- why would  
8 you need the contracts between the plaintiff and the hospitals?

9 MS. FEDDER: The contracts from -- between the  
10 plaintiffs and the hospitals, Your Honor, go to a few issues.

11 First of all, they help us understand the rates that the  
12 plaintiffs are willing to accept from the hospitals and the facilities,  
13 and that helps us to evaluate whether the billed charges they are  
14 seeking here are reasonable.

15 But we've also asked for documentation, including  
16 presentations, that provide context around the contracts and the  
17 contractual arrangements that plaintiffs have with these facilities so  
18 that we can make an apples-to-apples comparison between the rates  
19 that they are willing to accept from those facilities and the billed  
20 charges that they are demanding here.

21 It's relevant, for example, I give an example of if they have  
22 an monopoly in a given area, that gives them bargaining power to  
23 negotiate a higher rate with a hospital. And so the comparison  
24 between that higher rate -- that -- the use of that higher rate as a  
25 check on reasonableness is informed by that monopoly

1 consideration.

2 Likewise, you know, they may be willing to offer hospitals  
3 lower rates to be the exclusive provider and then that may, in turn,  
4 impact the billed charges that they charge. They may inflate their  
5 billed charges to compensate for that concession that they've made.

6 Also the contracts are relevant to helping us understand  
7 whether they're entitled to other compensation, compensation from  
8 other sources for the claims that are at issue.

9 We've -- in our affirmative defenses, you know, we've  
10 stated that -- we've argued that -- or alleged -- excuse me -- that  
11 they've received payments on the disputed claims, and we've also  
12 alleged that they failed to mitigate damages. So we're trying to  
13 understand there are other sources of compensation for these  
14 claims, these at-issue claims, to be able to prove up those affirmative  
15 defenses.

16 THE COURT: Okay. And I assume you have an expert  
17 witness who is going to talk about why you believe the charges are  
18 excessive?

19 MS. FEDDER: Yes, Your Honor. And that -- yes,  
20 Your Honor. We do anticipate designating an expert. We expect  
21 that plaintiffs anticipate doing the same. And we would expect to  
22 provide the discovery that we're seeking to our expert to inform his  
23 or her opinions on that subject.

24 THE COURT: But I assume your expert will be talking  
25 about market?

1 MS. FEDDER: Well, Your Honor --

2 THE COURT: The market where the plaintiffs operate.

3 MS. FEDDER: Your Honor, I expect so. But we -- you  
4 know, we have not designated an expert. And I can't say, sitting  
5 here today, what exactly our expert would opine on.

6 THE COURT: Now, I -- I'm just -- you know, I just have a  
7 series of questions, and it's not meant to put you on the spot --

8 MS. FEDDER: No, absolutely, Your Honor.

9 THE COURT: -- but to understand and really dig into your  
10 issue here.

11 All right. So okay. I -- you wanted information about  
12 licensing and credentialing?

13 MS. FEDDER: Yes, Your Honor.

14 THE COURT: Can you explain that?

15 MS. FEDDER: Yes.

16 THE COURT: Somebody's typing. Please mute yourself if  
17 you're typing.

18 Go ahead, please.

19 MS. FEDDER: I apologize, Your Honor. It was me. I was  
20 just trying to get down your question.

21 Yes. Licensing and credentialing information is again  
22 relevant to us being able to make an apples-to-apples comparison  
23 between the rates that plaintiffs are accepting from hospitals and the  
24 billed charges that are at issue here.

25 So, for example, if the -- and I'm just trying to -- I'm just

1 trying to navigate to that particular request to look at it to be able to  
2 respond to your question.

3 THE COURT: Sure.

4 MS. FEDDER: So the licensing and credentialing is  
5 relevant to providing context for the contracts, to helping us  
6 understand considerations that have informed the rate that the  
7 plaintiffs are going to accept from the hospital or facility.

8 So, for example, if the contract requires that the providers  
9 performing the services have certain licensure or certain credentials,  
10 that may allow plaintiffs to negotiate higher rates for those contracts.

11 So we want to understand those considerations when  
12 we're making a comparison, for example, a market comparison like  
13 the one that you've suggested between those rates and the billed  
14 charges that plaintiffs are seeking here.

15 THE COURT: Okay. And you've received the charges from  
16 the plaintiffs. Why would it matter if they get reimbursed  
17 elsewhere? Why would that matter? Because their relationship with  
18 you is what is at issue here.

19 MS. FEDDER: I understand that, Your Honor. And that's  
20 certainly true. But we would look to other sources to try to gauge  
21 the reasonableness of the billed charges that are at issue here. We  
22 have insight into what -- the billed charges that plaintiffs have  
23 submitted and the reimbursement rates that we have paid, but we  
24 don't have insight into what plaintiffs are doing in the rest of the  
25 market.

1           Plaintiffs, themselves, have characterized this as a fair  
2 value or a fair market value -- it's a case about fair value or fair  
3 market value. And surely their activity in the rest of the market is  
4 relevant to the reasonableness question.

5           THE COURT: And what --

6           MS. FEDDER: And, Your Honor, I'm sorry, if I may, I just  
7 wanted to revisit one of your points that I didn't have a firm answer  
8 to.

9           The Unitedhealth Group, Incorporated, parent is publicly  
10 traded, but the other defendants are not publicly traded.

11          THE COURT: Thank you.

12          MS. FEDDER: I apologize I didn't have that information,  
13 earlier.

14          THE COURT: No, no, no. Thank you.

15          Okay. Are rates not tied to Medicare? [Indiscernible] rates  
16 or -- because I understand -- I understand the difference between  
17 wholesale and retail medicine. You know, I've practiced a long time.  
18 But what I don't know is what the standard or the norm is if rates  
19 vary in a community.

20          MS. FEDDER: Right. Understood, Your Honor. You know,  
21 we would say that Medicare is certainly a relevant benchmark in  
22 determining what is reasonable. I think the best answer I can offer in  
23 response to your question is that the healthcare market is a  
24 complicated one, and it presents complex fair value issues.

25          You know, I think something we see from the case law is

1 that the concept of fair value in the healthcare context is unsettled in  
2 Nevada. And we may -- the Court and the finder of fact may look to  
3 other jurisdictions and see what they have to say about fair value or  
4 may look to federal law.

5 But given these complexities, this is why, as you alluded  
6 to, we anticipate that the parties would retain experts, and the  
7 experts would offer opinions to help the Court and the fact-finder  
8 determine what is fair value.

9 And our position is that you -- it's not a one-sided inquiry.  
10 It's not only about what we, the defendants, allowed as  
11 reimbursement. It's also about the billed charges -- sort of the other  
12 side of the equation, if you will. How are they set and what is the  
13 basis for them? Are they reasonable?

14 THE COURT: Is the setting of the charges reasonable? Or  
15 does the market determine the setting of charges?

16 MS. FEDDER: Well, the -- Your Honor, if I'm  
17 understanding your question, it's really what is the basis informing  
18 the setting of the charges? And we don't know. We don't know  
19 what that basis is. That is what we are seeking with this discovery.  
20 We're seeking to understand how these charges are set, what the  
21 considerations are that inform them, and who sets them.

22 You know, perhaps, the market informs that decision. I  
23 just -- I don't -- without the benefit of discovery into the process, I  
24 don't know the answer of how their charges are set.

25 THE COURT: And then my last question is -- and I know

1 I'm putting you on the spot.

2 MS. FEDDER: That's okay.

3 THE COURT: I've gone -- I'm working from home, I have  
4 more time. I've spent hours on this.

5 My last question is, if we get into the profitability on how  
6 they set their charges, do we have to look at the profitability of the  
7 defendant and how they reimburse?

8 MS. FEDDER: Understood, Your Honor. And that's a fair  
9 question.

10 You know, I think that our -- the focus on the inquiry -- the  
11 focus on the defendant is on our out-of-network programs. And the  
12 considerations -- or the -- excuse me -- let me take a step back.

13 The focus of plaintiffs' discovery, with respect to  
14 defendants, is on our out-of-network programs. And they are, you  
15 know, what inform -- one of the main considerations informing our  
16 out-of-network programs is a need to react to inflated billed charges.  
17 And I think that the discovery reflects that we have taken steps to do  
18 that.

19 I can't say that our profitability would be relevant to that  
20 issue, so I don't think you would need to explore defendants'  
21 profitability.

22 But I -- and I would also say we are -- our requests are  
23 limited to the billed charges, understanding the connection between  
24 the billed charges and plaintiffs' profitability, and what profitability  
25 considerations might have informed the setting of the billed charges.

1 THE COURT: Okay. Thank you, Ms. Fedder.

2 The opposition, please.

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

5 So I think I'll start my presentation just with in response to  
6 a couple of the issues that were raised in the dialogue, just because  
7 they're fresh on everybody's mind.

8 So United already has information about how the Health  
9 Care Providers have set their charges. They asked a number of  
10 discovery requests, and we responded with respect to what is called  
11 our charge master. We've also responded to interrogatories that it's  
12 based, in part, on fair health, which Your Honor is probably familiar  
13 with through our pleadings, was set up after United had an issue  
14 back in 2009 with how they were setting reimbursement rates.

15 And so that information is already within United's  
16 wherewithal. They have that information in spreadsheet form  
17 information.

18 And I think a lot of the questions that you are asking  
19 Your Honor, of United is similar to what we were opposing with  
20 respect to why this supposed cost position is just not relevant to this  
21 case. In fact, a few of these discussions I felt like maybe I was in a  
22 different case for a minute, because they just don't have any  
23 connection with the first amended complaint and the claims that are  
24 at issue here.

25 You know, as United has indicated, they've gotten three



1 categories: The corporate structure -- they want to know a lot about  
2 the corporate relationship. They want to know about costs of doing  
3 business. And when they talk about that, they also sort of talk about  
4 the hospital and the facility contracts.

5 I sort of see all of these categories, even though their  
6 delineated separately, as sort of singularly relating to costs.

7 But Your Honor has already had occasion in this case,  
8 we've come before you with respect to the clinical records that, you  
9 know, this case is about United's reimbursement. That's what we're  
10 here to litigate. The value of those services and the reimbursement  
11 rates is a market value determination.

12 And Your Honor is correct, I would anticipate that United  
13 is going to have an expert that talks about whether or not our  
14 charges are reasonable in the marketplace, just as I would expect  
15 we're going to say that their charges in the marketplace aren't  
16 reasonable.

17 And so the corollary to that, their defenses then, have to  
18 necessarily be tied to this case. And they can't be something that is  
19 disconnected, which is the cost-based argument that they're making.

20 And so these categories, you know, they don't have an  
21 argument under Nevada law. And I know that they sort of have  
22 indicated that other cases, other places have allowed cost-based  
23 considerations.

