Case Nos. 85525 & 85656

In the Supreme Court of Nevada

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

APPELLANTS' APPENDIX
VOLUME 47
PAGES 11,501–11,750

K. LEE BLALACK II
(*pro hac vice*)
JONATHAN D. HACKER (*pro hac vice forthcoming*)
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006

DANIEL F. POLSENBERG (SBN 2376)
JOEL D. HENRIOD (SBN 8492)
ABRAHAM G. SMITH (SBN 13,250)
KORY J. KOERPERICH (SBN 14,559)
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy., Ste. 600
Las Vegas, Nevada 89169

D. LEE ROBERTS (SBN 8877)
COLBY L. BALKENBUSH (SBN 13,066)
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd., Ste. 400
Las Vegas, Nevada 89118

Attorneys for Appellants/Petitioners

CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Tab	Document	Date	Vol.	Pages
241.	Errata	11/19/21	44	10,953
242.	Notice of Entry of Order Granting Plaintiffs' Motion for Leave to File Supplemental Record in Opposition to Arguments Raised for the First Time in Defendants' Reply in Support of Motion for Partial Summary Judgment	11/19/21	44	10,954–10,963
243.	Plaintiffs' Proposed Special Verdict Form	11/19/21	44	10,964–10,973
244.	Recorder's Transcript of Jury Trial – Day 16	11/19/21	44 45	10,974–11,000 11,001–11,241
245.	Response to Plaintiffs' Trial Brief Regarding Punitive Damages for Unjust Enrichment Claim	11/19/21	45 46	11,242–11,250 11,251–11,254
246.	Plaintiffs' Second Supplemental Jury Instructions (Contested)	11/20/21	46	11,255–11,261
247.	Defendants' Supplemental Proposed Jury Instruction	11/21/21	46	11,262–11,266
248.	Plaintiffs' Third Supplemental Jury Instructions (Contested)	11/21/21	46	11,267–11,272
249.	Recorder's Transcript of Jury Trial – Day 17	11/22/21	46 47	11,273–11,500 11.501–11,593
250.	Plaintiffs' Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time	11/22/21	47	11,594–11,608
251.	Defendants' Opposition to Plaintiffs' Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time	11/22/21	47	11,609–11,631
252.	4th Amended Jury List	11/23/21	47	11,632
253.	Recorder's Transcript of Jury Trial – Day 18	11/23/21	47 48	11,633–11,750 11,751–11,907

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

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

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

Tab	Document	Date	Vol.	Pages
291.	Objection to Plaintiffs' Proposed Judgment and Order Denying Motion to Apply Statutory Cap on Punitive Damages	03/04/22	53	13,161–13,167
292.	Notice of Entry of Judgment	03/09/22	53	13,168–13,178
293.	Notice of Entry of Order Denying Defendants' Motion to Apply Statutory Cap on Punitive Damages	03/09/22	53	13,179–13,197
294.	Health Care Providers' Verified Memorandum of Cost	03/14/22	53	13,198–13,208
295.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 1	03/14/22	53 54	13,209–13,250 13.251–13,464
296.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 2	03/14/22	54 55	13,465–13,500 13,501–13,719
297.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 3	03/14/22	55 56	13,720–13,750 13,751–13,976
298.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 4	03/14/22	56 57	13,977–14,000 14,001–14,186
299.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 5	03/14/22	57 58	14,187–14,250 14,251–14,421
300.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 6	03/14/22	58 59	14,422–14,500 14,501–14,673
301.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 7	03/14/22	59 60	14,674–14,750 14,751–14,920
302.	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of	03/14/22	60 61	14,921–15,000 15,001–15,174

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

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

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

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

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

Filed Under Seal

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

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

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

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

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

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

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

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

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

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

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

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

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

ALPHABETICAL TABLE OF CONTENTS TO APPENDIX

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

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

Tab	Document	Date	Vol.	Pages
	Volume 3			
309	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 4	03/30/22	65	16,054–16,232
310	Appendix of Exhibits in Support of Health Care Providers' Motion for Attorneys' Fees Volume 5	03/30/22	65 66	16,233–16,250 16,251–16,361
295	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 1	03/14/22	53 54	13,209–13,250 13.251–13,464
296	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 2	03/14/22	54 55	13,465–13,500 13,501–13,719
297	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 3	03/14/22	55 56	13,720–13,750 13,751–13,976
298	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 4	03/14/22	56 57	13,977–14,000 14,001–14,186
299	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 5	03/14/22	57 58	14,187–14,250 14,251–14,421
300	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 6	03/14/22	58 59	14,422–14,500 14,501–14,673
301	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 7	03/14/22	59 60	14,674–14,750 14,751–14,920
302	Appendix of Exhibits in Support of Health Care Providers' Verified Memorandum of Cost Volume 8	03/14/22	60 61	14,921–15,000 15,001–15,174
303	Appendix of Exhibits in Support of Health	03/14/22	61	15,175–15,250

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Tab	Document	Date	Vol.	Pages
483	Recorder's Transcript of Hearing re Hearing (Filed Under Seal)	10/13/22	142	35,259–35,263
346	Recorder's Transcript of Hearing Re: Hearing	09/22/22	72	17,951–17,972
359	Recorder's Transcript of Hearing Status Check	10/20/22	76	18,756–18,758
162	Recorder's Transcript of Jury Trial – Day 1	10/25/21	25 26	6127–6250 6251–6279
213	Recorder's Transcript of Jury Trial – Day 10	11/10/21	36 37	8933–9000 9001–9152
217	Recorder's Transcript of Jury Trial – Day 11	11/12/21	37 38	9185–9250 9251–9416
224	Recorder's Transcript of Jury Trial – Day 12	11/15/21	39 40	9522–9750 9751–9798
228	Recorder's Transcript of Jury Trial – Day 13	11/16/21	40 41	9820–10,000 10,001–10,115
237	Recorder's Transcript of Jury Trial – Day 14	11/17/21	42 43	10,314–10,500 10,501–10,617
239	Recorder's Transcript of Jury Trial – Day 15	11/18/21	43 44	10,624–10,750 10,751–10,946
244	Recorder's Transcript of Jury Trial – Day 16	11/19/21	44 45	10,974–11,000 11,001–11,241
249	Recorder's Transcript of Jury Trial – Day 17	11/22/21	46 47	11,273–11,500 11.501–11,593
253	Recorder's Transcript of Jury Trial – Day 18	11/23/21	47 48	11,633–11,750 11,751–11,907
254	Recorder's Transcript of Jury Trial – Day 19	11/24/21	48	11,908–11,956
163	Recorder's Transcript of Jury Trial – Day 2	10/26/21	26	6280–6485
256	Recorder's Transcript of Jury Trial – Day 20	11/29/21	48 49	12,000 12,001–12,034

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

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

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

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

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

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

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

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

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

CERTIFICATE OF SERVICE

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

Electronic notification will be sent to the following:

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

Attorneys for Respondents (case no. 85525)/Real Parties in Interest (case no. 85656)

Richard I. Dreitzer
FENNEMORE CRAIG, PC
9275 W. Russell Road, Suite 240
Las Vegas, Nevada 89148

Attorneys for Real Parties in Interest (case no. 85656)

Dennis L. Kennedy
Sarah E. Harmon
BAILEY KENNEDY
8984 Spanish Ridge Avenue
Las Vegas, Nevada 89148

Attorneys for Respondents (case no. 85525)

Constance. L. Akridge
Sydney R. Gambee
HOLLAND & HART LLP
9555 Hillwood Drive, Second Floor
Las Vegas, Nevada 89134

Attorneys for Amicus Curiae (case no. 85656)

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

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

Respondent (case no. 85656)

Joseph Y. Ahmad
John Zavitsanos
Jason S. McManis
Michael Killingsworth
Louis Liao
Jane L. Robinson
Patrick K. Leyendecker
AHMAD, ZAVITSANOS, & MENSING, PLLC
1221 McKinney Street, Suite 2500
Houston, Texas 77010

Justin C. Fineberg
Martin B. Goldberg
Rachel H. LeBlanc
Jonathan E. Feuer
Jonathan E. Siegelaub
David R. Ruffner
Emily L. Pincow
Ashley Singrossi
LASH & GOLDBERG LLP
Weston Corporate Centre I
2500 Weston Road Suite 220
Fort Lauderdale, Florida 33331

Attorneys for Respondents (case no. 85525)/Real Parties in Interest (case no. 85656)

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

Q Mr. Crandell, you came --
A Yes.
Q -- in here and told counsel for United --
A Uh-huh.
Q -- what the trends were in the industry and what the competitors of United are doing with regards to Data iSight, right? Right?
A I talked about the differences in methodologies that people are adopting in the industry. Yes.
Q Right. And but you can't tell us what percent of your top 20 clients have -- had wrap agreements where -- that prohibited balance billing --
A At a --
Q -- and a slight discount off the bill charge as of 2017?
A At a particular time period, no, I cannot recollect exactly.
Q Generally, sir?
A I'm an analyst. I don't speak in generalities. So --
MR. ROBERTS: Your Honor, in order to move things along, I'll stipulate to the admission of page 7.
THE COURT: Okay. So page 7 will be admitted.
[Plaintiffs' Exhibit 82 admitted into evidence]
MR. ZAVITSANOS: Put it up, Michele.
THE COURT: Page 7 of Exhibit 82; is that correct?
MR. ZAVITSANOS: That's all I need, Your Honor.
BY MR. ZAVITSANOS:

011501
011501

011501

Q All right. This is a MultiPlan document?
A It has a MultiPlan logo.
Q Yeah. And you see it says, "service usage by top clients?"
A Yes.
Q And at the bottom there it says, "service usage by top clients?"
A Yes.
Q And at the bottom there it says, "networks." And you have your top 20 clients. 90 percent had wrap agreements, right?
A It's stating that 90 percent of our top 20 clients have access to a network.
Q And one of the recent client strategies was to eliminate extender networks. You see that?
A Yes.
Q That's a wrap -- those are wrap agreements, right?
A Those aren't -- are -- an extender agreement is another organization. It's not technically our agreements.
Q Okay. But it's a form of a wrap agreement, right?
A I don't know the exact specification of an external party's network agreement and how it's designated.
Q Fair enough. But as of '17, more of your top 20 clients were using wrap agreements than were using Data iSight, right?
A That's what this is saying. Yes.
Q Okay. Let's move on. Now, Exhibit 25, page 2, the jury has seen this. This is in evidence. And it looks like at United -- at United, it

011502
011502

011502

looks like the majority of the United clients, the ASO clients were on usual, customary, and reasonable using the 80th percentile of FAIR Health, right?

A This is a United document. I can't --

Q Yes, sir.

A -- I can't comment on the percent of overall United clients. I do not have any access to their systems.

Q Well, MultiPlan was founded by people on the principle of wrap networks, right?

A Yes.

Q Okay.

A It's on PPO networks.

Q Yes, sir. And now let's go to Exhibit 267. No, actually, hold on. We're going to skip ahead. Oh, we were talking about that conversion factor in that long script, right?

A Uh-huh.

Q That's data that you buy out of a market, right, that anybody can buy?

A Yes.

Q Okay. And let's talk about what that conversion factor is. So you claim that -- let's look at Exhibit 16.

MR. ZAVITSANOS: Is that in, Michael?

MR. KLLINGSWORTH: I show it as not in.

MR. ZAVITSANOS: May I ask counsel, Your Honor, if you have an objection to Exhibit 16? And specifically, I want to ask about

011503
011503
011503

page 11. It is a direct reply to what he raised.

MR. ROBERTS: Just a second. I'm trying to find the exhibit.

MR. ZAVITSANOS: Yes.

MR. ROBERTS: Thank you, sir.

BY MR. ZAVITSANOS:

Q Would you please look at Exhibit 16, while they're doing that, please, and go to page 11?

MR. ZAVITSANOS: I had to show counsel, Your Honor. This is the only page I'm going to use. I'm just trying to speed this along.

MR. ROBERTS: No objection, Your Honor. I'd note that it's marked proprietary by MultiPlan.

MR. ZAVITSANOS: Okay. Michelle --

THE COURT: And 16 will be admitted.

[Plaintiffs' Exhibit 16 admitted into evidence]

MR. ZAVITSANOS: Thank you, Your Honor.

Page 11, Michelle.

BY MR. ZAVITSANOS:

Q Okay. So this is another MultiPlan document. And this is talking about Data iSight practitioner. That's what you use for doctors rather than facilities, right?

A Yes.

Q Okay. Pull this out, Michelle, the box. And right here it says, "proprietary conversion factor." You see that?

A Yes.

Q Now, conversion factor, you went out and you bought off the

011504
011504
011504

shelf data available in the public, right?

A Yes.

Q Proprietary, right? Okay.

A Define usage of proprietary.

Q Okay. Now, let's go -- 38. Okay. 38.

MR. ZAVITSANOS: Is that in? Let me ask counsel first. I don't think it is, Your Honor.

MR. ROBERTS: It is not in.

THE COURT: It is not.

BY MR. ZAVITSANOS:

Q Would you look at Exhibit 38, please, yourself? Tell me if that's the right paper on the methodology of how Data iSight would.

A Yes.

MR. ROBERTS: And we object to this document as to being incomplete, partial, and foundation with this witness.

MR. ZAVITSANOS: Let me lay a foundation.

BY MR. ZAVITSANOS:

Q Is this the white paper that talks about the secret formula and how it works?

A This is a white paper that describes the Data iSight professional module. Yes.

Q You're familiar with this document, right?

A Yes.

Q Okay. And this is something that you work with, right? You're a numbers guy, right?

011505

011505

011505

A Yes.
Q Okay. And this is a Data iSight document, right?
A Yes.
Q And this relates exactly to the issue that you're discussing with Mr. Roberts, right?
A What issues are you talking about?
Q The Data iSight issues of how it works, right?
A About the operational processes --
Q Yeah.
A -- et cetera?
Q Yeah.
A Not issues.
Q Is that right?
A I agree to it we talked through the operational processes. I don't necessarily agree with the word issues.
Q Well, you talked about how it operates, right?
A Yeah.
MR. ZAVITSANOS: I move for the admission of 38.
MR. ROBERTS: No objection, Your Honor. I'd note for the record it's been marked as confidential and proprietary.
BY MR. ZAVITSANOS:
Q Okay. Let's look at --
THE COURT: 38 is admitted.
[Plaintiffs' Exhibit 38 admitted into evidence]
MR. ZAVITSANOS: Sorry, Your Honor.

011506
011506

011506

BY MR. ZAVITSANOS:

Q Let's look at the secret formula. Okay. Let's start here, first paragraph. Okay. This module is available to address out-of-network physician and other medical healthcare professional claims before payment is made utilizing a unique, proprietary methodology that is applied consistently in all professions, right? Right, sir?

A Yes. That's what it says.

Q Okay. Page 3. Okay.

MR. ZAVITSANOS: Michelle, please put up page 3. Let's go to page 3. Now, let's pull this up.

BY MR. ZAVITSANOS:

Q This is the Medicare formula, right?

A Yes. It says the general formula for calculating Medicare payments.

Q Okay. Now, let's pull this up. This is the Medicare formula, right?

A Yes. It says the general formula for calculating Medicare payments.

Q Okay. Now, I'm not going to go through each of these. But we're going to put that up next to your proprietary formula. Let's go next, please, to page 5.

MR. ZAVITSANOS: Let's go to page 5, please, Michelle. I want to look at one thing. Actually, no. Let's put up the comparison. Page 5. So let's pull up this formula here. This formula right here, Michelle. Okay. And pull it up next to this formula, which is the seven

011507

011507

011507

herbs and spices.

BY MR. ZAVITSANOS:

Q You know the seven herbs and spices are proprietary, right, in KFC? Sir?

A Yes, I do.

Q Yes, sir. Okay. So now let's pull up -- now let's take a look and let's compare. Okay.

MR. ZAVITSANOS: And Michelle, I know I have a hard time seeing, but you're going to have to reduce that a little bit. Okay. Here we go.

BY MR. ZAVITSANOS:

Q All right. Here we go. Now, okay. So let's start. Let's take a look first at the Medicare formula. And I don't want to know what they mean. I just want to know which one is different. Okay. So first, Medicare starts with work RBU, right?

A Yes.

Q You start with work RBU?

A Uh-huh.

Q Next, times work GPCI. You use work GPCI, right?

A Yes. We adjust for locality.

Q Well, sir, I'm just talking about the formula now. I'm going to get to the locality in just a minute. So far, the formula is the same, right?

A Yes.

Q Next, practice expense, right? Practice expense?

A Yes.

011508

011508

011508

Q Okay. Which doesn't apply, by the way, to professional claims, right?

A Medicare -- the --

Q No, right?

A No. The foundation of practice expense is a part of the AMA and CMS formula that we use for our product.

Q I'm sorry, I didn't mean to cut you off. All right. Practice expense, RBU, blah, blah, blah, the same, right?

A Yes.

Q Malpractice the same, right?

A Yes. All adjustments to account for industry standard expenses.

Q Okay. So far, your secret formula is exactly the same as Medicare?

A It has the same industry standard components of Medicare.

Q My question, sir, is the secret formula that you're pitching to the world is proprietary so far is identical? Like in My Cousin Vinny, identical, right?

A It has the same --

MR. ROBERTS: Objection. Asked and answered.

THE COURT: Objection's sustained.

THE WITNESS: It has the same components of an industry standard defensible --

BY MR. ZAVITSANOS:

Q I'm going to get to defensible. What you're defending here

011509
011509
011509

in this first trial, that's what you mean by defensible, is if somebody calls you on it, you can put up something complicated like this and the people are going to go woah, that looks -- that looks official? That's what defensible means, right?

MR. ROBERTS: Objection. Compound and argumentative.

THE COURT: Objection's sustained.

MR. ZAVITSANOS: Michelle, pull up that for me.

BY MR. ZAVITSANOS:

Q Okay. So now, it looks like Medicare applies a conversion factor, right?

A Yes.

Q And so do you. So far, apples-to-apples. This super-secret formula is exactly the same as Medicare, right? The program that you said is woefully deficient, sir.

MR. ROBERTS: Objection. Compound.

THE COURT: Objection sustained. You have to break it down.

BY MR. ZAVITSANOS:

Q So far, at least the formula is identical, right?

A Yes.

Q Okay.

A The components of the formula are identical.

Q And then this conversion factor, you went and bought a bunch of data off the shelf, and you plugged it in, right?

A We looked -- we purchased data.

011510
011510
011510

Q Yeah.

A Defensible, large sets of data that is a true representation of an allowable that is being paid and allowed in the marketplace.

Q Okay. I'm sorry, sir. My question was this super-secret formula, which is available to anybody, this one, with a computer, the only difference is you plugged in some public, available, off the shelf data, and that's how you come up with your number, right?

A No. We come up with seven different conversion factors, okay? We don't know how Medicare comes up with their $36.01 here. We have to take what's being paid in the market and translate it to conversion factors.

Q Well, sir, my question is this conversion factor that is off the shelf data, right, that's what -- that's what it's based on? You bought it publicly. It's publicly available. Not proprietary.

A Yeah.

Q Okay. And so --

MR. ZAVITSANOS: And by the way, Michelle, go back to page 5. Right here.

BY MR. ZAVITSANOS:

Q And that, sir, is why United took to this like a camel to water, right here, right?

MR. ROBERTS: Is there a question, Your Honor?

THE COURT: Yeah. That wasn't a question. You'll have to ask a question.

BY MR. ZAVITSANOS:

011511

011511

011511

Q This is why United used Data iSight, because they can specify what the outcome is going to be under the guise of a proprietary formula that sounds fancy and defensible, right, sir?

MR. ROBERTS: Objection. Argumentative. Compound. Foundation. Calls for speculation.

THE COURT: Objection sustained.

BY MR. ZAVITSANOS:

Q This is why United bought this, right, sir?

MR. ROBERTS: Objection. Calls for speculation.

THE COURT: It does.

BY MR. ZAVITSANOS:

Q This is how you pitch it? This is -- this is what you all pitch to your insurance clients that the client can specify the overwrite, right, to make sure that the outcome is always 100 percent of the time exactly what the insurance company wants to pay, right?

A Disagree.

Q Isn't that what that says, the client can specify a high or low override?

A The client has to be able to be -- like I said before, adapt to what an employer wants from their out-of-network cost contingency.

Q Let's not talk about employers. Have you talked -- have you spoken with any of the United employers in this case?

A No.

Q Okay. I want to know about MultiPlan and just MultiPlan.

A Okay.

011512
011512
011512

Q This is why United ran right here because they can dictate exactly how much they want to pay, right?

A I can't comment on behalf of United.

Q All right. Let's move on.

THE COURT: Actually, if you're going to transition to another subject, this is a good time to take our last break of the day. So during this recess, don't talk with each other or anyone else on any subject connected with the trial. Don't read, watch, or listen to any report of or commentary on the trial. Don't discuss this case with anybody connected to it by any medium of information including without limitation newspapers, television, radio, internet, cell phones, or texting.

Don't conduct any research on your own relating to the case. Don't consult dictionaries, use the internet, or use reference materials. Don't post on social media about the trial. Don't talk, text, Tweet, Google, or conduct any other type of research with regard to any issue, party, witness, or attorney involved in the case.

Most importantly, do not form or express any opinion on any subject connected with the trial until the matter is submitted to the jury. Let's be back at 3:55. I know it's a short break.

THE MARSHAL: All rise for the jury.

[Jury out at 3:46 p.m.]

[Outside the presence of the jury]

THE COURT: It looks like the room is clear. Plaintiff, anything for the record?

MR. ZAVITSANOS: No, Your Honor.

011513
011513
011513

THE COURT: Defendants, anything for the record?

MR. BLALACK: Not at this time, Your Honor. We've got a couple things to resolve. We can do that in just a minute before the jury comes back in.

THE COURT: Great. Thank you.

MR. ROBERTS: And Your Honor, I'm going to assume the answer is still the same that they opened the door to costs. We've heard a lot about cost over the last hour. Cost of methodologies and --

THE COURT: No, because the answer wasn't -- it was not relevant.

MR. ROBERTS: Thank you, Your Honor.

THE COURT: Uh-huh.

[Recess taken from 3:47 p.m. to 3:56 p.m.]

THE MARSHAL: -- back in session.

THE COURT: Thanks, everyone. Let's bring in the jury.

[Pause]

THE MARSHAL: All rise for the jury.

[Jury in at 3:58 p.m.]

THE COURT: Thank you. Please be seated.

Mr. Zavitsanos, please continue.

MR. ZAVITSANOS: Thank you, Your Honor. And may I ask counsel if counsel has an objection to Plaintiff's Exhibit 34?

BY MR. ZAVITSANOS:

Q Would you please get to Exhibit 34, sir?

[Pause]

011514

011514

011514

MR. ROBERTS: Just foundation, Your Honor.

And, counsel, if you're going to move any other exhibits, if you could provide me a list, so I can have my paralegal start pulling them for me?

MR. ZAVITSANOS: Of course.

MR. ROBERTS: It might speed things up.

MR. ZAVITSANOS: Yes. I don't know if I'm going to use all of these, because I may cut off, but let me give you a list.

Can I do that, Your Honor?

THE COURT: Uh-huh.

MR. ZAVITSANOS: 16, 38. And some of these may be admitted. 376, 460, and 492.

BY MR. ZAVITSANOS:

Q Okay. Would you look at 34, please?

A Yeah.

Q Got it?

A Yeah.

Q Does this appear to be a MultiPlan document discussing the general characteristics of Data iSight?

A Yeah. It's titled Data iSight.

Q Okay. Would you look on the second page and see if that includes -- and the third page -- in written form, some of what you discussed with Mr. Roberts?

A Yes.

Q Okay.

011515

011515

011515

MR. ZAVITSANOS: Your Honor, we move for the admission of Plaintiff's 34.

MR. ROBERTS: No objection.

THE COURT: Exhibit 34 will be admitted.

[Plaintiffs' Exhibit 34 admitted into evidence]

BY MR. ZAVITSANOS:

Q All right. Let me get through this quickly. So this is a MultiPlan document. And this is something that you provide to your client, to your insureds' clients, right?

MR. ZAVITSANOS: All the way down, Michelle. I need the fine print. In fact, I need just the fine print.

BY MR. ZAVITSANOS:

Q Right, sir?

A Yes. This looks like a presentation we would present to a client.

Q Okay. So let's see what this says. Data iSight is MultiPlan's solution for repricing medical bills when an agreement is not available. By the way, do you know how many emergency room doctors in Nevada are out-of-network?

A No, I do not.

Q Okay. If we take the Team Health -- the three Plaintiffs out of the equation, do you know whether it's almost half?

A I don't know the exact specification.

Q Fair enough. All right.

MR. ZAVITSANOS: Pull that out again, Michelle, please.

011516
011516
011516

BY MR. ZAVITSANOS:

Q Okay. So continue. With Data iSight, you can from significant savings on non-contracted bills -- that's out-of-network, right?

A Yes.

Q Out-of-network?

A Yes.

Q And your client will lose the inquiries and appeals that typically accompany usual and customary reductions, right? That's what it says.

A Yeah. That's what the note is on the bottom.

Q Now one of the things you discussed with Mr. Roberts was that Team Health did not appeal, right?

A That's what he asked me. Yes.

Q What do you think we're doing here? Do you think we'd rather let you decide or let them decide? You understand some of the claims run through Data iSight are at issue in this case? You understand that?

A Yes, I do.

Q So are you saying that by not appealing somehow, that we shouldn't look at whether these charges are reasonable value or not? Are you saying that?

A I'm saying that's a -- that's a component of whether or not the claims were appealed or not of a disputed payment or reimbursement a month.

Q But MultiPlan is fair.

011517

011517

011517

THE COURT: Watch the interruptions.

MR. ZAVITSANOS: I'm sorry, Your Honor.

BY MR. ZAVITSANOS:

Q MultiPlan is fair, right?

A You're kind of generalizing our entire company as fair. So I'm not really understanding the context. Can you elaborate?

Q Yes, sir. I'm sorry. In connection with an appeal, MultiPlan is fair, right?

A Our reimbursement is a fair and reasonable representation of what's in the market.

MR. ZAVITSANOS: Page 2, Michelle.

BY MR. ZAVITSANOS:

Q And it's fair, even though --

MR. ZAVITSANOS: Pull this out. Actually, Michelle, pull out flexible. Just flexible.

BY MR. ZAVITSANOS:

Q It's fair even though you tell your client you had set it up so that it's guaranteed to fall below usual and customary.

MR. ZAVITSANOS: Will you highlight that, Michelle?

BY MR. ZAVITSANOS:

Q See that? See that?

A Yes, I do.

Q Yeah. Configurable means you can kind of set it so that, guaranteed, it's going to be less than usual and customary, right?

A No. The Data iSight has the ability to customize based on a

011518
011518
011518

client's specific out-of-network needs.

Q Well, so I'm just going by what you write. Configurable, that's you. You can configure it, right?

A Yes, we can set it up in accordance to client out-of-network benefit plan --

Q Yeah. I mean --

A -- strategies.

Q -- for example, you know those adjustable basketball goals, right --

A Yes.

Q -- that have a height -- you can configure it so that the basketball net is 14 feet high, so that nobody could dunk, right, if you want to do that, right?

A You could, yes.

Q And that's what we're talking about here. You're configuring it to make sure that your client's usual and customary amount is never hit. That's what you're selling this [indiscernible], right, sir?

A We're selling it, again, as a -- every client has needs on an out-of-network side --

Q Yeah.

A -- to adjust for. Every employer plan is different.

Q Now let's look at one other thing. Plaintiff's 34. And I want to look at Plaintiff's 34 and compare it to 107A.

MR. ZAVITSANOS: Michael, what page is that, please? Oh, I got it.

011519

011519

011519

So let's put up Plaintiff's 34, page 7. And put it up next to 170A, page 17.

BY MR. ZAVITSANOS:

Q And let's see what else you tell the clients.

MR. ZAVITSANOS: 34, page 7 on the left, Michelle. Okay. Michelle, will you please pull out number 1.

BY MR. ZAVITSANOS:

Q And there's another MultiPlan document that the jury saw briefly during another witness.

MR. ZAVITSANOS: And, Michelle, I need you to pull up the third bullet point under rationale. Okay. Now let's put -- okay. So let's look at the one on the left first.

011520

BY MR. ZAVITSANOS:

Q This is -- both of these are documents intended to go to the client, right? Right.

A I don't know the origins of the document and if they were ever intended to go to a client. I'm not in sales and marketing. I can't comment on the intent of somebody.

Q And these documents say -- you've heard the golden rule, he who has the gold makes the rules?

MR. ROBERTS: Objection. Argumentative.

THE COURT: Objection sustained.

BY MR. ZAVITSANOS:

Q This document basically says you can do whatever you want, regardless of what the plan language says. We got your back. Right?

011520

A I don't necessarily agree with that. I -- it -- the context of it, I just -- I can't tell you.

Q Well, the first one, if the methodology is intended to --

MR. ZAVITSANOS: No, right here.

BY MR. ZAVITSANOS:

Q -- to compliment your benefit limit, we can negotiate --

MR. ZAVITSANOS: Circle the word "or reverse", Michelle.

BY MR. ZAVITSANOS:

Q Or reverse on appeal. You see that?

A Yes.

Q And then more explicitly, if the benefit plan language requires the 60th percentile --

MR. ZAVITSANOS: Circle the word "requires", Michelle.

BY MR. ZAVITSANOS:

Q You see that word requires?

A Yes.

Q That means no discretion, right? Requires means no discretion, right, sir?

A I don't know the exact definition of requires.

Q You're required to pay minimum wage, right?

A Yes.

Q So we can just pay them three dollars an hour. And if they complain, all right, we'll pay minimum wage, right? Right?

A No.

Q Sir, you're basically saying you're going to ignore the plan

011521

011521

011521

language.

A Again, I don't know --

Q And then -- let me finish, sir.

A Sorry.

Q MultiPlan is telling United and these other insurance companies we will ignore the requirements in your plan documents, and we can adjust it on appeal --

MR. ZAVITSANOS: Right here, Michelle.

BY MR. ZAVITSANOS:

Q -- as needed. Right? With your magic tool, right?

MR. ROBERTS: Objection. Argumentative.

THE COURT: Objection sustained.

BY MR. ZAVITSANOS:

Q You're telling your insurance clients that you're going to ignore the plan language and adjust it on appeal as needed, right?

A No. I don't --

Q Let me rephrase.

A I don't agree with the statement, and I don't, A, know if this ever went to a client.

Q Wait a minute now. You don't agree with this statement? Let's look at the first page of Plaintiffs' 34.

A No. What I meant to say is I don't condone this type of language, what this is. And I don't know the context it was used it, nor do I know the discussions that actually happened on them.

Q 178, page 1. So you are a vice-president at MultiPlan. 178,

011522
011522
011522

page 1.

A In Health --

Q You don't condone what is in this document, right, sir?

A That's not what I said. I don't condone that statement. Okay.

Q How many levels of review do you think this document went through before you all presented it to United Healthcare?

A I do not know.

Q Would you tell the jury why you don't condone this language? What's wrong with it?

A Just the context that it's used in.

Q What's wrong with it?

A It sounds like it's not used in the correct context. That's what I --

Q Okay.

A I don't know the intention of it.

Q All right. Now you claim that Data iSight is completely transparent, right?

A Yes.

Q Exhibit 376, page 3. Pages 2 and 3.

MR. ZAVITSANOS: Michelle, pull out the email beginning at the bottom of page 2, top of page 3.

BY MR. ZAVITSANOS:

Q And then we're going to get to why you're really here, sir, after this.

MR. ZAVITSANOS: Pull out from here to here. All the way

011523
011523
011523

down, Michelle. Oh, you're going to do -- I'm sorry. Go ahead. Thank you.

BY MR. ZAVITSANOS:

Q Okay. So the jury has seen this before. Take a second to read it to yourself. I'm not going to read it out loud. The jury has heard it. Does this appear to be an email, internal at MultiPlan, that a gentleman by the name of Kent Bristow was trying to get to the bottom of this, of how this magic formula worked?

MR. ZAVITSANOS: Highlight Kent Bristow, Michelle.

BY MR. ZAVITSANOS:

Q Is that what that looks like to you, sir?

A That looks like it's an email from Mike -- or from Mike McEttrick to Susan and Mike.

Q Yeah.

A And it's basically saying that Kent Bristow has requested a meeting with somebody from our organization knowledgeable about Data iSight to learn more about the pricing methodology.

Q Exhibit -- okay. Now let's see what you said. 376, page 1. Same document. Same email chain. Oh, by the way, I just saw a Naperville address. You see that?

A Yes.

Q That's where McDonald's is. That's where they're headquartered, right?

A No. It's actually Oprah.

Q Oprah. And McDonald's has the secret sauce for the Big

011524

011524

011524

Mac, right? Right? And nobody knows that it's mayonnaise and Thousand Island dressing, because that's a secret, right, sir?

A I can't comment on McDonald's secret sauce.

Q Okay. So let's move on here. And it says --

MR. ZAVITSANOS: Michelle, I need the lower email, please, on page 1 at the bottom, please. I need -- I can't read that, Michelle. It's the one -- hold on, Michelle. 176, page 1 is the July 10, 2019 at 7:50 a.m. Okay. So --

BY MR. ZAVITSANOS:

Q Okay. Bruce Singleton to Michael McEttrick. Mr. McEttrick was your boss previously, right?

A Yes, he was.

Q And this is the only time that you can remember a provider ever calling to try to find out about Data iSight, right?

A Yeah. I've never had a provider request --

Q Except this one?

A Yeah.

Q We're trying to keep it eye level with Team Health.

MR. ZAVITSANOS: Can you highlight that, Michelle?

BY MR. ZAVITSANOS:

Q We're trying to keep it eye level with Team Health, meaning we're not going to give them any information. We're going to give them the pitch, right?

A I can't comment on Bruce's -- Bruce Singleton's intentions on --

011525

011525

011525

Q Okay. One more document --
A -- what he meant to say.
Q -- and then we're going to talk about why you're here. And that is --
THE COURT: No more -- hey. No more interruptions.
MR. ZAVITSANOS: I'm sorry. My apologies, Your Honor. Just trying to speed it along. I apologize.
THE COURT: You should apologize to the witness not me.
MR. ZAVITSANOS: Yes, Your Honor.
BY MR. ZAVITSANOS:
Q Exhibit 460. Hold on. I don't think that's it. 460. Would you please get 460?
MR. ZAVITSANOS: I asked counsel. He has a composition of this. Is that it?
MR. ROBERTS: Yeah.
[Counsel confer]
MR. ZAVITSANOS: Counsel, do you have any objection to 460?
MR. ROBERTS: 460?
MR. ZAVITSANOS: Yes, sir.
[Pause]
MR. ROBERTS: Objection. Hearsay.
MR. ZAVITSANOS: That -- let me lay the foundation, Your Honor.
BY MR. ZAVITSANOS:

011526
011526

011526

Q Can you please look at 460, sir?
A Yes, sir.
Q Does this appear to be a discussion -- first of all, does this appear to be internal emails at MultiPlan talking about Team Health and Data iSight and the processing of claims using Data iSight?
A It looks to be a network development discussion, but it has Data iSight in there. Yes.
Q Okay. And does it discuss the reimbursement methodology by United Healthcare using Data iSight to Team Health, sir?
A All right. Give me a second to read it.
Q Yes.
A Thank you.
Q I'll give you a little clue. Look at the first page.
A Sorry.
Q That's okay.
A So can you repeat the question again?
Q Yes, sir. Does this appear to be a discussion about Data iSight clients submitted by Team Health for United insureds?
A Yeah. I see Team Health on here and Data iSight. I don't -- I can't speak on behalf of the subjects that are in this, on what's actually being discussed.
Q Yes, sir. Do you see at the bottom of the page some Bates numbers with the Bates numbers beginning MP?
A Yes.
Q I'll represent to you that is a MultiPlan Bates number in

011527
011527

011527

response to a subpoena. Okay. You with me?

A Okay.

Q Any reason to doubt the authenticity of these emails produced by MultiPlan in this case?

MR. ROBERTS: We don't object to authenticity, Your Honor. Just foundation and hearsay.

MR. ZAVITSANOS: Hearsay, Your Honor, is a statement against interest, because he talked about --

THE COURT: No. No speaking objections. See if you can lay your foundation.

MR. ZAVITSANOS: Okay.

BY MR. ZAVITSANOS:

Q You told Mr. Roberts that Team Health did not appeal, right? Remember that chart on the bottom, right?

A Yes. That's what the data showed. Yeah.

Q Is this document -- does it -- is it within the date range?

A It looks like it's after the date range.

Q Okay. But often file claims during the date range, sir?

A One can conclude, yes, if it's in March 2020 --

Q Okay.

A -- it would have fallen into the date range.

Q Okay. And does this address some of the points that Mr. Roberts was covering with you regarding overrides?

A I really don't understand what the context of the conversation is here to assess to give you a valid statement of my

011528

opinion of this.

Q Does this email discuss benchmark pricing?

A Yes, it does say benchmark pricing at 400 percent.

Q Did you discuss benchmark pricing with Mr. Roberts on your examination?

A I don't know if I did.

MR. ROBERTS: I did not, Your Honor.

BY MR. ZAVITSANOS:

Q Does this also discuss Data iSight claims involving Team Health?

A Yes, I do see Data iSight.

MR. ZAVITSANOS: Your Honor, at this time, we'd move for the admission of Plaintiff's 460.

MR. ROBERTS: Same objections, Your Honor.

THE COURT: I don't think it can be admitted through this witness.

MR. ZAVITSANOS: All right. All right. Let me move on.

BY MR. ZAVITSANOS:

Q Now let's talk about why you're here. You were not subpoenaed, right?

A No.

MR. ZAVITSANOS: Can you please get Exhibit 492, please?

BY MR. ZAVITSANOS:

Q During the course of this lawsuit, while we were in trial, did MultiPlan's CEO issue a press release addressing some of the issues that

011529

011529

011529

have come up in this case?

MR. ROBERTS: Objection. 48.035. May we approach?

THE COURT: You may.

[Sidebar at 4:20 p.m., ending at 4:21 p.m., not transcribed]

BY MR. ZAVITSANOS:

Q Who is Mark Tabak?

A He's our CEO.

Q And you know right now, literally, as I'm asking you questions, there are analysts in Wall Street watching your testimony, right?

MR. ROBERTS: Objection. Calls for speculation.

THE COURT: Overruled. If it's within his knowledge, you can answer.

BY MR. ZAVITSANOS:

Q You know MultiPlan is a public company, right?

A Yes.

Q MultiPlan is -- which means it issues stock on the exchange, right?

A Yes.

Q And during the course of this trial, you know that some evidence came out that United intends to terminate MultiPlan, right?

A I don't know the specifics of the evidence, no.

Q But you heard generally about that, right?

A Yes.

Q And in one day, while Mr. Haben was on the stand, your

011530
011530
011530

stock price dropped like 10 percent?

MR. ROBERTS: Objection. Testimony by counsel.

THE COURT: Objection sustained. You have to ask a question.

BY MR. ZAVITSANOS:

Q Do you know, based on the testimony that you all are going to get terminated by United, whether or not your stock dropped by 10 percent in one day, causing MultiPlan to issue a press release that everything is good with United?

A I don't know the origin of a press release or whatnot. That is an executive team. I'm in the healthcare economics area. This is beyond my purview.

011531

Q Well, wait a -- did you hear about it? Did you hear about --

A Yeah, I actually did.

Q Okay. And did you take a moment to read this press release issued by your CEO?

A No, I read some of it, but I didn't -- I didn't read the whole thing. This is out of -- I can't control this.

Q Well, sir, let me ask --

A I focus on things I can control.

Q Let's just go through a couple of exhibits before we get back to this. Let's go to 246, page 4. Do you know whether -- before we get there, do you know whether MultiPlan told Wall Street that there's no termination planned, and everything is good, to try and boost its stock price back up?

011531

011531

A I don't know.

MR. ROBERTS: Objection. Foundation and argumentative.

THE WITNESS: Sorry.

MR. ROBERTS: And compound.

THE COURT: Objection sustained.

BY MR. ZAVITSANOS:

Q Do you know whether this -- do you know whether a press release was issued in connection with the drop in stock price of MultiPlan, sir?

A No, I do not. I'm not in investor relations.

Q Well, okay.

MR. ZAVITSANOS: We're looking at Exhibit 246, and let's look at this timeline, right here, Michelle.

BY MR. ZAVITSANOS:

Q And it looks like according to an internal United document in 2023, the MultiPlan vendor contract will be terminated. Do you see that?

A Yes, I do.

Q Do you know whether your CEO, after this evidence was introduced in this court, issued a press release saying that the MultiPlan relationship with United Healthcare remains strong, that it's false, that the contract is going to be terminated?

A I do not know the origin of it.

Q Do you know whether the company issued that kind of statement to the investing public?

A I know it because it was on our website after a Zoom call, it

011532
011532
011532

popped up.

Q Okay.

A And after every Zoom call it pops up.

MR. ZAVITSANOS: Your Honor, I move for the admission of 492.

MR. ROBERTS: Objection. It's hearsay. It says newspaper.

MR. ZAVITSANOS: Statement against interest, Your Honor.

THE COURT: It will be admitted as a statement against interest.

[Plaintiff's Exhibit 492 admitted into evidence]

MR. ZAVITSANOS: 492. MultiPlan Corporation releases stock holder update.

BY MR. ZAVITSANOS:

Q By the way, do you know what's happening to your share price literally right now as we're talking?

A I don't watch it.

Q Okay. Okay. So this says November 15th, 2021; you see that?

A Yes.

Q It's very seldom that you have evidence that actually happens during the trial; would you --

A I don't know. I'm not familiar with trial proceedings.

Q Okay.

A Sorry, sir.

Q Let's take a look here. So you're on the New York Stock

011533
011533
011533
011533

Exchange, right? Do you see that?

A Yes.

Q Okay.

MR. ZAVITSANOS: Let -- Michelle go down. Let's -- right here, Michelle. All the way down. All the way down.

BY MR. ZAVITSANOS:

Q Recent sworn testimony made clear United Healthcare's position with respect to its relationship with MultiPlan, and further supports our previous comments that the short seller assertions are false; you see that?

A Yes.

MR. ROBERTS: Objection, Your Honor. We've got a third party analyzing the testimony to the jury. It's for the jury to decide what the testimony is.

THE COURT: It's sustained, and the jury will disregard the last question.

MR. ZAVITSANOS: Let me move on, Your Honor. Let me -- let me go, let me get to -- okay. Close that up. Michelle, let's go to -- okay, second page. Right there, Hold on, hold on, Michelle. Scroll up, please. Okay. Right here. From here to here.

BY MR. ZAVITSANOS:

Q One of the reasons you're here, sir, is because United asked you to come, right?

A Yes.

Q And what you're trying to do here is hopefully, is salvage

011534
011534
011534

your relationship with United by cooperating with them in this case, right?

A I'm just doing what's being asked of me from a client standpoint.

Q Right. And so when you issued this press release that the false United Healthcare termination quotes narrative has been deployed tactically by opportunistic short sellers seeking to profit at the expense of MultiPlan shareholders; you see that?

A Yes.

Q We just looked at a document, I mean, do you -- selling short means investors who are betting the stock's going to drop, right?

A Uh-huh.

Q Right?

A Yes.

Q We just looked at a document, sir, that said you all are going to get terminated by 2023, right? We just saw it?

A Yeah, I saw the document.

Q Let's look at Exhibit 420 -- oh, hold on. Let's go the one more question about this, then we're going to talk about two more documents, and then I'm done. Next page. Page 3. Right here. The bottom line is that MultiPlan's relationship with UnitedHealthcare remains strong, and recent sworn testimony contradicts the false suggestion that UHC intends to terminate the relationship; you see that?

A Yes, I do.

Q Let's look at that testimony.

011535

011535

011535

MR. ZAVITSANOS: Let's pull up, Michelle, A7, page 200. This is Mr. Haben, and we're going to start at line 7, and we're going to go down to 17. A little further down. Perfect, Michelle. Thank you. Okay.

BY MR. ZAVITSANOS:

Q And so what you just -- this is me questioning Mr. Haben.

A Uh-huh.

Q "And so what you decided to do, United Health Plan was in 2018, you decided to turn on MultiPlan, and go after them, get rid of them, and set up a competing company, so that the 300 million that they were making would now go to you, right?

"A We created another option for clients at a lower amount. They could still adopt MultiPlan if they wanted to.

"Q But the motive for that was the 300 million dollars you were paying, and you were multiplying, so that instead of it going into MultiPlan's pocket, now you got the momentum going, it would go into you all's pocket instead, right?

"A We wouldn't have to pay a fee for it."

Do you see that?

A Yes.

Q Does that sound 180 digress inconsistent with what your CEO is telling Wall Street?

A All I can comment on is what I see from an analytic standpoint and requests, when I talked about the 28,000 requests we get a year, I've gotten more requests for United Healthcare in things that --

011536

011536

011536

for us to analyze and help improve their benefit plans than I ever have before in the last three months.

Q In the last three months?

A Yeah.

Q Right before this trial started?

A No.

Q Okay. All right.

A It has to do with --

Q Let's go to three -- is 320 calling Michael?

THE COURT: You didn't finish your answer; did you want to?

THE WITNESS: That's fine.

MR. ZAVITSANOS: Yes, and real quick, 323, Michelle, page 2.

BY MR. ZAVITSANOS:

Q Sir, have you seen this? Project Airstream, Naviguard. Do you know what Naviguard is?

A Yes, I do.

Q Okay. 320 -- 324, page 2.

MR. ZAVITSANOS: Michelle, pull out problem and GAP, the two. Actually, pull up problem, GAP solution.

BY MR. ZAVITSANOS:

Q Okay. I'll represent to you, sir, and try to finish agreements here. This is April of '19. The problem, high out-of-network charges, the GAP, MultiPlan or other rep networks perpetuate the problem; you see that?

011537

011537

011537

A Uh-huh.

Q The solution, a consumer protection NewCo to reduce out-of-network spend and provide United Healthcare with a market-leading monetized solution; you see that?

A Yes, I do.

Q And it's going to engage in negotiations post-event, right?

A Yes.

Q And it's --

MR. ROBERTS: Your Honor, this is a note, so just --

THE COURT: Be careful.

MR. ROBERTS: -- reminder to counsel, follow our protocols.

MR. ZAVITSANOS: I'm not reading any numbers, Your Honor.

THE COURT: Thank you.

MR. ZAVITSANOS: And then at the bottom, Michelle, right here, highlight that.

BY MR. ZAVITSANOS:

Q You're going to position this NewCo as a third party so that United Healthcare can keep the revenue and growth potential, right? You see that, sir?

A Yes, I see that.

MR. ZAVITSANOS: Okay. Next, let's go to 422, page 1. Okay. This is 2019 again. Right here, Michelle. All the way down.

BY MR. ZAVITSANOS:

Q Does this appear to be an internal United discussion where

011538

011538

011538

they're trying to see if they could swap out Naviguard from MultiPlan without having to go back to the clients and getting them to sign off on it based on how loose the language is in the planned benefits?

A Yeah, I can't comment on -- I don't deal with clients directly. Like I don't even recognize anything like this. If this is a United document, I don't -- I shouldn't really comment on this.

Q Last document, 478, which is in, page 1. Naviguard frequently asked questions; you see that?

A Yes.

Q The key account, the national account sales strategy for Naviguard is to roll out and support E&I sales strategy by providing a better option for clients who have remained unreasonable and customary; you see that?

A Yes.

Q All right. And they're going to out and start bidding in 2021. Okay. Now let's go, please, to page 4. Who is Naviguard?

MR. ZAVITSANOS: Pull that out, Michelle.

BY MR. ZAVITSANOS:

Q Number 1, Naviguard is a UnitedHealth Group company designed to bring value to our clients with aggressive reimbursement strategies, we provide consumer support in negotiations with providers to reduce the bill. That's what you do, right?

MR. ROBERTS: Objection. Beyond the scope of direct.

MR. ZAVITSANOS: Actually, Your Honor, it's directly responsive to the --

011539
011539
011539

THE COURT: Overruled.

BY MR. ZAVITSANOS:

Q That's exactly what you all do, right?

A Yes, we provide similar services.

Q Okay. Next page, 478, page 7. 478, page 7.

MR. ZAVITSANOS: Okay, Michelle, please pull out 15.

BY MR. ZAVITSANOS:

Q And it looks like UnitedHealth Group is thinking about offering it to people other than United Healthcare. That's a possibility. You see that?

A Yes.

Q Okay. And let's go to page 13, and we're going to end on page 14. Page 13, number 16. Now here we go. What is the expected success rate of negotiations? Talking about Naviguard. We are using the success rate of OCM advocacy. Now that's you, right?

A It --

Q That's MultiPlan, right?

A We do not have any products called OCM. I believe that's a United term that I can't comment.

Q Yes, sir. You, OCM uses Data iSight, and it has member advocacy as part of the offering, right?

A Again, we offer 19 or so different packages on behalf of United Healthcare clients.

Q Yeah. So they're looking at what you're doing, and using it as a basis for what Naviguard is going to do, right?

011540

011540

011540

A I can't comment on how -- what United put into this document and the comparisons that they drew on it.

MR. ZAVITSANOS: Let's go to page 14, and put that up next to 43, Michelle. Exhibit 43, next to -- Exhibit 478, page 14. Okay. Michelle, please pull out number 2 on the left, and pull out background on the right. Now here's the difference. The one on the bottom, yeah, right there. Okay.

BY MR. ZAVITSANOS:

Q So the one on the right is from 2016, and it's talking about that Data iSight is going to provide a legally sound process versus our random calculated amounts; you see that? On the right? That's before they started using Data iSight; are you with me, sir, on the right?

A Yeah, I'm with you. I really don't understand the context of the two documents again because I don't work for United.

Q Well, let's find out. The one on the right is from late 2019, and it says Naviguard pricing.

MR. ZAVITSANOS: Right here, Michelle.

BY MR. ZAVITSANOS:

Q Naviguard pricing is based on several things and tell me if you get a sense of déjà vu as you're reading that. That sounds like you. That sounds like Data iSight, right? The magic formula. Naviguard pricing is based on several things, propriety reimbursement logic, situation factors, site of service level of care, industry benchmarks, and it is geographically adjusted. That sounds exactly like Data iSight, right?

A I can't comment on what pricing Naviguard offers.

011541

011541

011541

Q That sounds exactly like Data iSight, right?

A Those are industry terms, yes.

Q I mean, does it seem to you, sir, that United figured out that all you all do is just buy something off the shelf, so instead of paying you 300 million, they're going to do it themselves and package it under some new company that sounds official?

MR. ROBERTS: Objection. Compound. Argumentative.

THE COURT: Objection sustained.

MR. ROBERTS: Calls for speculation.

MR. ZAVITSANOS: Well, let me break it down.

BY MR. ZAVITSANOS:

Q Based on what we've seen here, sir?

A Uh-huh.

Q Does it appear to you, number 1, that this termination is going to happen by 2023 based on what we've seen?

A Is that a question to me?

Q Yeah, yeah. Does that seem to you like this termination plan is on track?

MR. ROBERTS: Objection, Your Honor. Foundation and counsel has selectively showed him portions of Haben's deposition.

THE COURT: Objection sustained.

MR. ZAVITSANOS: I'll pass the witness, Your Honor.

THE COURT: Okay. So redirect, please.

MR. ROBERTS: Yes. Thank you, Your Honor.

THE COURT: When you're ready.

011542

011542

011542

MR. ROBERTS: Thank you. Waiting for the witness to turn around here, Your Honor.

THE WITNESS: Sorry. I want to make sure they're in order.

MR. ROBERTS: No problem, Mr. Crandell.

REDIRECT EXAMINATION

BY MR. ROBERTS:

Q Okay. Let's go back to some of the questions that Mr. Zavitsanos asked you. First of all, I'm not going to pull up the document, but there was a comparison made of between your formula and a Medicare formula.

A Uh-huh.

Q Do you recall that?

A Yes.

Q And Mr. Zavitsanos asked you if you compared the Medicare formula to Data iSight, the components of the formula are identical; do you recall that?

A Yes.

Q But you said that doesn't mean it's identical, but he wouldn't let you explain, remember that?

MR. ZAVITSANOS: Objection, Your Honor. Leading.

THE COURT: It's foundational. Overruled.

THE WITNESS: Can you repeat the question? I'm sorry.

BY MR. ROBERTS:

Q Let me just ask you and let's make sure. If the components of your formula in Data iSight are the same as components of the

011543
011543
011543

Medicare formula, then could you explain to the jury why you believe they are not identical?

A They're not identical, they're similar in some fashions where we take the defensibility of the AMA and CMS as a portion of what we have, and then we combine that with something completely different. What are people actually paying within a marketplace, using those solid fundamentals that are industry, widely accepted, produced by the AMA and CMS, and blending the two in a very complex view to provide a fair and reimburse -- or fair and reasonable reimbursement amount recommendation to our clients.

Q The Medicare formula that you were showed had a space for a conversion factor; do you remember that?

A Yes.

Q Is the Data iSight -- are the Data ISight conversion factors identical to the Medicare conversion factors?

A No, they're not.

Q Are your conversion factors publicly available?

A Our conversion factors are available to our clients or whoever puts a request. I don't know the exact legality of what we can disclose. That would be a legal question.

Q Did you purchase your conversion factors?

A No, we didn't.

Q And is the conversion factor the amount of money assigned per RVU or is it something different?

MR. ZAVITSANOS: Objection. Leading, Your Honor.

011544

011544

011544

THE COURT: Objection sustained. You can rephrase.

BY MR. ROBERTS:

Q Explain to the jury again what an RVU is?

A An RVU is the relative value that the AMA designates for a particular service. There are over 15,000 or 18,000 pick CPT codes. They differentiate what it takes for the work, the practice expense, as well as the malpractice expense, to make sure that they're paying people in accordance to relative -- for lack of a better term, relative value of the service.

Q When Mr. Zavitsanos was asking you questions about how you were considering costs, you kept mentioning RVU's in the answer.

A Uh-huh.

Q Can you explain to the jury why you were talking about RVU's when he was asking you about relative costs?

A It's a part of the component of -- there's a practice expense component of the RVU which is basically a calculation of -- for that specific procedure, what is the cost or the expense that the provider may encounter as part of the aggregate view. So they're -- what it takes to keep the lights on, practice expense, rents, those types of things.

Q Could you explain to the jury the relationship, if any, between the conversion factor and the RVU?

A They're both separate. I like to look at them as separate components, all the defensible aspect really falls within the geographical adjustment and the actual RVU, and our conversion factor, again, comes from that data source that we array in a specific way which plays a vital

011545
011545
011545

component in what we do, and those, again, those conversion factors are arrayed in a way that primary -- or primary PPO networks, the categories that they highlight in a lot of their contracts, there's a very similar correlation to.

MR. ROBERTS: So Shane, could I have Exhibit 299, page 3? And while you're pulling that up, I'm going correct a bad. Shane wasn't here when I introduced everyone during voir dire. Mr. Shane Godfrey, Las Vegas Legal Video. He's our hot seat operator. That's what that chair's called. Okay. Now if you remember, Shane, could you highlight that chart in the middle of the page?

BY MR. ROBERTS:

Q Mr. Zavitsanos was asking you some questions about this chart?

A Uh-huh.

Q And he started to ask a question, and then he said that's okay, let's move on, but let's ask that question. One, 2, 3, down, member pays 40 percent, right?

A Uh-huh.

Q 80th percentile of UNC, how much does the member pay?

A The member pays at a 40 percent, $1,033.16.

Q 120 percent to Medicare, how much does the member pay?

A 299.40

Q Assuming no balance billing, which is better for the member? 80th percentile of UNC or 120 percent of Medicare?

A 120 percent of Medicare is.

011546
011546
011546

MR. ROBERTS: Okay, Shane, let's go to PX-22.

BY MR. ROBERTS:

Q All right. You were asked right here in the second paragraph, we felt it was important to reiterate that Data iSight is not CMS-based, it is rather cost-based. Do you remember that question? And then he told the jury they were going to read the rest of it on their own time. Right. They're going to save you one thing to do on your own time. Look at this sentence beginning professional reductions. Read that sentence to the jury.

A "Professional reductions based on median reimbursement levels when compared to a percentage of CMS."

Q So the very document he showed you, right after cost-based clarified that professional reductions were based on median reimbursement levels and not the cost up methodology. Right?

MR. ZANITSANOS: Leading. Argumentative.

THE COURT: The objection is sustained. You can reask.

MR. ROBERTS: Thank you.

BY MR. ROBERTS:

Q Does this email contend that professional Data iSight reductions are based on the cost up methodology?

MR. ZANITSANOS: Same objection, Your Honor. Not argumentative, leading.

THE COURT: It's leading. You can rephrase.

BY MR. ROBERTS:

Q How does this document indicate Data iSight professional

011547

011547

011547

reductions are made?

A They're based off of median reimbursement levels.

Q Does it say anything about cost up methodology with regard to professional clinics?

A No, it doesn't.

Q Exhibit 3A-H10. Okay. Court's indulgence. Jury's indulgence. Just for a second. I may have written down the wrong page number.

MR. ROBERTS: You can take that down, Shane, and put up 82-7.

SHAWN: 82 page 7?

MR. ROBERTS: Yes.

BY MR. ROBERTS:

Q Okay. Here we go. So if you recall, this is a chart where a document which appeared to be from MultiPlan, was talking about the products in use by various clients. Top 5, top 10, top 20, correct?

A Uh-huh. Correct.

Q Can clients have both wrap networks and Data iSight?

A Yes. We have clients with both wrap networks and Data iSight.

Q And can the plan documents provide for one or the other?

A I'm not familiar with the requirements of a plan document. But we have set-ups for both.

Q Is it fair to say that your top 5 clients have -- 80 percent of them have wrap networks they can utilize and 80 percent of them have

011548
011548
011548

Data iSight they can utilize?

MR. ZANITSANOS: Leading, Your Honor.

THE WITNESS: Yes.

THE COURT: It is leading. You can reask.

THE WITNESS: Sorry.

MR. ROBERTS: Thank you, Your Honor.

MR. ZANITSANOS: Actually, Your Honor, given the time, he can lead.

THE COURT: All right.

MR. ROBERTS: Thank you. Thank you, Your Honor.

BY MR. ROBERTS:

Q Exhibit 16, page 11. So what I wanted to go and talk to you about right here is this proprietary conversion factor.

A Uh-huh.

Q Is that proprietary?

A Yes.

Q Is it the same as Medicare?

A No, it's not.

Q Is it the same as Naviguard?

A I don't know what Naviguard is.

Q Is it shared with Naviguard?

A Not to my knowledge.

Q And practice expense RVU. Do you see that?

A Yes.

Q Right there at the 1, 2, 3 blocks from the left or the top?

011549

011549

011549

A Yep.
Q What is practice expense RVU?
A That's the expense that the AMA designates to operate. Or the overhead that goes along with running a physician practice or professional practice.
Q Is that or is that not something that you referred to and told the jury about when you were talking about extended costs?
A Yes.
Q 38-3. 38, page 3. And when you look at this, that is what we talked about before, where the categories are the same, but are the numbers that you plug into each one of these categories the same as Medicare?
A The RVU's, yes. However, the conversion factors, no.
Q Okay. So you use RVU's from the Government studies, of the cost of relative practice?
A That's from the AMA and the Government.
Q Okay. 413-3. One last one on the cost issue. Okay. If you can pull up, let's see. That's good enough. So you recall Mr. Zavitsanos reading this to you. They take your provider's cost of doing business and the account by five times?
A Yes.
Q Let's try something fun. Let's read the whole sentence, instead of just the end of it. Beginning with this amount. Can you do that for the jury?
A Yes. In the beginning?

011550
011550

011550

Q Yes.
A Okay. "The amount -- the amount was determined by taking the data on your claim --"
Q No.
A I'm sorry.
Q Just that sentence. Okay. I don't mean to read the whole thing.
A Okay.
Q Just read the whole sentence. That take your provider's cost of doing business into account .
A Okay.
Q So let's begin with --
A Cost --
Q -- this amount --
A Okay. Sorry.
Q -- is then adjusted.
A "This amount is then adjusted based on the geographic location and prevailing labor costs, so they take your provider's cost of doing business into account."
Q So they take your provider's cost of doing business. Do you think that refers to anything else in the rest of the sentence?
A No. Can you repeat the question?
Q Yes. How does the sentence indicate they're going to take the provider's cost and put it in a single account?
A How does --

011551
011551

011551

Q Possibly.
A It's based on. Okay. They're going to adjust is by location. They're going to adjust it by what it actually costs in that practice expense of -- and then the last component is cost of doing business. And a component of that is malpractice expense as well. A large portion.
Q Is that anything like the geographical part he used, which he just told the jury about?
A Yes.
Q 34-page 7. He kept saying you're an officer. Are you in the sales department?
A No, sir.
Q Is the sales and marketing department under your supervision?
A No, sir.
Q You're not -- I know the jury remembers that you disagree with some of this document. But let me ask you a couple of questions. To your knowledge, did any of the United Defendants ever buy a product from MultiPlan, which was intended to compensate less than the plan documents required?
A Not to my knowledge.
Q To your knowledge, did MultiPlan ever even implement such a program with any of its products?
A Not to my knowledge.
Q Plaintiff's Exhibit 376. Okay. Let's go up to the top of this. All right. What's the date of this document up here at the top? When

011552
011552
011552

was it -- when was it sent to you?

A September -- or I'm sorry, geez.

Q I know they're long days for all of us.

A July 10th of 2019.

Q Okay. And let's go down toward the bottom where you were asked about -- keep going. Okay. Keep a high level with Team Health. Keep going. Keep going. Okay. Remember him talking about Kent Bristow calling. And I think the question was asked, he was just trying to figure out how this worked, right?

A Yeah.

Q Okay. July 10th, 2019. Do you know when Team Health filed this lawsuit, which we're still sitting here for today?

A I don't know the exact date.

Q Okay. If I represent to you they filed it on April 15th, 2019, was MultiPlan being cautious after MultiPlan was named in a lawsuit against United?

A Sounds like it.

Q Do you know if Mr. Bristow is trying to figure it out, or do you think he was getting the ammo for his deposition, I mean for this litigation?

A Indicates that -- I can't comment on his behalf, but it does seem a little bit odd.

Q And have you ever read the second amended complaint in this case?

A No, I haven't.

011553
011553
011553

Q Do you know if these conversations ended up in an amended complaint?

A I don't know.

Q How long ago did UnitedHealthcare ask someone to testify at this trial?

A Because when I --

MR. ZANITSANOS: Possible hearsay, Your Honor.

THE COURT: If it's within his knowledge, he can answer.

THE WITNESS: Yeah, I think it was in my deposition in like the first 15 minutes of it.

BY MR. ROBERTS:

Q How long ago was your deposition taken?

A I can't recall off the top of my head.

Q Was it before the trial started?

A Yes, it was.

Q Was it before all this stuff started with the MultiPlan stuff?

A Yes, it was.

THE COURT: I'm going to ask counsel to approach.

[Sidebar at 4:58 p.m., ending at 4:58 p.m., not transcribed]

THE COURT: So we know somebody needs to leave at 5:00. If they can get you out of here at 5:02, can you still listen? Yes. Thank you. Go ahead, please.

BY MR. ROBERTS:

Q You were shown a few excerpts from Mr. Haben's testimony. Do you know he testified in here for days and days and days.

011554

011554

011554

A No.

Q Do you know if he said there was no current plan to terminate MultiPlan?

A I have no knowledge.

Q Do you have any opinion about whether the Plaintiff's brought up a three year old business plan which talked about termination, in an effort to intentionally damage MultiPlan?

A No.

MR. ROBERTS: No further questions, Your Honor.

THE COURT: All right. Redirect [sic]?

MR. ZANITSANOS: I have nothing, Your Honor.

THE COURT: Does the jury have any questions for Mr. Crandell? We have one, thank you. Will counsel please approach.

[Sidebar at 4:59 p.m., ending at 5:00 p.m., not transcribed]

THE COURT: I would like to thank Ms. Landau for the question. One question, I get to ask it. And it pertains only to Nevada. Just to be clear, when factoring in location, it is passed state by state, not city by city. Oh, based, not -- sorry, based.

THE WITNESS: It's -- the locality is based on the Medicare-defined localities. So I believe there's 126 different classifications all across the United States that they have actuaries saying we should process these geographical ZIP codes together. And it's a pretty widely accepted contracting tools from both primary, as well as complimentary networks. Does that help?

THE COURT: Thank you. Any questions based upon the

011555

011555

011555

jury's question? Defendant?

MR. ROBERTS: Not for the Defendant, Your Honor.

THE COURT: Plaintiff.

RECROSS-EXAMINATION

BY MR. ZAVITSANOS:

Q One question. Sir, for Nevada, there's one geo ZIP, right?

A I don't know all 127 of them.

Q No, I'm asking just for the State of Nevada. There's only one?

A I believe there's only one.

MR. ZANITSANOS: That's all then, Your Honor.

THE COURT: All right. So let me give you -- we're going to start tomorrow again at 8:00 a.m. Tomorrow we're in Courtroom 3E, down the hall where we did jury selection.

So during your recess, don't talk with each other or anyone else on any subject connected with the trial. Don't read, watch, or listen to any report of or commentary on the trial. Don't discuss this case with anyone connected to it by any medium of information including without limitation newspapers, television, radio, internet, cell phones, or texting.

Do not conduct any research on your own. Don't consult dictionaries, use the internet or use reference materials. Don't post on social media during the recess. You can post on social media, but not about the trial. Don't talk, text, tweet, Google or conduct any other type of research with regard to any issue, party, witness, or attorney.

Most importantly, don't form or express any opinion on any

011556

011556

011556

subject connected with the trial until the jury deliberates. Thanks for a great Monday. Have a good night. We'll see you in the morning at 8:00.

THE MARSHAL: All rise for the jury.

[Jury out at 5:02 p.m.]

[Outside the presence of the jury]

THE COURT: It looks like the room is clear. Mr. Crandell is headed to the door. I know we have a number of things to take up.

MR. ROBERTS: Did you excuse the witness, Your Honor? I don't remember, I'm sorry. I wasn't paying attention.

MR. ZANITSANOS: We don't need him, Your Honor, so we're good.

THE COURT: I did not in front of the jury, but I can indicate in the morning that he's excused.

MR. ROBERTS: Thank you, Your Honor.

THE COURT: And ask you to call your next witness.

Okay. Now a couple of things from my end. They want to know in Court admin, if you want daily billings on overtime for the staff, or if you are willing to do it at the end of the trial. It is easier for them if they can send one bill. And if so, where should it go?

MR. ZANITSANOS: Your Honor, for the Plaintiff, send it to us. We're good doing it either way. And that will be paid within 3 days.

MR. ROBERTS: It's better for us at the end of the trial. And that can go to Audra Bonney's attention at Weinberg, Wheeler --

THE COURT: No, no, no. It's just -- there's just going to be one bill.

011557

011557

011557

MR. ROBERTS: Pardon?
THE COURT: It's easier for them to send one bill.
MR. ROBERTS: Yes. It's easier for us, too. One bill's good.
THE COURT: But where does it go.
MR. ROBERTS: Audra Bonney --
MR. ZANITSANOS: She's saying one --
MR. ROBERTS: No one wants me in charge of making sure this gets paid, Your Honor.
THE COURT: So it goes to Weinberg Wheeler?
MR. ROBERTS: Yes.
THE COURT: And the two of you will work that out?
MR. ZANITSANOS: Yes, Your Honor.
THE COURT: To Bonney. Okay.
MR. ROBERTS: Audra Bonney.
THE COURT: Okay. Next thing is, what's our schedule for tomorrow?
MR. BLALACK: I'll preview what we've got on tap, Your Honor. I believe we've got two depositions; you've now gone through and ruled on. They're tee'd up to start with. That will be Ms. Harris and then Dr. Jones. I think [indiscernible] indicated to me Mr. [indiscernible] probably about 40 minutes. We then are going to want to propose one of the two depositions, of about 20 minutes, 30 minutes, related our discovery compliance efforts, and that's something that we really wanted to do. And in light of the short conference discussion Sunday night, we believe we need to present that evidence.

011558
011558

011558

There may be objections, other than the fact that we've set designations, we'll talk about that tonight. Either we'll have an objection, but 100 percent, we'll have something to give you one way or the other for you. Once that's done my expectation is we need to rest, and then I think you have --

MR. ZAVITSANOS: Yeah. Can I ask a question, Your Honor, of counsel? So Lee are you -- are you saying, this additional deposition, you want to play that in front of the jury, or would you be willing to submit it writing?

MR. BLALACK: No, I -- this is going to be evidence we're offering for the Court, at our rebuttal to this presumption instruction that it's going to be part of the charge --

011559

MR. ZAVITSANOS: No, I got it. What I'm asking is, do you need to -- from your standpoint, do you want to do that in front of the jury, or do you want do that with Your Honor?

THE COURT: It'll have to be --

MR. BLALACK: No. We've got to be able to argue.

THE COURT: Sure.

MR. ZAVITSANOS: Okay. Got it.

MR. BLALACK: It's evidence.

MR. ZAVITSANOS: Got it.

THE COURT: And I would be inclined to allow you to do that.

MR. BLALACK: Thank you. So we'll work that out with Plaintiffs, then I will give you something.

MR. ZAVITSANOS: So, Your Honor, once they're done,

011559

Mr. Ahmad 15, 20 minutes max, we've got the share in rebuttal and it's true rebuttal. I think they probably will have, I'm guessing here, 15 to 20 minutes, because it's very limited topic. Then I think we may have a very, very slight honest difference of opinion about how much time is needed for closing. I think counsel would like two hours; we would propose an hour.

THE COURT: Well, you two can work that out between yourselves.

MR. BLALACK: Well, we --

THE COURT: It's not -- I don't --

MR. ZAVITSANOS: You don't limit it?

THE COURT: I don't

MR. ZAVITSANOS: Okay.

THE COURT: Hold on, no. And but the one thing --

MR. BLALACK: We discussed two hours a piece.

THE COURT: Yes. And you had told me that, that's why I was asking. The one thing we normally do is, all the closings in one day. If I have to chop it up I will, so that they finish the closings on Wednesday morning.

MR. ZAVITSANOS: So --

MR. BLALACK: I think, Your Honor, if we've got 40 minutes -- let's say we have an hour, an hour and ten minutes of video or something like that. You all have 20 or 30 -- let's say -- I would imagine if we started8:00 we should be completely done with the proof by 10.

MR. ZAVITSANOS: I've got 10 objections.

011560

011560

011560

MR. BLALACK: So if we take a break, and then we go to the charge, you know, go to the housekeeping and then the charge, I don't see why we couldn't do all the closings in the afternoon, so the jury has the case, before close today.

THE COURT: I have a Wednesday calendar, that things have been put off for two weeks, things that the Chief couldn't hear, it's at 9 o'clock Wednesday. So if you need more time Wednesday, you need to let me know tomorrow, so I can try to reschedule some things.

MR. ZAVITSANOS: Well, I think, Your Honor, if we can go until 5:00, I think Mr. Blalack is -- I think we're both confident we can have the case to the jury by 5 o'clock tomorrow.

MR. BLALACK: Yes.

THE COURT: I'm just telling you, because --

MR. BLALACK: No, I hear you. I heard that there's been some history here, and I'm not going to get into that, but that's --

THE COURT: No, no. I'm not calling anybody up, I'm just letting -- I'm just warning you. Now IT needs to be set up in 3D in the morning. Somebody from one of your teams called today --

MS. ROBINSON: We already figured that out.

THE COURT: Oh, they've got it figured out. Oh, okay, good.

Now, instructions and verdict form, are you going to have that tomorrow?

MS. ROBINSON: So we -- sorry, Your Honor.

MR. POLSENBERG: What's the question?

THE COURT: Instructions and verdict form.

011561

011561

011561

MR. POLSENBERG: Hopefully we're going to have them all typed out.

THE COURT: Are we going to have it tomorrow?

MS. ROBINSON: So I -- was the Court asking the parties to agree on the verdict form, because --

THE COURT: Yeah.

MS. ROBINSON: -- I did not know that?

THE COURT: We talked about that yesterday, at the end of the day, about --

MS. ROBINSON: I don't think either of us [indiscernible] that.

MR. PORTNOI: Yeah. I think what we had discussed was that we would raise the verdict form and have that as part of the last element of correspondence. Now that's the impression that we had formed.

THE COURT: Well, I had given you the impression that I thought there should be a general verdict form, where they could find for the Plaintiff, or for the Defendant, and then that nothing in the special verdict forms was a problem --

MS. ROBINSON: I'm sorry. I'm having trouble hearing you , Your Honor, there's a lot of --

THE COURT: Nothing in the special verdict forms was problematic to me.

MS. ROBINSON: On both sides? Because there's a lot of objections that we had to the defendants.

THE COURT: All right. Good enough then. All right. So

011562

011562

011562

we'll take that up. Are there things we need to take up before we get to that.

MR. BLALACK: There are a couple of, Your Honor.

THE COURT: Yeah. Let's do that.

MR. BLALACK: So --

THE COURT: And why don't people sit down, because the court recorder, I'm just concerned about the record.

MR. BLALACK: So let me hit the first issue, Your Honor. On our side we, and I [indiscernible] on our side I think I've got two issues, one related to any potential second phase proceeding, and two, we've got a bunch of exhibits, evidentiary issues to try to get resolved. I think we've resolved many of them, but I think we need to come up and talk about where we are on that, and the ones we can't, we'll present to you for a ruling and try to get the record resolved before we rest tomorrow.

One issue on the second phase, is Mr. Zavitsanos advised me yesterday, or at noon today, I've lost track of the day, that if there is a second phase, they would like to call Paradise as a witness in that phase. I don't have any objection to that, but I would like to ask that she be prevented to testify remotely, not physically here. She is traveling with her family for Thanksgiving, tomorrow night and Wednesday.

She has agreed to make herself available to a place where we could access her for testimony, under oath, live the whole thing. But to have her, after she was here, flew back, and had to fly back for whatever it would be 30 minutes, an hour, live examination in the second phase on the day before Thanksgiving, we think it's

011563

011563

011563

unnecessarily hard. She would be accessible to the jury for live testimony. They've already seen her. They've already evaluated her credibility and the like. So we've made that request to the Court --

MR. ZAVITSANOS: So, Your Honor, I don't want to be a Scrooge here, I advised Mr. Blalack when she testified that she was the person that we would want during phase 2. There is undoubtedly a different dynamic, from the jury's perspective, is placed with a live witness in the box.

THE COURT: And I understand that. And I'm going to suggest to both of you that it doesn't make sense to do it on Wednesday, if there is a second phase, only because nobody is going to listening, they're going to home cooking dinner, getting the house ready for Thanksgiving.

011564

MR. ZAVITSANOS: Then in that case --

THE COURT: But on Monday the 6th, my first day back, because I'll be gone a week, my trial settled today. So I'm not in trial on Monday the 6th.