24 But, you know, Your Honor, we were able to provide you  
25 at least one case that -- or actually two cases that the providers that

1 are under the Team Health umbrella have had occasion to have to  
2 respond to this type of inquiry. And those judges have indicated,  
3 under almost identical arguments that United has made here, that  
4 things like corporate structures are not relevant. Whether or not  
5 somebody is going to have a profit based on a particular charge is  
6 not going to be relevant unless there was something specific to  
7 the claims at issue in that case.

8 And what we have here are -- you know, we have a breach  
9 of implied in fact contract. We know that the measure of damages  
10 with respect to that is *quantum meruit*, which is going to fill in that --  
11 that price feature, and that is going to be market value.

12 We have another claim that is unjust enrichment, and that  
13 damage model is going to be restitution.

14 And so we know this from, not only just our claims, but  
15 Your Honor has the benefit of our calculation of damages in our  
16 Joint Case Conference Report.

17 And so we're very clear about how we anticipate these  
18 damage modelings to go. And that's what is consistent with our  
19 allegations and that's what's consistent with what United's defenses  
20 would be.

21 And so I don't want to necessarily read from our Joint  
22 Case Conference Report because it is on file with the Court back in  
23 July, but we do say that it is with respect to expert testimony that we  
24 will identify the reasonable value or the usual and customary rate for  
25 these emergency services in the marketplace. That's with respect to

1 some of our damages.

2 We've got other damages that are going to be a little bit  
3 different with respect to Nevada RICO. But again, they don't relate  
4 or necessarily rely on cost information.

5 And so I think it's important to talk about the case  
6 structure in Nevada and what's going to sort of -- you know, from a  
7 high level view what is guiding us; right, because that's essentially  
8 what we're doing.

9 THE COURT: And this -- that's going to be my question.  
10 And I know that I could intrude on your work product here, but I  
11 need just an idea of how you're going to put on the case because the  
12 defendant has to be able to cross-examine the witnesses.

13 MS. GALLAGHER: And I understand.

14 THE COURT: And you know, and that's where you're  
15 going, I think.

16 MS. GALLAGHER: It is. And I think that we've been very  
17 forthcoming with that, Your Honor, in our calculations of damages.  
18 We have not put costs, like a cost-plus situation at issue. What we  
19 have said -- and I'll go back to our Joint Case Conference Report, and  
20 this is reflected in our calculation of damages that runs in each of  
21 our initial disclosures -- is that it's going to be the difference between  
22 the lesser of the amounts charged for the emergency medicine  
23 services and the reasonable value or usual and customary rates for  
24 its professional emergency services and the amount defendants  
25 unilaterally allowed as payable.

1           So -- and then there's some additional aspects to that. I  
2 want to make sure I don't cut off what some of the additional  
3 categories -- but loss of use of the funds that we didn't have because  
4 United retained them, and some other damages under the Deceptive  
5 Trade Practices and RICO as well.

6           But so the consideration for this is exactly what  
7 Your Honor has had occasion to consider before, which is what's the  
8 reasonable value of this rate in the marketplace? And it is the  
9 marketplace. It's not how the Health Care Providers set the billed  
10 charges.

11           And I do want to make reference to paragraph 55 of our  
12 first amended complaint, because I think when United opened -- or  
13 54, rather -- when United opened its presentation, there was some  
14 discussion that it made it seem like we are saying our billed  
15 charges -- you have to take them at face value in determining  
16 whether or not the charge -- you know, what should be paid in this  
17 case. And that's not exactly what the allegations are, Your Honor.

18           The allegations are that there was a range that we were  
19 reasonably seeing, and that was the range that was consistent with  
20 what our expectations in the marketplace.

21           And so what changed is now we had that sort of mark or a  
22 guidepost about what was reasonable in the marketplace, and it  
23 dramatically changed.

24           And so from our position, our claim is what changed, you  
25 know, our allegation obviously is that they were unilaterally resetting

1 them at a rate that they desired or they wished. But it doesn't have  
2 any bearing on our -- what goes into our billed charge.

3 We have already indicated, in response to the discovery  
4 requests, what it is. And if United challenges it, what the challenge  
5 is is what's happening in the marketplace, whether or not that's a  
6 reasonable rate compared to other emergency service  
7 out-of-network providers in this market.

8 And you know, United has that information. Obviously it  
9 has the ability to crunch the numbers with respect to other  
10 emergency room providers. It doesn't need that information in  
11 terms of costs, because this isn't a construction type of case; right?

12 You might expect if we were setting here fighting about  
13 what's the rate of damages or what's the calculation of damages in a  
14 construction case, it might very well be a cost-plus situation.

15 But what we have provided to the Court in terms of the  
16 *Gulf-to-Bay* case and there's the California case that is NorthBay --  
17 another bay case -- NorthBay health providers, the Courts have said  
18 that, you know, market is reasonable services. If you get into a cost  
19 situation, you're changing the nature of this case. It doesn't inform  
20 the reasonable reimbursement that the Health Care Providers have  
21 alleged that they have not gotten. And so we know that costs are  
22 not relevant to the case.

23 And it sort of seems like United has tried to take, you  
24 know, pieces from the first amended complaint, pieces from other  
25 areas, and tried to cobble together a basis for this cost analysis.

1 But, you know, when I'm hearing discussions about  
2 hospitals, and they need to know what kind of rates we have so they  
3 can make an apples-to-apples comparison, I just don't see those --  
4 those are not apples to apples. A hospital situation and a contract  
5 perhaps to be able to provide services does not inform whether or  
6 not United has made a reasonable reimbursement in any regard. It  
7 would never move to inform, you know, the good or the bad about  
8 the plaintiffs' claims or the good or the bad about defendants'  
9 responses with respect to cost.

10 So I think it's important to know that we're not, you know,  
11 similar to NorthBay, I think -- which that case said there was no  
12 intention on submitting costs in support of any charges.

13 And so we've been plain in our calculation of damages  
14 disclosure, so there's no, you know, hiding of the ball. There's going  
15 to be nothing -- if something changes, obviously, that we would  
16 make a supplement and we would have that discussion with United.  
17 But in terms of what we have put forward in the modeling of  
18 damages, that's what it is.

19 And the one thing that I do want to point out, because in  
20 the reply United makes points to Section 49 of the restatements of  
21 restitution as saying that costs may be allowed. You know, and I  
22 think that we have to remember that, you know, those are very  
23 general discussions about what are the different models of damages  
24 that a plaintiff may be able to put forward? And sure, is cost one of  
25 them? Perhaps. But that is -- would be a plaintiff putting that at

1 issue.

2 And we see that in some of the underlying cases that  
3 United refers to, like out of Florida. There's a main case that is called  
4 Colomar. In that case, if you look deep into the basis for why costs  
5 were -- mattered in that case is because the plaintiffs put it at issue.  
6 And so I think that's the theme that we just don't have here and that  
7 can't sort of be carried over into this case because it doesn't matter.

8 But I think the important part about Section 49 that I  
9 wanted to take a moment to distinguish is that it talks about, you  
10 know, market value and that sort of thing. But only pricing -- I'm  
11 sorry -- only costs are going to be important if there is an issue, and  
12 then it triggers a qualifier in Section 50.

13 And so Section 50 talks about -- I'm sorry -- Section 50  
14 talks about an innocent recipient of an unjust enrichment situation,  
15 which we definitely, by our allegations, don't have here.

16 So what would apply would be Section 51 which talks  
17 about enrichment by misconduct -- I mean, obviously alleged  
18 misconduct. But it's important because it says the value for  
19 restitution purposes is not less than their market value.

20 And so I think when you couple, you know, looking at the  
21 totality of what we have in Nevada, which is certified buyer -- which  
22 does look to the restatements of restitution for certain pieces of it  
23 which is going to be the unjust enrichment -- is that when we drill  
24 down, we're back to market value. And so that is what we've  
25 alleged. That's our damage model that we've disclosed.

1           And so this cost analysis, we think is -- you know, just  
2 another way to expand this case to something it's not, especially  
3 when it -- with regard to the corporate structure.

4           I think Your Honor asked a very pointed question about,  
5 you know, what is this necessarily going to provide you? And  
6 Your Honor has many companies, big companies that come before  
7 you. And you know, they're not automatically having to provide  
8 financials and corporate structure and information about how they're  
9 setting, you know, their room rates when they go after somebody for  
10 not paying, you know, their room rate.

11           So we just think that we're sort of down this -- this line  
12 that doesn't match up to what this case is about, and so -- and then if  
13 you look specifically at the requests that they're asking for, it's sort  
14 of -- you know, they're glossing over corporateness.

15           But when you get down to it, they're looking at every last  
16 detail of the financial structures. And you know, we just think that in  
17 order -- you know, to allow them to probe is basically they're just  
18 trying to find out the financial wherewithal of the Team Health  
19 umbrella entities and perhaps even Team Health itself that just isn't  
20 related.

21           You know, whether or not somebody jacked -- you know,  
22 allegedly jacked up a billed charge just doesn't have a connection,  
23 just doesn't have -- I mean, you would have this kind of discovery in  
24 literally every case that came before Your Honor in the business  
25 court context.



1                   So we think that the corporate relationship documents, the  
2                   financials, just don't have anything that would inform what we  
3                   actually have at issue here.

4                   I'm happy to go through each of the different categories,  
5                   because I think it's important and not to gloss over them. But I also  
6                   know that Your Honor has spent some time --

7                   THE COURT: Can I just interrupt -- can I just interrupt for a  
8                   second?

9                   MS. GALLAGHER: Of course.

10                  THE COURT: Has there been discovery in coding for the  
11                  bills?

12                  You guys know more about your case than I do. I don't  
13                  know what the -- all the discovery shows.

14                  MS. GALLAGHER: Right. There -- there is that. We are  
15                  disputing any requests for coding-related matters, because that has  
16                  to do with clinical records.

17                  THE COURT: I understand.

18                  MS. GALLAGHER: You know, so the -- yeah. So the  
19                  concern about the credentialing and the monopoly -- one case I want  
20                  to point out that was raised in the reply is the *Eagle* case where they  
21                  talked about where it mattered because -- if there wasn't a monopoly  
22                  in that case. And it wasn't just enough to look at the market value.

23                  But that case, that parenthetical provider to the Court,  
24                  doesn't explain the full breadth of what was really at issue there.  
25                  That was truly a monopoly. There was one neurosurgeon or

1 neuroprofessional in that market. And so in that context, you  
2 couldn't only take the reasonable market value, because it was only  
3 those charges.

4 Certainly, we don't have that situation here. United is well  
5 versed in who are the emergency department providers in this  
6 market. Fremont is. And the Health Care Providers are -- do not  
7 hold a monopoly. They haven't proffered any evidence to this Court  
8 to suggest otherwise.