MR. ZAVITSANOS: That's perfectly acceptable.

THE COURT: Can the two of you talk about that tonight --

MR. BLALACK: Yes.

THE COURT: -- and we can revisit that tomorrow?

MR. ZAVITSANOS: Yes, Your Honor.

MR. BLALACK: We'll revisit that tomorrow, Your Honor.

THE COURT: And then Mr. Blalack, you have -- do you have things that came up at the bench.

011564

MR. BLALACK: Yes.
THE COURT: Do you want anything on the record?
MR. BLALACK: I don't -- not with -- I don't know if Mr. Roberts said something he wanted to finish, that came up in his. In mine, I don't believe there was any issue that was unresolved, that would indicate a record needed to be made on it.
THE COURT: Good enough.
MR. BLALACK: So I think I just have a handful of -- we just have a handful of evidentiary we need to resolve.
THE COURT: Okay.
MR. BLALACK: Do you want us to start, or is there something else that Mr. Zavitsanos --
MR. ZAVITSANOS: I don't have anything else, Your Honor.
THE COURT: Good enough. All right. So are we ready now to get into the discussion of the verdict form?
MR. ROBERTS: Well, I was going to run through these evidentiary exhibits that we did.
THE COURT: Oh, you know, let me step out for a minute while you do that.
MR. ROBERTS: That would be fine.
THE COURT: So I can get my book from yesterday.
MR. ROBERTS: Thank you, Your Honor.
[Recess taken from 5:12 p.m. to 5:16 p.m.]
THE COURT: Okay. Did you guys get the exhibits resolved with Nicole?

011565
011565

011565

MR. BLALACK: We got quite a few resolved, Your Honor --
THE COURT: And I'm not going to ask you --
MR. BLALACK: -- but not all --
THE COURT: -- I'm going to ask her.
MR. BLALACK: Oh, I'm sorry.
THE CLERK: No, they're still talking.
THE COURT: Oh.
MR. BLALACK: Well, I hope, based on the content here, hopefully we've got it down to a narrow -- what's at issue.

So, Your Honor, what I thought I'd do is just run through the open items on the evidentiary questions to resolve, for the record, before we rest tomorrow. So the first of these is -- there were quotes from the Yale study which has been much discussed here, that were read to the jury and relied upon by Mr. Deal in his live testimony, his expert testimony, and we would like to move into evidence Defense Exhibit 5525, which is literally the language from this book.

And, Your Honor, it's clearly we just have the title to study, with the names of the authors and the quotes, with the citations here as the exhibit. We'd like to move those into evidence. I believe there was an objection on hearsay grounds, at the time we were going through that -- well, let's talk to the jury [indiscernible]. So we're ready to admit those statements into evidence, NRS 51-255, which is the learned treatise exception, perhaps the same Federal rule.

It says that -- it says, "Statements can be admitted into evidence that are admissible or not hearsay, when they're called to the

011566
011566
011566

attention of an expert witness on cross-examination or relied upon by the expert witness in direct examination." And the statement is in the published treatise, peer Article handbook on the subject of history [indiscernible]. And then the only qualifier, is unless it's established that the evidence is not from a reliable authority, we need to physical evidence to call that into question, and that statement should be admissible, as exceptions to the hearsay rule.

THE COURT: What was your cite again?

MR. BLALACK: NRS 51.0255.

THE COURT: Okay.

MR. BLALACK: Which is the Nevada treatise exceptions.

THE COURT: Okay. Because I pulled up 512 and it was inspection of minds. Okay. Just let me look at it real quick, and --

MR. BLALACK: If the Court needs a case, Your Honor, the Nevada Supreme Court in '96, and I'm not sure how to pronounce it, *Prague*, P-R-A-G --

THE COURT: Well, *Prague*, yeah.

MR. BLALACK: *Prague*.

THE COURT: It's a local name.

MR. BLALACK: Which is 930 P.2d 103, which --

THE COURT: Good enough.

MR. BLALACK: -- discusses the application of the statutory exception and the hearsay rule.

THE COURT: And the response, please?

MR. MCMANIS: Yes, Your Honor. This is not a learning

011567
011567
011567

treatise. A treatise is, you know, a medical textbook or some type of, you know, almanac, what's being relied upon by an expert, that's accepted appeal. This is a hearsay article that's written. It is not -- it's not a recitation of the story in Nevada, it includes some incredibly slanted opinion and analysis with an agenda, and it is not -- it's absolutely not the type of information that qualifies for an exception to the hearsay rule, under the learned treatise exception.

THE COURT: No, it's going to overrule the objection, because it meets the standard in 51.255. It was established as a reliable authority by the testimony of the witness; it was an expert. So I overrule the objection 5525 can come in.

MR. MCMANIS: Thank you, Your Honor.

MR. BLALACK: And then Mr. Levine is going to update you on the state of what we've agreed to on the exhibits, that we [indiscernible] and the few that are remaining that need to be resolved.

MR. LEVINE: Your Honor, I apologize in advance. There's a number of exhibits here that we tried meet and confer about, and reach agreement, and I think we've done a decent job of actually reaching an agreement on a number of these items. There are in fact some others, and then there are a few that there's still a dispute on that we'll raise with Your Honor. now.

THE COURT: Both sides have shown the utmost and professional courtesy, there's no reason to apologize.

MR. LEVINE: Okay. Well, thank you.

In terms -- there are a number of exhibits here, where we've

011568

011568

011568

agreed to swap out the current exhibit with a slightly revised version of the exhibit, and with that -- so the we've been characterizing that, is conditionally admit the exhibit subject to swapping the exhibit out.

And those exhibits, and Jason, please tell me if you -- if I say anything you do not agree with, are Exhibit 4002, Defense Exhibit 4002, Defense Exhibit 4003, Defense Exhibit 4005, Defense Exhibit 4006. We actually previously agreed we would swap that on the record. Defense Exhibit 4008, Defense Exhibit 4455, Defense Exhibit 4166. Defense Exhibit 4457, Defense Exhibit 4168, Defense Exhibit 4774. Those are the ones with swap-outs, to I'm pointing right now. In addition to that --

MR. BLALACK: Before you move on, can I ask the Court's indulgence on one that I don't think we cleaned up earlier. There was an exhibit, I think it's 163, I'm showing 163, which is the United Healthcare website, which was shown to --

MR. LEVINE: 363 --

MR. BLALACK: 363.

MR. LEVINE: It's been redacted?

MR. BLALACK: Has that been redacted?

MR. LEVINE: We will --

MR. BLALACK: Do we have an agreement on that?

MR. KILLINGSOWRTH: We'll send the redacted version over --

MR. BLALACK: It's got the [indiscernible] stuff all over it, Your Honor. So I'm fine with it going back, I just want to redact a portion

011569

011569

011569

about the [indiscernible].

MR. LEVINE: So in addition to the exhibits I just mentioned, Your Honor -- sorry, go ahead.

MR. MCMANIS: I just think it'll be easier if we split it up, that is the correct list of the additional exhibits that --

THE COURT: Right.

MR. MCMANIS: -- we swapped out later on.

THE COURT: So the additional exhibits to be swapped out will be 4002, 4003, 4005, 4006, 4008, 4455, 4166, 4457, 4168 and 4774. There's also an agreement on the record to redact 363 and that will be done tomorrow?

MR. BLALACK: Correct. Thank you, Your Honor.

THE COURT: We'll put it on the record tomorrow.

MR. LEVINE: Here's a list of exhibits we've agreed to admit, unconditional. Exhibit 5527, Exhibit -- and these are all Defense exhibits, 4887, Exhibit 4894, and Exhibit 4891, Exhibit 4914, Exhibit 5321, and I believe that's it from the agreement to admit.

[Counsel confer]

MR. MCMANIS: That list is correct.

THE COURT: All right. So the Court will unconditionally admit 5527, 4887, 4894, 4891, 4914, and 5321.

MR. LEVINE: Okay, Your Honor. Then there are several where we do have the difference of opinion, and then this could be the last category where we actually haven't had a chance to talk yet. So --

MR. BLALACK: I suggest, Your Honor, not to belabor your

011570
011570
011570

time. For the ones we've [indiscernible] probably do those, and we can try, and we can try to resolve the others.

MR. LEVINE: In the morning, yes. I think that's --

THE COURT: Thank you. Because we've got to have a verdict tomorrow.

MR. LEVINE: Yes, okay. So the ones that are in dispute --

THE COURT: Do we have to put that on the record now?

MR. LEVINE: Well, we could do it altogether in the morning, if you prefer, Your Honor.

THE COURT: Well, we're eating into the time, and we don't have the jury verdict form yet. So -- and what if you guys talked about that tonight? Is it something you can talk about tonight?

MR. LEVINE: These are ones that we have talked about, the few that I will mention now, but then there are others that we'll talk about tonight to try to reach an agreement, if that's okay.

MR. BLALACK: But I think these are ripe for resolution --

THE COURT: Okay. I got it.

MR. BLALACK: -- one way or the other.

MR. LEVINE: There are four exhibits, 4969, 4970, 4971, 4972, which were produced, documents were produced by plaintiffs, they're plaintiffs' chargemasters, and the objection that plaintiffs have made to these exhibits is that the prejudice outweighs the probative; 48035.

Your Honor, our view on this is that these chargemasters are -- that this case is about what Plaintiffs seek here is billed charges. Their chargemasters list the charges for the services they provide. And we

011571

011571

011571

would submit that that's highly relevant. And I'm not sure how it's prejudicial at all actually.

THE COURT: Any response?

MS. LUNDVALL: Yes, Your Honor. These chargemasters cover periods of time that are not part of this case. They're not in the 2017 to 2020 period. They are not the charges that are at issue in this case. And for those reasons, we believe they're irrelevant.

THE COURT: Now, was there any testimony?

MS. LUNDVALL: I'm sorry?

THE COURT: Did anyone testify about them in a way that would make them useful?

MS. LUNDVALL: No, Your Honor. I don't believe so.

MR. BLALACK: Actually, I think Mr. Bristow's testimony covered some of these incidences.

MS. LUNDVALL: But I would also add, Your Honor, while some -- the chargemasters have blocks of years which they're associated. Some of the blocks do include periods that are part of this lawsuit.

THE COURT: What I would suggest is that I would probably move to admit the ones for which you can show there was testimony to lay a foundation if it's during the relevant time period. So check on that and let me know tomorrow.

MR. BLALACK: We'll do that, Your Honor. Thank you.

MS. LUNDVALL: Moving on, Your Honor, there are two spreadsheets related to acceptance. One that was produced by

011572

011572

011572

MultiPlan and to which Plaintiffs did not object until last night, at which time they objected on relevance grounds. And another one -- even though that had been in our exhibit list for many weeks. And another one that was produced by the Defendants themselves, related to the acceptance rates associated with their rates generated through the NLP program. Their objection is prejudice outweighs probative. You know, this case -- yeah. And you know, the data is from the relevant time period. And you know, this case, they've taken -- they've taken a lot of shots at the case of MultiPlan, the Data iSight acceptance rates and the validity of that rates -- of the Data iSight tool. We think the validity -- the acceptance speaks to the validity.

We've had witnesses testify, Mr. Haben, Ms. Paradise, who said that was important in their decision to use Data iSight. In the ENRP case, you know, rates are generated using the DPNRP program. They have a very high acceptance rate. And we would argue that is relevant -- highly relevant to the validity of those rates.

THE COURT: Response?

MR. BLALACK: So I'll take these in turn, Your Honor. The first spreadsheet that was mentioned, which I believe is 51-3 is a MultiPlan spreadsheet. It is hearsay. It was not proven by the MultiPlan witness who was here on the stand today. And it does not apply to any of the current issues in the case. That addresses 51-3.

With respect to 4679, although it is produced by Defendants, it has not been used with any witness in this case. There is no identity within the document as to who was appealing, why they appealed, or the

011573
011573
011573

reasons for acceptance or denial of those appeals. And because of that, because no witness has testified about that or a laid a foundation about that or a laid a foundation for any of that, there is no basis to admit the document.

THE COURT: And again, let's leave this until tomorrow. Unless there is testimony that lays the foundation, I will deny the admission.

MS. LUNDVALL: So we'll put that in the same category as the other one, if there's testimony.

THE COURT: No. If -- when there's a stipulation. But when there isn't, I have to follow the rules.

MS. LUNDVALL: Okay, Your Honor. I believe two more. There -- Exhibit 5323 is a Medicare physician fee schedule. Plaintiffs have objected to this on the basis of relevance. And prejudice outweighs probative. You know, we've had a lot of testimony, as we're all aware, about how -- about the percentage of Medicare that may be indicative of a payment rate, reasonable, et cetera. The anchor for those -- that testimony is -- were the Medicare rates themselves. This document indicates on a yearly basis what the rate is and what the CPT -- for each CPT code. And we could limit this to just the CPT codes that are at issue in this case. That's fine. But in order to anchor that testimony in something -- in a metric that is meaningful, the rates on the fee schedule would be what we submit, highly relevant to this case.

MR. BLALACK: One, Your Honor, this is hearsay. It's not been used or proven up with any witness. Two, this is squarely within

011574

011574

011574

Your Honor's limited rulings on the amounts under Medicare. And it's really just a back door around that. For that reason, we think it should be excluded.

THE COURT: And I'm going to sustain --

MS. LUNDVALL: Your Honor, I'd like to --

THE COURT: Go ahead.

MS. LUNDVALL: I would only say that they haven't objected on hearsay grounds. That's the first I'm hearing it's hearsay. In terms of the in limine ruling, we understand there's some contours to that in limine ruling that have evolved during the course of the case. And we believe that this fee schedule, just like the percentage of Medicare testimony is within those contours -- well within those contours.

011575

THE COURT: And the objection will be sustained. There's been no direct testimony that would infringe on the prior ruling with regards to the motion in limine.

MR. BLALACK: Your Honor -- is that the end of your list?

MS. LUNDVALL: That is the end of the list for today.

MR. BLALACK: Your Honor, before you move on to the charge, you mentioned the IT setup for any other conference room change. Shane mentioned that he wasn't sure what we were referring to.

MR. BALKENBUSH: Yeah. I've yet to speak with anybody about setting up.

THE COURT: We'll be in 3D tomorrow.

MR. BLALACK: Is he allowed to go down and start doing that

011575

now?

THE COURT: Yes.

MR. BLALACK: Okay. Then I think we're ready.

MS. LUNDVALL: Your Honor, as we move into the charge conference, you had asked for a redacted copy of your order to use in the jury instructions.

THE COURT: And will someone from the Defense side confirm for me if that is correct and accurate?

MR. PORTNOI: I received it as I came into the courtroom.

MS. LUNDVALL: Well, I gave it to Mr. Polsenberg a couple hours ago.

THE COURT: But did anyone confirm with you that the redactions were acceptable?

MR. PORTNOI: No. The redactions are not acceptable, Your Honor.

THE COURT: Okay. Good enough.

MR. PORTNOI: We don't believe that -- first off, we don't believe any of the instructions to be an instruction. It's still what the jury needs to know, and add that instruction into that, and not simply give the jury a lengthy pro lib document that is -- for instance, includes information about the rates through the limine ruling. It causes the jury to ask a lot of questions of what was in the discovery record and that -- or what the parties had discovery on and wonder, what is RFP 6, what is RFP 19. Why are we talking about all of these numbers and what was in there? It's an incomplete document unless we also provide the jury all of

011576

011576

011576

the requests for production that are referenced in that. And then what's the jury going to do with that?

So I don't -- first off, we believe we shouldn't be providing the jury that document, understanding that Your Honor has already ruled on that. I would limit the redactions only to the Court's findings that are -- that are at the end. These are the findings that are heading around the paragraph 31, I believe, and onward. And with respect to the same subsequent sanction, where there are multiple sanctions, there's a paragraph B. And I think that that really gives the jury what they need to know with respect to this, assuming that Your Honor wants to give that. I think the front matter relative to the history -- aids in the history. It simply is A, incomplete. At the same time, it's extremely long and causes the jury --

011577

THE COURT: I haven't seen it yet.

MS. LUNDVALL: Very briefly, Your Honor --

THE COURT: So I still have to read it.

MR. PORTNOI: Yes, Your Honor.

MS. LUNDVALL: Very briefly, Your Honor. We appreciate the concession by counsel. But in fact, the Court has already ruled what to do. And therefore, what we're trying to do is to comply with the Court's order. The second is that any concern that he had dealing with orders in limine, we've redacted those portions. So we're not in violation of any of the orders of limine. Third, what we did was to try to put into context this Court's ruling, as well as include the portions that have been wanted in by Mr. P. So with that then, Your Honor, that gives

011577

you a little context.

THE COURT: So let's pick this up in the morning.

MR. BLALACK: Yes, Your Honor.

THE COURT: All right. Now, what's next?

MS. ROBINSON: So I was going to go through with Mr. P's permission, we had already -- we've done a lot of work on the --

MR. POLSENBERG: Your Honor, excuse me. If I could address the order issue.

THE COURT: Of course.

MR. POLSENBERG: I think it's improper to give the jury a court order, especially since it's the only order they have in this trial. It's probably the only order they've seen in their entire lives. And I think it creates undue influence. You know, even in -- I've argued a lot of cases on sanctions. I know that the supreme court wrestles with a lot of these and what the -- what should go to the jury. You know, in the Goodyear case, Judge -- and trust me, Trust Laura [phonetic] was hopping mad at us. But she didn't say anything to the jury about something being done intentionally wrong. So I don't think it's appropriate for the Court to give the jury an order saying that you would have found that we acted willfully.

THE COURT: Well, you know, how do -- then how do I instruct the jury because it's going to be -- it's fair game.

MS. LUNDVALL: And Your Honor, from that perspective, Bass Davis requires the Court to make a finding of either negligence or willfulness so that we know what type of instruction that will be given to

011578

011578

011578

the -- to the jury. That was reaffirmed in the FT v. Hyatt case. And so therefore, the Court is doing exactly what it is obligated to do under Bass Davis.

MR. POLSENBERG: No, I don't think so. Judge, it's --

THE COURT: Give me a case to read overnight then.

MR. POLSENBERG: Judge, the standard -- and counsel keeps forgetting I was on the Hyatt case. The standard of willfulness versus negligence is for you to decide which instruction to give, whether to give a rebuttable presumption or the mere statutory inference. It doesn't mean that you tell the jury, oh, the Defendants intentionally misbehaved and engaged in misconduct. That throws prejudice into this jury. I mean, we've got this far in this trial. That's going to be the issue on appeal. So I don't think you should get into what the basis is at all for why you're instructing the jury.

THE COURT: And this all comes up after 5 p.m. when my law clerk is gone. And you guys knew about this all day? Why didn't you give me a heads up?

MS. LUNDVALL: From this, Your Honor, what this is is a reargument --

THE COURT: It is.

MS. LUNDVALL: -- of what we had decided yesterday.

THE COURT: But I'll go reread Bass Davis tonight and FTC v. Hyatt. I'll talk to the law clerk about it. And we'll have to take it up tomorrow.

MS. LUNDVALL: Thank you, Your Honor.

011579

011579

011579

MS. ROBINSON: So I have some good news.

THE COURT: Okay.

MS. ROBINSON: We've reached a lot of agreement on the homework you gave us on instructions.

THE COURT: Good.

MS. ROBINSON: There's just a couple of very small issues that we needed to take up with the Court.

THE COURT: Okay. Direct me and I'll be ready.

MS. ROBINSON: So with respect to the contract introduction instruction, that's the model instruction 13.0, the Court had instructed the parties to agree on language, describing the breach of contract claim as an introduction to the breach of contract. We all -- we have agreed on language with only one issue, which is that the Plaintiffs wish to refer to implied contract and the Defendants wish to refer to an implied in fact contract. We believe that implied is proper, both because it's less legalistic, it's easy to understand, and that's the language that the model instructions use.

THE COURT: And where will I find --

MR. PORTNOI: I don't think we -- unfortunately, Your Honor, I believe this is also something that we have yet to submit. But I can make this a little easier, which is simply that we'll agree to use implied contract so long as my opposing counsel agrees that there will never -- there will not be in the future some inference that we conceded to some other kind of implied contract. I don't know what it would be. That's really all we care about on that one.

011580

011580

011580

MS. ROBINSON: Agreed. The implied contract claim is implied in fact contract claim. Agreed.

THE COURT: Okay.

MR. PORTNOI: So we'll submit that it's agreed at this point.

THE COURT: Whoever's doing your closing, make sure that they're aware of this.

MS. ROBINSON: Understood. Just making a note.

THE COURT: All right. So what are the objections to the Plaintiffs' proposed verdict form?

MR. PORTNOI: The special verdict form?

THE COURT: No. Just the general verdict form.

MR. PORTNOI: Well, I think, Your Honor, that their general verdict form then goes all the way through to ask subsequent questions such as damages, which are really cause the jury to have to do it twice in terms of the general verdict form. Really, we have two competing with the special verdict form.

MS. ROBINSON: So what we submitted on the 16th -- I don't know if you looked -- what we have is general verdict on damages. And then we do have a chart about the stop payment, which is not a damages question. So there's really no way to address it for damages. And then we have a chart regarding the predicate on punitive damages. We've actually withdrawn number 6. And that's all we've got. What follows -- the special verdict form that follows is the proposed special verdict form from the phase two, that would be punitive damages.

MR. PORTNOI: Your Honor, it seems to me given that the

011581

011581

011581

special verdict form has asked the jury to talk about damages and talk about the individual claims, what I understood really was you have a general verdict for Defendants, yes, no, do you have a general verdict for Plaintiffs, yes, no. If you're -- you know, basically, if you don't have a general verdict for the Defendants, then you go to the special verdict form and start going through the claims. But other than really, you know, refer to -- so Mr. Polsenberg has a better experience than I do.

MS. ROBINSON: So this is -- I'm not sure. Yeah, that's different. So this is what we filed the first time, which is --

MR. POLSENBERG: This is what you filed on the 19th.

MS. ROBINSON: This is the 19th. This is the 16th. We filed two. So on the 16th, we filed the one that just says here is what we find for Plaintiffs' damages, and the blanks are per Plaintiff, per Defendant, which I think both sides agree is necessary. And then we have a chart for the PPA -- for the prompt payment, and we have a chart for the predicate [indiscernible] for punitives. And that's all we've got because we would withdraw it.

MR. POLSENBERG: We would -- just for the record, you would withdraw what?

MS. ROBINSON: Number six. I already said that on the record. This is a bad faith. We're not pursuing bad faith as a basis for punitive damages. Only the [indiscernible].

MR. POLSENBERG: Here's the problem, Judge. Under *Allstate v. Miller*, we've got to have the jury answer enough questions so that if there's anything that's reversible on appeal, the Supreme Court

011582
011582
011582

can look to see whether that was a basis of the jury's decision and whether it was the only basis of the jury's decision. Otherwise, there would have to be a new trial, which is why we have more detailed questioning as to all the causes of action and the parties.

MR. PORTNOI: What's also confusing, Your Honor, is that Plaintiff's general verdict form would have the jury go through and write down damages for every cause -- for every Plaintiff against each Defendant. And then when they got to Plaintiff's special verdict form, they would have to do it again.

MS. ROBINSON: No. The following verdict form is only for punitives. I don't understand what you're saying.

MR. PORTNOI: No, the way you did it on the 19th, you put the --

MS. ROBINSON: Oh, but that's -- we're not talking about that one.

MR. PORTNOI: Can I finish?

MS. ROBINSON: I'm sorry. Go ahead.

MR. PORTNOI: I'm talking about that one.

MS. ROBINSON: Okay. I'm sorry.

MR. PORTNOI: The way you did it on the 19th, you asked about the causes of action first, and then asked about the damages. And we have a few more questions on the causes of action so that we don't face a new trial under *Allstate v. Miller.* There are a number of reasons we have to have the jury ask all those questions. So they should after asking -- or answering the questions on what causes of action they're

011583

011583

011583

finding for the Plaintiff, then, they should award the damages. They shouldn't just award an amount of damages upfront and then go back and say what causes of action there are.

THE COURT: I've just never seen it like that, Mr. Portnoi, ever, in my 10 to 12 trials. I'm sure you've done more, every year. So --

MR. PORTNOI: Well, it -- I got to tell you, the evolution of verdict forms in Las Vegas is amazing. We've gotten -- and largely as a result of *Allstate v. Miller,* which in *Allstate v. Miller*, I as the Defendant asked for the jury to be asked what causes of action they're finding for. And there were three bad faith causes of actions. Supreme Court said two of them didn't really exist, but one of them did. But because we can't figure out what the jury found for and because I asked for the jury to be asked what they found for and what they didn't, Supreme Court reversed the whole thing and a whole new trial.

THE COURT: Now, let me just back up here. The Defendant's general defense verdict form, is there any objection to that? Because I'm hearing that both of you want to have a Plaintiff's verdict and a Defense verdict form.

MS. ROBINSON: I don't think so. I'm struggling to put my hands on it right now, but I don't think so. Thank you. No, I think this is the form -- this is the -- it's consistent with the form, so on that understanding that it's consistent with the form and the jury instructions, we don't have an issue for it.

THE COURT: All right. So that will be approved in its current form. It was filed on 11/16/21. Now, the Plaintiff's proposed verdict

011584
011584
011584

form, I understand that you are proposing to remove paragraph six.

MS. ROBINSON: Correct.

MR. PORTNOI: We -- again, we've had --

MS. ROBINSON: This is the one filed on the 16th.

THE COURT: The 16th.

MR. PORTNOI: So the superseding one on the 19th, we're withdrawing.

THE COURT: I think it just went away. Did it go away?

MS. ROBINSON: If we can agree on this one, yes. Otherwise, we, you know, the other one is -- that was just an alternative we proposed to meet some of the objections that we have had.

MR. PORTNOI: Judge, sorry, I do transcripts for a living. If we agree on this one, which one is that?

MS. ROBINSON: The 16th. November 16th.

THE COURT: November 16th at 4:57.

MR. POLSENBERG: Well, do you have an extra copy of that one?

MS. ROBINSON: I have a copy of it.

MR. PORTNOI: So Your Honor, so there's a superseding verdict form. In that case, we assumed that the one on the 16th had been withdrawn.

MS. ROBINSON: Sorry.

THE COURT: So take a minute.

MS. ROBINSON: I believe in the introductory, I said I -- in the introductory remarks on the 19th, I said Plaintiff's proposed was formed

011585

011585

011585

as an alternative to the general verdict form Plaintiffs have already filed. So I did not mean it to be superseding.

MR. PORTNOI: Yeah. And I obviously missed that.

MS. ROBINSON: This is my only copy. So, that.

MR. PORTNOI: Okay. Your Honor, it simply is the case, as Mr. Polsenberg has said, this doesn't -- this wouldn't provide any information, even about whether the jury had found on contract, on unjust enrichment. Which, by the way, Your Honor, if you remember, we discussed this earlier. Those are alternative claims. They can't actually even be found together. So we wind up in a place where we're sending alternative claims to the jury without knowing which alternative claim they're working with.

011586

So that all, you know, that creates a -- that creates a debate and a horribly messy record on appeal. And it just -- again, Your Honor, it's -- this is their general verdict form. This is not their special verdict form. I know you had said you wanted to start with the general verdict form and then go to a special verdict.

THE COURT: But you believe it has to be special in every respect?

MR. PORTNOI: I certainly believe that we could have discussions about how detailed it has to be, Your Honor, but I do believe that we need to at a minimum ask the jury about the four claims in this case.

THE COURT: I have the *Allstate v. Miller* case up. Give me a moment just to look at it. "It has to be clear which theory the jury

011586

concluded that Allstate breached the implied covenant of good faith and fair dealing. So you're going to have to revise your general verdict form.

MS. ROBINSON: So it was with that in mind --

MR. PORTNOI: This one, Judge, is a little more complicated because if I recall *Allstate Miller*, it was one plaintiff and one defendant. Which is why we have the graphs where the jury can say for each plan and each Defendant. Yes or no for each column about that.

THE COURT: So can we stair-step it? All right. So can we stair-step it so that it's clear it's yes or no for each Plaintiff versus each Defendant?

MS. ROBINSON: So Your Honor, if you --

MR. PORTNOI: I had Dimitri do that. Yes, Your Honor. I had Dimitri do yes or no checkboxes.

THE COURT: Ms. Robinson, would you like to respond?

MS. ROBINSON: Yes, I would, Your Honor. So that is why. In anticipation of this objection was why we filed an alternative form on the 19th. And so that's where we break out all four causes of action with an opportunity for the jury to answer yes or no for each pair of Plaintiff and Defendant as to each cause of action.

THE COURT: I just have to pull it up. And the 19th, you objection to that? Because it seems to be doing exactly what you're asking here.

MR. PORTNOI: Well, we have a few objections here, Your Honor. One objection is in ours, we broke out, in addition to the elements of contract. Now, we believe that is important.

011587

011587

011587

THE COURT: But you can do that -- can't you do that later? After -- this is, like, a threshold issue.

MR. PORTNOI: Later, I don't understand, Your Honor.

MR. POLSENBERG: But the reason it's important, Judge, is because whether a contract is formed comes up different ways on the different causes of action. You can't just ask the jury to find that there was a breach. They have to find that there was a contract. Plus, if there is a contract, Plaintiffs can't prevail on unjust enrichment. And if there isn't a contract, they can't prevail -- our theory is they can't prevail in the Unfair Claims Practices Act. So we need to get the jury to determine that particular issue --

THE COURT: I got it.

MR. POLSENBERG: -- so that I know what I no longer have an appeal on because the jury understood or what I do have an appeal on because the jury didn't understand.

MS. ROBINSON: So Your Honor, I don't believe it's necessary to have a special question on every single element of every cause of action unless there's a really serious question raised about whether or not there is evidence for that element. I don't feel that's --

THE COURT: I don't think every element needs to be. I think the causes of action need to be set out.

MS. ROBINSON: Correct. Which is why we set up the causes of action here, which will enable. Now, there's -- we are not asking the jury to -- we are -- we put one damages question. We are not asking the jury to multiply or give us extra damages. And this will allow

011588

011588

011588

the Supreme Court to look at this and say, okay, if we rule that a breach of -- that implied contract was required for the insurance claim, then we can see whether or not one existed. You know, whether -- how the jury found on that. And if we -- and if the jury finds, you know, yes on contract, yes on unjust enrichment, we're entitled to elect our remedy. And that will give us a chance. If we elect unjust enrichment and go up on appeal and Nevada Supreme Court says, well, you could have done implied contract but not unjust enrichment, then we had an opportunity to elect the valid claim.

I think this covers all of those problems. I have a very, very long list of objections to the 29-page document that they filed, which would ask the jury to -- and this is, you know, this is not assuming duplicate, but just to pull out -- 255 boxes and answer an essay question regarding why they would be interested in granting punitive damages. It's incredibly, unnecessarily time-consuming, confusing, and it assumes the jury is not reading and following the Court's instructions regarding how a cause of action should be determined.

You've given -- you're going to give the jury an explanation of how you find breach of contract. If the Defense feels that the jury cannot follow your instructions, I don't know how they feel that they can follow 255 boxes and an essay question. That's even more confusing.

THE COURT: I think it's very confusing, frankly.

MR. POLSENBERG: Judge, two things on that. Number one, I had Dimitri probably double the number of boxes so that there would be a yes and a no. But they --

011589

011589

011589

MS. ROBINSON: I was only having one for each.

MR. POLSENBERG: Judge.

MS. ROBINSON: Sorry. Go on.

MR. POLSENBERG: And they -- all right. So their format is, I mean, it's an easier form, so we can go with that. But you can't have one list of damages because the calculation of damages is different for different causes of action. We talked about that yesterday. Unfair claims practices act does not give you the same damages breach of contract gives you.

THE COURT: Let's finish the arguments and I'll announce a ruling in the morning. Let's come back at -- let's 7:45 so that I can read *Allstate, Vas Davis [phonetic] FTC v. Hyatt.* I'm leaning toward the Plaintiffs November 19th verdict form. So let's have your final comments on that.

011590

011590

MR. PORTNOI: I'll make two brief points, Your Honor. One point is if there's any additional question we think is really critical to add into Plaintiff's verdict form, it is the formation of the contract as well as the breach of the contract. That really improves the quality of the appeal because it's possible that the jury checks no under the breach of implied contract claim but the jury did think there was a contract. They just didn't think it was breached. And that's important on appeal because remember, if they believe that there is a contract, that still means that unjust enrichment is unavailable under Nevada law. So we do believe that's an important question.

The other point that's very important on the verdict form is

011590

that their punitive damages still references unjust enrichment. There's -- Your Honor has set the motion to amend the pleadings on hearing at 10:30, which I think will probably be in the middle of closing argument. We have our brief -- we weren't expecting a brief to come in. So we're -- our brief will come in tonight to Your Honor on that point. We'll be prepared to argue that brief tomorrow. But that's also -- I think that's really just something we can call an open issue that I want to flag until Your Honor has ruled.

THE COURT: All right. So --

MR. SMITH: Your Honor?

THE COURT: Go ahead, please.

MR. SMITH: I'm sorry, Your Honor. I just wanted to add one point to what Dimitri said. On punitive damages, even if Your Honor rules against us on the unjust enrichment issue, we still think it's important under *Allstate v. Miller* that we understand on what theory the jury chose to award punitive damages, whether it was the unjust enrichment theory that we think is improper or on the Unfair Claims Practices Act. And that gets to the second point on punitive damages, which is their last question is just whether there's oppression, fraud, or malice. And then it takes them immediately in the second phase to awarding a number. We think it's important that the jury actually make the choice. Did they choose to award punitive damages because in the instructions and under Nevada law, it's clear that the Plaintiff is never entitled to punitive damages even if they meet the standard of clear and convincing proof on all these elements.

011591

011591

011591

THE COURT: All right. So the tentative ruling tonight is yes or no on causes of action, not on elements of causes of action, to break out if there is a contract formed and if there was a breach, and if there are punitive damages, under which theory or which cause of action will they consider.

MR. PORTNOI: Will be mooted depending on how the motion to amend plays out tomorrow.

THE COURT: Good enough. And --

THE CLERK: Counsel, can I get your name, please?

MR. SMITH: Abraham Smith, bar number [indiscernible]. I apologize.

THE COURT: Somebody got a haircut. All right, everybody. Have a great night. See you tomorrow, 7:45.

MR. GODFREY: I'm sorry, Your Honor, one more thing.

THE COURT: Yes?

MR. GODFREY: I have a clean laptop for the jury to go back to the jury room. It's been reviewed by --

THE COURT: It has to be reviewed by IT as well.

MR. GODFREY: Okay.

THE COURT: So we'll put a ticket in for that tomorrow.

MR. GODFREY: Can I leave it with the clerk for that process or should we [indiscernible]?

THE COURT: You know, when you leave it with her, she's responsible for it. So I just can't put that sort of pressure on these guys. They're working their butts off.

011592

011592

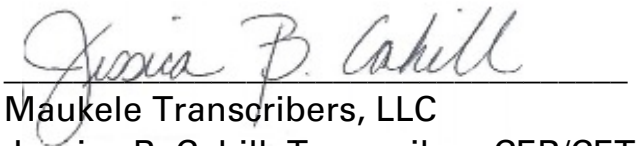
011592

MR. GODFREY: Okay. A supervised schedule to review it.

THE COURT: We'll put a ticket in with IT. Thank you.

[Proceedings adjourned at 6:01 p.m.]

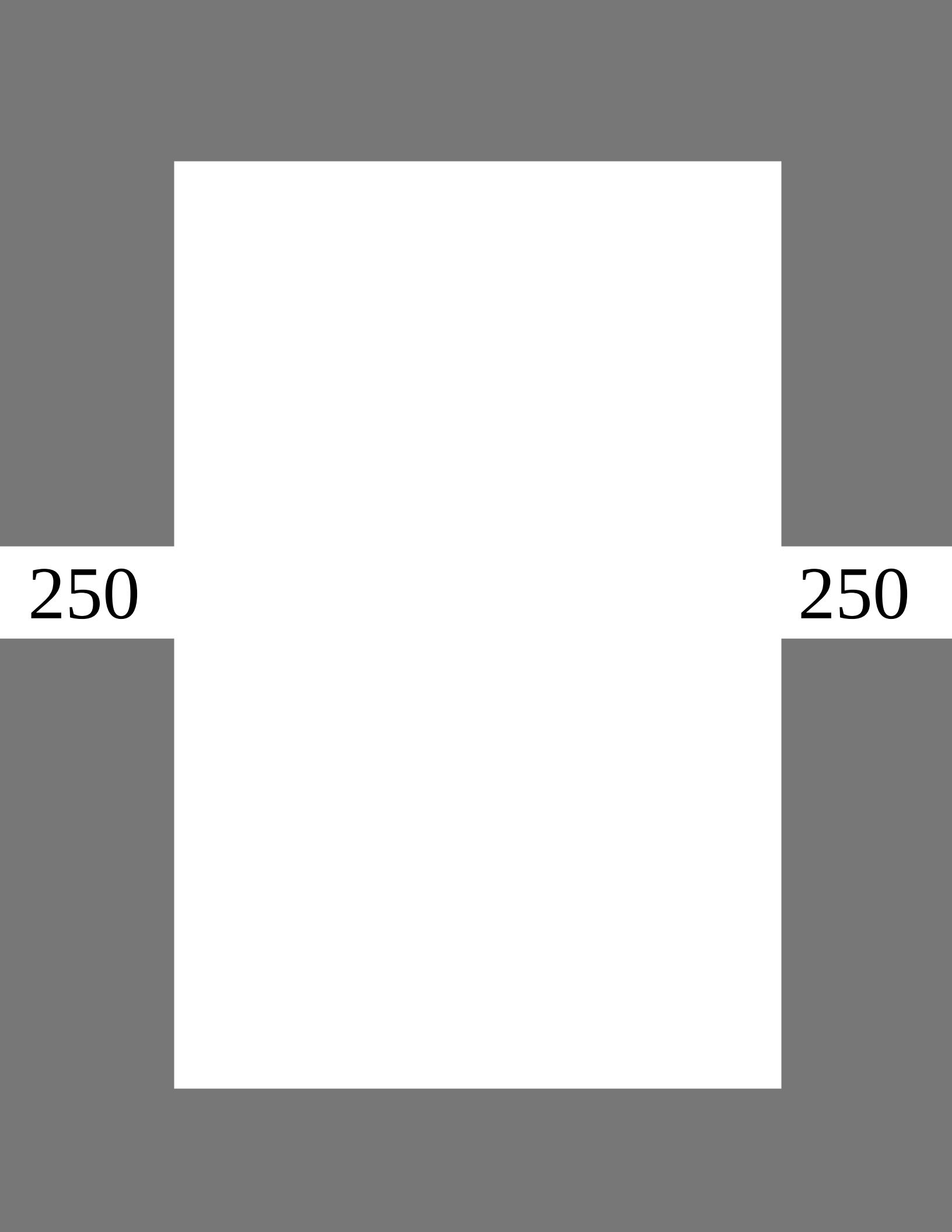
ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.



Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708

011593

011593


250
250

Electronically Filed
11/22/2021 10:19 AM
CLERK OF THE COURT

OST

Pat Lundvall (NSBN 3761)
Kristen T. Gallagher (NSBN 9561)
Amanda M. Perach (NSBN 12399)
McDONALD CARANO LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Telephone: (702) 873-4100
plundvall@mcdonaldcarano.com
kgallagher@mcdonaldcarano.com
aperach@mcdonaldcarano.com

Justin C. Fineberg (admitted *pro hac vice*)
Rachel H. LeBlanc (admitted *pro hac vice*)
Jonathan E. Siegelaub (admitted *pro hac vice*)
Lash & Goldberg LLP
Weston Corporate Centre I
2500 Weston Road Suite 220
Fort Lauderdale, Florida 33331
Telephone: (954) 384-2500
jfineberg@lashgoldberg.com
rleblanc@lashgoldberg.com
jsiegelaub@lashgoldberg.com

Joseph Y. Ahmad (admitted *pro hac vice*)
John Zavitsanos (admitted *pro hac vice*)
Jason S. McManis (admitted *pro hac vice*)
Michael Killingsworth (admitted *pro hac vice*)
Louis Liao (admitted *pro hac vice)*
Jane L. Robinson (admitted *pro hac vice*)
P. Kevin Leyendecker (admitted *pro hac vice*)
Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, P.C.
1221 McKinney Street, Suite 2500
Houston, Texas 77010
Telephone: 713-600-4901
joeahmad@azalaw.com
jzavitsanos@azalaw.com
jmcmanis@azalaw.com
mkillingsworth@azalaw.com
lliao@azalaw.com
jrobinson@azalaw.com
kleyendecker@azalaw.com

Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

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

PLAINTIFFS' MOTION TO MODIFY JOINT PRETRIAL MEMORANDUM RE: PUNITIVE DAMAGES ON ORDER SHORTENING TIME

011594

011594

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") move for an order allowing the Health Care Providers to modify the joint pretrial memorandum regarding punitive damages to make it clear that they seek punitive damages in connection with their unjust enrichment claim as well as under Nevada's Unfair Insurance Practices Act.

DECLARATION IN SUPPORT OF PLAINTIFFS' MOTION TO MODIFY JOINT PRETRIAL MEMORANDUM RE: PUNITIVE DAMAGES ON ORDER SHORTENING TIME

I, Jane L. Robinson declare as follows:

1. I am an attorney admitted *pro hac vice* to practice law in the State of Nevada and am a partner in the law firm of Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, P.C., counsel for plaintiffs Fremont Emergency Services (Mandavia), Ltd. ("Fremont"); Team Physicians of Nevada-Mandavia, P.C. ("Team Physicians"); Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine ("Ruby Crest" and collectively the "Health Care Providers").

2. This declaration is submitted in support of the Plaintiffs' Motion To Modify Joint Pretrial Memorandum Re: Punitive Damages On Order Shortening Time and is made of my own personal knowledge, unless otherwise indicated. I am over 18 years of age, and I am competent to testify as to same.

3. Because the jury trial is currently in progress, the Health Care Providers respectfully request their motion heard on an order shortening time.

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

Executed: November 22, 2021.

/s/ Jane L. Robinson
Jane L. Robinson

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

011595

011595

ORDER SHORTENING TIME

It appearing to the satisfaction of the Court and good cause appearing therefor,

IT IS HEREBY ORDERED that the hearing on **PLAINTIFFS' MOTION TO MODIFY JOINT PRETRIAL MEMORANDUM RE: PUNITIVE DAMAGES ON ORDER SHORTENING TIME**, shall be shortened and heard before the above-entitled Court on the 23rd day of November, 2021 at 10:20 a.m./p.m., or as soon thereafter as counsel may be heard.

Dated this 22nd day of November, 2021

November 22, 2021

Nancy L Allf

DISTRICT COURT JUDGE

TW

E5B 384 5A9C 349F
Nancy Allf
District Court Judge

Respectfully submitted by:

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

By: */s/ P. Jane L. Robinson*

P. Kevin Leyendecker (admitted pro hac vice)
John Zavitsanos (admitted pro hac vice)
Joseph Y. Ahmad (admitted pro hac vice)
Jason S. McManis (admitted pro hac vice)
Michael Killingsworth (admitted pro hac vice)
Louis Liao (admitted pro hac vice)
Jane L. Robinson (admitted pro hac vice)
Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, P.C
1221 McKinney Street, Suite 2500
Houston, Texas 77010
kleyendecker@azalaw.com
joeahmad@azalaw.com
jzavitsanos@azalaw.com
jmcmanis@azalaw.com
mkillingsworth@azalaw.com
lliao@azalaw.com
jrobinson@azalaw.com

Pat Lundvall (NSBN 3761)
Kristen T. Gallagher (NSBN 9561)
Amanda M. Perach (NSBN 12399)
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
plundvall@mcdonaldcarano.com
kgallagher@mcdonaldcarano.com
aperach@mcdonaldcarano.com

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

011596
011596
011596

Justin C. Fineberg (admitted pro hac vice)
Rachel H. LeBlanc (admitted pro hac vice)
LASH & GOLDBERG LLP
Weston Corporate Centre I
2500 Weston Road Suite 220
Fort Lauderdale, Florida 33331
jfineberg@lashgoldberg.com
rleblanc@lashgoldberg.com

Attorneys for Plaintiffs

POINTS AND AUTHORITIES

I. RELEVANT BACKGROUND AND REQUESTED RELIEF

Plaintiffs respectfully request an order that permits them to modify Section III(A) of the joint pretrial memorandum filed on October 28, 2021 to clarify that they seek punitive damages in connection with their unjust enrichment claim. Specifically, Count 2 would be revised to state:

> Count 2: Unjust Enrichment (Second Am. Compl. ¶¶ 80–89)
>
> Damages: (1) actual damages; (2) punitive damages including damages under NRS 42.005(2)(b); and (3) pre- and post-judgment interest.

This modification is consistent with the Health Care Providers' position throughout the course of these proceedings that they seek punitive damages against United as may be available under any cause of action. *See e.g.* Joint Pretrial Memorandum, Section II, Plaintiffs' Statement of the Case ("Through this lawsuit, the Health Care Providers seek actual damages in excess of $10,000,000 for Defendants' systematic underpayment of claims, pre- and post-judgment interest, attorneys' fees and costs, and punitive damages, including damages under NRS 42.005(2)(b)."); *see also* Second Amended Complaint, Prayer for Relief; Fremont's FRCP 26(a) Initial Disclosures served October 2, 2019 ("Plaintiff also seeks punitive damages, attorneys' fees, costs and interest under each of the claims asserted in this action."). In the pretrial memorandum, United also acknowledged that the Health Care Providers seek punitive damages not just on their Unfair Claims Practices Act claim, but on any available claim:

> 8. Whether TeamHealth Plaintiffs can present evidence sufficient to establish that Defendants are "guilty of oppression, fraud or malice, express or implied" to support the imposition of punitive damages for any of TeamHealth Plaintiffs' claims and whether punitive

011597
011597
011597

> damages are available to TeamHealth Plaintiffs on any claim for which that category of damages is asserted.
>
> 9. With respect to TeamHealth Plaintiffs' Unfair Settlement Practices claim, whether TeamHealth Plaintiffs may seek punitive damages or seek punitive damages with no statutory cap, where punitive damages are capped at three times the amount of compensatory damages pursuant to NRS 42.005(a).

Joint Pretrial Memorandum at 15. Therefore, United has been on notice of and has acknowledged the Health Care Providers' intention with respect to punitive damages.

II. LEGAL ARGUMENT

A. Legal Standard

The Court has the discretion to permit the Health Care Providers to modify the pretrial memorandum in order to confirm that they seek punitive damages on all available claims, including their unjust enrichment claim. *Madrid v. Hernandez*, 134 Nev. 976 (Nev. App. 2018) (unreported) (holding that party was on notice that subject issue (custody) could be decided at an evidentiary hearing). Under NRCP 15, the "court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the court that the evidence would prejudice that party's action or defense on the merits." NRCP 15(b)(1).

B. The Health Care Providers Seek Punitive Damages In Connection with Their Unjust Enrichment Claim and Under Nevada's Unfair Insurance Practices Act.

The only limitation to asserting the remedy of punitive damages, is the inapplicable restriction on breach of contract claims. However, United has repeatedly and consistently asserted to this Court that no contract existed between United and the Health Care Providers during the subject time period. *See* Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint at 24:3-4 ("Plaintiffs…[have] no contractual relationship with Defendants"); Defendants' Motion for Partial Summary Judgment at 14:24-15:1 ("Where the third-party payor (here, the six Defendants that adjudicated and allowed payment of benefit claims) and the out-of-network provider (here, TeamHealth Plaintiffs), had no network contract in the 12 months before the date of service, subsection (2) applies."). In all, because punitive damages are sought under the Health Care Providers' claim for unjust enrichment and because such punitive damages are available

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

011598

under an unjust enrichment claim, any instruction to the jury concerning punitive damages should make clear that punitive damages can be awarded under the Health Care Providers' claim for unjust enrichment, in addition to their claim for violation of Nevada Unfair Insurance Practices Act in the event the jury finds that United is liable under the unjust enrichment claim.

1. Unjust Enrichment Is Not a Breach of an Obligation Arising from a Contract.

Under NRS 42.005(1), "[e]xcept as otherwise provided in NRS 42.007, in an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice, express or implied, the plaintiff, in addition to the compensatory damages, may recover damages for the sake of example and by way of punishing the defendant." Although the Nevada Supreme Court has held that punitive damages are not available for *breach of contract* claims, no such restriction exists for a claim of unjust enrichment, which, by its terms and United's own arguments throughout the course of this litigation, is not based on a contract. *See Ins. Co. of the West v. Gibson Title Co., Inc.*, 122 Nev. 455, 464, 134 P.3d 698, 703 (2006) ("[T]he award of punitive damages cannot be based upon a cause of action sounding **solely** in contract.") (emphasis added); *see also Peri & Sons Farms, Inc. v. Jain Irr., Inc.*, 933 F. Supp. 2d 1279, 1294 (D. Nev. 2013) ("Punitive damages are not available under Nevada law for contract-based causes of action); *Leasepartners Corp. v. Robert L. Brooks Tr. Dated Nov. 12, 1975*, 113 Nev. 747, 755–56, 942 P.2d 182, 187 (1997) ("[a]n action based on a theory of unjust enrichment is not available when there is an express, written contract, because no agreement can be implied when there is an express agreement."). Federal court decisions are in accord. *See e.g. Hester v. Vision Airlines, Inc.*, 687 F.3d 1162 (9th Cir. 2012); *Bavelis v. Doukas*, No. 2:17-CV-00327, 2021 WL 1979078, at *3 (S.D. Ohio May 18, 2021) (affirming punitive damages award based on a theory of unjust enrichment).

In *Hester*, the Ninth Circuit, considering Nevada law, addressed whether a federal district court improperly dismissed a claim for punitive damages where claims of conversion, money had and received and unjust enrichment had been asserted. *Hester v. Vision Airlines, Inc*., 687 F.3d 1162, 1166 (9th Cir. 2012). The Ninth Circuit concluded that the "claims are not based on an action for breach of contract. Thus, the statute allows punitive damages." *Id*. at 1172. It went on

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

011599

to conclude that the federal district court's decision concerning punitive damages should be reversed because the conduct alleged could give rise to punitive damages:

> Likewise, in this case, the Complaint alleges facts that could allow a jury to conclude that Vision engaged in oppression, fraud, or malice when it refused to pay its employees the hazard pay they were due, when it fired those employees to whom it had already paid hazard pay, or when it continued to accept hazard pay monies from upstream contractors for years with no intention of distributing that money.

Id. at 1173. Thus, after determining that unjust enrichment is not a contract claim which would be excluded under NRS 42.005(1), the Court focused on the conduct alleged and whether it could demonstrate the existence of oppression, fraud and malice.

Here, unjust enrichment has been asserted among evidence which will demonstrate United's wrongful conduct. Just as was the case in *Hester,* unjust enrichment is not within the breach of contract exclusion under NRS 42.005 – rather, the focus must be on whether the conduct at issue demonstrates oppression, fraud or malice. United would like this Court to disregard the conduct and simply reach a conclusory decision that unjust enrichment cannot give rise to punitive damages. No such exclusion exists. In the event the jury determines that United is liable for unjust enrichment, this Court should instruct the jury to consider whether the conduct at issue gives rise to punitive damages.

2. <u>The Policy Underlying Unjust Enrichment Claims and NRS 42.005 Supports the Allowance of Punitive Damages.</u>

Unjust enrichment "is grounded in the theory of restitution, not in contract theory." *Schirmer v. Souza*, 126 Conn. App. 759, 765, 12 A.3d 1048 (2011). "Before 1938, when the United States Supreme Court adopted the Federal Rules of Civil Procedure abolishing the division between law and equity, unjust-enrichment claims, though ascribed different labels, proceeded in both courts of law and equity." *Wright v. Genesee Cty.,* 504 Mich. 410, 420, 934 N.W.2d 805, 811 (2019). "Unjust enrichment has evolved from a category of restitutionary claims with components in law and equity into a unified independent doctrine that serves a unique legal purpose: it corrects for a benefit received by the defendant rather than compensating for the

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

011600

defendant's wrongful behavior. Both the nature of an unjust-enrichment action and its remedy—whether restitution at law or in equity—separate it from tort and contract." *Id*. at 422.

Thus, while some unjust enrichment claims involve an innocent defendant who – through no fault of his own received a benefit from the plaintiff – other unjust enrichment claims involve wrongful, oppressive and intentional conduct from the defendant. *See e.g.* Restatement (Third) of Restitution and Unjust Enrichment § 40 (2011) ("A person who obtains a benefit by an act of trespass or conversion, by comparable interference with other protected interests in tangible property, or in consequence of such an act by another, is liable in restitution to the victim of the wrong."). It is under these latter circumstances that an award of punitive damages is appropriate – and consistent with the policies underlying NRS 42.005(1) which focuses on deterring similar behavior and punishing the defendant for its wrongful conduct. Indeed, the restriction on breach of contract claims under NRS 42.005(1) is because contracting parties can already accomplish these two goals through appropriate drafting. *See Gibson Title*, 122 Nev. at 464, 134 P.3d at 703. Of course, under an unjust enrichment theory, there is no contract and, thus, the underlying policy goals of NRS 42.005(1) would not be served if punitive damages were prohibited for an unjust enrichment claim. *See e.g. Bergerud v. Progressive Cas. Ins.*, 453 F. Supp. 2d 1241, 1251 (D. Nev. 2006) (noting that claims for breach of implied covenant of good faith and fair dealing may also give rise to punitive damages notwithstanding the fact that the existence of a contract is a precondition to such a claim). In all, given these policy goals and the absence of any caselaw prohibiting punitive damages for unjust enrichment in Nevada, an instruction allowing for the jury to award punitive damages upon a finding of liability for unjust enrichment is appropriate.

C. The requested modification will not prejudice Defendants

The evidence Plaintiffs rely on both for the underlying conduct and punitive damages is the same for Plaintiffs' unjust enrichment claim and unfair insurance practices claim. Permitting leave to amend to conform the memorandum with the Plaintiffs' legal and evidentiary position throughout trial will not prejudice Plaintiffs.

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

011601
011601

III. CONCLUSION

For the foregoing reasons, the Health Care Providers request an order that permits them to revise Section III(A) of the joint pretrial memorandum to state:

> Count 2: Unjust Enrichment (Second Am. Compl. ¶¶ 80–89)
>
> Damages: (1) actual damages; (2) punitive damages including damages under NRS 42.005(2)(b); and (3) pre- and post-judgment interest.

DATED this 22nd day of November, 2021.

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

By: */s/ Jane L. Robinson*

P. Kevin Leyendecker (admitted pro hac vice)
John Zavitsanos (admitted pro hac vice)
Joseph Y. Ahmad (admitted pro hac vice)
Jason S. McManis (admitted pro hac vice)
Michael Killingsworth (admitted pro hac vice)
Louis Liao (admitted pro hac vice)
Jane L. Robinson (admitted pro hac vice)
Ahmad, Zavitsanos, Anaipakos, Alavi & Mensing, P.C
1221 McKinney Street, Suite 2500
Houston, Texas 77010
kleyendecker@azalaw.com
joeahmad@azalaw.com
jzavitsanos@azalaw.com
jmcmanis@azalaw.com
mkillingsworth@azalaw.com
lliao@azalaw.com
jrobinson@azalaw.com

Pat Lundvall (NSBN 3761)
Kristen T. Gallagher (NSBN 9561)
Amanda M. Perach (NSBN 12399)
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
plundvall@mcdonaldcarano.com
kgallagher@mcdonaldcarano.com
aperach@mcdonaldcarano.com

Justin C. Fineberg (admitted pro hac vice)
Rachel H. LeBlanc (admitted pro hac vice)
LASH & GOLDBERG LLP
Weston Corporate Centre I

011602
011602
011602

2500 Weston Road Suite 220
Fort Lauderdale, Florida 33331
jfineberg@lashgoldberg.com
rleblanc@lashgoldberg.com

Attorneys for Plaintiffs

011603

011603

011603

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of McDonald Carano LLP, and on this 22nd day of November, 2021, I caused a true and correct copy of the foregoing **PLAINTIFFS' MOTION TO MODIFY JOINT PRETRIAL MEMORANDUM RE: PUNITIVE DAMAGES** to be served via this Court's Electronic Filing system in the above-captioned case, upon the following:

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Brittany M. Llewellyn, Esq.
Phillip N. Smith, Jr., Esq.
Marjan Hajimirzaee, Esq.
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
lroberts@wwhgd.com
cbalkenbush@wwhgd.com
bllewellyn@wwhgd.com
mhajimirzaee@wwhgd.com

Paul J. Wooten, Esq. (admitted *pro hac vice*)
Amanda Genovese, Esq. (admitted *pro hac vice*)
Philip E. Legendy, Esq. (admitted *pro hac vice*)
O'Melveny & Myers LLP
Times Square Tower,
Seven Times Square,
New York, New York 10036
pwooten@omm.com
agenovese@omm.com
plegendy@omm.com

Dimitri Portnoi, Esq. (admitted *pro hac vice*)
Jason A. Orr, Esq. (admitted *pro hac vice*)
Adam G. Levine, Esq. (admitted *pro hac vice*)
Hannah Dunham, Esq. (admitted *pro hac vice*)
Nadia L. Farjood, Esq. (admitted *pro hac vice*)
O'MELVENY & MYERS LLP
400 South Hope Street, 18th Floor
Los Angeles, CA 90071-2899
dportnoi@omm.com
jorr@omm.com
alevine@omm.com
hdunham@omm.com
nfarjood@omm.com

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Abraham G. Smith, Esq.
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
dpolsenberg@lewisroca.com
jhenriod@lewisroca.com
asmith@lewisroca.com

Attorneys for Defendants

K. Lee Blalack, II, Esq. (admitted *pro hac vice*)
Jeffrey E. Gordon, Esq. (admitted *pro hac vice*)
Kevin D. Feder, Esq. (admitted *pro hac vice*)
Jason Yan, Esq. (*pro hac vice* pending)
O'Melveny & Myers LLP
1625 I Street, N.W.
Washington, D.C. 20006
lblalack@omm.com
jgordon@omm.com
kfeder@omm.com

Attorneys for Defendants

/s/ Marianne Carter
An employee of McDonald Carano LLP

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

011604
011604

CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Fremont Emergency Services (Mandavia) Ltd, Plaintiff(s) vs. United Healthcare Insurance Company, Defendant(s)	CASE NO: A-19-792978-B DEPT. NO. Department 27

AUTOMATED CERTIFICATE OF SERVICE

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

Service Date: 11/22/2021

Michael Infuso	minfuso@greeneinfusolaw.com
Frances Ritchie	fritchie@greeneinfusolaw.com
Greene Infuso, LLP	filing@greeneinfusolaw.com
Audra Bonney	abonney@wwhgd.com
Cindy Bowman	cbowman@wwhgd.com
D. Lee Roberts	lroberts@wwhgd.com
Pat Lundvall	plundvall@mcdonaldcarano.com
Kristen Gallagher	kgallagher@mcdonaldcarano.com
Raiza Anne Torrenueva	rtorrenueva@wwhgd.com
Colby Balkenbush	cbalkenbush@wwhgd.com

011605

011605

011605

Daniel Polsenberg	dpolsenberg@lewisroca.com
Joel Henriod	jhenriod@lewisroca.com
Abraham Smith	asmith@lewisroca.com
Brittany Llewellyn	bllewellyn@wwhgd.com
Amanda Perach	aperach@mcdonaldcarano.com
Beau Nelson	bnelson@mcdonaldcarano.com
Marianne Carter	mcarter@mcdonaldcarano.com
Karen Surowiec	ksurowiec@mcdonaldcarano.com
Kimberly Kirn	kkirn@mcdonaldcarano.com
Justin Fineberg	jfineberg@lashgoldberg.com
Yvette Yzquierdo	yyzquierdo@lashgoldberg.com
Phillip Smith, Jr.	psmithjr@wwhgd.com
Flor Gonzalez-Pacheco	FGonzalez-Pacheco@wwhgd.com
Kelly Gaez	kgaez@wwhgd.com
Marjan Hajimirzaee	mhajimirzaee@wwhgd.com
Jessica Helm	jhelm@lewisroca.com
Cynthia Kelley	ckelley@lewisroca.com
Emily Kapolnai	ekapolnai@lewisroca.com
Maxine Rosenberg	Mrosenberg@wwhgd.com
Mara Satterthwaite	msatterthwaite@jamsadr.com
Virginia Boies	vboies@lashgoldberg.com
Martin Goldberg	mgoldberg@lashgoldberg.com
Rachel LeBlanc	rleblanc@lashgoldberg.com

011606

011606

011606

Jonathan Feuer	jfeuer@lashgoldberg.com
Jason Orr	jorr@omm.com
Adam Levine	alevine@omm.com
Jeff Gordon	jgordon@omm.com
Hannah Dunham	hdunham@omm.com
Paul Wooten	pwooten@omm.com
Dimitri Portnoi	dportnoi@omm.com
Lee Blalack	lblalack@omm.com
David Ruffner	druffner@lashgoldberg.com
Amanda Genovese	agenovese@omm.com
Emily Pincow	epincow@lashgoldberg.com
Cheryl Johnston	Cheryl.Johnston@phelps.com
Jonathan Siegelaub	jsiegelaub@lashgoldberg.com
Philip Legendy	plegendy@omm.com
Andrew Eveleth	aeveleth@omm.com
Kevin Feder	kfeder@omm.com
Nadia Farjood	nfarjood@omm.com
Jason Yan	jyan@omm.com
AZAlaw AZAlaw	TMH010@azalaw.com
Beau Nelson	beaunelsonmc@gmail.com
Marianne Carter	mcarter.mc2021@gmail.com
Dexter Pagdilao	dpagdilao@omm.com
Hollis Donovan	hdonovan@omm.com

011607

011607

011607

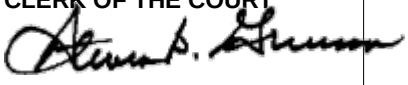
Tara Teegarden	tteegarden@mcdonaldcarano.com
Errol KIng	errol.King@phelps.com

011608

011608

251

Electronically Filed
11/22/2021 11:57 PM
Steven D. Grierson
CLERK OF THE COURT



OPPM

D. Lee Roberts, Jr., Esq.
Nevada Bar No. 8877
lroberts@wwhgd.com
Colby L. Balkenbush, Esq.
Nevada Bar No. 13066
cbalkenbush@wwhgd.com
Brittany M. Llewellyn, Esq.
Nevada Bar No. 13527
bllewellyn@wwhgd.com
Phillip N. Smith, Jr., Esq.
Nevada Bar No. 10233
psmithjr@wwhgd.com
Marjan Hajimirzaee, Esq.
Nevada Bar No. 11984
mhajimirzaee@wwhgd.com
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864

Daniel F. Polsenberg, Esq.
Nevada Bar No. 2376
dpolsenberg@lewisroca.com
Joel D. Henriod, Esq.
Nevada Bar No. 8492
jhenriod@lewisroca.com
Abraham G. Smith, Esq.
Nevada Bar No. 13250
asmith@lewisroca.com
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169-5996
Telephone: (702) 949-8200

Attorneys for Defendants

Dimitri D. Portnoi, Esq.(*Admitted Pro Hac Vice*)
dportnoi@omm.com
Jason A. Orr, Esq. (*Admitted Pro Hac Vice)*
jorr@omm.com
Adam G. Levine, Esq. *(Admitted Pro Hac Vice)*
alevine@omm.com
Hannah Dunham, Esq. *(Admitted Pro Hac Vice)*
hdunham@omm.com
Nadia L. Farjood, Esq. (*Admitted Pro Hac Vice*)
nfarjood@omm.com
O'Melveny & Myers LLP
400 S. Hope St., 18th Floor
Los Angeles, CA 90071
Telephone: (213) 430-6000

K. Lee Blalack, II, Esq.(*Admitted Pro Hac Vice)*
lblalack@omm.com
Jeffrey E. Gordon, Esq. *(Admitted Pro Hac Vice)*
jgordon@omm.com
Kevin D. Feder, Esq. *(Admitted Pro Hac Vice)*
kfeder@omm.com
Jason Yan, Esq. *(Admitted Pro Hac Vice)*
jyan@omm.com
O'Melveny & Myers LLP
1625 Eye St., N.W.
Washington, D.C. 20006
Telephone: (202) 383-5374

Paul J. Wooten, Esq. *(Admitted Pro Hac Vice)*
pwooten@omm.com
Amanda L. Genovese *(Admitted Pro Hac Vice)*
agenovese@omm.com
Philip E. Legendy *(Admitted Pro Hac Vice)*
plegendy@omm.com
O'Melveny & Myers LLP
Times Square Tower, Seven Times Square
New York, NY 10036
Telephone: (212) 728-5857

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,

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

DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO MODIFY JOINT PRETRIAL MEMORANDUM RE: PUNITIVE DAMAGES ON ORDER SHORTENING TIME

011609

WEINBERG WHEELER HUDGINS GUNN & DIAL
011609

vs.

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

Defendants.

Hearing Date: 11/23/21

Hearing Time: 10:20 AM

Defendants United Healthcare Insurance Company ("UHIC"), United Health Care Services Inc. ("UHS", which does business as UnitedHealthcare or "UHC" and through UHIC), UMR, Inc. ("UMR"), Sierra Health and Life Insurance Company ("SHL"), and Health Plan of Nevada, Inc. ("HPN") (collectively, "Defendants"), by and through their attorneys, hereby submit this Opposition ("Opposition") to TeamHealth Plaintiffs' Motion to Modify Joint Pretrial Memorandum Re: Punitive Damages on Order Shortening Time ("Motion").

This Opposition is based upon the following Memorandum of Points and Authorities, the pleadings and papers on file herein, and any oral argument this Court may allow on this matter.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

"As a general proposition a pretrial order does control the subsequent course of the trial and supersedes the pleadings." *Walters v. Nevada Title Guar. Co.*, 81 Nev. 231, 234, 401 P.2d 251, 253 (1965); *see also Recontrust Co. v. Zhang*, 130 Nev. 1, 7, 317 P.3d 814, 818 (2014) (pretrial memorandum supersedes pleadings). In this case, during argument of jury instructions, and two days before the tentative date closing arguments, TeamHealth Plaintiffs[1] indicated that they would move to modify the stipulated pretrial memorandum that was jointly filed by the parties. Specifically, TeamHealth Plaintiffs wish to add a request for a punitive damages award

[1] Fremont Emergency Services (Mandavia), Ltd.; Team Physicians of Nevada-Mandavia, P.C.; Crum, Stefanko and Jones, Ltd. dba Ruby Crest Emergency Medicine (collectively the "TeamHealth Plaintiffs").

based on their unjust enrichment claims. Until now, TeamHealth Plaintiffs' punitive damages theory was confined to their claims under the Unfair Claims Practices Act.

TeamHealth Plaintiffs filed their motion the day before closing argument, and as of the time of filing, the hearing is set during closing argument. They did not address their high burden for modification—that modification is imperative to prevent manifest injustice. They did not provide good cause for their request to amend the scheduling order governing the stipulated pretrial memorandum. They did not demonstrate that they were diligent in pursing this theory of damages to justify adding it after Defendants have presented their limited defense.[2] And, they did not demonstrate that Defendants consented to their new damages theory.

At the October 20, 2021 pretrial hearing, TeamHealth Plaintiffs' counsel represented the parties' discussions regarding the scheduling deadline for the stipulated pretrial memorandum: that the parties are in agreement to submit the stipulation on October 26, after jury selection starts. 10/20/2021 Tr. 99:19-25. TeamHealth Plaintiffs' counsel also asked whether the Court would permit that filing deadline, which the Court ordered was allowable pursuant to agreement by the parties. *Id*. 100:1-5. Therefore, the stipulated pretrial memorandum was scheduled to be submitted on October 26 via stipulated order.

On October 4, 2021, TeamHealth Plaintiffs provided Defendants with their portion of the stipulated pretrial memorandum, which informed Defendants that they would only be seeking a punitive damages award based only on their unjust enrichment causes of action. On October 26, 2021, TeamHealth Plaintiffs amended their portion to remove all references to their causes of action or the categories of damages that they request for each cause of action. **Exhibit 1**. Defendants responded by informing TeamHealth Plaintiffs that their revisions did not comply with EDCR 2.67(b)(2), which requires "[a] list of all claims for relief designated **by reference to each claim or paragraph of a pleading** and a **description of the claimant's theory of recovery** with each **category of damage** requested." *Id*. (bolding in original) (quoting EDCR 2.67(b)(2)).

[2] Defendants were unable to present their desired case because of TeamHealth Plaintiffs trial strategy that involved four days of voir dire and questioning one witness for two weeks.

Defendants were insistent on compliance with the rule, and would not have signed onto a non-compliant pretrial memorandum, because Defendants were entitled to a clear target prepare their trial presentation and argument. Based on the demand, TeamHealth Plaintiffs reverted back to their October 4 recitation of their causes of action and the categories of damages that they were persuading for each cause, including that they were only seeking a punitive damages award based on Unfair Claims Practices Act causes of action. *Id*. Defendants then relied on TeamHealth Plaintiffs' statement of their case in creating their trial defense strategy and trying their case.

I. LEGAL ARGUMENT

A. LEGAL STANDARD

TeamHealth Plaintiffs contend that the legal standard for this case is NRCP 15(b)(1). They also cite to an inapposite, unreported case that held a child custody issue could be decided at an evidentiary hearing because the adverse party was on notice. There is no notice in this case based on the conduct of the parties. Additionally, NRCP 15(b)(1) is not the appropriate standard, because NRCP 16(e) governs modifications to pretrial orders, including the stipulated pretrial memorandum. Under that standard, a formulated trial plan the "court may modify the order issued after a final pretrial conference only to prevent manifest injustice." Even if NRCP 16(e) did not apply to this motion, TeamHealth Plaintiffs must satisfy NRCP 16's "good cause" standard for modifying the scheduling order that governs the stipulated pretrial memorandum and the standard for amendment under NRCP 15. *Nutton v. Sunset Station, Inc.*, 357 P.3d 966, 131 Nev. Adv. Op. 34 (Ct. App. 2015); *Janicki Logging Co. v. Mateer*, 42 F.3d 561, 566 (9th Cir. 1994); *Gorsuch, Ltd., B.C. v. Wells Fargo Nat'l Bank Ass'n*, 771 F.3d 1230, 1240-41 (10th Cir. 2014); *Pasternack v. Shrader*, 863 F.3d 162, 174 & n.10 (2d Cir. 2017) (citing 3-16 MOORE'S FEDERAL PRACTICE § 16.13 (2016))

B. TEAMHEALTH PLAINTIFFS CANNOT PREJUDICE DEFENDANTS BY CHANGING THEIR DAMAGES THEORY JUST BEFORE CLOSING ARGUMENTS THROUGH A BELATED MOTION TO AMEND THE STIPULATED JOINT PRETRIAL MEMORANDUM THAT WAS PRESENTED TO THE COURT

1. TeamHealth Plaintiffs Fail to Demonstrate "Manifest Injustice" to Amend the Stipulated Joint Pretrial Memorandum that was Presented to the Court as Required by EDCR 7.50 and DCR 16.

On October 28, 2021, the parties jointly filed a stipulated pretrial memorandum. This stipulated pretrial memorandum was intended to formulate the trial plan of the parties and the Court, including to facilitate the admission of evidence. The Court accepted that stipulated pretrial memorandum. As such, the Court cannot modify that stipulated pretrial memorandum, except to "prevent a manifest injustice." *See* NRCP 16(e). Despite it being their burden, TeamHealth Plaintiffs do not move this Court to prevent a manifest injustice. Motion at 8 (contending Defendants will not be prejudiced by amendment in two-sentences); *Davey v. Lockheed Martin Corp.*, 301 F.3d 1204, 1208 (10th Cir.) (Rule 16(e) moving party bear burden that manifest injustice will occur).

A jointly filed pretrial memorandum is a stipulation entered on the record and in writing, that pursuant to EDCR 7.50 is binding on that party. DCR 16 (same). Moreover, written stipulations that are subscribed to be a party's attorney are treated just as if it was entered as an order by the presiding court. EDCR 7.50 ("No . . . stipulation between the parties . . . will be regarded unless the same shall, by consent, be entered in the minutes in the form of an order, **or** unless the same shall be in writing subscribed . . . by the party's attorney." (emphasis added)); DCR 16 (same); *Recontrust Co. v. Zhang*, 130 Nev. 1, 7, 317 P.3d 814, 818 (2014) (holding joint pretrial memorandum governs the trial just as a pretrial order (citing NRCP 16); *Telegraph Rd Trust v. Bank of America, N.A.*, 2015 WL 13202910, at *3 (Nev. Dist. Ct. 2015) ("In Nevada, the pretrial memorandum controls the subsequent course of the trial and supersedes the pleadings.").[3] It is undisputed that TeamHealth Plaintiffs stipulated to the pretrial memorandum and that their

[3] *See also Lehrer McGovern Bovis v. Bullock Insulation*, 124 Nev. 1102, 1118, 197 P.3d 1042, 1042 (2008) ("[S]tipulations are of an inestimable value in the administration of justice, and valid stipulations are controlling and conclusive." (quoting *Second Baptist Church v. Mt. Zion Baptist Church*, 86 Nev. 164, 172, 466 P. 2d 212, 217 (1970)); *Phung v. Doan*, 132 Nev. 1018, 420 P.3d 1029, 2018 WL 2272867, at *3 (May 10, 2018) (unpublished table disposition) ("A court abuses its discretion by relieving a party of its obligation under a stipulation and, in doing so, effectively imposing upon the other party the harm resulting from the reneging party's dereliction." (citing *Citicorp Servs., Inc. v. Lee*, 99 Nev. 511, 513, 665 P.2d 265, 266-67 (1983)).

011613
011613

counsel signed it before it was submitted to the Court. Thus, the parties' stipulated pretrial memorandum carries the same weight as an order of the Court. *Recontrust Co.*, 130 Nev. at 7.

The Court cannot modify a pretrial order, such as the stipulated pretrial memorandum, except "to prevent manifest injustice." NRCP 16(e). However, TeamHealth Plaintiffs do not present any "manifest injustice" arguments or facts to demonstrate that this Court can modify the stipulated pretrial memorandum. In *DeChambeau v. Balkenbush*, the parties entered into a stipulation governing the course of pretrial discovery. 134 Nev. 625, 628, 431 P.3d 359, 361 (Nev. Ct. App. 2018). The court ruled that the stipulation should be treated as an order and that "any order issued by the court on any matter is deemed to remain in effect until expressly superseded by another order on the same question." *Id*. at 629 (citing NRCP 16(e)); *Petit v. Chicago*, 239 F. Supp. 2d 761 (N.D. Ill. 2002) (holding evidence or theories not raised in the pretrial order are properly excluded at trial), *aff'd*, 352 F.3d 1111. Further, because "the stipulation . . . contain[ed] no language [to] suggest[] that the parties intended to depart from the typical way that other stipulations and orders are normally handled between lawyers and courts," so the stipulation "***govern[ed] throughout the course of litigation until and unless subsequently voided by the court or by the parties***." 134 Nev. at 630 (emphasis added). Because Defendants do not consent to any change to the stipulated pretrial memorandum, the Court can only modify that stipulation to "prevent manifest injustice."

TeamHealth Plaintiffs cannot establish that they would suffer a manifest injustice but for the Court forcing Defendants to accept a modification of the stipulated pretrial memorandum. To the contrary, *Defendants* would be prejudiced and would suffer a manifest injustice if the that stipulation is modified. While there is a dearth of guidance in Nevada regarding the meaning of "manifest injustice" in the civil context, corollaries can be drawn from the corresponding federal Rule 16(e) and to Nevada criminal jurisprudence.

First, federal jurisprudence requires that the moving party establish that a manifest injustice will occur absent the requested judicial modification. *Davey*, 301 F.3d at 1208. There is no reason for Nevada to depart from the practice that the moving party bears the burden to establish the basis for the relief requested by the motion. However, TeamHealth Plaintiffs present nothing with

regard to its burden of proving manifest injustice and ought not be permitted to concoct one at argument on the day of closing. Second, the pretrial memorandum can only be modified if there is no substantial injury or prejudice to the non-moving party. *See Glismann v. AT&T Technologies, Inc.*, 827 F.2d 262, 267 (8th Cir. 1987). However, TeamHealth Plaintiffs have not shown that this eleventh-hour modification will be harmless to Defendants. Nor can they, because courts routinely deny eleventh-hour motions to modify. *See, e.g., Phoenix Canada Oil Co. v. Texaco, Inc.*, 842 F.2d 1466 (3d Cir. 1998) (refusing to amend pretrial order to include request for consequential damages that was absent from order). Third, in the civil context, the Nevada Supreme Court has found manifest injustice only when the jury "obvious[ly] disregard[s] . . . the court's instructions" which "result[s] in a verdict which is shocking to the conscience of reasonable [people]" and "is nothing short of manifest injustice." *Avery v. Gilliam*, 97 Nev. 181, 183, 625 P.2d 1166, 1168 (1981). However, TeamHealth Plaintiffs' situation—strategically omitting a damages claim and inducing Defendants' reliance on that representation—is not analogous to a jury verdict that shocks the conscience. Fourth, in the criminal context, manifest injustice can occur when a defendant was not adequately informed of the consequences of his or her guilty plea. *Rubio v. State*, 124 Nev. 1032, 1039, 194 P.3d 1224, 1228-29 (2008). It is doubtful such an analogue exists in the civil context because there is no parallel remedy for ineffective assistance of counsel,[4] but even assuming there were, manifest injustice would only be supported where a client gave up a substantive right because, for instance, the client was ill-advised by its attorney. Here, however, TeamHealth Plaintiffs has had the benefit sophisticated and excellent counsel, who know full well the importance of the pretrial memorandum and were even directly informed by Defendants' counsel of the relevance and importance of EDCR 2.67(b). In other words, manifest injustice is the sort of showing that would permit a criminal defendant to withdraw a guilty plea, and TeamHealth Plaintiffs not only have not established such injustice, they have not even cited the right standard.

[4] *Garcia v. Scolari's Food & Drug*, 125 Nev. 48, 57 n.7, 200 P.3d 514, 520 n.7 (2009) ("[W]e find no support . . . for the proposition that the right to an ineffective-assistance-of-counsel argument exists in civil cases.").

Whatever the definition of manifest injustice, TeamHealth Plaintiffs have failed to cite or meet it. Because TeamHealth Plaintiffs have not, and cannot, meet their burden of establishing a manifest injustice but for the Court's modifying the stipulated pretrial memorandum, this Court cannot modify that stipulation. To do so absent that showing would be an abuse of discretion. *Citicorp Servs., Inc. v. Lee*, 99 Nev. 511, 513, 665 P.2d 265, 266-67 (1983).

2. TeamHealth Plaintiffs Fail to Demonstrate Good Cause to Amend the Stipulated Pretrial Memorandum After the Deadline Pursuant to NRCP 16 or 15.

The manifest injustice standard is one of the highest in jurisprudence, and TeamHealth Plaintiffs cannot meet it. But even if a lesser standard applied—in the circumstance that the parties had *not* expressly stipulated to keep punitive damages limited to the claims under NRS 686A.310—it would be the good cause standard under NRCP 16(b) for modifying the scheduling order, which TeamHealth Plaintiffs likewise do not cite and do not meet.

At the October 20, 2021 pretrial hearing, TeamHealth Plaintiffs' counsel represented the parties' discussions regarding the scheduling deadline for the stipulated pretrial memorandum: that the parties are in agreement to submit the stipulation on October 26, after jury selection starts. 10/20/2021 Tr. 99:19-25. TeamHealth Plaintiffs' counsel also asked whether the Court would permit that filing deadline, which the Court ordered was allowable pursuant to agreement by the parties. *Id*. 100:1-5. Therefore, the stipulated pretrial memorandum was scheduled to be submitted on October 26 via stipulated order.

After the expiration of a scheduling order's deadline for submission, a party must move for leave of court to modify the scheduling order. TeamHealth Plaintiffs have not moved for leave of court and Defendants object to the improper procedure being utilized in this case. Additionally, the moving party must satisfy both NRCP 16's "good cause" standard for modifying the scheduling order and the standard for amendment under NRCP 15. *Nutton v. Sunset Station, Inc.*, 131 Nev. 279, 357 P.3d 966 (Ct. App. 2015). Thus, even when an amendment might satisfy NRCP 15's more liberal standard, the fact that the amendment "came too late" is enough to deny it. *See Janicki Logging Co. v. Mateer*, 42 F.3d 561, 566 (9th Cir. 1994); *Gorsuch, Ltd., B.C. v. Wells Fargo Nat'l Bank Ass'n*, 771 F.3d 1230, 1240-41 (10th Cir. 2014); *Pasternack v. Shrader*, 863

F.3d 162, 174 & n.10 (2d Cir. 2017) (citing 3-16 MOORE'S FEDERAL PRACTICE § 16.13 (2016)).

In determining whether "good cause" exists under NRCP 16(b) the basic inquiry is the diligence of the party seeking the amendment. *Nutton*, 131 Nev. at 286-87, 357 P.3d at 971. Disregard of the scheduling order disrupts the agreed-upon course of the litigation and rewards the indolent and the cavalier. So if the party seeking amendment "was not diligent, the inquiry should end." *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). *State, Univ. & Cmty. Coll. v. Sutton*, 120 Nev. 972, 988, 103 P.3d 8, 19 (2004) (declining modification when motion to amend was filed "during argument over jury instructions"); *Ennes v. Mori*, 80 Nev. 237, 243, 391 P.2d 737, 739-40 (1964) (denying a motion to amend because it was made on the "eve of trial"; "there was no disclosure of how long ago these facts had been ascertained nor whether reasonable diligence would not have revealed them sooner;" the modification went to the heart of the issues and "must have been with the [movant's] knowledge"; and because "the liberal policy provided in Rule 15(a) does not mean the absence of all restraint").

Here, TeamHealth Plaintiffs fail to show good cause in deviating from the agreed upon scheduling order. They had years to prepare their case and determine whether to pursue punitive damages for their unjust enrichment causes of action. The parties in this case knew this matter was going to trial months before October 26, meaning TeamHealth Plaintiffs had months to prepare their portion of the stipulated pretrial memorandum, which included that they were not seeking punitive damages for their unjust enrichment causes of action. Indeed, on October 4, 2021, TeamHealth Plaintiffs provided Defendants with what causes of action they were going to try and theories of damages associated with each cause of action—including, critically, a breakdown of compensatory and punitive damages. That recitation from October 4 is what was filed on October 26, including that TeamHealth Plaintiffs were seeking a punitive damages award based solely on their Unfair Claims Practices Act cause of action. Moreover, TeamHealth Plaintiffs' counsel represented that they have always sought punitive damages based on unjust enrichment, but fail to explain why they misled Defendants and did not include a request for that award based on unjust enrichment in the stipulated pretrial memorandum.

Therefore, TeamHealth Plaintiffs have not, and cannot, present evidence of their diligence to seek punitive damages for their unjust enrichment causes of action. *Sutton*, 120 Nev. at 988 (declining modification when motion to amend was filed "during argument over jury instructions"); *Ennes*, 80 Nev. at 243 (denying a motion to amend because it was made on the "eve of trial"). Indeed, there is not a single declaration or other piece of cognizable evidence from which the Court could glean why TeamHealth Plaintiffs could not, in due diligence, have included this claim in the pretrial memorandum filed in October, or why TeamHealth Plaintiffs could not, in due diligence, have filed this modification motion early enough so the motion would not be heard on the day of closing arguments. That is because TeamHealth Plaintiffs either acted dilatorily in failing to seek to pursue punitive damages for the unjust enrichment causes of action or seek to sandbag Defendants at the end of trial. Without that showing of diligence, they are not entitled to amend and prejudice Defendants at the close of this trial. *See Rompe v. Yablon*, 277 F. Supp. 662 (S.D. N.Y. 1967) (ruling pretrial order which contains agreement upon extent of damages is controlling over any assertion in the pleadings).

3. TeamHealth Plaintiffs' Modification is not Proper Because the Theory of Punitive Damages Being Award Based on Unjust Enrichment was Not Tried by Consent.

TeamHealth Plaintiffs purportedly contend that Defendants have consented to their requesting the jury to award punitive damages based on their unjust enrichment causes of action. However, Defendants have not consented to TeamHealth Plaintiffs trying this case in a manner that sought a punitive damages award based on unjust enrichment.

At the outset, the Nevada Supreme Court is entirely clear that to establish amendment by consent, TeamHealth Plaintiffs must meet a "***high threshold***" to amend the stipulated pretrial memorandum based on Defendants' implied consent. *Klabacka v. Nelson*, 133 Nev. 164, 180 (2017). Indeed, "if evidence relevant to the implied [theory] is also relevant to another issue in the case, and nothing at trial indicates that the party who introduced the evidence did so to raise the implied [theory], court will generally not find that the parties tried the issue by consent." *Yount v. Criswell Radovan, LLC*, 136 Nev. 409, 416, 469 P.3d 167, 172-73 (2020) ("The reasoning behind this view is sound since if evidence is introduced to support basic issues that already have

been pleaded, the opposing party may not be conscious of its relevance to issues not raised in the pleadings unless that fact is made clear."). Counsel for Defendants raised this point at the charge conference on Sunday, November 21, 2021, and yet TeamHealth Plaintiffs have not pointed to a single, solitary piece of evidence that was introduced, relevant to punitive damages on an unjust enrichment claim, but not also "relevant to other issues in the case." 11/21/2021 55:14-22, 57:6-18. In this case, every piece of punitive damages evidence that TeamHealth Plaintiffs rely upon is applicable to their causes of action based on the Unfair Claims Practices Act. Therefore, there can be no implied consent justifying modification.

Moreover, Defendants have repeated, time and again, that they do not consent either to amendment or to a vague and general pretrial order. During the pretrial phase of this case, the parties exchanged drafts of the stipulated pretrial memorandum, and Defendants' counsel insisted that the pretrial order must comply with EDCR 2.67(b), so that Defendants would have a clear target at trial. On October 4, 2021, TeamHealth Plaintiffs provided Defendants with their portion of the stipulated pretrial memorandum, which informed Defendants that they would only be seeking a punitive damages award based on their unjust enrichment causes of action. At 9:39 pm on October 26, 2021, the date that the stipulated pretrial memorandum was ordered to be submitted, TeamHealth Plaintiffs amended their portion to remove all references to their causes of action or the categories of damages that they request for each cause of action. **Exhibit 1**. Defendants responded by informing TeamHealth Plaintiffs that their revisions did not comply with EDCR 2.67(b)(2), which requires "[a] list of all claims for relief designated **by reference to each claim or paragraph of a pleading** and a **description of the claimant's theory of recovery** with each **category of damage** requested." *Id.* (bolding in original) (quoting EDCR 2.67(b)(2)). Accordingly, Defendants insisted that TeamHealth Plaintiffs comply with EDCR 2.67(b)(2), because Defendants needed to know how to present their own case. Based on the demand, TeamHealth Plaintiffs reverted back to their October 4 recitation of their causes of action and the categories of damages that they were persuading for each cause, including that they were only seeking a punitive damages award based on Unfair Claims Practices Act causes of action. *Id.* Defendants then relied on TeamHealth Plaintiffs' statement of their case in creating their trial

defense. And counsel for Defendants have likewise objected at every turn to amendment, which does not suggest express or implied consent. 11/18/2021 Tr. 10:25-11:18, 30:11-31:6 ("it is absolutely prejudicial to amend . . . to add new claims for damages. Now, we are not consenting to that. We are absolutely not. . . . . [T]he Nevada Supreme Court makes clear that there is severe prejudice to amend . . . without consent."); 11/21/2021 Tr. 54:2-57:18, 122:15-123:5.

Likewise, TeamHealth Plaintiffs statement of their case found in the stipulated order matches their Second Amended Complaint and the entire history of this case, which put Defendants on notice that TeamHealth Plaintiffs were not seeking punitive damages based on their unjust enrichment causes of action. Therefore, Defendants express pretrial conduct refutes any consent to modify the stipulated pretrial memorandum, especially a modification that would be effective the day of closing arguments.

4. Unjust Enrichment Is a Quasi-Contract, Not a Basis for Punitive Damages.

The purpose of the remedy of unjust enrichment is to compensate a party that confers a benefit with reasonable expectation of payment and *without* an express agreement memorializing that expectation. 26 Richard A. Lord, Williston on Contracts § 68:1, at 24 (4th ed. 2003). As comment e. to Restatement § 49 notes, the remedy of quantum meruit is "regarded in modern law" as an instance of "unjust enrichment *rather than contract*." Restatement § 49, cmt. e. (emphasis added). Should the jury find that a contract existed between any of TeamHealth Plaintiffs and any Defendant (as would be necessary for TeamHealth Plaintiffs' breach of implied-in-fact contract and unfair settlement practices claims), the jury could not then also award damages for unjust enrichment. This is a well-established point of law in Nevada. *See, e.g., Richey v. Axon Enters., Inc.*, 437 F. Supp. 3d 835, 849 (D. Nev. 2020) ("As a quasi-contract claim, unjust enrichment is unavailable when there is an enforceable contract between the parties."); *Leasepartners Corp. v. Robert L. Brooks Tr. Dated Nov. 12, 1975*, 113 Nev. 747, 756 (1997) ("The doctrine of unjust enrichment or recovery in quasi contract applies to situations where there is no legal contract but where the person sought to be charged is in possession of money or property which in good conscience and justice he should not retain but should deliver to another or should pay for.").

As Defendant have made clear, punitive damages cannot be awarded under NRS 42.005 where an action "sounds in contract, and not in tort." *Rd. Highway Builders, LLC v. N. Nev. Rebar, Inc.*, 284 P.3d 377, 384 (Nev. 2012); *see also Sprouse v. Wentz*, 105 Nev. 597, 602, 781 P.2d 1136, 1140 (1989) ("[P]unitive damages must be based on an underlying cause of action ***not based on a contract theory***." (emphasis added)). This prohibition applies not just to breach of contract claims, but *broadly* to any cause of action that "arises from" or "sounds in" contract. *Frank Briscoe Co. v. Clark County*, 643 F. Supp. 93, 100 (D. Nev. 1986) (breach of warranty claim cannot support an award of punitive damages); *e.g., Desert Salon Servs., Inc. v. KPSS, Inc.*, 2013 WL 497599, at *5 (D. Nev. Feb. 6, 2013) (contract-based causes of action for intentional interference with contractual relations, intentional interference with prospective economic advantage, and breach of the implied covenant of good faith and fair dealing cannot support an award of punitive damages); *Franklin v. Russell Rd. Food & Beverage, LLC*, 2015 WL 13612028, at *13 (Nev. Dist. Ct. June 25, 2015) (claims alleging failure to pay Plaintiffs Nevada's minimum wage do not "sound in tort, and in fact, are based on a contract theory").

The Nevada Supreme Court has made clear that "[w]here unjust enrichment is found, the law implies a quasi-contract." *Certified Fire Prot. Inc. v. Precision Constr.*, 128 Nev. 371, 380–81, 283 P.3d 250, 257 (2012) (quoting *Lackner v. Glosser*, 892 A.2d 21, 34 (Pa. Super. Ct. 2006)). Accordingly, Nevada trial courts consistently find that punitive damages are not available for unjust enrichment claims in Nevada because of their quasi-contractual nature, *i.e.*, where they are not a species of tort. *E.g., Gonor v. Dale*, 2015 WL 13772882, at *2 (Dist. Ct. Nev. July 16, 2015) ("To the extent that any claims for punitive damages against the Dale defendants (i.e. unjust enrichment detrimental reliance and quantum meruit) sound in contract, not in tort, such claim for punitive damages against the Date defendants is DENIED."); *Raider v. Archon Corp.*, 2015 WL 13446907, at *2 n.1 (Dist. Ct. Nev. June 19, 2015); *Hartman v. Silver Saddle Acquisition Corp.*, 2013 WL 11274332, at *3 (Dist. Ct. Nev. Jan. 28, 2013).

Similarly, other jurisdictions agree that punitive damages are not available on a claim for unjust enrichment. *See Priority Healthcare Corp. v. Chaudhuri*, 2008 WL 4459041 *5 (M.D. Fla. 2008) ("Because unjust enrichment is not intended to be punitive, I find that punitive damages are

not available under this theory"); *Moench v. Notzon*, 2008 WL 668612 *5 n.3 (Tex. Ct. App. 2008) (noting that "exemplary damages are not available for unjust enrichment"); *US. East Telecommunications, Inc. v. U.S. West Information Sys., Inc.*, 1991 WL 64461 *4 (S.D.N.Y. 1991) ("Neither are punitive damages available on an unjust enrichment cause of action."); *Edible Arrangements Int'l, Inc. v. Chinsammy*, 446 F. App'x 332, 334 (2d Cir. 2011) (punitive damages not allowed because a "claim of unjust enrichment is a quasi-contract claim for which the right to recovery is 'essentially equitable.'"); *Guobadia v. Irowa*, 103 F. Supp. 3d 325, 342 (E.D.N.Y. 2015) (no punitive damages for "unjust enrichment and other quasi-contract claims"); *Seagram v. David's Towing & Recovery, Inc.*, 62 F. Supp. 3d 467, 478 (E.D. Va. 2014) (same); *Conner v. Decker*, 941 N.W.2d 355 (Iowa Ct. App. 2019) (same); *Am. Safety Ins. Serv., Inc. v. Griggs*, 959 So. 2d 322, 332 (Fla. App. 2007) ("Unjust enrichment awards are not punitive, and allowing plaintiffs a recovery worth more than the benefit conferred would result in an unwarranted windfall."); *Dewey v. Am. Stair Glide Corp.*, 557 S.W.2d 643, 650 (Mo. App. 1977) ("Dewey's theory of recovery of actual damages is based on the contract theory of unjust enrichment. It is beyond question that punitive damages do not lie for a breach of contract. Thus, Dewey is not entitled to punitive damages.").

The Nevada Supreme Court's decision in *Sprouse* is instructive. In that case, the Nevada Supreme Court found that an award of punitive damages could not be based on a non-tort cause of action and that the plaintiff could not "go fishing for a supporting tort." *Sprouse*, 781 P.2d at 1138. In *Sprouse*, the district court awarded punitive damages to a counterclaim-plaintiff based on "reprehensible conduct." *Id.* The question before the Nevada Supreme Court was to determine which cause of action could have supported the punitive damages award. The counterclaim-plaintiff argued that there were four tort theories upon which the court could have based punitive damages: wrongful repossession, conversion, fraud, and tortious breach of contract. *Id.* The Court dispensed with the wrongful repossession and tortious breach of contract theories because those theories were not raised as causes of action in the pleadings or pretrial order. *Id.* And the Court rejected the fraud theory because the district court had determined there was no evidence of fraud. *Id.*

As for conversion, the only tort-based cause of action that could support punitive damages in the case, the court found that the counterclaim-plaintiff waived his right to seek punitive damages under that cause of action because he did not allege any conduct amounting to fraud, malice or oppression in his pleadings on conversion, therefore, the counterclaim-plaintiff could not obtain punitive damages under that claim. *Id.* Ultimately, the court concluded that the counterclaim-plaintiffs' case was, at its core, a contract-based action rescission, restitution and punitive damages. *Id.* The court accordingly reversed the award, finding that the counterclaim-defendant "rightfully believed from the pleadings and the pre-trial statements that [the counterclaim-plaintiff] sought punitive damages based only on fraud. To uphold the punitive damage award based on [counterclaim-plaintiff's] reasoning now would deny [the counterclaim-defendant] the opportunity to defend against a substantial punitive damage award." *Id.* at 1140.

Like the counterclaim-plaintiff in *Sprouse*, TeamHealth Plaintiffs' lawsuit here is based on conduct they claim arises from contract. The fact that TeamHealth Plaintiffs are trying to tack on a cause of action for unjust enrichment now does not change that. TeamHealth Plaintiffs have simply adduced no evidence of fraud, oppression, or malice in this case that would permit a finding that any tortious conduct by Defendants is alleged. That TeamHealth Plaintiffs have never purported to adduce this evidence in support of their unjust enrichment theory only underscores this fact.

II. CONCLUSION

TeamHealth Plaintiffs have made it a theme of this case that Defendants not be permitted to stray from previously-decided issues or even to vary in minor ways from scheduling deadlines. (*See, e.g.*, Doc. 590, Plaintiffs' Response to Defendants' Objection to Special Master's Report and Recommendation #7, filed June 24, 2021 (successfully prohibiting defendants from serving discovery that would require a response 8 days after discovery cutoff).) Yet now TeamHealth Plaintiffs seek just the opposite: to renege on their relied-upon stipulation and pleadings and to rip up the scheduling order in favor of a drastic modification to the pretrial memorandum at the literal last hour—during closing arguments. Denying the amendment would be well within the Court's discretion considering Plaintiffs' failure to meet any of the applicable standards for amendment

(or even to cite them). In contrast, granting the modification would be a manifest abuse of discretion and inject reversible error.

The issue Plaintiffs raise belatedly now has long ago been decided—through TeamHealth Plaintiffs own pleadings and stipulation. For the foregoing reasons, this Court must deny TeamHealth Plaintiffs' motion to modify the stipulated pretrial memorandum.

Dated this 22nd day of November, 2021.

/s/ Colby L. Balkenbush

D. Lee Roberts, Jr., Esq.
Colby L. Balkenbush, Esq.
Brittany M. Llewellyn, Esq.
Phillip N. Smith, Jr., Esq.
Marjan Hajimirzaee, Esq.
WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC
6385 South Rainbow Blvd.
Suite 400
Las Vegas, Nevada 89118

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Abraham G. Smith, Esq.
Lewis Roca Rothgerber Christie LLP
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169-5996
Telephone: (702) 949-8200

Attorneys for Defendants

Dimitri D. Portnoi, Esq.(*Pro Hac Vice*)
Jason A. Orr, Esq. (*Pro Hac Vice)*
Adam G. Levine, Esq. *(Pro Hac Vice)*
Hannah Dunham, Esq. *(Pro Hac Vice)*
Nadia L. Farjood, Esq. (*Pro Hac Vice*)
O'Melveny & Myers LLP
400 S. Hope St., 18th Floor
Los Angeles, CA 90071

K. Lee Blalack, II, Esq.(*Pro Hac Vice)*
Jeffrey E. Gordon, Esq. *(Pro Hac Vice)*
Kevin D. Feder, Esq. *(Pro Hac Vice)*
Jason Yan, Esq. *(Pro Hac Vice)*
O'Melveny & Myers LLP
1625 Eye St. NW
Washington, DC 20006

Paul J. Wooten, Esq. *(Pro Hac Vice)*
Amanda L. Genovese *(Pro Hac Vice)*
Philip E. Legendy *(Pro Hac Vice)*
O'Melveny & Myers LLP
Times Square Tower, Seven Times Square
New York, NY 10036

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of November, 2021, a true and correct copy of the foregoing **DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO MODIFY JOINT PRETRIAL MEMORANDUM RE: PUNITIVE DAMAGES ON ORDER SHORTENING TIME** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

Pat Lundvall, Esq.
Kristen T. Gallagher, Esq.
Amanda M. Perach, Esq.
McDonald Carano LLP
2300 W. Sahara Ave., Suite 1200
Las Vegas, Nevada 89102
plundvall@mcdonaldcarano.com
kgallagher@mcdonaldcarano.com
aperach@mcdonaldcarano.com

Justin C. Fineberg
Martin B. Goldberg
Rachel H. LeBlanc
Jonathan E. Feuer
Lash & Goldberg LLP
Weston Corporate Centre I
2500 Weston Road Suite 220
Fort Lauderdale, Florida 33331
jfineberg@lashgoldberg.com
mgoldberg@lashgoldberg.com
rleblanc@lashgoldberg.com
jfeuer@lashgoldberg.com

Matthew Lavin
Aaron R. Modiano
Napoli Shkolnik PLLC
1750 Tysons Boulevard, Suite 1500
McLean, Virginia 22102
MLavin@Napolilaw.com
AModiano@Napolilaw.com
Attorneys for Plaintiffs

Judge David Wall, Special Master
Attention:
Mara Satterthwaite & Michelle Samaniego
JAMS
3800 Howard Hughes Parkway, 11th Floor
Las Vegas, NV 89123
msatterthwaite@jamsadr.com
msamaniego@jamsadr.com

/s/ Colby L. Balkenbush
An employee of WEINBERG, WHEELER, HUDGINS GUNN & DIAL, LLC

EXHIBIT 1

011626

011626

011626

Portnoi, Dimitri D.

From: Portnoi, Dimitri D.
Sent: Wednesday, October 27, 2021 4:20 PM
To: 'Jason McManis'; Blalack II, K. Lee; Roberts, Lee; Balkenbush, Colby; Levine, Adam; Legendy, Philip E.; Gordon, Jeffrey E.
Cc: TMH010; Pat Lundvall; Amanda Perach; Kristen T. Gallagher; Justin Fineberg; Rachel LeBlanc
Subject: RE: Revised Joint Pretrial Memorandum

Yup. Obviously it's your section, but the October 4 version did comport with the EDCR.

From: Jason McManis <jmcmanis@AZALAW.COM>
Sent: Wednesday, October 27, 2021 4:18 PM
To: Portnoi, Dimitri D. <dportnoi@omm.com>; Blalack II, K. Lee <lblalack@omm.com>; Roberts, Lee <LRoberts@wwhgd.com>; Balkenbush, Colby <CBalkenbush@wwhgd.com>; Levine, Adam <alevine@omm.com>; Legendy, Philip E. <plegendy@omm.com>; Gordon, Jeffrey E. <jgordon@omm.com>
Cc: TMH010 <TMH010@azalaw.com>; Pat Lundvall <plundvall@mcdonaldcarano.com>; Amanda Perach <aperach@mcdonaldcarano.com>; Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>; Justin Fineberg <jfineberg@lashgoldberg.com>; Rachel LeBlanc <RLeBlanc@lashgoldberg.com>
Subject: Re: Revised Joint Pretrial Memorandum

[EXTERNAL MESSAGE]

011627

Nevermind—I think I understand what you did in Section III—complete replacement of yesterday's version with what was in the prior version?

011627

From: Jason McManis <jmcmanis@AZALAW.COM>
Date: Wednesday, October 27, 2021 at 4:15 PM
To: Portnoi, Dimitri D. <dportnoi@omm.com>, Blalack II, K. Lee <lblalack@omm.com>, Roberts, Lee <LRoberts@wwhgd.com>, Balkenbush, Colby <CBalkenbush@wwhgd.com>, Levine, Adam <alevine@omm.com>, Legendy, Philip E. <plegendy@omm.com>, Gordon, Jeffrey E. <jgordon@omm.com>
Cc: TMH010 <TMH010@azalaw.com>, Pat Lundvall <plundvall@mcdonaldcarano.com>, Amanda Perach <aperach@mcdonaldcarano.com>, Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>, Justin Fineberg <jfineberg@lashgoldberg.com>, Rachel LeBlanc <RLeBlanc@lashgoldberg.com>
Subject: Re: Revised Joint Pretrial Memorandum

Do you have a redline?

From: Portnoi, Dimitri D. <dportnoi@omm.com>
Date: Wednesday, October 27, 2021 at 4:06 PM
To: Jason McManis <jmcmanis@AZALAW.COM>, Blalack II, K. Lee <lblalack@omm.com>, Roberts, Lee <LRoberts@wwhgd.com>, Balkenbush, Colby <CBalkenbush@wwhgd.com>, Levine, Adam <alevine@omm.com>, Legendy, Philip E. <plegendy@omm.com>, Gordon, Jeffrey E. <jgordon@omm.com>
Cc: TMH010 <TMH010@azalaw.com>, Pat Lundvall <plundvall@mcdonaldcarano.com>, Amanda Perach <aperach@mcdonaldcarano.com>, Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>, Justin Fineberg <jfineberg@lashgoldberg.com>, Rachel LeBlanc <RLeBlanc@lashgoldberg.com>
Subject: RE: Revised Joint Pretrial Memorandum

Jason,

As you requested, we've taken the draft you circulated last night and interposed our new additions in the Defendants' sections, as well as some additional points in the "Other Matters" section (Section XI).

Note that, per our exchange from last night about your deficient changes to Section III, we've replaced Plaintiffs' language in Section III with the exact language that we received from the previous draft that you sent us on October 4 for this section.

Let me know if you have any questions in order to get this on file today.

Dimitri

From: Jason McManis <jmcmanis@AZALAW.COM>
Sent: Tuesday, October 26, 2021 11:14 PM
To: Portnoi, Dimitri D. <dportnoi@omm.com>; Blalack II, K. Lee <lblalack@omm.com>; Roberts, Lee <LRoberts@wwhgd.com>; Balkenbush, Colby <CBalkenbush@wwhgd.com>; Levine, Adam <alevine@omm.com>; Legendy, Philip E. <plegendy@omm.com>; Gordon, Jeffrey E. <jgordon@omm.com>
Cc: TMH010 <TMH010@azalaw.com>; Pat Lundvall <plundvall@mcdonaldcarano.com>; Amanda Perach <aperach@mcdonaldcarano.com>; Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>; Justin Fineberg <jfineberg@lashgoldberg.com>; Rachel LeBlanc <RLeBlanc@lashgoldberg.com>
Subject: Re: Revised Joint Pretrial Memorandum

011628

[EXTERNAL MESSAGE]

011628

I don't think it's meaningful but If it bothers you that we don't have paragraph numbers and list that we're seeking damages and punitives, we can add that back in. Shouldn't be an issue.

--
Jason McManis
AZA
1221 McKinney, Ste. 2500
Houston, TX 77010
713.600.4969
jmcmanis@azalaw.com

From: Portnoi, Dimitri D. <dportnoi@omm.com>
Sent: Tuesday, October 26, 2021 11:11:40 PM
To: Jason McManis <jmcmanis@AZALAW.COM>; Blalack II, K. Lee <lblalack@omm.com>; Roberts, Lee <LRoberts@wwhgd.com>; Balkenbush, Colby <CBalkenbush@wwhgd.com>; Levine, Adam <alevine@omm.com>; Legendy, Philip E. <plegendy@omm.com>; Gordon, Jeffrey E. <jgordon@omm.com>
Cc: TMH010 <TMH010@azalaw.com>; Pat Lundvall <plundvall@mcdonaldcarano.com>; Amanda Perach <aperach@mcdonaldcarano.com>; Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>; Justin Fineberg <jfineberg@lashgoldberg.com>; Rachel LeBlanc <RLeBlanc@lashgoldberg.com>
Subject: RE: Revised Joint Pretrial Memorandum

Happy to do that.

Please also let me know your response to the problem regarding EDCR 2.67(b)(2) that I flag below at your earliest convenience.

Dimitri

From: Jason McManis <jmcmanis@AZALAW.COM>
Sent: Tuesday, October 26, 2021 11:08 PM
To: Portnoi, Dimitri D. <dportnoi@omm.com>; Blalack II, K. Lee <lblalack@omm.com>; Roberts, Lee <LRoberts@wwhgd.com>; Balkenbush, Colby <CBalkenbush@wwhgd.com>; Levine, Adam <alevine@omm.com>; Legendy, Philip E. <plegendy@omm.com>; Gordon, Jeffrey E. <jgordon@omm.com>
Cc: TMH010 <TMH010@azalaw.com>; Pat Lundvall <plundvall@mcdonaldcarano.com>; Amanda Perach <aperach@mcdonaldcarano.com>; Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>; Justin Fineberg <jfineberg@lashgoldberg.com>; Rachel LeBlanc <RLeBlanc@lashgoldberg.com>
Subject: Re: Revised Joint Pretrial Memorandum

[EXTERNAL MESSAGE]

We hadn't heard from y'all on the draft in over three weeks, so of course we've tweaked it. I don't think we made any substantive changes that will make it difficult to evaluate where your pieces will go.

Why don't you carry your redlines over to the version we circulated today and send it back in the morning? Then we avoid a competing versions issue. Thanks.

--
Jason McManis
AZA
1221 McKinney, Ste. 2500
Houston, TX 77010
713.600.4969
jmcmanis@azalaw.com

011629

011629

From: Portnoi, Dimitri D. <dportnoi@omm.com>
Sent: Tuesday, October 26, 2021 11:00:06 PM
To: Jason McManis <jmcmanis@AZALAW.COM>; Blalack II, K. Lee <lblalack@omm.com>; Roberts, Lee <LRoberts@wwhgd.com>; Balkenbush, Colby <CBalkenbush@wwhgd.com>; Levine, Adam <alevine@omm.com>; Legendy, Philip E. <plegendy@omm.com>; Gordon, Jeffrey E. <jgordon@omm.com>
Cc: TMH010 <TMH010@azalaw.com>; Pat Lundvall <plundvall@mcdonaldcarano.com>; Amanda Perach <aperach@mcdonaldcarano.com>; Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>; Justin Fineberg <jfineberg@lashgoldberg.com>; Rachel LeBlanc <RLeBlanc@lashgoldberg.com>
Subject: RE: Revised Joint Pretrial Memorandum

Jason,

Thank you for the revised pretrial order. We will review and send you redlines shortly.

We were getting close to sending you our edits. It would delay getting you our content to superimpose those edits on top of your new document. So in the interest of expediency, I'm attaching our revisions, which are based on your October 4 transmittal.

I note at the outset that your Part III has been revised in a deficient manner. EDCR 2.67(b)(2) requires:

"A list of all claims for relief designated **by reference to each claim or paragraph of a pleading** and a **description of the claimant's theory of recovery** with each **category of damage** requested.

The version of the document your circulated on October 4 appears to comply with this Rule. The new version has deleted any reference to a claim or paragraph in the pleadings and the categories of damage requested. Can you please revert to the prior version or otherwise circulate a version that complies with the Eighth District Rules? We'll need a compliant proposed pretrial order in order to go forward with the pretrial conference on Thursday.

Thanks,

Dimitri

From: Jason McManis <jmcmanis@AZALAW.COM>
Sent: Tuesday, October 26, 2021 9:39 PM
To: Blalack II, K. Lee <lblalack@omm.com>; Roberts, Lee <LRoberts@wwhgd.com>; Balkenbush, Colby <CBalkenbush@wwhgd.com>; Levine, Adam <alevine@omm.com>; Legendy, Philip E. <plegendy@omm.com>; Portnoi, Dimitri D. <dportnoi@omm.com>; Gordon, Jeffrey E. <jgordon@omm.com>
Cc: TMH010 <TMH010@azalaw.com>; Pat Lundvall <plundvall@mcdonaldcarano.com>; Amanda Perach <aperach@mcdonaldcarano.com>; Kristen T. Gallagher <kgallagher@mcdonaldcarano.com>; Justin Fineberg <jfineberg@lashgoldberg.com>; Rachel LeBlanc <RLeBlanc@lashgoldberg.com>
Subject: Revised Joint Pretrial Memorandum

[EXTERNAL MESSAGE]

United folks,

011630

Attached please find the following:

1. **Revised draft joint pretrial memorandum.** Please let us know if you have any revisions to the joint portion and make your insertions as needed.
2. **Deposition designation objections/counters.**
3. **Draft jury instructions and verdict form.**

011630

AHMAD ZAVITSANOS ANAIPAKOS ALAVI MENSING
AZA

JASON S. MCMANIS
direct: 713.600.4969 | main: 713.655.1101
1221 McKinney Suite 2500
Houston, Texas 77010
AZALAW.COM

Software as a Service (SaaS) for business. Providing a **safer** and **more useful** place for your human generated data. Specializing in; Security, archiving and compliance. To find out more Click Here.

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd**, an innovator in Software as a Service (SaaS) for business. Providing a **safer** and **more useful** place for your human generated data. Specializing in; Security, archiving and compliance. To find out more Click Here.

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd**, an innovator in Software as a Service (SaaS) for business. Providing a **safer** and **more useful** place for your human generated data. Specializing in; Security, archiving and compliance. To find out more Click Here.

011631

Disclaimer

The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

This email has been scanned for viruses and malware, and may have been automatically archived by **Mimecast Ltd**, an innovator in Software as a Service (SaaS) for business. Providing a **safer** and **more useful** place for your human generated data. Specializing in; Security, archiving and compliance. To find out more Click Here.