9 So to use a case that truly was a monopolistic situation in  
10 further evidence or if further support of a claim that -- or an  
11 argument that somehow if we had a monopoly it might mean  
12 something.

13 But at the end of the day, what's going to happen is that  
14 the experts are going to look at what are -- what's being billed in this  
15 market and what's being paid in this market. And then, you know,  
16 somewhere in there is going to be an outcome that, you know, we  
17 think United is -- is not reimbursing based on market rates or what  
18 should be market rates for this type of arrangement, which is  
19 out-of-network in a commercial payer situation.

20 And so we think this is just another way to expand this  
21 case, to bring in completely irrelevant information that's not going to  
22 inform our claims. And certainly, you know, they try to transform  
23 our allegations in an attempt to do so.

24 And we would just ask Your Honor that you deny the  
25 requests in full. And specifically, you know, each and every one that

1 just goes well beyond the bounds of what they're even saying that it  
2 stands for with respect to cost because the reasonable value of  
3 services is going to be a market determination, Your Honor.

4 THE COURT: Thank you.

5 And the reply, please, Ms. Fedder.

6 MS. FEDDER: Thank you, Your Honor. The Court has  
7 been very patient with us this afternoon, so I'll just make a few  
8 points in response to Ms. Gallagher's presentation.

9 The first is that this inquiry and this case is not only about  
10 plaintiffs' claims. It's also about defendants' affirmative defenses.

11 With respect to plaintiffs' claims, they do certainly allege  
12 in paragraph 54 of their amended complaint that a reasonable  
13 reimbursement rate is 75 to 90 percent of billed charges. And as I  
14 stated in my opening presentation, it's our position that in that, in  
15 other ways, they put the reasonableness of their billed charges at  
16 issue.

17 But even if that weren't the case, our affirmative defenses  
18 put the reasonableness of their billed charges at issue.

19 We've alleged among other things that their charges are  
20 excessive. The Court -- Ms. Gallagher alluded to two cases coming  
21 out in a Team Health affiliated plaintiff -- Team Health affiliated  
22 plaintiff providers' favor. One of those cases is the *Gulf-to-Bay* case  
23 and the *Florida Emergency* case that I alluded to in my opening  
24 presentation declined to follow that case. And in that case, and in  
25 the *Florida Emergency Physician's* case, the Court expressly stated

1 that it was, you know -- it was not precluded from compelling  
2 cost-of-care discovery.

3 And I think that's one of the key points that we're making  
4 here is none of this authority that has been offered precludes the  
5 Court from ordering the -- from compelling the discovery that we  
6 have sought here. Moreover, none of this case law defines  
7 definitively what market value means. It's a facts-and-circumstances  
8 specific consideration, which is why that we need to involve experts  
9 to help -- to assist the court and the finder of fact in determining  
10 what is market value.

11 And plaintiffs are seeking to cut off our ability to seek  
12 discovery into areas that we think are relevant and that we want to  
13 provide to our expert to use, to inform his or her opinions.

14 If you'll bear with me, Your Honor, I took some notes, and  
15 I have a few points -- a few other points that I wanted to make.

16 With respect to -- Ms. Gallagher referenced some of  
17 plaintiffs' interrogatory responses, you know, plaintiffs have  
18 provided some information about their billed charges. It's not clear  
19 that that is all of the information that we would need to understand  
20 how those billed charges are set and whether they're reasonable.

21 And I think in many of these arguments, plaintiffs are  
22 effectively asking us and the Court to kind of take our -- take their  
23 word for it -- take their word for the fact that these -- that this  
24 discovery we're seeking isn't relevant. And I don't think that's  
25 appropriate.

1           We have the right to test plaintiffs' claims, and we also  
2 have the right to seek the discovery that is necessary to prove our  
3 affirmative defenses.

4           And to your point, we have the right to effectively  
5 cross-examine plaintiff's witnesses at trial, all of whom I -- or most of  
6 whom I would guess would be Team Health current or former  
7 employees, based on their witness disclosures.

8           In addition, Your Honor, the portions of the case law that  
9 plaintiffs cite and have spoken about are largely limited to the unjust  
10 enrichment and *quantum meruit* context.

11           We disagree, as I said in my opening, with their position  
12 that our discovery is irrelevant in those contexts. But they haven't  
13 explained why the discovery we are seeking is irrelevant to the rest  
14 of their claims. And the case law doesn't demonstrate irrelevance.

15           You know, finally, Your Honor, the case law establishes a  
16 pattern by Team Health affiliated entities in resisting the type of  
17 discovery that we seek here. At least one court, the *Florida*  
18 *Emergency* court has found it to be relevant. And we think that that  
19 and other cases we've cited to you where courts have allowed the  
20 kind of discovery we're seeking are the more persuasive authorities.

21           The Oklahoma -- the Oklahoma case that plaintiffs cited,  
22 for example, is, you know, it -- it's -- it focuses on an Oklahoma  
23 statute that doesn't apply here. And with all due respect to that  
24 Court, it's a two-page opinion that doesn't offer us much insight into  
25 the Court's reasoning or analysis.

1           You know, by contrast, the *Florida Emergency* court walks  
2 through in detail its reasoning in ordering discovery into costs. And  
3 so we think that that is the more persuasive authority, especially  
4 here, where both sides are equally entitled to discovery to level the  
5 playing field.

6           Your Honor, if there are any additional questions I could  
7 address for you, I welcome them.

8           THE COURT: No. You were so well spoken, and I got all  
9 my questions answered. So thank you.

10          MS. FEDDER: Thank you.

11          THE COURT: You know, this is really what it comes down  
12 to is it's a rate of pay case and it's not a cost case, and the plaintiff  
13 very carefully re-pled in that first amended complaint.

14          So I just don't see where the corporate structure, the  
15 finances, even how the charges are determined is going to be  
16 relevant in this case. You know, there -- you -- this does not preclude  
17 the defendant from arguing that the charges are excessive -- if the  
18 charges changed; if they didn't; if the reimbursement rates  
19 changed -- it doesn't prevent you from defending the case by  
20 denying this motion.

21          And I really -- I've worked long and hard on it because I  
22 want to make sure that the defendant has the ability to defend. But  
23 unfortunately, you know, both companies are for-profit entities.

24          The financial information that the defendant would want  
25 with regard to the plaintiffs' operations to prove the charges are

1 excessive, the monopoly issue -- it just isn't relevant. It's not going  
2 to lead to the discovery of relevant information.

3           So for those reasons, you know, the corporate structure -- I  
4 asked all the questions with regard to the thing -- my notes. The  
5 only thing you guys didn't address that was in the papers was to -- to  
6 strike the boilerplate objections. At this point I'm not going to do  
7 that only because they are rooted in law, but I am going to deny the  
8 motion, Ms. Fedder.

9           So I'll task Ms. Gallagher with preparing an order. I don't  
10 accept competing orders. I've had so many lately. And we're  
11 working remotely as much as we can, so I'm bogging down. So I  
12 won't accept a competing order. I'll return it.

13           But certainly if you have objections, I will objectively look  
14 at those objections. And if I have to, we even go back and listen to  
15 the arguments on the JAVS system.

16           So Ms. Gallagher will prepare the order. Ms. Fedder and  
17 Ms. Llewellyn will approve the form of that.

18           Any other questions, any clarifications, questions that  
19 either party has?

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

21           THE COURT: Ms. Fedder or Ms. Llewellyn, anything  
22 further?

23           MS. FEDDER: I don't think I have anything further.

24           I think the only point I would raise and not to -- I respect  
25 the Court's decision.

1 THE COURT: Okay.

2 MS. FEDDER: Certainly the plaintiffs are for-profit entities.

3 I don't know the answer about whether they are publicly  
4 traded. I just wanted to make sure that's clear. I don't want to speak  
5 for plaintiffs. I don't -- I can't speak to what their corporate structure  
6 is.

7 THE COURT: Good enough.

8 Okay. Well, then, everyone stay safe and healthy until I  
9 see you next.

10 MS. GALLAGHER: Thank you, Your Honor.

11 MR. ROBERTS: Thank you.

12 MS. FEDDER: Thank you.

13 [Proceeding concluded at 3:50 p.m.]

14 \* \* \* \* \*

15  
16  
17 ATTEST: I do hereby certify that I have truly and correctly  
18 transcribed the audio/video proceedings in the above-entitled case  
19 to the best of my ability.

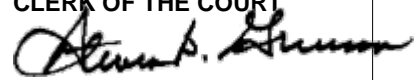
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21 \_\_\_\_\_  
22 Katherine McNally  
23 Independent Transcriber CERT\*\*D-323  
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25



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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

**NOTICE OF ENTRY OF ORDER  
GRANTING DEFENDANTS' MOTION  
FOR APPOINTMENT OF SPECIAL  
MASTER**



Dated this 2nd day of February, 2021.

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of February, 2021, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION FOR APPOINTMENT OF SPECIAL MASTER** was electronically filed/served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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*Fremont Emergency Services (Mandavia), Ltd.*

/s/ Cynthia S. Bowman

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



*Heather S. Linn*

CLERK OF THE COURT

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-19-792978-B

Dept. No.: 27

**ORDER GRANTING DEFENDANTS'  
MOTION FOR APPOINTMENT OF  
SPECIAL MASTER**



Defendants UnitedHealth Group, Inc.; UnitedHealthcare Insurance Company; United HealthCare Services, Inc.; UMR, Inc.; Oxford Health Plans LLC, (incorrectly named as Oxford Health Plans, Inc.); Sierra Health and Life Insurance Co., Inc.; Sierra Health-Care Options, Inc.; and Health Plan of Nevada, Inc.'s (collectively, "United") Motion for Appointment of Special Master (the "Motion") came before the Court on December 30, 2020, and thereafter for a Status Check on January 13, 2021, for the appointment of a discovery master following the submission of candidates to the Court. D. Lee Roberts, Jr., Colby L. Balkenbush, and Brittany M. Llewellyn of Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC appeared on behalf of United. Pat Lundvall, Kristen T. Gallagher, and Amanda M. Perach of 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") (collectively the "Health Care Providers").

The Court, having considered United's Motion and Reply, the Plaintiffs' Response, the authority provided in NRCP 53, the parties' separate submissions of candidates for special master, and the argument of counsel at the hearing on this matter, and good cause appearing, finds and orders as follows:

### **FINDINGS**

1. The Court finds that, due to ongoing discovery disputes, the appointment of a special discovery master, pursuant to NRCP 53, is appropriate.

2. The Court finds that retired Judge David T. Wall has a background befitting service as Special Master in this litigation.

3. The Court finds that the Special Master's duties are to be defined by this Order, pursuant to NRCP 53, and by the scope set forth by the Court during the December 30, 2020 hearing as well as may be appropriate from time to time.

**Accordingly,**

### **ORDER**

IT IS HEREBY ORDERED that United's Motion is **GRANTED**, and that the Honorable David T. Wall is appointed to serve as Special Master in this action.



1 IT IS FURTHER ORDERED that, within seven (7) days following the entry of this  
2 Order, the Special Master will set a time and place for a first meeting with counsel for the parties,  
3 whether in person, telephonic, or by videoconferencing means.

4 IT IS FURTHER ORDERED that the Honorable David T. Wall shall be authorized to  
5 handle the following specific areas of potential discovery disputes:

6 (a) Motions to compel;

7 (b) Number of depositions;

8 (c) Confidential designations made under the June 24, 2020 Stipulated Confidentiality  
9 and Protective Order;

10 (d) Written discovery issues; and

11 (e) On other areas of dispute that may be agreed to by the parties and approved by the  
12 Court.

13 IT IS FURTHER ORDERED that the Special Master will not have the authority to make  
14 any rulings as to whether either party is compliant with any existing order of the Court, and will  
15 not be permitted to alter discovery deadlines or continue any jury trial setting.

16 IT IS FURTHER ORDERED that the Special Master shall be authorized and empowered  
17 to: (a) review all pleadings, papers, and documents filed with the Court and/or served on counsel  
18 concerning the action and/or the specific motion(s) involved; (b) set the date, time, and place of  
19 any in-person hearing within Clark County, Nevada or by teleconference or videoconference on a  
20 discovery issue before him; and (c) make recommendations concerning discovery-related  
21 motions.

22 IT IS FURTHER ORDERED that, within seven (7) days of issuing a decision, the Special  
23 Master shall prepare a Report and Recommendation for the Court's review. Pursuant to NRCP  
24 53(f)(1), if a party disagrees with a decision of the Special Master, a party may object to a  
25 recommendation of the Special Master through the procedures set forth in NRCP 53(f).

26 IT IS FURTHER ORDERED that the Special Master will not preserve any materials,  
27 except by the express, written request of the parties or the Court.

28 IT IS FURTHER ORDERED that the Court shall have access to the Special Master and



the Special Master shall have access to the Court to confer on issues related to this litigation. The Court will then issue a minute order disclosing the contact.

IT IS FURTHER ORDERED that, pursuant to NRCP 53(g), United will bear 75% of the costs for services performed by the Special Master and Plaintiffs will bear 25%, subject to review and reallocation at a later time.

**IT IS SO ORDERED.**

February 2, 2021

Dated this 2nd day of February, 2021

*Nancy L. Alf*  
Hon. Nancy L. Alf

NB

Submitted by:

WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC

DFB BCE 9CAD 5CBA  
Nancy Alf to form/content:  
District Court Judge

McDONALD CARANO LLP

/s/ Brittany M. Llewellyn

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/s/ Amanda M. Perach

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*Attorneys for Defendants*





**Bowman, Cindy S.**

---

**From:** Amanda Perach <aperach@mcdonaldcarano.com>  
**Sent:** Tuesday, February 02, 2021 10:46 AM  
**To:** Llewellyn, Brittany M.; Kristen T. Gallagher; Pat Lundvall  
**Cc:** 'Fedder, Natasha S.'; Balkenbush, Colby; Roberts, Lee; 'Genovese, Amanda L.'; 'Portnoi, Dimitri D.'; Bowman, Cindy S.  
**Subject:** RE: Fremont Emergency Services v. UnitedHealth Group, et al. - Order on Motion to Appoint Special Master

This Message originated outside your organization.

---

You may affix my e-signature.

Thank you,

**Amanda M. Perach** Partner

**McDONALD CARANO**

P: 702.873.4100 E: [aperach@mcdonaldcarano.com](mailto:aperach@mcdonaldcarano.com)

**From:** Llewellyn, Brittany M. <[BLlewellyn@wwhgd.com](mailto:BLlewellyn@wwhgd.com)>

**Sent:** Tuesday, February 2, 2021 10:41 AM

**To:** Amanda Perach <[aperach@mcdonaldcarano.com](mailto:aperach@mcdonaldcarano.com)>; Kristen T. Gallagher <[kgallagher@mcdonaldcarano.com](mailto:kgallagher@mcdonaldcarano.com)>; Pat Lundvall <[plundvall@mcdonaldcarano.com](mailto:plundvall@mcdonaldcarano.com)>

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**Subject:** Fremont Emergency Services v. UnitedHealth Group, et al. - Order on Motion to Appoint Special Master

Good Morning,

I have attached a final version of the Order on United's Motion to Appoint a Special Master. Please confirm we may affix your e-signature.

Thank you,

Brittany



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

Brittany M. Llewellyn, Attorney  
**Weinberg Wheeler Hudgins Gunn & Dial**  
 6385 South Rainbow Blvd. | Suite 400 | Las Vegas, NV

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

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

CASE NO: A-19-792978-B

8 vs.

DEPT. NO. Department 27

9 United Healthcare Insurance  
10 Company, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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

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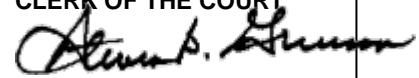
003701

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No.: A-19-792978-B

Dept. No.: XXVII

**NOTICE OF ENTRY OF ORDER  
DENYING DEFENDANTS'  
MOTION TO COMPEL RESPONSES  
TO DEFENDANTS' FIRST AND  
SECOND REQUESTS FOR  
PRODUCTION ON ORDER  
SHORTENING TIME**

003703

McDONALD CARANO

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PHONE 702.873.4100 • FAX 702.873.9966

1 PLEASE TAKE NOTICE that an Order Denying Defendants' Motion to Compel  
2 Responses to Defendants' First and Second Requests for Production on Order Shortening Time  
3 was entered on February 4, 2021, a copy of which is attached hereto.

4 DATED this 4th day of February, 2021.

5 McDONALD CARANO LLP

6 By: /s/ Kristen T. Gallagher

7 Pat Lundvall (NSBN 3761)  
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15 *Attorneys for Plaintiffs*

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003704

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and that on this 4th day of February, 2021, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' MOTION TO COMPEL RESPONSES TO DEFENDANTS' FIRST AND SECOND REQUESTS FOR PRODUCTION 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.  
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*Attorneys for Defendants*

/s/ Marianne Carter  
An employee of McDonald Carano LLP

**ODM**

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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  
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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 RESPONSES TO  
DEFENDANTS' FIRST AND SECOND  
REQUESTS FOR PRODUCTION ON  
ORDER SHORTENING TIME**

Hearing Date: January 21, 2021  
Hearing Time: 3:00 p.m.

This matter came before the Court on January 21, 2021 on defendants UnitedHealth  
Group, Inc.; UnitedHealthcare Insurance Company; United HealthCare Services, Inc.; UMR,



Inc.; Oxford Health Plans, Inc.<sup>1</sup>; Sierra Health and Life Insurance Co., Inc.; Sierra Health-Care Options, Inc.; and Health Plan of Nevada, Inc.’s (collectively, “United”) Motion to Compel Responses To Defendants’ First And Second Requests For Production On 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”). Brittany M. Llewellyn, Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, and Natasha S. Fedder, O’Melveny & Myers LLP, appeared on behalf of United.

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

### **FINDINGS OF FACT**

1. The Health Care Providers’ First Amended Complaint alleges that this case does not involve the “right to payment” and, in connection with the breach of implied contract and related claims, the Health Care Providers challenge United’s reimbursement rates, making this a “rate-of-payment” case. This case is not a cost case.

2. On June 28, 2019, United served its First Set of Requests for Production of Documents on Fremont.

3. Fremont timely served its responses and objections on July 29, 2019.

4. On August 12, 2020, United served its Second Set of Requests for Production of Documents on the Health Care Providers

5. The Health Care Providers timely served their responses and objections on September 28, 2020.

6. On December 11, 2020, the parties engaged in a meet and confer that included the Health Care Providers’ responses to the RFPs that are the subject of the Motion.

---

<sup>1</sup> Defendants contend Oxford Health Plans, Inc. is improperly named and should be Oxford Health Plans, LLC

7. On January 11, 2021, United moved to compel production of documents it described as follows:

a. Corporate structure/relationship documents:

i. Structure: RFP Nos. 61, 69, 132;

ii. Relationship: RFP Nos. 95, 108, 133, 134, 142, 143, 144, 145

b. Cost-related documents:

i. RFP Nos. 68, 86, 92, 93, and 94

c. Hospital/Facility contracts and credentials:

i. RFP Nos. 126, 137 and 146

8. 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**

9. 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).

10. The Court concludes that the relevant inquiry in this action is the proper rate of reimbursement.

11. The Court concludes that corporate structure, finances, and how the Health Care Providers' charges are determined are not relevant in this case. Further, financial information that United seeks with regard to the Health Care Providers' business and operations to purportedly establish the Health Care Providers' charges are excessive, as well as and United's monopoly argument, are not relevant to the claims or defenses in this case. None of the information sought by United in the Motion will lead to the discovery of relevant information.

12. The Court further considered United's arguments in the Motion and supporting reply, as well as its oral presentation, and concludes that the documents and information sought by United is not relevant and therefore not discoverable.

13. The Court concludes that the Health Care Providers' objections are rooted in law and will not strike them.

Accordingly, good cause appearing, therefor,

### ORDER

**IT IS HEREBY ORDERED** that Motion to Compel Responses To Defendants' First And Second Requests For Production On Order Shortening Time is DENIED in its entirety. February 4, 2021

Dated this 4th day of February, 2021

*Nancy L Allf*

NB

4B8 415 1353 BAA3  
Nancy Allf  
District Court Judge

Submitted by:

McDONALD CARANO LLP

Approved as to form only:

WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC

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**Marianne Carter**

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**From:** Llewellyn, Brittany M. <BLlewellyn@wwhgd.com>  
**Sent:** Thursday, February 4, 2021 2:08 PM  
**To:** Kristen T. Gallagher; Fedder, Natasha S.; Balkenbush, Colby; Roberts, Lee  
**Cc:** Pat Lundvall; Amanda Perach  
**Subject:** RE: Fremont Emergency Services v. UnitedHealth Group, et al. - order denying United's motion to compel

You may affix my e-signature. Thank you



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**From:** Kristen T. Gallagher [mailto:kgallagher@mcdonaldcarano.com]  
**Sent:** Thursday, February 4, 2021 12:55 PM  
**To:** Llewellyn, Brittany M.; Fedder, Natasha S.; Balkenbush, Colby; Roberts, Lee  
**Cc:** Pat Lundvall; Amanda Perach  
**Subject:** Fremont Emergency Services v. UnitedHealth Group, et al. - order denying United's motion to compel

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Brittany and Natasha –

Per your request, please see the attached revision to your signature block. Please provide authority for insertion of your e-signature for submission to the Court.