011631

011631

252

ORIGINAL

011632

AJUR

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

NOV 23 2021

BY, Nicole McDevitt
NICOLE MCDEVITT, DEPUTY

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 DEPARTMENT 27

4th AMENDED JURY LIST

1. Nerissa Gonzaga
2. Cindy Springberg
3. Katelyn Landau
4. Catherine Ross
5. Dinah Hortillas
6. Elizabeth Trambulo
7. Michael Cabrales
8. Isis Wynn

ALTERNATES

9. Valerie Herzog

A-19-792978-B
AJUR
Amended Jury List
4976798

011632
011632
011632

253

Electronically Filed
11/29/2021 9:04 AM
Steven D. Grierson
CLERK OF THE COURT

RTRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

FREMONT EMERGENCY SERVICES (MANDAVIS) LTD., ET AL., Plaintiffs, vs. UNITED HEALTHCARE INSURANCE COMPANY, ET AL., Defendants.	CASE#: A-19-792978-B DEPT. XXVII

BEFORE THE HONORABLE NANCY ALLF
DISTRICT COURT JUDGE
TUESDAY, NOVEMBER 23, 2021

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 18

APPEARANCES:

For the Plaintiffs:	PATRICIA K. LUNDVALL, ESQ. JOHN ZAVITSANOS, ESQ. JASON S. MCMANIS, ESQ. JOSEPH Y. AHMAD, ESQ. KEVIN LEYENDECKER, ESQ. MICHAEL KILLINGSWORTH, ESQ.
For the Defendants:	D. LEE ROBERTS, JR., ESQ. K. LEE BLALACK, ESQ. JEFFREY E. GORDON, ESQ. DANIEL F. POLSENBERG, ESQ. COLBY L. BALKENBUSH, ESQ. DIMITRI D. PORTNOI, ESQ. ADAM G. LEVINE, ESQ. ABRAHAM G. SMITH, ESQ.

RECORDED BY: BRYNN WHITE, COURT RECORDER

INDEX

011634
011634
011634

INDEX OF EXHIBITS

FOR THE PLAINTIFFS	MARKED	RECEIVED
5423, 5523, 5524, 5527, 5528, 5531, 5532,5536, 5538, 5539, 5545, 5546		72
5424		73
473-X, 473-Y, 473-Z		74
297		98
297-S		98

FOR THE DEFENDANTS	MARKED	RECEIVED
4875, 4944, 4863, 5177, 4893, 4777, 4874, 4896, 5175, 5180, 5174, 5242, 4760, 4971		61
4002, 4003, 4005		67
5365, 5530, 5464		68
4455, 4166, 4457, 4168		134
4971		135

COURT	MARKED	RECEIVED
5423, 5523, 5524, 5527, 5528, 5531, 5532, 5536, 5539, 5545, 5546		72
5424		

011635

011635

011635

Las Vegas, Nevada, Tuesday, November 23, 2021

[Case called at 7:48 a.m.]

[Outside the presence of the jury]

THE MARSHAL: Department 27 is now in session. Honorable Judge Allf Presiding.

THE COURT: Thanks everyone. Please be seated. Okay, calling the case of Fremont v. United. Let's take appearances for the record.

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

THE COURT: Thank you.

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

MR. AHMAD: Joe Ahmad, Your Honor, also on behalf of the healthcare providers.

MS. ROBINSON: Jane Robinson on behalf of healthcare providers.

MR. LEYENDECKER: Kevin Leyendecker on behalf of the healthcare providers.

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

MR. KILLINGSWORTH: Michael Killingsworth on behalf of the healthcare providers.

THE COURT: Thank you.

011636

011636

011636

MR. PORTNOI: Dimitri Portnoi on behalf of Defendants.
MR. GORDON: Good morning, Your Honor. Jeff Gordon on behalf of the Defendants.
MR. POLSENBERG: Good morning, Your Honor. Dan Polsenberg.
MR. ROBERTS: Good morning, Your Honor. Lee Roberts also on behalf of Defendants.
MR. LEVINE: Good morning, Your Honor. Adam Levine on behalf of the Defendants.
THE COURT: I can't see everybody.
MR. SMITH: Abe Smith for Defendants.
THE COURT: Thank you.
MR. BALKENBUSH: And good morning, Your Honor. Colby Balkenbush on behalf of the Defendants.
MR. ROBERTS: And Lee Blalack will be on his way shortly.
THE COURT: Good enough. All right. So Plaintiffs, where do you want to start this morning?
MS. ROBINSON: Well, I think we've made a lot of progress on the jury instructions and there's just a couple of open issues that I thought we had to address.
THE COURT: And I assume you guys got my proposed?
MS. ROBINSON: We did.
MR. PORTNOI: Your proposed adverse inference instruction. Yes, Your Honor.
MS. ROBINSON: Yes, Your Honor. That's acceptable for

011637
011637

011637

Plaintiffs, Your Honor.

MR. PORTNOI: Defendants continue to object for the reasons stated on the record, but we don't have a reason to argue with that.

THE COURT: Very good.

MR. PORTNOI: And also for the reasons in our trial brief on the issue.

THE COURT: Thank you for referencing that instead of giving me the long explanation.

MR. PORTNOI: We've got a lot to do today.

MS. ROBINSON: So one open issue was that we had agreed on language for 13.0, it would be description of the contract dispute. And I didn't know -- I hesitated to file anything this morning because I didn't want to create additional confusion. We can handle it any way you'd like. I've already handed this to the Defendants, but we do have a Word document and a printout of or agreed language. However, the Court would prefer, although eagle eye Mr. Portnoi noticed that I missed a tab indent.

MR. PORTNOI: As a general matter, Your Honor, because Ms. Robinson and I think we understand generally where the instructions sit. A few tiny disputes this morning. We were suggesting that Ms. Robinson, myself, and Ms. Bonnie, while video is playing, go off and compare a Word document that we can give to the Court after -- right at 10:00 to instruct so that we have -- so we are in place where we think we agree, and we know -- we all know. Because we just don't want to delay and have the jury waiting for any kind of disagreement about, oh no, the

011638

011638

011638

Judge will this, the Judge will that.

THE COURT: I think 3A is available.

MR. PORTNOI: Okay.

THE COURT: And we'll know when the Marshal -- I think he's outside now.

MS. ROBINSON: There was at least one issue that we were not able to reach agreement on as far as the instructions and that's the punitive damages language. So the Court may recall that we had a dispute about what should be told to the jury about the effect of their verdict or their finding on the predicate of any. And the Court had suggested the following language: If you find that punitive damages are appropriate, I will further instruct you. That's obviously find from the Plaintiff's perspective. I know they had proposed an additional six words.

011639

011639

MR. PORTNOI: Yeah. We proposed seven words. You will hear additional evidence, and I will further instruct you. This continues to just let the jury know without trying to flag that there's a big phase of something afterward, but just so they're absolutely clear because there have been these jury's that you get into the habit of claim, damages, claim, damages, and you just write a number.

THE COURT: I have no objection to the additional language.

MS. ROBINSON: My concern about alerting the jury to an additional phase is I just don't want them to be distracted from the question in front of them by the effect of what they do. And so, to alert them that if you find that punitive damages are appropriate, I will further

011639

instruct you, I think it's very clear that, you know, this is not the end of it, but it doesn't tell them there's going to be additional evidence.

In addition, both in the verdict forms that have already been submitted and the one that we're going to raise -- that I'm going to raise with you in a moment, punitive damages is at the very end after damages have already been discussed. And so, you know, I don't think that -- I just don't think -- you know, it's a yes or no question and it's not a numbers question. I think -- I just want to keep the jury focused on what's in front of them.

MR. POLSENBERG: No, that's not true. I mean, she accused me of stuff on Sunday.

THE COURT: Stop. No attacks.

MR. POLSENBERG: Okay. I'm not trying to do this so that the jury says oh, we'll have to come back to another phase so we're not going to award punitives (sic). That's not my purpose at all. My purpose is exactly on *Wyeth v. Rowatt* and the 2011 jury instructions were written in a way to make clear to the jury that we don't have the situation we had in *Wyeth v. Rowatt* and had to bring the jury back and redo everything.

THE COURT: All right. I'm going to overrule your objection. Would you like to state anything further for the record?

MS. ROBINSON: No. I've already stated my intentions. Thank you, Your Honor.

THE COURT: Thank you.

MR. PORTNOI: Two other housekeeping, Your Honor. If you may recall, you asked Ms. Robinson and I to come up with a written

011640

011640

011640

stipulation on the preservation of the record. I've shared this with Ms. Robinson. She agrees it's correct. May I approach?

THE COURT: Please.

MS. ROBINSON: And yes, on the record, I do agree with that.

MR. PORTNOI: So that perhaps could be entered as a Court exhibit and then we would agree that that's a -- that is our stipulation.

MS. ROBINSON: We realized that in the manner that we went over the instructions on Sunday, the record says have 33 and this will save everybody, I think.

THE COURT: Good enough. Reduce that to a stipulation?

MR. PORTNOI: Oh, you want something that's actually signed?

THE COURT: I do.

MR. PORTNOI: Yes, we'll do that.

MS. ROBINSON: So I think that's all the instructions questions.

MS. PORTNOI: Well we did the one with the [indiscernible] which is actually on a somewhat different issue. I was working with Mr. McManis last night on the Yerich deposition. There's a single objection left in it after our discussions. We would like to -- if I may approach? We would like to play first if there's a chance after we do verdict form that you could look at it quickly.

THE COURT: I might do it right now. Where is it?

MR. PORTNOI: It's -- I think if you go to the tab you'll see the

011641

011641

011641

objection and response.

THE COURT: But which objection?

MR. PORTNOI: May I approach again to help you?

THE COURT: Just mark it.

MR. PORTNOI: So these are identical objections, that's why. So it's one objection. It's just repeated twice.

THE COURT: Okay. I'll do it right before the jury comes in.

MR. PORTNOI: Thank you.

MS. ROBINSON: So Mr. Portnoi and I did some negotiations last night on the verdict form. But this morning or overnight I worked on what I believe is a verdict form that addresses the Court's concern the conduct underlying punitive damages. It breaks out breach of contract and formation of contract, but it also -- the only other difference is that it adds a separate damages question for each cause of action. And I think that addresses some of the concerns that Mr. Polsenberg has as well about whether or not the damages questions, you know, have different measures of damages.

Now we believe -- we're going to argue they're the same, but I'm hearing what he's saying. And so, we have proposed this. Now -- and again, I didn't file it because I was worried about more confusion, but I have handed it and emailed it to opposing counsel.

The only other thing that I would add, and if I may approach and hand it to you, is that if we do it this way, I would request an instruction that is designed to let the jury know that each damages question should be considered separately and independently and the

011642

011642

011642

jury should imagine that we're -- shouldn't, you know, be wondering are we going to get everything? Should we divide it among the three? And so, that instruction is designed to sort of elevate the confusion that may be caused by having multiple damages questions on parallel theories. So if I may?

THE COURT: Please. Give me a second and then I'll want the response.

MR. POLSENBERG: I'm pretty good with this. This is a result of something that I had agreed to a week or so ago where we would set up different damages for the different causes of action and then they, after the trial, probably at the time of judgment, could elect which remedy that they wanted. But I was saying that the damages are different.

In fact, what we were arguing is that the implied contract -- originally we said the implied contract, if they find for that, they don't address the others. And Jane raised the issue of well, what if the implied contract is reversed on appeal? Then we'd have to go back and try all the other damages issues. So this is just like *Allstate v. Miller* where we're putting in alternatives to keep from having to try it over again.

MS. ROBINSON: So only for the record I would state that it is not -- it is our position that the jury could find an implied contract in unjust enrichment and that doesn't mean the unjust enrichment is invalid. I just wanted to clarify our position for the record. But other than that, yeah.

011643
011643
011643

MR. PORTNOI: Well, and I just want to be clear, and I think I understand what you're saying but just to make sure Ms. Robinson is saying that agreeing with Mr. Polsenberg that once the jury delivers a verdict, not before, there will be an election of remedy so that we don't then get an argument after hearing that they're the same damages --

MS. ROBINSON: Right.

MR. PORTNOI: -- that we can add them all together.

MS. ROBINSON: Right. So the way that I have handled parallel theories in the past, and I've, you know, obviously not in Nevada. But the way that I've handled it in the past is there is a judgment that says, you know, finding for the Plaintiffs on this theory. In the event this theory is overturned, finding for the Plaintiffs on this theory. In the event this theory is overturned, finding for the Plaintiffs on this theory. And that way it can be rendered without a retrial.

MR. POLSENBERG: Exactly.

THE COURT: The waterfall approach.

MR. POLSENBERG: And my understanding of Nevada law is they elect their remedy at the time they enter the judgment. They don't have to do it at the time we have the verdict.

THE COURT: So with that said, this proposed instruction will be given. And is this then an agreed special verdict form?

MR. PORTNOI: It's not quit agreed. We did reach agreement on a number of -- first off I want to --

MS. ROBINSON: I'm not making them give up their

011644

011644

011644

objections.

MR. PORTNOI: Yeah, so exactly. So part of the stipulation that Your Honor will enter is that you have refused the many questions in our special verdict form. So I'm not going to say that that's an agreed instruction, but it is the subject of much negotiation that has gotten us to a much closer place. And so in terms of verbiage, we're very close. I think Mr. Polsenberg may have some questions.

MR. POLSENBERG: I do. The punitive side too, which I think are under this one or 15 and 15.

MS. ROBINSON: Oh, do I have the -- you know, it was very late at night.

MR. POLSENBERG: Yeah, that's fine. I didn't catch it until this very second.

THE COURT: So the --

MS. ROBINSON: That's correct. The last one should say 16 and not 15.

MR. POLSENBERG: Okay.

MR. PORTNOI: So if the --

MS. ROBINSON: You guys are both catching my typos this morning. I'm very impressed.

MR. POLSENBERG: I just did it this very second. I'm a little blurry myself.

The problem I have is you can't just under Nevada law, you can't just ask a jury whether Defendants acted with malice, oppression, or fraud. Under 42.005, section 3, the jury has to make a finding whether

011645

011645

011645

such damages will be assessed. The jury doesn't have to award punitive damages. So it's not just something where you say was there malice, oppression, and fraud? You actually have to say, and you find that punitive damages will be assessed. So we have to add that line.

MS. ROBINSON: So, I mean, my response to that would just be that would be -- they would have the -- they would obviously be free to give a zero punitive damages.

MR. POLSENBERG: No, this is the law. And it's in 211 verdict forms.

MS. ROBINSON: Is it in the 2018? That's all I have here?

MR. POLSENBERG: I don't know. I don't see 2018.

MS. LUNDVALL: Your Honor, if I could weigh in on this under the argument that's being made by Mr. Polsenberg, it would deprive them of any opportunity to argue for zero punitive damages in phase two.

MR. POLSENBERG: I'm just reading the statute, Judge.

MS. LUNDVALL: Well, what I'm suggesting is that because as far -- it values what he contends is the law with which we disagree, then it would deprive them from arguing for a zero finding then in phase two.

MR. POLSENBERG: As we say in Massachusetts, we can drive off that bridge when we get to it.

So the statute is very clear that the jury has to make a finding whether punitive damages would be assessed, so we need to add that line.

011646

011646

011646

THE COURT: Which part of 42.005?

MR. POLSENBERG: Subsection 3.

MS. ROBINSON: Sorry, let me get out the statute.

MR. PORTNOI: While they're looking up the statute, Your Honor, I would also --

MR. POLSENBERG: She's looking up the statute as well.

MR. PORTNOI: That's fine. I'll wait a minute.

THE COURT: Do you guys want to just bring in the jury and go talk about this stuff?

MR. POLSENBERG: If you say add it, then we can go in the hallway and Audrey can help us come up with a final set. If you say don't add it, we can do the same.

011647

THE COURT: The language has to be compliant with 42.005(3).

MR. PORTNOI: The last issue then -- and we'll figure out what that should look like and if there's -- if there needs dispute at a break, we'll bring it up.

And then the last issue that we have is just that we still have punitive damages questions on unjust enrichment and -- as well as unfair claims practices. We filed our opposition to the motion to amend pleadings last night. I don't know when Your Honor wants to take that up, but that -- whether or not they're two punitive questions or one punitive question is dependent on that issue.

THE COURT: Good enough. We will -- I had to give 24 hours' notice, so we'll take it up after 10:15.

011647

MR. PORTNOI: I mean, I'm happy to waive that 24 hours' notice given that we filed a brief. But I also know -- don't know if you -- however Your Honor wants to handle it given that the jury is here.

THE COURT: As I told you guys for the last time I admitted I hadn't read something, it ended up in the blog.

MS. ROBINSON: I was just going to say, I'm not going to blog it, Your Honor. I promise.

THE COURT: And it was something filed after I took the bench, so I do need a chance to review it.

MR. PORTNOI: Sure. Was it the Las Vegas Law Blog?

THE COURT: Oh, yeah.

MR. PORTNOI: So we'll hold on that until Your Honor asks us for it. I think Mr. Levine has informed me that the few remaining exhibits issues, some of them may be resolved as the morning goes on while video is playing. So I think he has suggested to me that those quick issues may make the most sense at a break.

THE COURT: All right. So let me look at this deposition transcript and as soon as I do that, I'll hand it back to you and then we'll bring in the jury.

MR. POLSENBERG: Thank you, Your Honor.

MS. LUNDVALL: Thank you, Your Honor.

MR. ZAVITSANOS: Your Honor, can I raise just one slight housekeeping matter?

THE COURT: Of course.

MR. ZAVITSANOS: We had talked about timing if there is a

011648

011648

011648

phase two. Here's where we come down on that. I think on this die of the room, our preference would be -- we've drawn kind of a sharp line in the sand. If there's a verdict before 1:00 tomorrow, we would like to proceed forward with phase two even if that means that Ms. Paradise would not appear by video. If it's after 1:00, then you know, we can proceed the way Your Honor suggested. Now this is obviously subject to the Court's schedule and subject to the Court's decision, but I'm just letting you know that's kind of where we stand now.

THE COURT: When do you think the jury will go out to deliberate?

MR. ZAVITSANOS: Today? Well, if Mr. Blalack really does take two hours, I'm thinking we're going to finish the evidence by 10:00ish, 10:15. So I'm guessing late afternoon, Your Honor.

THE COURT: I don't think they'll be out more than an hour.

MR. ZAVITSANOS: Well, if that's the case then a --

THE COURT: And we can work -- I can arrange to have staff here overtime, for them to come in tonight. The only problem is tomorrow at 9:00, I've got a calendar, things at 9:00, 9:30, 10:00, 10:30 and 11:00, so.

MR. ZAVITSANOS: Yes, Your Honor.

THE COURT: So talk to each other about that and let me look at this deposition transcript. We're almost ready to bring in the jury.

Mr. Portnoi, you had one more thing?

MR. PORTNOI: No.

THE COURT: Okay.

011649

011649

011649

[Pause]

THE COURT: Okay you guys, whoever is heading up this issue come on up and let me explain if you need an explanation. We need a Plaintiffs' lawyer up here please.

MR. PORTNOI: Your Honor, as I read it, you're sustaining both sides, which I don't necessarily understand.

THE COURT: So I think the answer comes in without reference to the attorneys.

MR. PORTNOI: The issue is -- it is a reference to an attorney.

UNIDENTIFIED SPEAKER: Does this have to --

MR. PORTNOI: Do you mean that --

THE COURT: Those were the things that were given to me.

UNIDENTIFIED SPEAKER: Okay. I'll just take them all.

MR. PORTNOI: The issue is with the missing, you know, six lines is simply and unfortunately --

UNIDENTIFIED SPEAKER: Well, I don't --

MR. PORTNOI: -- is simply the reference to the fact that Mr. Wong, who is sitting at counsel table, his emails weren't searched because he's an attorney. So that is the issue so that's why the [indiscernible] doesn't include that language.

UNIDENTIFIED SPEAKER: And I don't think that is the entire scope of what's been cut out and there's no privilege objection at the time. It's -- what the answer says is it lists what was searched and then it says, but we didn't search everybody period. And then it mentions --

THE COURT: Plaintiff's objection is sustained.

011650
011650
011650

MR. ZAVITSANOS: Thank you, Your Honor.

THE COURT: Okay. Now, Marshal Allen, let's bring in the jury.

THE MARSHAL: Your Honor, you ready?

THE COURT: Yes.

THE MARSHAL: All rise for the jury.

[Jury in at 8:10 a.m.]

THE COURT: Thank you. Please be seated. Good morning everyone. Welcome back to Courtroom 3D, and we're entering the home stretch here, so let's make it a great day. All right, so did we excuse Mr. Crandell yesterday?

MR. BLALACK: We did, Your Honor.

MR. ZAVITSANOS: Yes, Your Honor. We excused.

THE COURT: Very good. So Defendant, please call your next witness.

MR. BLALACK: Yes, Your Honor. We're going to call David Yerich by video, and I believe Shane is just finalizing the transcript based on our discussion and then we'll play it.

[Pause]

THE COURT: So I hope you let that noise distract you this morning.

UNIDENTIFIED SPEAKER: Oh, there we go.

THE COURT: Okay.

UNIDENTIFIED SPEAKER: There we go.

THE COURT RECORDER: Just a reminder, this is the

011651

011651

011651

courtroom that's really sensitive with the phones and microphones.

MR. BLALACK: Whenever you're ready, Shane.

[Video deposition of David Yerich begins at 8:15 a.m.]

BY MS. LEBLANC:

Q You had said the data volume. What was the volume of data that was responsive to the litigation hold request that you had before you?

A So again, I -- I want to remind you, if you remember how we discussed how we preserve data, the answer I am going to give you is the entirety of the data that was indexed for the matter that was related. We can start there.

I broke it into two separate categories because the notice of the deposition specifically outlined seven individuals. And I believe you know who those are. The data that was indexed for those seven individuals came to 7.73 million documents, which equates to 2,232 gigabytes, which you could also think as two terabytes of information for those seven.

The other individuals that I mentioned come to ten individuals, and those individuals -- these are data, now, I do want to clarify, not everybody who was placed on the hold necessarily would have had data collected. But in this case, it would not include Ryan Wong and individuals like that. But for the ten individuals who were also on the hold and for whom data was collected, that additional information came to 1.66 million documents or 1.5 -- 1,500 gigabytes, also 1 -- you could consider that 1.5 terabytes. That is the information that we indexed in

011652

011652

011652

our on-premise system for this matter, for the custodial data.

Q Okay. And I see also that your note also -- that your note also reflects a data filter of January 1, 2016, to January 31, 2020. And then a topic that said search terms. Are those all of the search terms that were utilized in pulling the universe of documents that you just referenced?

A That is the comprehensive list for all search terms that were utilized in this matter, yes. I do not have that document up as it is a printed document. So if you wish to discuss that, I would ask that you could put that one up to display for me.

Q So with respect to the notes that are displaying now, that are you notes, where it says, 2019-44900 Fremont, what does that mean?

A If you recall on the previous discussion we had on this, you gave me a case number. And I indicated that that was not the case number that we use internally to refer to this matter. This is the internal case number that my team utilizes.

Q Okay. And under roster, what is the information under roster mean?

A So roster is the staffing of the document review for the custodial document review.

Q And -- okay. So are these dates, 1/28/21?

A Yes. So those are dates. The first part was 1/28/21, 2/7, 3/12, 4/1, 4/4 through 4/11, and 4/18 are all dates, correct.

Q And are all those dates in 2021, after January 20th of '21?

A Yes.

011653
011653
011653

Q And when you say these are staffing, for example, the first one, 1/28/21, it looks like it says 9 and then 1L training; is that correct?

A That is correct. Yes.

Q What does that mean?

A Nine is the number of first-level reviewers, and 1L training refers to the fact that the first-level review training began on 1/28.

Q Okay. Is that the first date the documents were reviewed by the first-level reviewers?

A For -- as -- as you're well aware, there were documents that were transmitted and would have been reviewed prior to this. But this does begin the custodial document review that we discussed that Haystack performed, yes.

Q Okay. And then on 2/17, there was a developing prediction -- I'm sorry, developing redaction and privileged-log workflows; is that correct?

A Right. It was actually 2/7. And yes, there was the development -- this case had a fairly complex redaction workflow requirement and as well as privlog workflows.

Q And then on 3/12, it looks like 1L training 44. What does that mean?

A As more data was loaded into the matter, it became quite aware that nine reviewers would not be sufficient. So additional first-level reviewers were brought in, at which point, the training had to be re-given as they were new to the review. So at that point --

Q Does the 44 indicate --

011654

011654

011654

A -- there were 44.

Q I'm sorry, I didn't mean to interrupt you. The number 44, is that 44 additional reviewers or is that a total of 44 reviewers?

A A total of 44 reviewers.

Q And then on April 1st, there was an additional training, and there was, at that time, a total of 77 reviewers?

A That is correct.

Q And then on April 4th through 4/11 or April 11, there were a total of 110 reviewers; is that correct?

A That is correct. Now, some of those reviewers may have had different -- I'm not stating that all of those are -- at this point, there was a lot of QC areas. There was redaction areas. So not 110 necessarily were always on first-level review during that entire time.

Q And it has a date of 4/18, custodial team review something post-production. What is that word?

A The custodial team was released post-production. So the production happened on the 15th and on the 18th, the team was released.

Q Okay. And if we continue to scroll down in your notes, are these the custodians that were searched and the amount of information that was returned on these custodians?

A So these are the custodians that were searched that were specifically noticed under 20U that were searched. There is additional --

Q Okay.

A -- custodians that were searched separate, but as you broke it

011655

011655

011655

out differently in your notice, I tried to reflect that here.

Q I think according to your notes, were these custodians searched beginning 1/28/21 or prior to that date?

A So the 1/28 date reflects the review. There's two searches, if you will, that we -- in order to provide the data to Haystack, the data was initially searched at UnitedHealth Group by our team. And then that was -- data was sent to Haystack and loaded in the review tool. There were actually multiple loads of the data to the review tool, and that reflects the different staffing number that you saw as the data volumes continued to grow.

Q What was the date that the data was first searched?

A The date that the data was first searched, I -- the data was sent -- the first set of data was sent to Haystack on January 8th.

Q What does it mean, 187K total objects?

A So within Relativity, there are workspaces. This is where the information is sent and placed for a document review. And in the workspace for this Fremont review, there were 187,000 total objects that were loaded into the workspace.

Q And what does the 79,000-reviewed mean?

A Of the 187,000 objects that were loaded into the workspace, 79,000 objects were reviewed by first level.

Q And first level with Haystack, is that what that's referring to?

A Yes.

Q Okay. So this is after the information was sent to Haystack for further review after the custodian -- I'm sorry, after the search terms

011656

011656

011656

had been applied, this reflects the search by Haystack; is that right?

A Review by Haystack.

Q I'm sorry, review by Haystack. So this is -- so let me restate my question so that the record is clear. After the document search was conducted and the search terms were applied, this reflects the documents that were reviewed by Haystack?

A If you don't mind, I might try to just rephrase that slightly to make sure that --

Q Go ahead.

A -- I understand what you're saying. So the -- the process is that we collected the information internally. And as we talked about, that was the kind of combined 7.73 million and 1.66 million. That was all of the information that was collected. That information then had the search terms applied to it. The result of the documents that hit on the search terms were then sent to Haystack. The other columns that we discussed are the processing at Haystack to load them into the review. That had a total number of documents of 190 -- or 2,119. Through the processing process where you have Dedupe and other things, and maybe documents that aren't actual documents because they were attached but they weren't real, those are 187,000 total objects. Of that 187,000 total objects loaded into the Relativity workspace for this review, 79,000 documents were reviewed.

Q And out of those 79,000 that were reviewed, is it fair to say that according to your notes here, 54,716 were found to be responsive, 24,423 were found to be nonresponsive?

011657

011657

011657

A That is correct.

Q And then this -- this is the search terms that were applied to the date filter of January 1, 2016, to January 31, 2020; is that right?

A That is correct. There was one slight change that isn't reflected on here for Dan Schumacher, as he had switched roles. But it was so minor that it -- I didn't feel it needed text or notations.

Q Okay. And when it says custodians all, what does that mean?

A That this was applied to all the custodial data. And they're -- in different reviews, you may apply different search terms to different custodians. In this case, this set of search terms was applied to all of the custodians. And that's why I am just mentioning it to you, the separate part for Dan Schumacher.

Q Searching only the parent emails, what does that mean?

A So if you had an email string, and within the string, the -- let me look at this real quick here, hold on. It would be the top-level emails. So if an email contained another email as an attachment, this only searched for the email, the top-level email. It would not have included a search of these names for an attached email to that email.

Q Okay. I understand. Were litigation hold updates sent out over the course of time after the initial litigation hold was sent?

A So we send and -- and we discussed this last time. We send reminders on a quarterly basis to individuals to remind them of their legal hold obligations. Is that what you're referring to or something different?

011658

011658

011658

Q Yes. That's what I am referring to. Just were you able to confirm that those reminders were sent out on a regular basis for this litigation?

A Yes, I was.

Q They were sent out on a quarterly basis after the initial litigation hold?

A Yes. We used a system as previously discussed called Exterro Legal Hold. And we have configured the system to send out quarterly reminders to custodians related to their litigation holds. It isn't specific to a -- a exact hold. It's for all holds that a custodian is on. So they -- they would receive reminders for each hold that they're on on a quarterly basis.

Q And for those reminders, do they -- does it, for example, specifically list either the United case number that you have identified in your notes or a case file, so it reminds the recipient specifically of either the case or the issues for which they are to maintain documents?

A So the quarterly reminder is an email that informs the individual that they are subject to hold. That email contains a link, and from that link, they can then see the previous holds that they've been on that were released as well as current holds that they are still subject to. They can go in and -- and review the hold if they choose to for any of the holds that they're on.

Q And the litigation hold for this case, would it have referenced -- what would it reference, the parties, the United case number, or other information to allow the custodian to identify the documents that he or

011659

011659

011659

she should be maintaining?

A So the litigation hold, we use a standard template so that if you're on a number of holds, it'll be understandable to you what -- what's important for this hold. And I have reviewed the hold that went out for this matter. Now, this is from memory. There were approximately 15 different areas of documents and information that were included that needed to be, you know, preserved, for the matter of this. It gives a description of what the hold is -- what the legal matter is about. And then it provides a description of the types of documents that are subject to the hold that we're asking the user to be aware -- you know, be aware of.

[Video ended at 8:27 a.m.]

MR. BLALACK: I think that's it, Your Honor.

THE COURT: Okay. Very good. Defendant, please --

MR. BLALACK: I don't believe the Plaintiffs have anything else -- anything else on that?

MR. ZAVITSANOS: That's correct, Your Honor. We have nothing.

THE COURT: Okay.

MR. BLALACK: Call our next witness, Your Honor?

THE COURT: Please.

MR. BLALACK: Rena Harris, by video.

[Video Deposition of Rena Harris begins at 8:27 a.m.]

MR. BALKENBUSH: Would the reporter please swear in the witness?

011660
011660
011660

COURT REPORTER: Would you raise your right hand for me, Ms. Harris?

[WITNESS SWORN]

REPORTER: Thank you.

MR. BALKENBUSH: Good morning, Ms. Harris. We met earlier, but just for the record; my name is Colby Balkenbush. As you heard, I represent the Defendants in litigation pending in Nevada between UnitedHealthcare and entities affiliated with TeamHealth, your former employer. I'll be taking your deposition today.

DIRECT EXAMINATION

BY MR. BALKENBUSH:

Q To get started, can you just state and spell your name for the record, please?

A Rena Harris, R-E-N-A H-A-R-R-I-S.

Q And then how long did you work at Kindred Healthcare?

A Two years.

Q So from approximately August 2013 to August 2015?

A Yes, August/September. Probably, to --

Q Okay.

A -- October 2015.

Q Okay. You don't recall there being a gap between your employment at Kindred Healthcare and your employment at TeamHealth?

A Probably two weeks. Would two weeks count? Because I wanted to take some time off before I started at --

011661

011661

011661

Q Makes sense.
A -- at TeamHealth, yes.
Q Makes sense. And how did you obtain your position at TeamHealth?
A I actually, I -- when I was at Kindred Healthcare, we would get this newsletter called Med Facts that we get every Monday. And there was a position there for a senior contract manager at TeamHealth. And -- and I applied, and I really liked working for the providers -- for the provider's side. And so TeamHealth is a provider. And so I submitted my application and my resume and got a call.
Q Excellent. And do you recall who interviewed you at TeamHealth?
A Yes, Brad Blevins.
Q Okay. Anyone else other than Mr. Blevins?
A I'm trying to think of Kent Bristow. I think Kent -- okay, so Brad Blevins, Kristopher Smith with a K, he's a CFO.
Q Okay.
A And I think Kent Bristow, senior VP. But I definitely remember Brad Blevins and -- and Kristopher -- Kristopher Smith. But not -- I don't remember about Kent Bristow.
Q And Brad Blevins, he was a vice president of managed care at the time?
A Yes. Yes, he was. Yes.
Q Okay. And other than senior contract manager at TeamHealth, did you have any other titles while you worked there?

011662
011662

011662

A No.
Q Okay. And once you were hired at TeamHealth, and -- well, let me ask you this. October 2015, that sounds about right for when you were hired there?
A Yes.
Q Okay. Once you were hired there, who did you directly report to?
A Brad Blevins.
Q Okay. And did the person you reported to at TeamHealth change over time or was it always Brad Blevins?
A No, it changed quite a few times.
Q Okay. What changes do you recall? I know it's a little --
A So there was Brad Blevins, and then Mark Kline, K-L-I-N-E, and then David Greenberg. Then right before I left, it's Brent Davis.
Q And those four names you mentioned, did you understand them all to be vice presidents of managed care?
A Yes.
Q Okay. And the order you listed them in, I have Brad Blevins, Mark Kline, David Greenberg, and then Brent Davis. Is that in chronological order --
A Yes.
Q -- for how you reported to them?
A Yes.
Q Okay. Can you go ahead and describe your job duties as senior contract manager at TeamHealth?

011663
011663

011663

A I negotiated on behalf of our medical groups. I had several states, did the ER contracting, did the contracting for -- with health plans for our different lines of business. So I did -- I did contracting on our medical groups behalf that are staffed in the different hospitals.

Q Understood. And you said you did several states. Do you recall what states you were involved with?

A It's Arizona, it's on my -- it's on my LinkedIn page. Arizona, California, Colorado, Idaho, Kansas, Nevada, New Mexican (sic), Oklahoma, Oregon, Texas, Washington, and Wyoming.

Q So it looks like, I guess, other than Oklahoma and Texas -- well, Oklahoma, Texas, and Kansas, many -- many states in the west region, it looks like?

A I had the west region, yes.

Q Okay. Okay. And then you said you believe you left TeamHealth in 2020. Do you recall the approximate month you left?

A August 2020.

Q Okay. And what was your reason for leaving TeamHealth?

A I wanted a change of pace because I had been at TeamHealth for over five years doing the professional contracting. And with Centene, I got a great opportunity to do the contracting there and to do the state prison system in California. So it's been quite challenging and -- and interesting to do state prison contracting.

Q And do you believe you left TeamHealth on good terms?

A I hope so.

Q And who is your -- I guess no reason to believe, you -- you

011664
011664
011664

left voluntarily once you took at job at Centene, correct?

A Yes.

Q Okay. How long approximately have you been working in the healthcare industry?

A 20 years.

Q And approximately how many years have you worked on the -- or did you work on the provider side of that equation? And you can feel free to look at your LinkedIn page if that will help.

A Nine years.

Q So nine years working on the provider side. And again, I know it's tough, it's probably been a while ago, but do you recall approximately how many of those nine years on the provider's side you would have been involved in contract negotiations with payers?

A All nine years.

Q All nine years. Okay. And then approximately, how many years do you believe you worked -- have worked on the hospital side of the equation?

A All nine years, because I did the hospital and also professional side. I did both.

Q Oh, sorry. All nine years you worked --

A For the hospital.

Q You worked nine years on the hospital side as a -- in addition to nine years on the --

A So nine -- as being -- as contracting for a hospital.

Q Sorry. And I'm drawing -- I should have been clear. I'm

011665

011665

011665

drawing a distinction between a time when you worked actually, you know, for a provider, negotiating provider agreements with payers versus when you may have worked at a hospital negotiating agreements between the hospital and commercial payers.

A Okay.

Q Does that -- did that make sense?

A Yes. Okay. Nine years working for the hospital negotiating with payer contracts.

Q Okay. And just to clear -- when you say payer contracts, you're referring to negotiations between hospitals and insurers like Blue Cross, United, Aetna, Anthem, et cetera?

A Yes.

Q Is that correct? Okay. And then is it accurate that you've also spent time working for health plans?

A Yes.

Q And negotiating contracts on behalf of health plans with providers?

A Yes.

Q Okay. And your understanding for Sierra Health Plan of Nevada would have been that the -- once the termination was effective and the notice went into effect, there would have been no contract whatsoever between Sierra and Fremont at that point, correct?

A Correct.

Q Ms. Harris, do you agree that it is inappropriate to bill services provided by one medical provider under the tax identification

011666
011666
011666

number of a different unrelated medical provider? Do you understand my question?

A Yes.

Q Go ahead and answer.

A I think it is wrong.

Q And why do you think it's wrong?

A You're contracted with a certain entity and that entity bills, and that entity should be used according to that tax ID number.

Q As a hypothetical, if there was an emergency medical provider in Los Angeles that was billing its claims under the tax identification number of an emergency provider in San Francisco that was unrelated to it, would you agree that would be inappropriate? Did you understand my question?

A Yes.

Q Would you agree that the example I gave you, an emergency provider in LA billing services under the tax identification number of an emergency provider in San Francisco, that would be inappropriate behavior?

A I would feel it's inappropriate.

Q And the reason you'd feel it's inappropriate is for the same reason you gave me earlier, that services should be billed under the tax identification number of the provider that actually provided the services; is that correct?