Thank you,  
 Kristy

**Kristen T. Gallagher** | Partner

**McDONALD CARANO**

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1 **CSERV**

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3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

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

CASE NO: A-19-792978-B

8 vs.

DEPT. NO. Department 27

9 United Healthcare Insurance  
10 Company, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

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13 This automated certificate of service was generated by the Eighth Judicial District  
14 Court. The foregoing Order Denying Motion was served via the court's electronic eFile  
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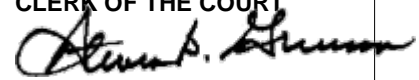
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**DISTRICT COURT**

**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., 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

**HEARING REQUESTED**

**MOTION FOR RECONSIDERATION OF  
ORDER DENYING DEFENDANTS'  
MOTION TO COMPEL PLAINTIFFS'  
RESPONSES TO DEFENDANTS' FIRST  
AND SECOND REQUESTS FOR  
PRODUCTION**



Defendants UnitedHealth Group, Inc.; UnitedHealthcare Insurance Company; United HealthCare Services, Inc.; UMR, Inc.; Oxford Health Plans LLC (incorrectly named as “Oxford Health Plans, Inc.”); Sierra Health and Life Insurance Company, Inc.; Sierra Health-Care Options, Inc. and Health Plan of Nevada, Inc. (collectively, “United” or “Defendants”), hereby submit the following Motion for Reconsideration of the Court’s Order denying United’s Motion to Compel Plaintiffs’ Responses to Defendants’ First and Second Requests for Production. This Motion is made and based upon the papers and pleadings on file herein, the following memorandum of points and authorities, and any arguments made by counsel at the time of the hearing.

Dated this 18th day of February, 2021.

/s/ Brittany M. Llewellyn

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**DECLARATION OF BRITTANY M. LLEWELLYN IN SUPPORT  
OF DEFENDANTS' MOTION FOR RECONSIDERATION OF ORDER DENYING  
DEFENDANTS' MOTION TO COMPEL PLAINTIFFS' RESPONSES TO  
DEFENDANTS' FIRST AND SECOND REQUESTS FOR PRODUCTION**

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

2. This Declaration is submitted in support of Defendants' Motion for Reconsideration of the Court's Order denying Defendants' Motion to Compel Plaintiffs' Responses to Defendants' First and Second Set of Requests for Production. I have personal knowledge of the matters set forth herein and, unless otherwise stated, am competent to testify to the same if called upon to do so.

3. True and accurate copies of the Plaintiffs' Nevada Secretary of State Filings are attached hereto as ***Exhibit 1***.

4. True and accurate copies of Adobe PDF printouts of Plaintiffs' Internet presence are attached hereto as ***Exhibit 2***.

5. True and accurate copies of EDGAR search results for Plaintiffs are attached hereto as ***Exhibit 3***.

6. A true and accurate copy of *Completes Previously Announced Transaction with Blackstone*, TEAMHealth, <https://www.teamhealth.com/news-and-resources/press-release/blackstone/?r=1> is attached hereto as ***Exhibit 4***.

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

DATED: February 18, 2021

/s/ Brittany M. Llewellyn



## MEMORANDUM OF POINTS AND AUTHORITIES

### **I. INTRODUCTION**

This case arises from a dispute between Plaintiffs, TeamHealth-affiliated providers of emergency medical services, and United over the benefit payments due to Plaintiffs for alleged emergency services rendered to United's members. In furtherance of its defense against Plaintiffs' claims, United served discovery related to Plaintiffs' costs for rendering the at-issue emergency services (Request Nos. 68, 86, 92, 93, and 94) (the "Actual Cost Discovery"). This discovery sought documents and information with regard to Plaintiffs' incurred cost to perform emergency services and how that cost compares to Plaintiffs' unilaterally-set billed charges for those same services. United expects that the Actual Cost Discovery will show that the benefit rates to which Plaintiffs claim entitlement—75–90% of their billed charges—are excessive because those rates bear no relation to the actual cost of performing the underlying services. United has a right to this discovery to test Plaintiffs' allegations and to support its Sixth affirmative defense ("Some or all of Plaintiffs' billed charges are excessive under the applicable standards"), among others.<sup>1</sup> See Defendants' Answer ("Answer") to Plaintiffs' First Amended Complaint ("FAC") at ¶ 44.

United now respectfully requests that this Court reconsider its February 4, 2021 Order Denying Defendants' Motion to Compel Responses to Defendants' First and Second Requests for Production on Order Shortening Time (the "Order"), which denied United's Motion to Compel the Actual Cost Discovery. First, the Court denied the Actual Cost Discovery without making a ruling on the governing standard applicable to Plaintiffs' causes of action. The Court appears to have applied a "market" standard to deny the requested discovery, which is not the standard established in the Nevada authority that the Court considered. Although some jurisdictions apply a "fair market value" standard where there is a state statute that addresses

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<sup>1</sup> See also Answer at 44, 47, 48 (setting forth United's Fourteenth ("Plaintiffs' claims are barred, in whole or in part, to the extent they have not suffered any damages"), Eighteenth ("Plaintiffs' claims are barred, in whole or in part, to the extent that Plaintiffs have not mitigated their damages"), and Twenty-Sixth ("Plaintiffs are not entitled to relief because they have received all payments due, if any, for the covered services they provided in accordance with the terms of their patients' health plans") affirmative defenses).





1 reimbursement rates for out-of-network services,<sup>2</sup> Plaintiffs have not pleaded any such statutory  
2 cause of action here. Rather, they have pleaded common law unjust enrichment and breach of  
3 implied contract claims (among others) to which Nevada courts apply a “reasonable value”  
4 standard. *See Flamingo Realty, Inc. v. Midwest Dev., Inc.*, 110 Nev. 984, 987, 879 P.2d 69, 71  
5 (1994). Proper considerations in determining the reasonable value of services rendered include  
6 “market value,” a “previous agreement between the parties,” or “any other evidence regarding  
7 the value of services.” *Las Vegas Sands Corp. v. Suen*, 132 Nev. 998, 2016 WL 4076421, at \*4  
8 (2016). The Actual Cost Discovery is thus certainly relevant to determining the reasonable value  
9 of the services underlying the Plaintiffs’ health benefit claims. Furthermore, factually analogous  
10 authority from other jurisdictions holds that United is entitled to the Actual Cost Discovery in a  
11 reimbursement dispute between a health plan and a healthcare provider that is not in the plan’s  
12 network, such as this case.

13 Second, to the extent the Court’s Order denied the Actual Cost Discovery based on a  
14 finding that the information United seeks is available in the public domain, the record does not  
15 support such a finding. While the Court found correctly that Plaintiffs are for-profit entities,  
16 Plaintiffs do not appear to be publicly-traded, and their Nevada Secretary of State filings are  
17 sparse at best.

18 For these reasons and those set forth below, United respectfully requests that this Court  
19 grant this Motion, reconsider its ruling on the Motion to Compel, modify the Order, and compel  
20 the production of the Actual Cost Discovery sought.

## 21 **II. LEGAL STANDARD**

22 EDCR 2.24 allows a party to seek reconsideration of a ruling of the Court within fourteen  
23 (14) days after service of written notice of the order or judgment. EDCR 2.24. “A district court  
24 may reconsider a previously decided issue if . . . the decision is clearly erroneous.” *Masonry &*  
25

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26 <sup>2</sup> *See Baker Cty. Med. Servs., Inc. v. Aetna Health Mgm’t, LLC*, 31 So. 3d 842, 845 (Fla. 1st DCA  
27 2010) (“*Baker County*”) (“In the context of the [applicable Florida] statute, it is clear what is  
28 called for is the fair market value of the services provided. Fair market value is the price that a  
willing buyer will pay and a willing seller will accept in an arm’s-length transaction.”).

*Tile Contractors Ass'n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997). *See also* EDCR 2.24. Reconsideration is appropriate “[a]lthough the facts and the law [are] unchanged [if] the judge [is] more familiar with the case by the time the second motion [is] heard, and [she is] persuaded by the rationale of the newly cited authority.” *Harvey’s Wagon Wheel, Inc. v. MacSween*, 96 Nev. 215, 218, 606 P.2d 1095, 1097 (1980).

Reconsideration is warranted in many circumstances, including:

. . . ‘when (1) the matter is presented in a “different light” or under ‘different circumstances;’ (2) there has been a change in the governing law; (3) a party offers new evidence; (4) “manifest injustice” will result if the court does not reconsider the prior ruling; (5) a court needs to correct its own errors; or (6) an issue was inadequately briefed when first contemplated by the court.’

*Wasatch Oil & Gas, LLC v. Reott*, 263 P.3d 391, 396 (Utah Ct. App. 2011) (quoting *Trembly v. Mrs. Fields Cookies*, 884 P.2d 1306, 1311 (Utah Ct. App. 1994)). The Court should grant a motion to reconsider whenever it has overlooked or misapprehended pertinent facts or law or for some other reason mistakenly arrived at in its earlier decision. *Cf.* NRAP 40(c)(2); *see also Nelson v. Dettmer*, 46 A.3d 916, 920 (Conn. 2012); *Viola v. City of New York*, 13 A.D.3d 439, 440 (N.Y. App. Div. 2004). A motion to reconsider is preferred over an appeal as a quicker, easier and less expensive method of correcting error. *See, e.g., Osman v. Cobb*, 77 Nev. 133, 136, 360 P.2d 258, 259 (1961) (denying costs because Rule 60 relief was not sought with the trial court).

### III. LEGAL DISCUSSION

#### A. Reconsideration of the Order is necessary because the Court denied the Actual Cost Discovery based on the application of an erroneous legal standard

The Court should reconsider and modify the Order because the Court appears to have denied the Actual Cost Discovery based on the application of an erroneous legal standard. The Court did not rule on the governing standard for the causes of action Plaintiffs have pleaded.



1 The questions the Court posed at the hearing on United's Motion to Compel suggest that it  
2 applied some sort of "market" standard, and then ruled as follows:<sup>3</sup>

3  
4 [T]his is really what it comes down to is it's a rate of pay case and it's not a cost  
5 case, and the plaintiff very carefully re-pled in that first amended complaint. So I  
6 just don't see where the corporate structure, the finances, even how the charges  
7 are determined is going to be relevant in this case. . . . this does not preclude the  
8 defendant from arguing that the charges are excessive -- if the charges changed; if  
9 they didn't; if the reimbursement rates changed -- it doesn't prevent you from  
10 defending the case by denying this motion. . . . unfortunately, you know, both  
11 companies are for-profit entities. The financial information that the defendant  
12 would want with regard to the plaintiffs' operations to prove the charges are  
13 excessive, the monopoly issue -- it just isn't relevant. It's not going to lead to the  
14 discovery of relevant information.

15 Tr. at 32:11–33:2.

16 The Nevada authority that the Court considered does not establish a "market" standard.  
17 In opposing United's Motion to Compel, Plaintiffs directed the Court to a single Nevada case,  
18 *Certified Fire Prot. Inc. v. Precision Contr.*, 128 Nev. 371, 283 P.3d 250 (2012), for the  
19 proposition that "Nevada law makes it clear that the reasonable value of services does not  
20 embody cost considerations, instead focusing on market value." Opp'n at 11; Tr. at 24:19-25:25  
21 ("[L]ooking at the totality of what we have in Nevada, which is certified buyer [sic] -- which  
22 does look to the restatements of restitution for certain pieces of it which is going to be the unjust  
23 enrichment -- is that when we drill down, we're back to market value. And so that is what we've  
24 alleged. That's our damage model that we've disclosed."). *Certified Fire* did not make any such  
25 holding, however. The case described quantum meruit as "one of the common counts . . .  
26 available as a remedy at law to enforce implied promises or contracts. 1 Joseph M.  
27 Perillo, *Corbin on Contracts* § 1.18(b), at 53 (rev. ed. 1993); 7 C.J.S. *Action of Assumpsit* § 2

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28 <sup>3</sup> See Jan. 21, 2021 Transcript of Hearing regarding Motions (hereinafter, "Tr.") at 12:16-13:2 ("THE COURT: Okay. And I assume you have an expert witness who is going to talk about why you believe the charges are excessive? . . . THE COURT: But I assume your expert will be talking about market? . . . THE COURT: The market where the plaintiffs operate."); *id.* at 16:14-15 ("THE COURT: Is the setting of the charges reasonable? Or does the market determine the setting of charges?"); *see also* Tr. at 14:15-18 (Plaintiffs' "relationship with [United] is what is at issue here.").





(2004). A party who pleaded quantum meruit sought recovery of the reasonable value, or ‘as much as he has deserved,’ for services rendered.” *Certified Fire*, 128 Nev. at 379 (quoting *Black’s Law Dictionary* 1361 (9th ed. 2009)). The court explained that, “quantum meruit ensures the laborer receives the reasonable value, usually market price, for his services.” *Id.* at 380; see *Flamingo Realty*, 110 Nev. at 987 (“[T]he proper measure of damages under a quantum meruit theory of recovery is the reasonable value of [the] services” and the district court has “wide discretion in calculating an award of damages”); *Scaffidi v. United Nissan*, 425 F. Supp. 2d 1159, 1170 (D. Nev. 2005) (“In Nevada, ‘[t]he terms “restitution” and “unjust enrichment” are the modern counterparts of the doctrine of quasi-contract’ . . . . ‘In a case with a quantum meruit or unjust enrichment theory of recovery, the proper measure of damages is the “reasonable value of [the] services.”’) (internal citations omitted).

Nevada thus applies a “reasonable value” standard—as opposed to a “market” standard—to unjust enrichment and quantum meruit claims. Proper considerations in determining the reasonable value of services rendered include “market value,” a “previous agreement between the parties,” or “any other evidence regarding the value of services.” *Las Vegas Sands Corp.*, 2016 WL 4076421 at \*4. The Actual Cost Discovery is certainly relevant to determining the reasonable value of the services underlying the Plaintiffs’ health benefit claims.

Looking to other jurisdictions, factually analogous authority counsels that the Actual Cost Discovery is relevant to this dispute, and necessary for United to marshal a defense to Plaintiffs’ allegations. The District Court of Appeal of Florida in *Giacalone v. Helen-Ellis Memorial Hospital Foundation, Inc.*, for example, held that when a healthcare provider sues to recover medical charges under breach of contract and related theories, discovery regarding the provider’s cost structure is both relevant and critical to establishing a defense that the charges were unreasonable. 8 So. 3d 1232, 1233-34, 1236 (Fla. 2d DCA 2009). The court reaffirmed *Giacalone* in *Gulfcoast Surgery Ctr., Inc. v. Fisher*, holding that a non-party surgical center’s documents relating to internal cost structure were relevant to claims regarding reasonableness of charges. 107 So. 3d 493, 495 (Fla. 2d DCA 2013). Most recently, the Circuit Court for the 17th Judicial Circuit in *Florida Emergency Physicians Kang & Assocs., M.D., Inc. v. Sunshine State*





1 *Health Plan, Inc.* allowed discovery into plaintiffs' actual costs of providing the at-issue services  
 2 where, as here, plaintiffs (who are, just like the plaintiffs here, affiliated with TeamHealth)  
 3 alleged that defendants failed to adequately reimburse plaintiffs for emergency services and  
 4 sought recovery on breach of implied contract and unjust enrichment theories, among others.  
 5 CACE19-013026, Filing No. 118577916, at 1, 4-6 (Fl. Cir. Ct. Dec. 21, 2020). The court  
 6 reasoned that, while it was "appropriate to consider the amounts billed and the amounts  
 7 accepted by providers," it was not "inappropriate to allow discovery into other areas," and thus  
 8 the court was not precluded from "compelling . . . cost of care discovery." *Id.* at 3, 5 (quoting  
 9 *Baker County*, 31 So. 3d at 845).

10 The opinion of the Circuit Court for the 13th Judicial Circuit in *Gulf-to-Bay Anesthesia*  
 11 *Associates, LLC vs. Unitedhealthcare of Florida, Inc., et al.* that Plaintiffs have latched onto is  
 12 utterly distinguishable. There, the court denied discovery into plaintiff's costs of care on the  
 13 basis that plaintiff asserted only statutory claims and defendants did not "raise[] any  
 14 unreasonable pricing claims here, either by affirmative defense or counterclaim." CASE NO.:  
 15 17-CA-011207, Order Denying Defendants' Motion to Compel Discovery, at 4-6. Here, like the  
 16 emergency room providers in *Florida Emergency Physicians*, Plaintiffs' actual costs of doing  
 17 business are directly relevant to several of United's affirmative defenses, detailed *supra* at 4.  
 18 Furthermore, unlike the Florida statute at issue in *Gulf-to-Bay*, Plaintiffs' pleading contains no  
 19 claim based on a statute that addresses compensation of out-of-network emergency services. No  
 20 such statutory claim is available to Plaintiffs in Nevada.<sup>4</sup>

21 In this case, like in *Giacalone*, *Gulfcoast Surgery*, and *Florida Emergency Physicians*,  
 22 United has requested discovery on Plaintiffs' actual costs for rendering the disputed healthcare  
 23 services and has done so for purposes of challenging Plaintiffs' billed charges as excessive or  
 24 \_\_\_\_\_

25 <sup>4</sup> A special statutory rate of payment scheme passed in the 2019 Nevada Legislative Session, but those  
 26 statutory requirements did not go into effect until January 1, 2020 and the statute is not retroactively  
 27 applicable to this case. See AB 469 at § 29(2) (2019 Nevada Legislative Session) (stating that law does  
 28 not go into effect until January 1, 2020). Plaintiffs have not, in any event, contended that this statute  
 supplies the governing standard for determining the proper amount of reimbursement for the at-issue  
 health benefit claims.





unreasonable. Such evidence is relevant to the reasonableness of a healthcare provider's charges. *See Giacalone*, 8 So. 3d at 1235-36; *see also Gulfcoast Surgery Ctr.*, 107 So. 3d at 495; *Florida Emergency Physicians* at 4-6. Plaintiffs, for their part, have placed the reasonableness of their charges squarely at issue. Indeed, charges are the very metric Plaintiffs point to in alleging that United's payments are unreasonable. Furthermore, Plaintiffs' own Complaint suggests that reimbursement at 100% of their charges is *not* reasonable; rather, "a reasonable reimbursement rate" for the disputed health benefit claims is "75-90% of the Health Care Providers' *billed charge*." FAC ¶ 54 (emphasis added). If 100% of billed charges is not a reasonable reimbursement rate—*i.e.*, if billed charges do not reflect the reasonable value of the underlying services—then the Actual Cost Discovery is all the more relevant to the reasonable value determination. United has a right to both prove up its affirmative defenses and test Plaintiffs' allegations by comparing Plaintiffs' billed charges to Plaintiffs' actual costs to provide the underlying services.

The Court denied the Actual Cost Discovery without making a ruling as to the governing standard for the causes of action Plaintiffs have pleaded. Furthermore, the "market" standard the Court appears to have applied is erroneous. Under the reasonable value standard applicable to Nevada common law unjust enrichment and quantum meruit claims, the Actual Cost Discovery is clearly relevant, and United respectfully requests that the Court reconsider its Order and compel the Actual Cost Discovery.

**B. Reconsideration of the Order is necessary to the extent the Order is based on a finding that the Actual Cost Discovery is available in the public domain**

The Court should reconsider and modify the Order denying Actual Cost Discovery to the extent the Order denied the Actual Cost Discovery based on a finding that the information United seeks is available in the public domain.<sup>5</sup> While the Court correctly acknowledged that Plaintiffs are for-profit entities, there is nothing in the record suggesting that they are publicly

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<sup>5</sup> See Tr. at 9:9-14; 10:19-23; 34:2-7.

1 traded.<sup>6</sup> See **Exhibit 3**, attached hereto (compiling searches of the Securities and Exchange  
 2 Commission’s EDGAR database of company filings yielding no results). Plaintiffs’ Secretary of  
 3 State filings, attached hereto as **Exhibit 1** are sparse, providing only that Plaintiffs are “Domestic  
 4 Professional Corporations” that share some corporate officers. Plaintiffs do not appear to have  
 5 websites, and a Google search yields little more than addresses, phone numbers, and references  
 6 to their connection to TeamHealth. See **Exhibit 2**, attached hereto (compiling examples of  
 7 Plaintiffs’ limited Internet presence).

8 In short, there is little publicly available information about Plaintiffs’ corporate  
 9 characteristics at all, and no information about their financials or actual costs of care. To the  
 10 extent the Court denied the Actual Cost Discovery on the theory that the information United  
 11 seeks is publicly available, that finding is not supported in the record, and United respectfully  
 12 requests that the Court reconsider its Order and compel the Actual Cost Discovery.

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24  
 25 <sup>6</sup> Certainly, TeamHealth is not publicly-traded. See *Completes Previously Announced Transaction with*  
 26 *Blackstone*, TEAMHealth, [https://www.teamhealth.com/news-and-resources/press-](https://www.teamhealth.com/news-and-resources/press-release/blackstone/?r=1)  
 27 [release/blackstone/?r=1](https://www.teamhealth.com/news-and-resources/press-release/blackstone/?r=1) is attached hereto as **Exhibit 4** (“Team Health Holdings, Inc. . . . today  
 28 announced the successful completion of its acquisition by funds affiliated with Blackstone . . . for \$43.50  
 per share in cash, valued at approximately \$6.1 billion . . . . As a result of the transaction, TeamHealth is  
 now a privately held company. TeamHealth’s common stock is no longer traded on the New York Stock  
 Exchange . . . .”).