A Yes.

Q Do you agree that it would be wrong for Fremont Emergency

011667
011667
011667

Services to bill services it provided under the tax identification number of Ruby Crest? Do you understand my question?

A Yes.

Q Go ahead and answer.

A It's inappropriate.

Q And please go ahead and tell the jury why that would be inappropriate.

A Ruby Crest was not the rendering physician.

Q And therefore, services provided by Fremont Emergency Services should only be billed under Fremont Emergency Services' tax identification number; is that correct?

A That's correct.

Q Would you agree that it would fraudulent for Fremont Emergency Services to bill services it provided under the tax identification number of Ruby Crest Emergency Medicine? Do you understand my question?

A Yes.

Q Go ahead and answer my question.

A I think it's inappropriate.

Q If you were making the decisions at TeamHealth as far as how services provided by a particular TeamHealth provider should be billed, would you ever personally authorize one emergency medical provider to bill its services under the tax identification number of a different unrelated emergency medical provider? Did you understand my question?

011668

011668

011668

A I don't give any approval for anything.

Q My -- understood. My question is if -- it's a hypothetical. If you were in charge of determining how services would be billed by TeamHealth owned or affiliated medical providers, would you personally ever authorize a TeamHealth owned or affiliated medical provider to bill its own services under the tax identification number of an unrelated medical provider?

A I would have my superior make that decision.

Q Because you personally would never order that; is that correct?

A No.

Q Have you seen Exhibit 35? Does this refresh your recollection that Mr. Greenberg ordered you to begin billing Fremont Services under the tin for Ruby Crest? Do you understand my question?

A Yes.

Q You can go ahead and answer it.

A Looks like it.

Q And so we're clear here, you understand Exhibit 35, which is an email thread between you and Mr. Greenberg, a VP of managed care at TeamHealth, to be confirming that Mr. Greenberg has previously given you an instruction to begin billing services provided by Fremont Emergency Services under the tax identification number of Ruby Crest; is that correct?

A Yes, per the request of David Greenberg.

Q And we previously discussed that billing services provided

011669
011669
011669

by one provider under the tax identification number of another provider would be wrong, correct?

A I stated it was inappropriate.

Q And in fact, is it correct that this email from Mr. Greenberg appears to be now asking you if not only did you set up Fremont's services to be billed under Ruby Crest's tax identification number, but he is also asking you if you have set up Team Physicians of Nevada to bill under Ruby Crest's tax identification number; is that correct?

A Looks like it, yes.

Q Exhibit 36 begins with Bates Number FESN7635. Have you had an opportunity to look through that document now, Ms. Harris?

A Yes.

Q And do you agree that this email is a true and correct copy of an email thread involving various TeamHealth employees, the -- some of which emails you were copied on or sent to?

A Yes.

Q I want to direct your attention to this January 15, 2019 email from David Greenberg to James Hart West [phonetic] that also copies you and Janine Rourke [phonetic]. Do you see that?

A Yes.

Q And Mr. Greenberg states: We have set up a sub tin for Ruby Crest for Fremont and UHC claims. Will the Fremont/UHC claims we put a hold on get released now under RCEM automatically since we didn't place those on hold for RCEM? Or do we have to notify you to release those claims? Thanks.

011670
011670
011670

You see that?

A Yes.

Q And do you understand RCEM to mean Ruby Crest Emergency Medicine?

A Yes.

Q And do you agree, having now looked at a number of documents and email threads here, that it appears that, in fact, not only did David Greenberg authorize the billing of Fremont Emergency Services medical services under Ruby Crest tin but, in fact, Fremont's medical services were billed under Ruby Crest tax identification number?

A It looks like that?

Q Did you understand my question?

A Yes.

Q And so, if I'm understanding, Mr. Greenberg sends an email to James Heartless and copies you and Janine Rourke, asking if Fremont claims will now be billed under Ruby Crest tax identification number. Is that how you understand this email?

A It looks like that.

Q Okay. And then that's a January 15, 2019 email at 8:43 a.m. And then if we scroll up through Exhibit 36, we reach another email from Mr. Greenberg on January 17, 2019, to James Heartless and yourself, where he states, did we get this resolved? Were claims released under RCEM for the UHC services at Fremont?

Do you see that?

A Yes.

011671

011671

011671

Q And so, now Mr. Greenberg is following up again to make sure that Fremont's services are going to be billed under the tax identification number of an unrelated entity named Ruby Crest; is that correct?

A Looks like it.

Q Have I mischaracterized the document in any way to you?

A No.

Q Who was James Hart West at TeamHealth?

A He is the Alcoa billing coordinator.

Q So he would have been involved in the TeamHealth billing department?

A He's in the Alcoa billing center.

Q Would -- and Janine Rourke, do you know what her position was at TeamHealth?

A She was also in the billing center, Alcoa billing center.

Q And an April Roga, do you know what her position was at TeamHealth?

A She does the physician changes in the system.

Q Okay. Understand. Okay. And so, if I'm understanding this correctly, we're looking at emails from Mr. Greenberg to TeamHealth's billing department to yourself, a TeamHealth senior contract manager, and to April Roga, an individual at TeamHealth involved with physician redesignations, he -- trying to make sure that he can implement this redesignation of Fremont services, so they'll be billed under Ruby Crest tax identification number. Am I understanding that correctly?

011672

011672

011672

A Yes.
Q Did you understand my question?
A Yes.
Q Having looked through the various documents we've looked at here today, do you agree that Mr. Greenberg's instruction and acts were inappropriate?
A David was a VP. He has the jurisdiction to do what he wants to do.
Q Does he have the jurisdiction to commit fraud?
A I don't want to answer that.
Q How do you personally define fraud?
A Action you should not be doing.
Q Would a fair definition of fraud be lying in order to obtain a financial benefit?
A One would assume. Yes.
Q And we discussed earlier how you and others at TeamHealth had discovered that Ruby Crest was being paid at 95 percent of billed charges. Do you recall that?
A Yes.
Q And so, was the idea here that Fremont would bill its services under Ruby Crest tax identification number so that it would be at 95 percent billed charges?
A Looks like it.
Q And Exhibit 37 appears to be an email thread between you and Mr. Greenberg and a few others at TeamHealth. Is that accurate?

011673
011673

011673

A Yes.
Q And does Exhibit 37 appear to be a true and correct copy of an email thread between you and others at TeamHealth?
A Yes.
Q Do you recall, Ms. Harris, where Ruby Crest provides services in Nevada?
A What I remember, northern Nevada.
Q And I'll represent to you that it operates out of a Elko, Nevada, which is in northern Nevada. Does that sound familiar to you?
A Yes.
Q And I'll represent to you that the hospital that Ruby Crest operates out of in Elko, Nevada is more than 50 miles away from the nearest major hospital. Does that also sound accurate to you?
A I don't know.
Q Okay. Where did you understand Fremont Emergency Services to operate?
A Las Vegas.
Q Do you understand Las Vegas to be in southern Nevada?
A Yes.
Q So Fremont operates in southern Nevada. Ruby Crest operates in northern Nevada. Opposite ends of the state; is that correct?
A Yes.
Q Do you agree, based on your experience working for TeamHealth and working for other employers in the healthcare industry, that rates of reimbursement for emergency services often differ between

011674
011674

011674

rural and urban areas?

A Yes.

Q And do you agree that often, although not always, rural hospitals will receive higher rates of reimbursement than urban hospitals, because they have fewer patients and, therefore, need to collect more per visit to stay in business?

A To my understanding, yes.

Q Did you understand my question?

A Yes.

Q And would you agree that another potential reason for a difference in rates of reimbursement between services provided in urban areas versus services provided in rural areas is that there can be more competition between emergency medical providers in urban areas than in rural areas?

A Can you repeat the question?

MR. BALKENBUSH: Court reporter, can you read back my question?

THE COURT REPORTER: And would you agree that another potential reason for a difference in rates of reimbursement between services provided in urban areas versus services provided in rural areas is that there can be more competition between emergency medical providers in urban areas than in rural areas?

THE WITNESS: Yes.

BY MR. BALKENBUSH:

Q In light of the differences that we've just discussed between

011675

011675

011675

emergency medical services that are provided at rural hospitals versus emergency medical services that are provided at urban hospitals, do you agree that it would be particularly inappropriate to bill emergency services provided by an urban emergency provider under the tax identification number of an unrelated rural emergency provider?

A At the end of the day, the patient is being seen at an emergency care. That should be the main focus.

Q And I understand. But I do want to ask that you answer my question.

MR. BALKENBUSH: Can you read back my question, court reporter, please?

THE COURT REPORTER: In light of the differences that we've just discussed between emergency medical services that are provided at rural hospitals versus emergency medical services that are provided at urban hospitals, do you agree that it would be particularly inappropriate to bill emergency services provided by an urban emergency provider under the tax identification number of an unrelated rural emergency provider?

THE WITNESS: Yes.

BY MR. BALKENBUSH:

Q And did you understand my question?

A Yes.

Q But unfortunately, that is exactly what David Greenberg ordered TeamHealth employees to do here, isn't it?

A David Greenberg was the vice-president.

011676
011676
011676

MR. BALKENBUSH: Can you please read back my question, court reporter?

THE COURT REPORTER: But unfortunately, that is exactly what David Greenberg ordered TeamHealth employees to do here, isn't it?

THE WITNESS: Yes.

BY MR. BALKENBUSH:

Q During your time at TeamHealth, were you involved -- were you -- did you have the experience of being involved in multiple situations where a TeamHealth affiliated emergency medical provider was out-of-network with a major commercial payer?

A Yes.

Q Did you understand my question?

A Yes.

Q And when a TeamHealth affiliated or owned emergency provider is out-of-network with a commercial payer, what rates typically would TeamHealth expect that emergency provider to be paid?

A It can vary.

Q Okay. And you say it can vary from provider to provider and also from commercial payer to commercial payer?

A Yes.

Q Okay. And we've talked about a UCR rate. Do you recall that?

A Yes.

Q We talked about looking at rates that other commercial

011677

011677

011677

payers pay and using that as a benchmark; is that right?

A Yes. I'm not an expert.

Q Based on your experience at TeamHealth, would you agree that it would be unusual for a TeamHealth emergency provider that it out-of-network with a particular payer to be paid its full billed charges by that particular payer?

A It's not the expectations, no.

Q And that that is -- it would not have been TeamHealth's expectation that the out-of-network emergency provider would be paid its full billed charges?

A No.

Q Okay. Did you understand my question?

A Yes.

Q Now there were some questions by Mr. Ruffner [phonetic] also earlier United reaching out to your employer. And essentially, it was implied that somehow you were coerced to appear today through that. So I want to ask you an important question. You're doing a lot of testimony today. We've been on the record well over seven hours. Has any of the testimony that you've given today, whether in response to my questions or Mr. Ruffner's questions, been changed or impacted by the fact that United reached out to your employer, Centene, in an attempt to convince you to appear for today's deposition?

A No. I stated to what I recall when I was working at TeamHealth.

Q Do you understand that, as citizens in this country, we all

011678

011678

011678

have an obligation to provide testimony in civil cases when we are served with a valid subpoena?

A Yes.

Q And do you understand that by appearing here today, that you have fulfilled that obligation you have as a citizen of this country?

A Yes.

Q There was also some implication earlier that, potentially, I had misled you on prior phone calls or in prior communications prior to today's deposition. Do you feel that, in any of the prior phone calls you and I had, I misled you in any way?

A No. You were very cordial. You were very cordial, and I knew what I had to do. But I just don't like to take time off from work if I don't have to.

[Video deposition ended at 8:55 A.M.]

MR. BLALACK: I believe that's our portion, Your Honor.

THE COURT: And there were no counter designations?

MR. MCMANIS: I believe we do have some more counters, Your Honor.

THE COURT: Okay.

[Continued video deposition was played in open court at 8:56 a.m. and transcribed as follows:]

BY UNIDENTIFIED SPEAKER:

Q And then I'll be referring oftentimes to United during this deposition. There's a number of United affiliate entities that are defendants in the Nevada litigation. But when I use the term United, I'm

011679
011679
011679

generally referring to all those entities. And if I need to, if we're talking about a specific health plan, like Sierra Health or Health Plan of Nevada, I'll try to be specific, so you know which health plan I'm talking about. Is that fair?

A Yes.

Q Mr. Jefferson's email from the first page bleeds onto the second page. And he states in the second paragraph, will you please confirm that it is not TeamHealth's intent to balance bill our members?

Do you see that?

A Yes.

Q Okay. And then you respond on the first page that, Hi, JC. We will not balance bill the member.

Do you see that?

A Yes.

Q So as -- after June 30, 2017, is it accurate that Fremont would not have expected United to suddenly start paying Fremont's full bill charges?

A I don't know United Healthcare's billing practices or policies. Is that clearly stated? So I don't know what expectations are there to be expected when they're non-par.

BY MR. RUFFNER:

Q Ms. Harris, as Mr. Balkenbush just said to you, I know that you've been sitting here for quite a long time today, starting at 9 a.m. Pacific and it's not almost [indiscernible] Pacific. I am very appreciative of your time today. I have just a few questions for you. I'm going to do

011680

011680

011680

my best to make them very quick so that we can get you out of here really soon. And this process will be over for you.

Let me start by just making sure -- can you hear me okay?

A Yes.

Q Ms. Harris, did you tell your employer about the subpoena prior to the attorney telling you what they had received?

A No.

Q How did it make you feel that United or its counsel contacted your employer?

A Shocked and scared.

Q Can you elaborate?

A I did not want my new employer that I just started working in September 2020 to find out that I need to discuss my previous negotiation when I was at TeamHealth.

Q Did United or its counsel ask you if it was okay to contact your employer?

A I don't recall that conversation.

Q And prior to today, have you had any conversations with Mr. Balkenbush?

A I did one -- one or two times, yes, on the phone.

Q Okay. Do you recall when that first conversation was?

A Maybe about two months ago when I first got subpoenaed.

Q And what do you remember discussing?

A That I'm being deposed, United Healthcare is the defendant, I need you to show up. I told Colby that I was concerned that I don't want

011681
011681
011681

to take time away from work because I just started, and I asked how many hours; and he said it probably take a whole day. And I asked if I have to take PTO -- paid time off, and he said yes.

Q Anything else that you remember?

A No. I -- actually, I did get another phone call asking me to -- to testify and again, I said that I do not want to take time off from work. If I could do -- I'm willing to do like after 4 p.m., but I understand it'll take -- it will probably go into the night. I asked for weekends and you guys don't do weekends. So I asked -- so I just left it saying that it's hard for me to take time off and I cannot be away very long for my current job.

Q Do you have any feelings about the fact United went to court and filed a petition compelling you to come here for a deposition?

A I wasn't comfortable in coming because it was a previous employer, but I felt like I had to come.

Q Understood. And I appreciate that. Just a follow-up question. How does it feel knowing that United went to court and took legal action to require you to come here today?

A I feel impartial. It's a business. You have your own defense. Colby has his own defense.

[Video ended at 9:01 a.m.]

MR. MCMANIS: That concludes our portion, Your Honor.

THE COURT: Thank you. Okay. So any rebuttal --

MR. BLALACK: No further from us, Your Honor.

THE COURT: All right. Defendant, please call your next witness.

011682
011682
011682

MR. BLALACK: That'll be Dr. Jones, by video, Your Honor.

[Video deposition of Daniel Carl Jones beings at 9:02 a.m.]

UNIDENTIFIED SPEAKER: And will the court reporter please swear in the witness?

[WITNESS SWORN]

BY MS. LLEWELLYN:

Q Good morning, Doctor.

A Good morning.

Q Could you please start by stating and spelling your full name for the record?

A Daniel Carl Jones, D-A-N-I-E-L C-A-R-L J-O-N-E-S.

Q There are three plaintiffs in the litigation we're here to discuss today. I'd just like to briefly ask you about your knowledge of each. Are you aware of Fremont Emergency Services Mandavia, Ltd.?

A No.

Q Have you heard of Team Physicians of Nevada Mandavia?

A No.

Q And sir, I'm assuming you have heard of Crum, Stefanko, and Jones doing business as Ruby Crest Emergency Medicine; is that correct?

A Yes.

Q Okay. And where is Northeastern Nevada Regional located?

A It's in Elko, Nevada.

Q Did you join Ruby Crest in 2005 or was it later than that?

A No, it -- it was -- it was in 2005.

011683

011683

011683

Q Are you still employed by Ruby Crest?
A We subsequently sold to TeamHealth and so I'm employed by TeamHealth.
Q Understanding that you were first employed as an emergency physician for Ruby Crest, is that still your title now that you work for TeamHealth?
A Yeah, currently I am a -- a TeamHealth employee and working as an emergency room physician.
Q You said Ruby Crest was subsequently sold to TeamHealth after you joined. Do you recall that Ruby Crest was sold to TeamHealth?
A 2015.
Q How many employees did Ruby Crest have when you started there in 2005?
A We had three employees.
Q Do you know how many employees currently work at Ruby Crest?
A No, I don't.
Q Is it your understanding that everyone employed by Ruby Crest is -- are employees of TeamHealth?
A Yes.
Q Dr. Jones, just before we went off the record, I asked about your opinion as to whether Northeastern Nevada Regional is a rural hospital. How would you define what a rural hospital is as opposed to say, an urban hospital?
A A rural hospital would be outside of -- a certain mileage away

011684
011684

011684

from a tertiary or larger hospital setting.

Q Is there a difference in terms of the volume of patients that are generally seen at a rural hospital versus an urban hospital in your experience as an emergency room physician?

A Yes.

Q And how might you define that difference in terms of patient volume?

A I'm sorry. In terms of patient volume?

Q Yeah. Patient volume at a rural hospital, how does it differ from patient volume at urban hospitals just in a general sense?

A Typically, there's a -- a lower volume of patients.

Q A lower volume of patients at urban hospitals; is that correct?

A At the -- I'm sorry. At the rural hospital.

Q My mistake there. Okay. So just to be clear, your testimony is that generally speaking, there is a lower volume of patients at rural hospitals versus urban hospitals?

A That is correct.

Q Dr. Jones, are you aware that when submitting claims for the payment of emergency room services to an insurer, claims are submitted using the provider's tax I.D. number?

A I am aware.

Q Would you agree that it would be inappropriate for an emergency provider to submit claims to an insurer payor under a different tax I.D. number than its own?

A Yes.

011685

011685

011685

Q And understanding your counsel's objection, if I could give you a more concrete hypothetical. Would you agree that it would be inappropriate for Ruby Crest to submit claims to United under the tax I.D. number for Fremont Emergency Services?

A Answer to the question is yes.

Q And vice versa, would you agree that it would be inappropriate for Fremont Emergency Services to submit claims for reimbursement to United under the tax I.D. number for Ruby Crest?

A Answer to the question is yes.

Q If Fremont Emergency Services submitted claims for reimbursement to United under the tax I.D. number for Ruby Crest, would you consider that to be fraudulent practice?

A Answer to the question is yes.

Q Thank you.

BY MR. RUFFNER:

Q Dr. Jones, good morning. I'm going to ask you a few questions on the record today. Are you ready to proceed?

A Yes, I am.

Q Earlier you were asked some questions about Fremont's billing involving a TIN. Do you have any personal knowledge of Fremont's billing?

A I do not.

Q Do you have any personal knowledge of what TIN or TINs Fremont uses at any point when it bills?

A No, I do not.

011686

011686

011686

Q Do you kwon what a sub-TIN is?
A No.
Q Have you ever reviewed any of Fremont's bills to see what TIN it uses at any point ever?
A No.
Q Are you licensed as a lawyer in the state of Nevada?
A I am not.
Q Do you have any formal accredited, legal training or education?
A No.
Q Do you know what the legal elements of fraud are in Nevada?
A I do not.
Q What you consider yourself an expert on what fraud is in the state of Nevada?
A No.
Q Let me first ask you, do you know whether Fremont has ever billed under a TIN other than its own?
A I do not know.
Q If it did do that, do you know why it did it?
A No.
Q And when you said earlier that you thought it could be fraud, were you saying that it meets the elements of fraud in the state of Nevada as a legal conclusion?
A No.

011687
011687

011687

Q And you'd agree with me that's because you don't even know what fraud is legally in the state of Nevada, correct?
A Correct.
Q Do you know at any point what TIN was used on Ruby Crest's bills?
A No.
Q Do you know whether Ruby Crest ever used more than one TIN on its bills?
A I do not know.
Q Do you know at any point in time, whether Ruby Crest uses or used a sub-TIN?
A I do not know.
Q If Ruby Crest billed under more than one TIN, is it fair to say that you would not know why it did that?
A That is correct.
Q And that's because you have no personal knowledge as to why that was done, correct?
A Correct.
Q And when you answered Ms. Llewellyn's question earlier about whether if Ruby Crest billed under a TIN other than its own, whether that would constitute fraud, you'd agree with me that you don't know whether or not Ruby Crest ever did that, correct?
A Correct.
Q And you'd agree with me that not knowing what the legal elements of fraud are, you were not giving a legal opinion that that

011688
011688

011688

would actually constitute fraud in the state of Nevada, correct?

A Correct.

Q And when you answered those questions earlier about fraud pertaining to Fremont and Ruby Crest, you were answering about unknown hypotheticals, correct?

A Correct.

Q Not actual situations that you have any personal knowledge of, correct?

A Correct.

BY MS. LLEWELLYN:

Q Dr. Jones, you testified a moment ago that you are not aware of the definition of fraud in a legal sense in the state of Nevada; is that a fair characterization of your testimony?

A That's correct.

Q How would you define the term fraud?

A Lying for the purpose of obtaining money.

[Video ended at 9:14 a.m.]

MR. BLALACK: I believe that's it, Your Honor.

THE COURT: Okay. And there were no -- all the counter-designations were played?

MR. BLALACK: I believe -- I don't know if they have anything else.

MR. MCMANIS: I believe we have a short --

[Video deposition of Daniel Carl Jones played at 9:15 a.m.]

BY MR. RUFFNER:

011689

011689

011689

Q -- for the purpose -- Dr. Jones, do you know whether Fremont ever lied for the purpose of as you say, obtaining money?

A I do not know.

Q And would you agree with me that you have no personal knowledge of Ruby Crest lying for the purpose of obtaining money?

A That's correct.

[Video ends at 9:16 a.m.]

MR. BLALACK: We have no redirect designations, Your Honor, so I think that should --

THE COURT: Very good.

MR. BLALACK: Could counsel approach at this point, Your Honor?

THE COURT: You may.

[Sidebar at 9:16 a.m., ending at 9:17 a.m., not transcribed]

THE COURT: All right. So we are going to take a recess. And this is going to be a little longer because we have some things to finish up. We started earlier this morning. We have a few things still hanging. So I'm going to bring you back at 9:40, which is 23 minutes.

During the recess, don't talk with anyone or each other or anyone else on any subject connected to the trial. Don't read, watch, or listen to any report of or commentary on the trial. Don't discuss this case with anyone connected to it by any medium of information without limitation newspapers, radio, internet, cell phones, texting.

Do not conduct any research on your own relating to the case. Don't consult dictionaries, use the internet, or use reference

011690

011690

011690

materials. Don't post on social media about the trial. Don't, talk, text, tweet, Google issues or conduct any other type of research with regard to any issue, party, witness, or attorney involved in the case.

Most importantly, do not form or express any opinion on any subject connected with the trial until the matter is submitted to you.

Thank you for your attention this morning. Another early morning. See you at 9:40.

THE MARSHAL: All rise for the jury.

[Jury out at 9:18 a.m.]

[Outside the presence of the jury]

THE COURT: Do you guys want a short recess before we start back?

MR. BLALACK: Your Honor, it's up to you. I'm going to allow Mr. Levine on our side to be the [indiscernible].

THE COURT: Okay.

MR. ZAVITSANOS: We're okay, Your Honor.

THE COURT: All right.

MR. BLALACK: I don't see Michael. Is he in here?

[Counsel confer]

MR. BLALACK: Here he is.

[Court and bailiff confer]

THE COURT: So let's just take a five-minute recess. It's 9:20. I'll be back at 9:25. You guys can talk to the clerk.

[Recess taken from 9:20 a.m. to 9:27 a.m.]

[Outside the presence of the jury]

011691
011691
011691

THE COURT: You guys ready to proceed?

MR. LEVINE: We are, Your Honor.

THE COURT: Great.

MR. LEVINE: Okay. A number of document issues, our favorite issue here. We're trying to wrap these up before we rest. The parties have met and conferred about a lot of documents. I'll try to be clear for Your Honor and the clerks.

The first category of documents are documents where the parties have agreed both to admit these documents and in some cases admit them in a redacted form that we'll submit to the Court shortly. Those documents are -- check me on this, Michael -- Defense Exhibit 4875, Defense Exhibit 4944, Defense Exhibit 4863, Defense Exhibit 5177, Defense Exhibit 4893, Defense Exhibit 4777, Defense Exhibit 4874, Defense Exhibit 4896, Defense Exhibit 5175, Defense Exhibit 5180, Defense Exhibit 5174, Defense Exhibit 5242, and we have agreement on a redaction to Defense Exhibit 4760, and in redacted form to be admitted. Also related to this set of documents, we have an agreement on Exhibit 4971, to be admitted in redacted form, but we don't have those redactions ready quite yet. We'll have them soon.

Good so far?

MR. KILLINGSWORTH: 4760, which one is that again? I think it's just --

MR. LEVINE: That's the one that we looked at this morning that you -- that we redacted.

011692
011692
011692

MR. KILLINGSWORTH: Okay.
THE CLERK: Are these in addition to yesterday's list?
MR. LEVINE: These are in addition, yes.
THE COURT: Mr. Killingsworth, is that correct?
MR. KILLINGSWORTH: Yeah. I would just like to note specifically which ones have redactions, just so we're clear.
MR. LEVINE: Sure.
MR. KILLINGSWORTH: So I'm going to prepare a list. So 4875 is with redactions, 4944 is with redactions --
THE COURT: Hold on. Hold on. Okay. Ready.
MR. LEVINE: I can say this if it's helpful to you. The first five I listed are all with redactions. And to repeat what those are for clarity, that's 4875, 4944, 4863, 5177, and 4893. And then the other two that have redactions, I think I mentioned on the record, but I'll say it again just so we have it all in one place, are 4760 and 4971.
THE COURT: But 4971, you don't have the redactions done, so we're not admitting it yet.
MR. LEVINE: I think we have an agreement on -- could be conditionally admitted maybe is the way to handle that one.
THE COURT: Is that correct?
MR. KILLINGSWORTH: We're agreeable to that.
THE COURT: All right. So we will admit some that are redacted, some that are not, but 4875, 4944, 4863, 5177, 4893, 4777, 4874, 4896, 5175, 5180, 5174, 5242, and 4760; we will conditionally admit 4971.
[Defendants' Exhibits 4875, 4944, 4863, 5177, 4893, 4777, 4874,

011693
011693

011693

4896, 5175, 5180, 5174, 5242, 4760, and 4971 admitted into evidence]

MR. LEVINE: Right. Thank you, Your Honor.

THE COURT: 5117? I don't have a -- oh, 5177.

MR. LEVINE: All right. The next category to discuss, Your Honor, is -- and there's some others to admit, which I'm going to get to, but I'm just trying to keep them in the right buckets -- are a set of interrogatory and interrogatory answers. It's -- there are three sets of responses from Plaintiffs, one for each of the Plaintiffs. There's one Q&A, or one interrogatory and response that we would ask to be admitted as a Court's -- Court Exhibit and read to the jury. And what it relates to on behalf of each Defendant is an admission that there was no oral contract.

011694

And Ms. Harris testified about that on behalf of some of the entities. There was an objection to her testimony in that regard that Your Honor overruled. You know, we were just asking that, you know, this is obviously an applied contract case, among other causes of action. There was statements made in opening about there was no deal before, you know, no deal in place.

011694

There can, you know, be confusion among the jury about, you know, whether there was a written contract, whether there was an oral contract. And the question to them whether there was an implied contract. We just want to make sure that is clear for the jury. There were no oral or written contracts. This clearly states it on behalf of the three Plaintiffs, that they acknowledge that there was no oral contract, and we just want to make that real -- make that explicit.

011694

The objection I understand that Plaintiffs have made to this is relevance. And you know, that's why we think it's relevant.

THE COURT: Thank you. And?

MR. MCMANIS: Yes, Your Honor. A few responses. Number one, we're not arguing that there's an oral contract. Your Honor is not going to instruct that there's an oral contract finding in the case. So this is irrelevant. Two, to the extent that Defendants feel the need to be able to argue that, as Mr. Levine just said, they have that evidence in the record already. And I don't think they need these interrogatories to do that.

And if I could just -- I think it's important to see what the interrogatory actually asks, which is, "To the extent Fremont," it's the same for the other two Plaintiffs, as well, "contends that any of the Defendants orally promised/committed to reimburse Fremont at a particular rate," and it goes on. That's simply not a contention in the case. And I think reading these to the jury will add confusion because they're not going to be instructed on an oral contract and it's simply misleading.

THE COURT: And your response, please?

MR. LEVINE: Again, this is the same issue that was already teed up with Ms. Harris. Ms. Harris only spoke to it on behalf of one set of the parties. And so we would like to have it clear as to all three Plaintiffs that they acknowledge that there was no oral contract, that that ambiguity should just be put aside when the jury is deliberating.

THE COURT: But oral contract is not at issue here. It's about

011695

011695

011695

an implied contract or implied in fact.

MR. LEVINE: That's absolutely right. Nor is written contract. And we just -- it is easily confused, in our view, whether there was an oral contract unless it is clearly stated to the jury that there was no oral contract in connection with an implied contract.

THE COURT: I'm going to --

MR. LEVINE: And so to alleviate that confusion that we're trying to -- that we were --

THE COURT: I'm going to sustain the objection. I find that the introduction of discovery at this time would be cumulative, that oral contract is not at issue, so it's not relevant to the jury, and there's the potential for confusion.

011696

MR. LEVINE: Okay, Your Honor. Thank you.

THE COURT: Next bucket?

MR. LEVINE: The next bucket is there are four exhibits that are Plaintiffs' expert summaries of Plaintiffs' billed charges in Nevada related to the five CPT codes at issue. They are -- I'm holding them right here. They are Nevada Market Analysis about CPT code 99285, and so on as to the other five -- other four relevant CPT codes. They summarize the Plaintiffs' billed charges as Plaintiffs' expert summarized them. It's the expert that did not justify -- it's expert -- Mr. Phillips, but it was relied on by Defense experts for their testimony in this case. So we would submit that this is relevant and on point in terms of Your Honor's prior orders as it relates to the Nevada market and the particular CPT codes at issue.

011696

THE COURT: And the response?

MR. MCMANIS: Yes, Your Honor. These are hearsay related to an expert who did not testify. Certainly to the extent that their expert relied on these, he testified about them, that does not make the underlying hearsay admissible evidence. So these summaries, as they've called them, were created, I believe, before even the claims were all the way narrowed down to what they are today.

THE COURT: And were they used in Mr. Deal's testimony?

MR. LEVINE: They were relied on by Mr. Deal and Mr. Mizenko.

THE COURT: Were they shown to the jury? Because I thought --

MR. MCMANIS: They were not, Your Honor.

MR. LEVINE: These particular summaries --

THE COURT: I thought we had -- yeah.

MR. LEVINE: -- were shown to the jury. What they relied on. They relied on these summaries in their opinions that were presented to the jury. In addition, as to the hearsay issue, all this is is a summary of voluminous data that are Plaintiffs' business records. So I think it falls squarely within a hearsay exception.

MR. MCMANIS: It's not a straight summary, Your Honor. The expert performed analysis to reach certain of these opinions that are contained within these charts.

THE COURT: And you've laid no foundation, you've made no effort to admit them? No. I'm sorry. If you need to talk to each other.

011697
011697
011697

MR. BLALACK: I was just going to.

MR. LEVINE: As Mr. Blalack has said, Mr. Leathers' analysis is just a summary and calculations based on the underlying data.

THE COURT: Right.

MR. LEVINE: Which this is also a summary of that data.

THE COURT: Is there some reason you didn't move for admission of these with the witness, with Mr. Deal?

MR. LEVINE: I mean, there was a lot of mathematical data we went through with Mr. Deal, and we -- this is not a particular chart we showed to him. It's just he relied on it in connection with his testimony.

THE COURT: I understand, but if you had moved to lay a foundation and introduce it with Mr. Deal. We don't have anything in the record that allows me to admit it at this time.

MR. LEVINE: Well, the fact that -- I mean, they're not making a foundation objection, but a hearsay objection and a relevance objection.

THE COURT: Right.

MR. LEVINE: So --

THE COURT: Then hearsay and relevance is sustained.

MR. LEVINE: Okay. I would note that they didn't make a foundation objection before, either, so that's the part where I know foundation was laid with Mr. Deal initially.

THE COURT: I'm still the gatekeeper.

MR. LEVINE: Next bucket, Your Honor, is what we call the swap out documents. There's some documents that were

011698

011698

011698

conditionally -- some exhibits that were conditionally admitted but needed to be swapped out to --

THE COURT: And is that for redaction?

MR. LEVINE: It was for not so much redactions as a reduction of the data in the set that's submitted to just claims at issue, disputed claims and the like. So we have agreement in terms of what will be swapped out on conditionally admitted Exhibits 4002, 4003, 4005, and 4774. To state it more eloquently, 4774.

THE COURT: Okay. Is that correct?

MR. KILLINGSWORTH: We're just looking at that. Your Honor, that is accurate for 4002, 4003, and 4005. As to 4774 --

MR. LEVINE: Why don't you get back to us?

MR. KILLINGSWORTH: Yeah. I'll get back to the Court about 4774. I just want to make sure we're on the same page.

THE COURT: All right. So there's agreement as to what we call the swap out docs, two thousand -- I'm sorry, 4002, 4003, 4005. And both parties are reviewing 4774?

MR. KILLINGSWORTH: Yes.

THE COURT: Okay. Marshal Allen?

[Defendants' Exhibits 4002, 4003, and 4005 admitted into evidence]

MR. LEVINE: And then there are several other swap out documents where we're in general agreement, we just have not created -- there needs to be some small tweaks to the swap out documents before they can be actually submitted to the Court. And those are 4455, 4166, 4457, and 4168 will be presented -- you know,

011699
011699
011699

providing those to the Court after there's approval from Plaintiffs on those.

Final category, Your Honor. Summaries exhibits. There are a number of summary exhibits -- well, there's several that we've agreed should be admitted, three in particular. Those are 5365, 5530, and 5464. The last of those, 5464, we've agreed would be admitted in redacted form.

MR. MCMANIS: Your Honor, I believe that these documents are figures that were created --

MR. LEVINE: Sorry, Jason, to interrupt. Those first three are -- we've agreed would be admitted. I haven't argued about the other one.

011700

MR. MCMANIS: Oh, I'm sorry. I'm sorry. I misheard.

MR. LEVINE: Yeah. Yeah.

THE COURT: Is that correct? Or do you need a moment?

MR. LEVINE: So as to the three, 5365, 5530, and 5464, we have agreement.

MR. KILLINGSWORTH: Your Honor, we have agreement with 5365, we have agreement with 5530, and we have agreement with 5464.

THE COURT: All right. So summary exhibits to be admitted will be 5365, 5530, and 5464.

[Defendants' Exhibits 5365, 5530, and 5464 admitted into evidence]

MR. LEVINE: As to the other summary exhibits, I could talk about them in categories. You know, the main question with summary exhibits is whether they are accurate and faithful to the documents that

011700

they're summarizing. In our exchange with the Plaintiffs' counsel about their objections to the remaining summary exhibits that we're seeking to admit, their concern was that they were graphical in nature and not -- and therefore not summaries.

You know, that, in our view, is not a basis to object to a summary exhibit. There's no question as to their accuracy. You know, I could point out that some of these are actually tables. Others are graphic depictions of pie charts, but they are accurate depictions of pie charts. For example, this exhibit, which is 5632. The vast majority of these, and there are about 12, are summaries of the disputed claims data that was just finalized in the last week or so that have to be updated based on the final disputed claims list.

011701

There were no objections asserted, but you know, they now suggest that there's a -- you know, they're graphical instead of, you know, a bland table or the like. And then, there's some other ones that they didn't object -- they had for a long time that they didn't object to. They appear to be objecting based on the same reason, that they're graphical.

And then, there's one I want to talk about separate from the other, and that is a summary of -- the histograms that we saw Mr. Mizenko present. I'll mention it in a second. But why don't we save that for last and you can discuss, Mr. McManis, the other ones first and then we'll get to that.

THE COURT: Do you want to give me numbers?

MR. LEVINE: Sure. The ones we are seeking to admit are

011701

Exhibits 5423, 5523, 5524, 5527, 5528, all of which have been on the exhibit list for quite some time and never had objections. And then, the ones that are updated versions of previous exhibits that are tied to the new disputed claims file are the following: 5530, 5531, 5532, 5536, 5538, 5539, 5545, and 5546. And then for completion, the last one, I will talk about separately related to the histograms is 5424.

THE COURT: Okay.

MR. KILLINGSWORTH: And Your Honor, I believe he mentioned 5530, but I think we disagree to that one.

MR. LEVINE: Oh, sorry. But -- sorry. I did mention 5530. My fault. That one has been admitted.

THE COURT: So 5530 has been admitted already today?

MR. KILLINGSWORTH: Yes.

MR. LEVINE: Yeah. I had mentioned it earlier when I was mentioning --

THE COURT: Got it.

MR. LEVINE: -- discussing the ones that were admitted, so.