1 **IV. RELIEF REQUESTED**

2 United respectfully requests that this Court reconsider its February 4, 2021 Order  
 3 Denying Defendants' Motion to Compel Responses to Defendants' First and Second Requests  
 4 for Production on Order Shortening Time, modify the Order, and compel the production of the  
 5 Actual Cost Discovery.

6 Dated this 18th day of February, 2021.

7  
 8 /s/ Brittany M. Llewellyn

9 D. Lee Roberts, Jr., Esq.  
 Colby L. Balkenbush, Esq.  
 Brittany M. Llewellyn, Esq.  
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 10 GUNN & DIAL, LLC  
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 11 Las Vegas, Nevada 89118  
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 13 Natasha S. Fedder, Esq.  
*Admitted Pro Hac Vice*  
 O'Melveny & Myers LLP  
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 14 Los Angeles, CA 90071  
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 16 K. Lee Blalack, II, Esq.  
*Admitted Pro Hac Vice*  
 O'Melveny & Myers LLP  
 1625 Eye St. N.W.  
 17 Washington, D.C. 20006  
 Telephone: (202) 383-5374  
 18 *Attorneys for Defendants*  
 19  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28



**CERTIFICATE OF SERVICE**

I hereby certify that on the 18th day of February, 2021, a true and correct copy of the foregoing **MOTION FOR RECONSIDERATION OF ORDER DENYING DEFENDANTS' MOTION TO COMPEL PLAINTIFFS' RESPONSES TO DEFENDANTS' FIRST AND SECOND REQUESTS FOR PRODUCTION** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

Pat Lundvall, Esq.  
Kristen T. Gallagher, Esq.  
Amanda M. Perach, Esq.  
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aperach@mcdonaldcarano.com  
*Attorneys for Plaintiffs*

/s/ Brittany M. Llewellyn

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



**EXHIBIT 1**

003727

003727

**ENTITY INFORMATION****ENTITY INFORMATION****Entity Name:**

FREMONT EMERGENCY SERVICES (SCHERR), LTD.

**Entity Number:**

C7781-1990

**Entity Type:**

Domestic Professional Corporation (89)

**Entity Status:**

Active

**Formation Date:**

08/21/1990

**NV Business ID:**

NV19901034076

**Termination Date:**

Perpetual

**Annual Report Due Date:**

8/31/2021

**REGISTERED AGENT INFORMATION****Name of Individual or Legal Entity:**

CORPORATION SERVICE COMPANY

**Status:**

Active

CRA Agent Entity Type:

Registered Agent Type:

Commercial Registered Agent

NV Business ID:

NV20101844335

Office or Position:

Jurisdiction:

DELAWARE

Street Address:

112 NORTH CURRY STREET, Carson City, NV, 89703, USA

Mailing Address:

Individual with Authority to Act:

GEORGE MASSIH

Fictitious Website or Domain Name:

OFFICER INFORMATION

☐ VIEW HISTORICAL DATA

Title	Name	Address	Last Updated	Status
President	SCOTT SCHERR, MD	5000 HOPYARD ROAD, SUITE 100, Pleasanton, CA, 94588, USA	07/22/2020	Active
Secretary	SCOTT SCHERR MD	5000 HOPYARD ROAD, SUITE 100, Pleasanton, CA, 94588, USA	07/22/2020	Active
Director	SCOTT SCHERR MD	5000 HOPYARD ROAD, SUITE 100, Pleasanton, CA, 94588, USA	07/22/2020	Active
Treasurer	KRISTOPHER SMITH	5000 HOPYARD ROAD, SUITE 100, PLEASANTON, CA, 94588, USA	06/26/2019	Active

CURRENT SHARES



Class/Series	Type	Share Number	Value
	Authorized	25,000	1.000000000000
Page 1 of 1, records 1 to 1 of 1			
Number of No Par Value Shares:			
0			
Total Authorized Capital:			
25,000			
Filing History      Name History      Mergers/Conversions			

Return to Search

Return to Results

003730

003730

## NAME HISTORY

## ENTITY INFORMATION

**Entity Name:**

FREMONT EMERGENCY SERVICES (SCHERR), LTD.

**Entity Number:**

C7781-1990

**Entity Type:**

Domestic Professional Corporation (89)

**Entity Status:**

Active

**Formation Date:**

08/21/1990

**NV Business ID:**

NV19901034076

**Termination Date:**

Perpetual

**Annual Report Due Date:**

8/31/2021

## NAME HISTORY DETAILS

File Date	Effective Date	Filing Number	Consent Date	Name
04/28/2008	04/28/2008			FREMONT EMERGENCY SERVICES, INC.
10/02/2009	10/02/2009			FREMONT EMERGENCY SERVICES (BROWN), LTD.

File Date	Effective Date	Filing Number	Consent Date	Name
11/16/2015	11/16/2015			FREMONT EMERGENCY SERVICES (HENNER AND SEARS), LTD.
09/21/2020	09/21/2020	20200924782		FREMONT EMERGENCY SERVICES (MANDAVIA), LTD.
Page 1 of 1, records 1 to 4 of 4				

Back

Return to Search

Return to Results

**ENTITY INFORMATION****ENTITY INFORMATION****Entity Name:**

TEAM PHYSICIANS OF NEVADA-SCHERR, P.C.

**Entity Number:**

E0521322013-7

**Entity Type:**

Domestic Professional Corporation (89)

**Entity Status:**

Active

**Formation Date:**

10/29/2013

**NV Business ID:**

NV20131633249

**Termination Date:**

Perpetual

**Annual Report Due Date:**

10/31/2021

**REGISTERED AGENT INFORMATION****Name of Individual or Legal Entity:**

CORPORATION SERVICE COMPANY

**Status:**

Active

CRA Agent Entity Type:

Registered Agent Type:

Commercial Registered Agent

NV Business ID:

NV20101844335

Office or Position:

Jurisdiction:

DELAWARE

Street Address:

112 NORTH CURRY STREET, Carson City, NV, 89703, USA

Mailing Address:

Individual with Authority to Act:

GEORGE MASSIH

Fictitious Website or Domain Name:

OFFICER INFORMATION

☐ VIEW HISTORICAL DATA

Title	Name	Address	Last Updated	Status
President	SCOTT SCHERR MD	5000 HOPYARD ROAD, SUITE 100, Pleasanton, CA, 94588, USA	10/17/2019	Active
Officer	JENNIFER BEHM	5000 Hopyard Road, Suite 100, Pleasanton, CA, 94588, USA	10/17/2019	Active
Officer	JOHN R STAIR	265 BROOKVIEW CENTRE WAY STE 400, KNOXVILLE, TN, 37919, USA	10/17/2019	Active
Officer	JOHN BARRACK	265 BROOKVIEW CENTRE WAY STE 400, KNOXVILLE, TN, 37919, USA	10/17/2019	Active
Secretary	SCOTT SCHERR MD	5000 HOPYARD ROAD, SUITE 100, Pleasanton, CA, 94588, USA	10/17/2019	Active

CURRENT SHARES

Class/Series	Type	Share Number	Value
No records to view.			
Number of No Par Value Shares:			
1000			
Total Authorized Capital:			
1,000			
Filing History      Name History      Mergers/Conversions			

Return to Search

Return to Results

**ENTITY INFORMATION****ENTITY INFORMATION****Entity Name:**

TEAM PHYSICIANS OF NEVADA-SCHERR, P.C.

**Entity Number:**

E0521322013-7

**Entity Type:**

Domestic Professional Corporation (89)

**Entity Status:**

Active

**Formation Date:**

10/29/2013

**NV Business ID:**

NV20131633249

**Termination Date:**

Perpetual

**Annual Report Due Date:**

10/31/2021

**REGISTERED AGENT INFORMATION****Name of Individual or Legal Entity:**

CORPORATION SERVICE COMPANY

**Status:**

Active

003737

003737

CRA Agent Entity Type:

Registered Agent Type:

Commercial Registered Agent

NV Business ID:

NV20101844335

Office or Position:

Jurisdiction:

DELAWARE

Street Address:

112 NORTH CURRY STREET, Carson City, NV, 89703, USA

Mailing Address:

Individual with Authority to Act:

GEORGE MASSIH

Fictitious Website or Domain Name:

OFFICER INFORMATION

☐ VIEW HISTORICAL DATA

Title	Name	Address	Last Updated	Status
Director	SCOTT SCHERR MD	5000 HOPYARD ROAD, SUITE 100, Pleasanton, CA, 94588, USA	10/17/2019	Active
Treasurer	KRISTOPHER SMITH	5000 HOPYARD ROAD, SUITE 100, PLEASANTON, CA, 94588, USA	10/04/2018	Active

< Previous

...

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2

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Next >

Page 2 of 2, records 6 to 7 of 7

Go to Page

CURRENT SHARES

Class/Series	Type	Share Number	Value
No records to view.			



Number of No Par Value Shares:

1000

Total Authorized Capital:

1,000

Filing History

Name History

Mergers/Conversions

[Return to Search](#)

[Return to Results](#)

003738

003738

NAME HISTORY

ENTITY INFORMATION

**Entity Name:**  
TEAM PHYSICIANS OF NEVADA-SCHERR, P.C.

**Entity Number:**  
E0521322013-7

**Entity Type:**  
Domestic Professional Corporation (89)

**Entity Status:**  
Active

**Formation Date:**  
10/29/2013

**NV Business ID:**  
NV20131633249

**Termination Date:**  
Perpetual

**Annual Report Due Date:**  
10/31/2021

NAME HISTORY DETAILS

File Date	Effective Date	Filing Number	Consent Date	Name
12/23/2013	12/23/2013			TEAM PHYSICIANS OF NEVADA-GREEN, P.C.

File Date	Effective Date	Filing Number	Consent Date	Name
12/03/2019	10/03/2019	20190325369		TEAM PHYSICIANS OF NEVADA-MANDAVIA, P.C.

Page 1 of 1, records 1 to 2 of 2

[Back](#)

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003740

003740

**ENTITY INFORMATION****ENTITY INFORMATION****Entity Name:**

CRUM, STEFANKO AND JONES, LTD.

**Entity Number:**

C13107-1993

**Entity Type:**

Domestic Professional Corporation (89)

**Entity Status:**

Active

**Formation Date:**

10/22/1993

**NV Business ID:**

NV19931084473

**Termination Date:**

Perpetual

**Annual Report Due Date:**

10/31/2021

**REGISTERED AGENT INFORMATION****Name of Individual or Legal Entity:**

CORPORATION SERVICE COMPANY

**Status:**

Active

CRA Agent Entity Type:

Registered Agent Type:

Commercial Registered Agent

NV Business ID:

NV20101844335

Office or Position:

Jurisdiction:

DELAWARE

Street Address:

112 NORTH CURRY STREET, Carson City, NV, 89703, USA

Mailing Address:

Individual with Authority to Act:

GEORGE MASSIH

Fictitious Website or Domain Name:

OFFICER INFORMATION

☐ VIEW HISTORICAL DATA

Title	Name	Address	Last Updated	Status
President	SCOTT SCHERR MD	5000 HOPYARD ROAD, SUITE 100, Pleasanton, CA, 94588, USA	10/17/2019	Active
Officer	JOHN R STAIR	265 BROOKVIEW CENTRE WAY STE 400, KNOXVILLE, TN, 37919, USA	10/17/2019	Active
President	JENNIFER BEHM	5000 Hopyard Road, Suite 100, Pleasanton, CA, 94588, USA	10/17/2019	Active
Secretary	SCOTT SCHERR MD	5000 HOPYARD ROAD, SUITE 100, Pleasanton, CA, 94588, USA	10/17/2019	Active
Director	SCOTT SCHERR MD	5000 HOPYARD ROAD, SUITE 100, Pleasanton, CA, 94588, USA	10/17/2019	Active

CURRENT SHARES

Class/Series	Type	Share Number	Value
	Authorized	25,000	1.000000000000

Page 1 of 1, records 1 to 1 of 1

Number of No Par Value Shares:  
0

Total Authorized Capital:  
25,000

Filing History

Name History

Mergers/Conversions

Return to Search

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**EXHIBIT 2**

003744

003744



003745

003745

003745

003745



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About 4,650,000 results (0.64 seconds)

www.healthcare4ppl.com › ... › Nevada › Fallon

### Team Physicians Of Nevada-mandavia Pc - Medical Group in ...

Detailed information about **Team Physicians Of Nevada**-mandavia Pc, a Medical Group - Health Care Provider in Fallon Nevada, including its practice locations, ...

npidb.org › allopathic\_osteopathic\_physicians

### TEAM PHYSICIANS OF NEVADA-MANDAVIA PC; NPI ...

Jan 10, 2020 — **TEAM PHYSICIANS OF NEVADA-MANDAVIA** PC in PLEASANTON, CA. Profile from the NPI Registry.

healthprovidersdata.com › hipaa › codes › NPI-107394...

### team physicians of nevada-mandavia pc npi 1073942116

**TEAM PHYSICIANS OF NEVADA-MANDAVIA** PC is an emergency medicine in Pleasanton, CA. The provider's NPI Number is 1073942116 with a scope of ...

www.hipaaspace.com › medical\_billing › coding › codes

### 1073942116 NPI Number | TEAM PHYSICIANS OF NEVADA ...

The 1073942116 NPI number is assigned to the healthcare provider **TEAM PHYSICIANS OF NEVADA-MANDAVIA** PC, practice location address at 5000 ...

www.teamhealth.com › press-release › teamhealth-acqu...

### TeamHealth Acquires Three Emergency Department Medical ...

... and **staff** eight hospital emergency departments in the Las Vegas, **Nevada**, market. These groups work with more than 120 **physicians** and advanced practice ...  
You visited this page on 2/15/21.

www.teamhealth.com › jobs › 7164br-medical-director...

### 7164BR: Medical Director - Emergency Medicine, Fallon, NV ...

Deliver compassionate patient care leading our emergency department (ED) **team** at Banner Churchill Community Hospital in Fallon, **Nevada**. **Physician** shifts in ...

nevadawolfpack.com › ot-unv-sports-medicine-html

### Sports Medicine - University of Nevada Athletics

Jul 21, 2017 — **Dr.** Arthur Islas is the Wolf Pack's **team physician** and Director of the UNSOM Sports Medicine Fellowship program, and partners with **Dr.** Mark ...

www.vitals.com › group-practice › nevada › clark › em...

### Emergency Physicians Medical Group Reviews | Las Vegas, NV

Emergency **Physicians** Medical **Group** has been reviewed by 16 patients. The rating is 3.8 out of 5 stars. The average wait time to see a **doctor** at Emergency ...  
★★★★★ Rating: 3.8 · 16 votes

www.corporationwiki.com › U.S. › Tennessee › Knoxville

### Team Physicians of Nevada-Mandavia, P.C. in Knoxville TN ...



About 1,460,000 results (0.68 seconds)

🦠 COVID-19 safety info

▼

www.teamhealth.com › press-release › teamhealth-acqu...  
**TeamHealth Acquires Ruby Crest Emergency Medicine ...**  
TeamHealth Holdings Inc. announced the acquisition of the operations of **Ruby Crest Emergency Medicine**, the group that manages and staffs the hospital ...  
You visited this page on 2/15/21.

www.nnrhospital.com › patient-business-department  
**Patient Finance | Northeastern Nevada Regional Hospital**  
Tell the front-desk receptionist you need **medical** care but you would like to speak with someone about your payment ... **RUBY CREST EMERGENCY BILLING**

www.manta.com › ... › Billing Services  
**Ruby Crest Emergency Medical - Elko, NV - Billing Service in ...**  
Get information, directions, products, services, phone numbers, and reviews on **Ruby Crest Emergency Medical** in Elko, undefined Discover more Accounting, ...

www.prnewswire.com › news-releases › teamhealth-acq...  
**TeamHealth Acquires Ruby Crest Emergency Medicine**  
Feb 12, 2015 — **Ruby Crest Emergency Medicine's** clinicians provide care for approximately 24,000 cases annually. "Our physicians and physician assistants ...

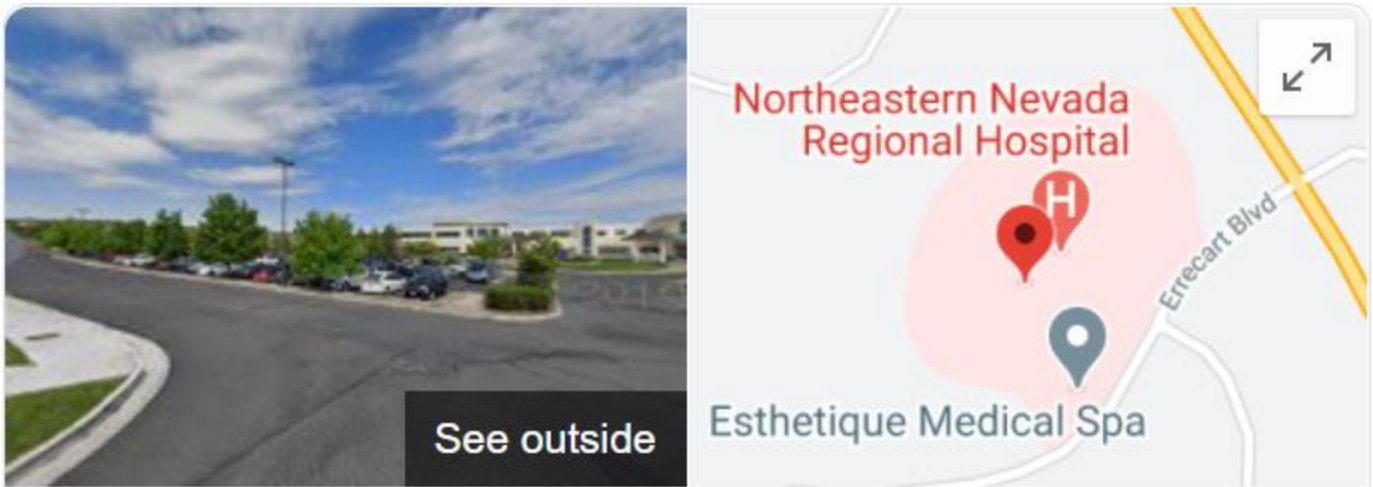
pitchbook.com › profiles › company  
**Ruby Crest Emergency Medicine Company Profile ... - PitchBook**  
Information on acquisition, funding, investors, and executives for **Ruby Crest Emergency Medicine**. Use the PitchBook Platform to explore the full profile.

npiprofile.com › ... › Elko › Emergency Medicine  
**RUBY CREST EMERGENCY MEDICINE (CRUM,STEFANKO ...**  
**Ruby Crest Emergency Medicine** (crum,stefanko And Jones Ltd) is a provider established in Elko, Nevada specializing in emergency medicine. The NPI number ...

www.mapquest.com › nevada › ruby-crest-emergency-...  
**Ruby Crest Emergency Medical of Elko 455 8th St Elko, NV ...**  
Get directions, reviews and information for **Ruby Crest Emergency Medical** of Elko in Elko, NV.

npidb.org › emergency-medicine\_207p00000x  
**RUBY CREST EMERGENCY MEDICINE; NPI #1285645515**  
Mar 25, 2015 — **RUBY CREST EMERGENCY MEDICINE** dba CRUM,STEFANKO AND JONES LTD in ELKO, NV. Profile from the NPI Registry.

staffingtoday.net › 2015/02/13 › teamhealth-acquires-r...  
**TeamHealth Acquires Ruby Crest Emergency Medicine ...**



## Ruby Crest Emergency Medcn Physical

Website

Directions

Save

Call

Doctor in Elko, Nevada

**Located in:** [Northeastern Nevada Regional Hospital](#)

**Address:** 2001 Errecart Blvd, Elko, NV 89801

**Phone:** (775) 777-0935

[Suggest an edit](#) · [Own this business?](#)

### Add missing information

[Add business hours](#)

**Know this place?** [Share the latest info](#)

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Reviews ?

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Add a photo

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Golf course

Cunningham Carpet Cleaning  
Carpet cleaning service

Elko Junction Federal Credit Un...  
Federal credit union

Northeastern Nevada Regional...  
Emergency room

Southwest Gas Corporati...  
Gas company

▼

More about Ruby Crest Emergenc...

About this data

Feedback

See results about

Ruby Crest Emergency Medicine Inc.

003747

003747



**EXHIBIT 3**

003748

003748



Document word or phrase ?

Keywords to search for in filing documents

Company name, ticker, CIK number or individual's name

fremont emergency services

Filing category

View all

Browse filing types

Filed date range

Last 5 years

Filed from

2016-02-17

Filed to

2021-02-17

Principal executive offices in ?

View all

- less search options

SEARCH

Clear all

No results found for the past 5 years. Consider expanding the filed date range!



Document word or phrase ?

Keywords to search for in filing documents

Company name, ticker, CIK number or individual's name

team physicians of nevada-mandavia

Filing category

View all

Browse filing types

Filed date range

Last 5 years

Filed from

2016-02-17

Filed to

2021-02-17

Principal executive offices in ?

View all

- less search options

SEARCH

Clear all

No results found for the past 5 years. Consider expanding the filed date range!