MR. MCMANIS: So Your Honor, the problem that I have with these is the vast majority of these are not summaries in any way, shape, or form. As an example, this is a map of facilities. These are demonstrative exhibits. To the extent that they're not in violation of a limine order, I know some of them have some Medicare comparisons from Mr. Deal's report. But to the extent that they don't violate another order, I certainly don't have any problem with them using these charts, enclosing as demonstratives, or anything of that nature.

011702
011702
011702

But the argument is effectively that if we create a demonstrative, so long as it's accurate, we can then admit it into evidence. And that's simply not how it works. These are, like, these are graphs that they can show to the jury. They're not summaries of data, summaries of voluminous records that are admissible as summaries. I mean, as another example, we have kind of a frequency chart here. These are not the tables that both sides have been admitting, and I think we've worked well together on that. These just don't fall into that category, Your Honor.

THE COURT: Your response, please?

MR. LEVINE: I think we have worked well together on this, Your Honor. But do they fall in a different -- they -- some are graphs, some are bar charts, some are simply tables. They all are summaries of voluminous data that, you know, that are correctly categorized that way. You know, they -- can a summary also be a demonstrative at the same time? There is some overlap between those two. And then there are, you know, there are documents that are just demonstratives.

I think in this case, we're talking about summaries and summaries that could also be at the same time demonstratives. That's the category of summaries that we're talking here. But there has been no suggestion from Plaintiffs' counsel now or in our communications beforehand that there was anything inaccurate about these summaries, and that really is the lynchpin to whether these should be admitted.

THE COURT: Now, I go back to my concern that you didn't offer them with the witness and lay foundation for them. I've got no

011703
011703
011703

problem for you using them as demonstratives in your close, but I'm going to sustain the objection to admission.

MR. LEVINE: Okay. Well Your Honor, I would just ask one follow-up question on that, if you would allow. There were -- there are seven or eight of these that were only recently available to be created because the disputed claims list was just finalized in the last week. We actually updated the demonstratives over the, you know, the last, I think, two days. That's when we provided it. So those are those updated versions.

THE COURT: I know you guys -- I know you've all worked around the clock for weeks. So you can use them in the close, but they won't be admitted.

011704

MR. LEVINE: Okay, Your Honor.

THE COURT: You can ask to mark them as a Court's Exhibit so that in the event there's an appeal, it'll be a part of the record.

[Court's Exhibits 5423, 5523, 5524, 5527, 5528, 5531, 5532, 5536, 5538, 5539, 5545, and 5546 admitted into evidence]

MR. LEVINE: Okay. Thank you. And let me address the last item, then, if you would, Your Honor, the histograms. Those were used with the witness. Okay? This is Exhibit 5424. You know, these -- you know, Plaintiffs have already agreed to admit the underlying FAIR Health data on which this summary, 5424, was based on. There's no suggestion that it is not accurate. Again, it was used extensively with the witness. And you know, it is a central issue to the case, the reliability of the FAIR Health database, and we would ask that the jury have access to it in their

011704

deliberations if they want to see it, therefore, be an admitted exhibit.

THE COURT: Response?

MR. MCMANIS: Yes, Your Honor. As you may recall, we had this argument on the bench that these are hearsay charts created by an expert. Yes, they were used in front of the jury. Yes, both experts used a number of demonstrative slides in front of the jury. That in and of itself is not the test. What I would say is that the data that was used in the creation of these histograms, there's a spreadsheet of charges, it's about 1 page, 54 lines. The purported summary is 108 separate pages of -- it actually breaks it up. It actually goes in the reverse direction of what a summary is contemplated as under the rule.

So again, no objection to using these in closing as demonstratives. We may do the same thing. We've admitted the summary analysis that actually calculates the percentages that has been shown a few times. We agreed to admit that because I believe that is a proper summary. But the charts themselves I don't think fall into that category.

THE COURT: All right. So I'll deny their admission. Again, we'll make them Court's Exhibits and you may refer to them in the close.

[Court's Exhibit 5424 admitted into evidence]

MR. LEVINE: Okay. Thank you, Your Honor.

THE COURT: Now, you guys make sure you get with the clerk with regard to what is a court exhibit and what isn't. And then, I have to give you a break because we've been here two hours now. So do that. And as soon as you're ready, let the marshal know to tell the

011705
011705
011705

jury ten more minutes and then take ten minutes.

[Recess from 9:51 a.m. to 10:08 a.m.]

THE COURT: Thanks everyone. Please remain seated. Okay. Let's have updates.

MR. KILLINGSWORTH: Your Honor, real quick, there's just three exhibits that the parties had agreed on and are ready to move into the record. And that's Plaintiffs' 473-X, 473-Y and 473-Z.

THE COURT: Is that correct?

MR. LEVINE: That is correct.

THE COURT: Thank you.

MR. KILLINGSWORTH: Thank you, Your Honor.

THE COURT: Yes.

MR. KILLINGSWORTH: Thank you.

THE COURT: 473-X, 473-Y and 473-Z will be admitted. Okay. Next update.

[Plaintiffs' Exhibits 473-X, 473-Y and 473-Z received into evidence]

MR. PORTNOI: Just that we're -- so we are down to one small issue on one instruction that I think Mr. Smith would talk about and then we will still have the motion to amend the pleadings.

THE COURT: Good enough.

MS. ROBINSON: And also a statement on the record about the finding.

MR. PORTNOI: Yes.

MS. ROBINSON: So the issue that we're still debating in the jury instruction, we have two competing, I guess there was a

011706

misunderstanding between the parties regarding, sorry, I'm trying to pull up the instruction, and I'm not seeing --

UNIDENTIFIED SPEAKER: Number 39.

MS. ROBINSON: Number 39. I'm sorry I had the old version of the form because --

THE COURT: What tab is that in the binder from Sunday?

MS. ROBINSON: So this is not something -- this is -- I think it's not clear on the record. So I can just show you the two competing instructions that we prepared. We had misunderstood -- or we had a misunderstanding about the additional language that would be there. So what we argue this morning is the "you'll hear further evidence." It's at the very last paragraph, Your Honor. That's the only difference.

011707

And as you see, during our email exchange there was a misunderstanding, as sometimes happens during emails. And so we thought we had reached an agreement on two alternatives. We thought we had reached an agreement, but he hadn't and so --

THE COURT: I think the shorter version is better. But I certainly want to give you guys -- I'll keep an open mind to any argument.

MR. POLSENBERG: Your Honor, as Janice points out, this was the issue *Wyeth v. Rowatt*. This is why, you know, when we discussed, it seemed like we were in agreement on this initial section. At this time you only to decide whether one or more Defendants were engaged in wrongful conduct. The only issue I thought we had was whether we were going to specifically tell the jury that they were going

011707

to hear evidence versus just being instructed. So I think it's clearly appropriate. It's part of the pattern, the 2011 Pattern. And I think that it would be inappropriate to just tell the jury that they're going to be instructed, without telling them what their task is, in this phase of the case

MS. ROBINSON: So I would just respond that the -- our previous instruction, which is the 2018 form instruction, it's telling them what their task is. That the Court has already ruled that they will be told that they will -- I think -- I don't have my copy now, but --

THE COURT: You can take this.

MS. ROBINSON: Oh, thank you. And that the shorter language is better, and we don't need to pile on.

THE COURT: I'm going to go with the shorter version.

MS. ROBINSON: Thank you, Your Honor.

THE COURT: Now where are we with jury instructions?

MS. ROBINSON: So everything else is done. The only thing is that I just wanted an agreement on the record about the form of -- we agreed with Mr. Polsenberg that we will add language to say that the jury is making a finding that punitive damages should be assessed. And I just want an agreement that --

MR. POLSENBERG: We're not stipulating that punitive damages should be assessed.

MS. ROBINSON: I would never suggest that -- I'll finish my sentence and then we can make sure that we're all clear on the same page. The question is, and I just need to pull up the verdict form, but the

011708

011708

011708

question is the wording for the jury's finding. And I've got so many stacks of paper here. I don't know if I have the final that we agreed to. Nope, that's not it. Do you have a copy of the final verdict form I could take a look at? Thank you. So the language that we agreed to is at the end of both questions 15 and 16, it says, "and if you find that you will assess punitive damages against the Defendant." And I just want an understanding on both sides, that that is sufficient to constitute a finding consistent with the statute? I'm not -- I understand that -- Mr. Portnoi is going to say that they believe that this should be granulated out . And I understand that objection. That's not what I'm talking about.

I'm just saying there's a question raised by some people on my team regarding whether or not, "and do you find that you will assess punitive damages against the Defendant," We wanted to make sure that there was an agreement, since we agreed on the language, that it would be sufficient to constitute a finding under the statute. It would not be insufficient.

MR. POLSENBERG: I picked this language because it parallels the language in the statute. And the language even in the shorter version of instruction 39 that says if you find that punitive damages are appropriate and find that you will assess punitive damages, et cetera. So I think that's the question we need to ask the jury to have them say that they are going to a second phase on punitive damages.

MS. ROBINSON: So I think I heard agreement.

THE COURT: I think I heard agreement.

MS. ROBINSON: Okay, thank you, Your Honor.

011709

011709

011709

THE COURT: So with the rulings today are the jury instructions resolved?

MR. PORTNOI: The jury instructions are resolved.

THE COURT: Subject to all objections.

MR. PORTNOI: Subject to all objections. With respect to the special verdict form, there is either one too many questions, or the right number of questions, depending on the outcome of the motion to amend the pleadings.

THE COURT: Good enough. Do you guys want to finish your proof this morning and argue this later? We've got -- we've had the jury out for an hour.

MR. PORTNOI: I'll do the motion to amend whenever Your Honor would like to, because we ultimately -- we have agreement on everything in the special verdict. It's just going to be a question of do we need question 16 or do not need question 16.

THE COURT: Got it. All right. Is the order of the jury instruction agreeable to both of you?

MS. ROBINSON: Yes, Your Honor.

MR. POLSENBERG: Yes, Your Honor.

THE COURT: Okay. Let's bring in the jury.

MR. POLSENBERG: Thank you, Your Honor.

THE COURT: We have 158 people on the phone, just FYI.

MR. ZAVITSANOS: I'm sorry, Your Honor.

THE COURT: We have 158 people on BlueJeans, FYI.

THE MARSHAL: All rise for the jury.

011710

011710

011710

[Jury in at 10:16 a.m.]

THE COURT: Thank you, please be seated. To the note from Ms. Herzog. Thank you for your note. We don't believe that there's an issue.

JUROR HERZOG: Okay.

THE COURT: Okay. Defendant. And just to let everyone know that we have been working in here, and we're doing our best to be polite with regard to your time.

Defendant please call your next witness.

MR. BLALACK: Your Honor, subject to the clerical issues we discussed about certain exhibits being resolved, then Defense rests.

DEFENSE RESTS

THE COURT: Thank you. Plaintiff do you have a rebuttal case?

MR. ZAVITSANOS: We do, Your Honor. Mr. Ahmad is going to handle that.

MR. AHMAD: Yes, Your Honor, we would call back to the stand, Dr. Scott Scherr. And Your Honor, I'm not sure if he can be seen behind the screen.

THE COURT: Can everyone see Dr. Scherr? All right, so we're going to need to adjust the monitor. Oh, everyone can. Great.

MR. AHMAD: Everyone. Okay.

THE COURT: Dr. Scherr, you're under the same oath you took previously. There's no reason to re-swear you.

DR. SCHERR: Yes, Your Honor.

011711
011711
011711

SCOTT SCHERR, PLAINTIFFS' WITNESS, PREVIOULSY SWORN

THE COURT: Go ahead, please.

MR. AHMAN: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. AHMAD:

Q Welcome back, Dr. Scherr.

A Thank you.

Q I know -- well, first of all, have you sat through the entire -- all the days of evidence throughout the entire case?

A Yeah, it's been a long month, to say the least. And like I said in the beginning, it's much different than my pace. So I don't know how you guys do it. I've been living off of energy drinks just to sit there, so.

Q Well, some of these energy drinks were supplied by us, in fairness.

A Well, thank you. Thank you.

Q Yes. And well, I guess, I'm sure you have a lot of reactions, but I want to focus on one particular piece or one particular witness that the Defense called in their case-in-chief, and that was Dr. Deal to testify about the reasonable value.

A I don't think he was a doctor. Right.

Q I apologize. You are correct. Mr. Deal was called to testify about the reasonable value of the services that you and the other emergency room doctors at the various facilities, Fremont Emergency Services, Ruby Crest, and I think it's Banner and Churchill, which is the

011712
011712
011712

Team Physician facility, correct?

A That's correct.

Q Okay. And you are familiar with all of those facilities?

A I am.

Q He used this term willing buyer and willing seller, Mr. Deal did, as a model for his testimony about what the reasonable value of your services are. Do you have a reaction to that?

A To be respectful to the Court, I need to kind of watch my words a little bit. I also think he compared my service to going into a department store to buy a pair of pants. Which was a slap in the face of myself and my colleagues that are on the front line every day.

In terms of willing seller and willing buyer, we are in no way near being a willing seller. I completely disagree with that. We, as emergency room physicians are there on the front lines 24/7, seven days a week, seeing patients, regardless of their ability to pay. Our number one prior is the patient. Our number one priority is the community. And I feel that he undervalued the service that we provide for this community.

Q He talked, and I want to follow up with a question, willing seller. You understand that you treat everybody, you actually have to under the law?

A Yeah, we, you know, ER providers, we treat everybody regardless of their ability to pay. That's, you know, I think we discussed EMTALA here in Court. You know, and honestly we're proud of being frontline workers here in our community. We're proud to serve this

011713
011713
011713

community, serve our patients. And how he compared us to a pair of pants in a transaction was a slap in my face.

Q He also mentioned that the buyer -- well, he said willing buyer, willing seller. But then he said it was a forced transaction. And I want to focus on the willing buyer part. Specifically, he referenced an ambulance that could take a left turn to one facility or a right turn to another facility, and that this was somehow random. Do you remember that testimony?

A Yes, I do.

Q Is it random?

A No, no, far from random. And that kind of goes a little bit towards his credibility of knowing what we actually do. Just for an example, here in the Las Vegas community, the 3 out of the 14 hospitals here in Las Vegas, Sunrise, Mountainview and Southern Hills, we receive about 40 percent of all EMS traffic in the Valley. And it's not a forced transaction because we receive that amount of patients because of the services that we provide. The reputation that we have. Sunrise Hospital is a Level 2 trauma center. So if you're shot, you're going to want to go to a trauma center. Also a burn center. We have multiple areas that we specialize in.

We focus on my hospitals here in the Vegas Valley, and we pride ourselves on seeing patients as soon as they walk in the door. It's important for our EMS colleagues to not wait in the hospital when they drop off a critical ill patient. And our, what we call our off-load times is less than 10 minutes at all three of those sites. And it's less than 10

011714

011714

011714

minutes because we have an ER doctor standing in the ambulance bay to greet every single one of those critical patients that come in.

Having an off-load time of less than 10 minutes means that the EMS crew is able to get back out into the community and take care of the next patient. And that's vitally important for our community.

Q Now let me ask you this. Is there any other facility, other than Sunrise, for example, which has that level of trauma and a burn center?

A Yeah, so University Medical Center, our colleagues down the street, they have a level 1 trauma center, and a burn center. Only difference between a level 1 trauma center and a level 2 trauma center is that the level 1 trauma center provides and does research. Yeah, same exact services, same exact coverage model. We see very similar volumes and types of patients.

Q Are they the only other ones in the Las Vegas area?

A There is one other trauma center. It's a level 3 trauma center. St. Rose Siena, but yeah. I mean it's actually kind of amazing that a Valley this big, with the number of visitors that we have, that we only have two trauma centers, and Sunrise being the closest trauma center to the Strip.

Q What about urgent care? How would that come into play if an ambulance is making that right turn or left turn?

A Ambulances do not go to urgent care.

Q Why not?

A Because typically if you're in an ambulance, you need the

011715
011715
011715

qualifications of a board certified emergency provider.

Q Does urgent care -- those urgent centers, do they have emergency -- board certified emergency room doctors?

A No. We're -- you know, we're not considered an urgent care. I think he put a picture of ingrown toenail on there. Which again, kind of elicited some emotions. We're not an urgent care. The majority of the patients that we see in all of our emergency departments are critically ill or in need of our service.

Q And urgent care is not subject to EMTALA, I take it?

A They are not subject to EMTALA. They will not in fact see you until your bill is paid.

Q Now you mentioned the toenail fungus. You referenced -- something came up in the Defense case-in-chief. They picked one bill, I think a 99281 or something other than a 99284 or 85, with toenail fungus. Is that typical?

A I think it was an ingrown. I think it was an ingrown toenail, which could be caused by toenail fungus, I guess. But no, it's -- it's not typical. In fact those types of complaints comprise, you know, probably around 10 percent of the things that we see. But, you know, well north of 80 to 90 percent are patients that are sick, are critically ill, have chief complaints that can make one think that you know, they may need to be rushed into surgery. They may, you know, have to go to the cath lab or things like that. I mean that's the majority of what we see.

Q So how many patients, you know, typically come in with life-threatening conditions?

011716
011716
011716

A The majority. So if you're, you know, look at Sunrise Hospital, they average about 320 to 350 patients per day. Take 10 percent off of that, and the rest of them are higher level of acuity or sick patients with potentially life-threatening illnesses.

Q Thank you, Dr. Scheer.

A Thank you.

MR. AHMAD: I'll pass the witness.

THE COURT: Cross examination.

CROSS-EXAMINATION

BY MR. BLALACK:

Q Good morning, sir.

A Good morning.

THE CLERK: I'm sorry. Everyone on BlueJeans needs to please mute yourself and remain muted.

BY MR. BLALACK:

Q Dr. Scheer, my name is Lee Blalack. I'm an attorney representing the Defense in this case. I don't think you and I have ever met, correct?

A Correct. I've seen you every day.

Q And I've seen you in between energy drinks, we both pass each other in the hall.

A And we both have the great looking haircuts, so --

Q All right. Let me -- let me follow up on a few points that you raised with Mr. Ahmad. I just want to make sure I understand your testimony. My memory from your trial testimony is that you indicated

011717
011717
011717

that you had no opinions or evidence on the reasonable value of the disputed services. Do you remember giving that testimony, sir?

A That's correct.

Q And is that still The case today?

A After hearing all of the evidence, I've completely changed my mind. I think that we're undervalued.

Q Okay. So when you gave a deposition back in May you didn't have a view on that question, correct?

A That's correct.

Q And you testified at trial earlier a few weeks ago, you didn't have a view on that question, correct?

A That's correct.

Q Now you do; is that right?

A After four plus weeks of seeing evidence, I do.

Q Okay. Now do you have -- I'm sure you're a highly credentialed professional, sir. Do you have a degree in economics?

A I do not.

Q Have you studied economics in any academic setting?

A I have not.

Q Have you worked in the field of economics at any point, either in connection with or outside of your work at TeamHealth?

A Similar to Mr. Deal, I was in an MBA Program, but I didn't finish.

Q So I take it you don't have any academic training as an economist, and you haven't practiced your professional life as an

011718
011718
011718

economist; is that fair?

A No, sir.

Q Okay. So the views you're expressing about the value of these services are your lay views as an ER professional, correct?

A In terms of lay views, do I feel that the service we provide is important, and that we should get fairly compensated on, that's probably my lay view.

Q And I think if you heard our opening statements, I don't believe anybody in this courtroom, sir, disputes that you provide a valuable service. And that you should be fairly compensated. You understand that the very dispute in this case is not over whether you do great work and it's not over whether you should be fairly compensated. It's a disagreement between the folks over here and the folks over here about what constitutes reasonable value. You understand that?

A I understand.

Q Okay. And there's differences differing opinions on that, correct?

A That's correct.

Q Okay. Now you made reference to an ER visit not being a forced transaction; do you remember that?

A Yes.

Q What did you understand Mr. Deal's testimony about a forced transaction in the world of economics to mean?

A I think the example he gave was an ambulance turning left or turning right and not -- the hospital on the left may have an in-network

011719

emergency physician, and the hospital on the right may have an out-of-network emergency physician.

Q Okay. And let's go through that. That's a good example. I'm glad you raised that. Do you agree with me, sir, that the emergency professionals in both of those hospitals, whether they have a contract with a health insurance company or they don't have a contract with a health insurance company, are both doing their level best to provide high-quality medical care to the patients who walk into those emergency rooms or are carried into those emergency rooms?

A Yeah, I think as a profession, you know, we do our best every day.

Q Right. So in both of those instances, whether you turn left and go to the hospital that has a participating agreement or you turn right and go to a hospital that has a non -- no participating agreement, in both cases, the patient is going to be treated by an ER professional who is doing their level best to render high-quality care, correct?

A Yeah, but I think I -- you know, when I talked about that is that our EMS partners, they know what facilities provide. They know, and like in case, in my facilities, they know that they're not going to have an exceeded number of wall times. I think as a profession, everybody in all the ERs here in the valley, do their best. You know, we do things faster and we provide the same level of care if not better in some instances, in a more efficient matter.

Q So what you're saying is that as that ambulance driver is turn -- coming to the intersection and deciding whether to turn left to go to

011720
011720
011720

the hospital that is staffed by participating providers or turn right, where the hospital is staffed by nonparticipating providers, you think, in that situation, these ambulance drivers know what great quality work you do relative to the other ER professionals, and therefore are turning right more often; is that what I would assume your testimony to be?

A Yes, sir.

Q Okay. And let's take your -- we've seen no -- have you seen any evidence in this case about the decision-making of ER ambulance drivers taking people to hospitals, while you've been sitting in the courtroom? Any documents, any testimony?

A Just besides the fact that he talked about it being a random act of turning left or turning right.

Q Right. In other words, there's no evidence that you've seen, sitting in the courtroom, where the rates at which ER ambulance drivers decide to turn left to the participating hospital or turn right is being measured or evaluated in any way, correct? We have no empirical data on that?

A Yeah, you're correct.

Q Okay. So -- but let's say, for the sake of argument, that you're right and that there is some decision-making by the ambulance driver that's making a difference of how frequently those ER patients are going to the right to a nonparticipating hospital as to a participating hospital. Are you with me so far?

A Yep.

Q Okay. Would you agree with me, sir, in those situations, the

011721
011721
011721

patient who is insured by the health plan is typically not making that decision?

A Yeah, not always. But I think the patient in our community does also have a choice, and they choose certain facilities over other facilities based on previous experience or knowing what type of services are provided by that facility. So the patients do have that choice.

Q Let's talk that through. So you think that patients who are in the midst of an emergency, a health emergency, who have called an ambulance or had an ambulance called on their behalf, are sitting in the back and saying to the driver, you know, I've heard really good things about Sunrise or MountainView. Would you please go to that hospital instead?

Actually, no. Let me back up. They've heard really good things about the doctors who staff Sunrise and MountainView. So I'd like you to turn right and go to that hospital as opposed to going to this other one over here, is that your --

A Yeah, that can happen. Uh-huh.

Q Okay. And how frequently would you say that happens, sir?

A I'm not sure if that's measured or has been presented in this case.

Q Okay. Does the value of the service rendered by the -- well, let me back up. In that situation, you're saying that those patients not only know that the hospital is in or not in their network, they also know what company the hospital happens to contract with to staff their emergency room. And that's affecting their decision-making on which

011722
011722
011722

way the ambulance driver should go. Is that what I understand you to say?

A That some of them may know. Some of them may not know.

Q Okay. So let's come back to my foundational question. You agree that in both situations, whether the ambulance driver turns left or turns right, you've got an ER professional in both places doing their level best to help those patients. Would you agree with me?

A Yeah, I agree with that.

Q Okay. And I am sure you're a fantastic ER professional and that the people you work with are fantastic. But you have no reason to think that those other ER professionals working at a non-participating or at a participating relationship with a health insurer aren't doing a great job too, correct?

A Yeah. I'm sure that they're doing a great job as well.

Q Okay. So here's my question. Do you believe that the reasonable value of the service that's actually rendered to those patients -- to the patient, whether the ambulance driver turns right or turns left, is different because of that choice?

A Yes. Like I explained before, some hospitals have more specialties or the ability to care for certain chief complaints. There's a -- there's a lot of differences. All the ER providers here in this valley are great. But there's a lot of differences in services provided at each and every one of the hospitals here.

Q Okay. Have you all offered any evidence of the quality of the services provided by the other ER professionals who are not affiliated

011723

011723

011723

with TeamHealth to compare to yours?

A No, sir.

Q Now, let's talk about the examples that you've highlighted. And I think one of the ones you highlighted that you -- I think, bothered you, was there was an example of an ingrown toenail. Do you remember that, sir?

A Yes, sir.

Q I just want to make sure you're clear about something. You understand that wasn't a hypothetical, right?

A No. I mean, we do see -- we do see complaints like that. But it's not a vast majority of those complaints.

Q And it's not just that it wasn't a hypothetical, it's not only a service you all rendered and billed for, it's on the disputed claims list, correct?

A I believe so.

Q Okay. So whether it's infrequent or frequent or somewhat frequent, it's one of the claims you all are seeking to be paid about $1,100 on, correct?

A Yeah, I don't -- I don't think I was upset about that. I was just upset about the dichotomy of what he compared what I do, a really critical patient or an ingrown toenail.

Q Well, in the really critically ill patient example, if you paid attention to his testimony, it involved four different CPT codes, $2,800 in billed charges, and -- oh, actually, I think it was higher than that. $2,800 in allowed, and that was a heart event. Do you remember that?

011724

011724

011724

A Yeah, I think it was an arrhythmia. You can correct me if I'm wrong, an arrhythmia that required medical and electric cardioversion, which is a pretty serious complaint.

Q Right. And so he was really illustrating in his testimony, if you watched it, what a code for a serious encounter involving a level 5 with additional procedures and services might look like from the disputed claims list, and a less severe code that doesn't have the same level of severity, and what that might look like. You remember that, right?

A Uh-huh. I remember that, yes.

Q Okay. And in one of them, we had high levels of charges for multiple CPT codes, correct?

A Yes.

Q And you had allowed amounts for each of those codes that, I believe, added up to over 60 percent of the billed charges, do you remember that?

A I remember that.

Q And then for the less severe codes, you had one or maybe two line items on the code, where the allowed amount was something like $200, and the billed amount for that ingrown toenail was around $1,000. Do you remember that?

A Yeah. I think it was a surgical excision of an ingrown toenail, so a surgical procedure.

Q And that claim is on the disputed claims list, right?

A Yes.

011725

011725

Q And you're asking this jury for damages for the full billed charges for that claim, correct?

A Yes.

Q The full $1,000 for that claim, correct?

A Yes.

MR. BLALACK: Thank you for your time, sir.

THE WITNESS: Thank you.

THE COURT: Redirect?

MR. AHMAD: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. AHMAD:

Q Dr. Scherr, I want to talk to you about something that probably we're going to see a lot more of that are in dispute, and that is 99285 charges, right?

A Yeah, that would be something like chest pain or stroke or a gunshot wound.

Q Yes. And where the allowed amount by the Defendant for that service is repeatedly at levels as low as 185; do you remember that?

A Yeah, I also -- I also saw evidence that there was no change in that $185 based on how critical the patient was. It was just a straight 185 bucks.

Q Does that make any sense to you as having any basis at all on the reasonable value of those services?

MR. BLALACK: Objection. Foundation. He's not an expert, and he just said yes, and there is no basis for such.

011726

MR. AHMAD: Judge, I mean, they asked.

THE COURT: Overruled.

BY MR. AHMAD:

Q Go ahead.

A Can you repeat that one more time?

Q Sure. Is the 185, is that reasonable value for a 99285 with this kind of life-threatening condition?

A It's not reasonable. I mean, I think if you go back to Dr. Deal's comparison of pants, if I bought corduroy pants, they shouldn't be the same -- the same cost as a -- you know, diamond-studded pants, right? I mean, it's -- if we're going to talk about pants in emergency care.

Q And another element in emergency care, and I think United's lawyer tried to suggest that all emergency room services are fungible. And I know that all of the ER doctors here try, as the lawyer said, their level best, right?

A That's correct.

Q But are all the services given the resources that you all have compared to what other have? Are they all fungible?

A What do you mean by fungible?

Q Well, in other words --

A I know science. You guys, the lawyers, are really good at the English language, so.

Q Yeah, fair point. Fair point. Let me -- let me help you out. If I have critical trauma, is there a difference between going to Sunrise and another facility that doesn't have the same level trauma care?

011727

011727

011727

A Yeah. I mean, the level 2 trauma care is the best trauma care that you can receive. So your chance of survival going to a trauma center for a critical gunshot wound increases.

Q Is that the same value as another place which doesn't have that level trauma care?

A It's not the same value.

MR. AHMAD: Thank you. That's all I have.

THE COURT: Any recross?

MR. BLALACK: Nothing further.

THE COURT: Does the jury have any questions for Dr. Scherr? No?

Sir, you may step down.

DR. SCHERR: Thank you.

THE COURT: Plaintiffs, do you have another rebuttal witness?

MR. ZAVITSANOS: The Plaintiffs rest, Your Honor.

PLAINTIFFS RESTS

THE COURT: All right.

So Counsel, please approach.

[Sidebar at 10:42 a.m., ending at 10:45 a.m., not transcribed]

THE COURT: Okay. Everybody, we have a matter to take up outside your presence, but things are starting to move along. Both sides now have finished the proof of -- we have a motion to argue during the recess, but when you come back, I'll read the jury instructions to you.

So during the recess, this is more important than ever. Don't

011728
011728
011728

talk with each other or anyone else on any subject connected to the trial. Don't read, watch, or listen to any report of or commentary on the trial. Don't discuss this case with anyone connected to it by any medium of information, including without limitation, newspapers, television, radio, internet, cell phones, or texting.

Don't conduct any research on your own relating to the case. Don't consult dictionaries, use the internet, or use reference materials. During the recess, don't post on social media about the trial. Don't talk, text, tweet, Google, or conduct any other type of research with regard to any issue, party, witness, or attorney involved in this case. Most importantly, do not form or express any opinion on any subject connected with the trial until the matter is submitted to you.

You're in the home stretch. We should be ready by 11. Thank you.

THE MARSHAL: All rise for the jury.

[Jury out at 10:46 a.m.]

[Outside the presence of the jury]

THE COURT: When was the last time you guys had a break?

MR. ROBERTS: Not too long ago, 30 or 40 minutes.

THE COURT: All right. So let's take up the motion please.

MR. KILLINGSWORTH: Your Honor, real quick?

THE COURT: Yes?

MR. KILLINGSWORTH: I think I have an agreement on one of the outstanding exhibit issues that Mr. Levine brought up, and that's 297 --

011729

011729

011729

THE COURT: That was the one, the to be redacted?

MR. KILLINGSWORTH: Well, there was one other one that was 297-S. It was a little unclear in the record whether it was, after agreement, if it was literally demonstrative or if it was admitted. And I think Mr. Levine said there is no issue over it being admitted.

THE COURT: All right. Is that correct?

MR. LEVINE: That is correct, yeah. That's one of Plaintiffs' exhibits.

THE COURT: 297 -- thank you -- will be admitted.

[Plaintiffs' Exhibit 297 admitted into evidence]

THE COURT: What about the 4971 that we conditionally?

MR. LEVINE: 4971 is being worked on right now.

THE COURT: Great.

MR. KILLINGSWORTH: And just -- I don't want to mishear the Court. It was 297-S.

THE COURT: Oh, I did not say that. So 297-S?

MR. KILLINGSWORTH: Yes.

THE COURT: And that's still correct?

MR. LEVINE: That is correct, yes. I'm sorry.

THE COURT: Thank you.

[Plaintiffs' Exhibit 297-S admitted into evidence]

MR. LEVINE: I just thought that's what was said.

THE COURT: All right.

MR. KILLINGSWORTH: Thank you, Your Honor.

THE COURT: Thank you.

011730

011730

MR. LEVINE: Thank you.

UNIDENTIFIED SPEAKER: Your Honor --

MS. LUNDVALL: And since it's our motion, I would assume that you would like to hear from us first?

THE COURT: Yes. I want to hear motion, opposition, reply, please.

MS. LUNDVALL: Thank you, Your Honor.

THE COURT: And if the Defendants want this chart moved, please feel free.

MS. LUNDVALL: Your Honor, just to put some context as far as [indiscernible] during the conference that we had on Sunday, it was suggested that somehow, that the Defendants weren't on notice of the fact that we were seeking punitive damages on any or all of our claims. And they specifically focused upon the unjust enrichment claim.

The Court had suggested that we file a motion and make, what they had cited was the joint pretrial memorandum. That with that issue, suggesting that somehow, that there was some type of a miscommunication on that or a waiver or something of that nature. And so the Court invited us to file a motion to amend the joint pre-trial memo, and so we did.

The principle issue is whether or not that the Defendants had notice of whether or not that we were going to seek punitive damages on any and all of our claims. So what I'd like to do is to first and foremost address the language that they inserted in the joint pretrial memorandum. Their language is found on page 15 of 17. They identify

011731
011731
011731

certain legal issues.

THE COURT: Do you have the date the joint pretrial was filed?

MS. LUNDVALL: I can get that, but I believe it was October 26th or October 27th, Your Honor.

THE COURT: It was right after we started the trial.

MS. LUNDVALL: At page 15 of 17, lines 11 through 16, issue number 8 was identified by the Defendant as a legal issue, therefore, that maybe arise during the course of the trial. And I am going to read it out loud. "Whether TeamHealth Plaintiffs can present evidence sufficient to establish that Defendants are "guilty of oppression, fraud or malice, express or implied" to support the imposition of punitive damages for any of TeamHealth Plaintiffs' claims and whether punitive damages are available to TeamHealth Plaintiffs on any claim for which that category of damages is asserted." And so they already identified that as a particular legal issue.

So let me focus a bit on the standard that was articulated and by which the Court should view this. And it deals with a joint pre-trial memorandum and whether or not that Rule 15 applies, Rule 16 applies. Or in actuality, whether or not Rule 61 applies. And under the case law that was cited in the opposition brief, we submit that Rule 61 is the standard by which that should be applied.

So let me articulate, though a little bit of the context though, for purposes of the fluidity of this joint pretrial memorandum. We have seen the defense call witnesses that were not reflected in the joint

011732
011732
011732

pretrial memorandum, and for which that they did not identify that they intended to advance even via deposition excerpts. We saw changes to exhibits that were being proposed. We saw changes to their list of appropriate defenses and which ones that they were -- they were asserting or that they were continuing to advance during the course of this.

So the joint pretrial memorandum has been a very fluid document throughout the course of this case. I believe that they misnamed that joint pretrial memorandum, and they try to characterize it as an order, but the Court never entered it as an order. And I've searched the rules of procedure, and there's nothing within the rules of procedure that automatically transform it into an order.

011733

So notwithstanding, there was a citation to the *Walters v. Nevada Guarantee* case. And if you take a look at the *Walters v. Nevada Guarantee* case, it was a decision that dates all the way back to 1965, authored by Justice Thomas at the time. And one of the things that Justice Thomas indicated in the exact same issue that was before the court at that point in time is that the standard by which it would be examined is NRCP 61, and that's the harmless error standard.

011733

And one of the things that if you go through that particular rule, the finding that the Court has to make is that whether or not that there is any effect on any party's substantial rights. So in other words, it was the burden that fell upon the defense to articulate in some fashion that their substantial rights were adversely impacted by our inclusion of a request, then, for punitive damage instruction on the unjust

011733

enrichment claim. And when I scoured their opposition, there is no articulated defect, no articulated prejudice, no articulated effect then upon their rights.

And so we submit that under the appropriate standard, that they have not met, you know, any argument or advanced any argument for which that they could oppose it or request you to permit. But it continues to be discretionary with the Court. And so one of the things that I think that is important is to examine what notice then, that the defense has that we intended to assert such a punitive damage claim under the unjust enrichment claim.

If you look all the way back at the joint pre-trial memorandum, if you want to go in reverse order, they identified themselves that they knew we were seeking punitive damages on any claim that we had asserted. Second is, if you take a look at the second amended complaint, the second amended complaint makes clear that we were seeking punitive damages on any of the claims. If you look at our first amended complaint, it does so as well. And if you look at our original complaint, it goes all the way back.

In addition, my recollection is that we filed over 20 Rule 16.1 disclosures. In each and every one of those Rule 16.1 disclosures, we identified that we were seeking punitive damages on any and all of our claims. And we identified that within the scope of Rule 16 that identifies that a Plaintiff must demonstrate or articulate or describe what damages that they are seeking, and we did that.

So in addition, one of the things, that if you take a second

011734

011734

011734

look at the joint pretrial memorandum, they also, at page 14 of 17, at lines 2 through 6, they identified that there was going to be certain various legal issues that may be contested in the case and that they identified this for, so where those legal issues may arise. And the source of where those legal issues may arise dealt with everything from a motion for partial summary judgment, a motion for sanctions, as well as the Defendants' jury instructions that will be submitted to the Court on November 1, 2021.

Within our submission of jury instructions, we had identified that we were seeking punitive damages on the unjust enrichment claim. And so, in fact, that they had fair notice and they are -- identified that they had fair notice of that claim. As a result of that and also when they identified in their proposed jury instructions is to try to somehow limit the scope then our request for punitive damages, they tried to suggest that only one of our claims then brought that forth. So we filed a trial brief. That trial brief articulated, in full and fair notice as to the Defendants, that we were seeking punitive damages not only as far as on our insurance statutory claim but also on the unjust enrichment claim. And we briefed them the legal entitlement to that claim.

So as a result of that, what did they do? They filed a Rule 50 motion. They fully briefed that Rule 50 motion. We argued that Rule 50 motion. And the Court ruled in our favor on that particular point. So what I think is afoot at this point in time is that the defense is trying to create some type of a contradiction, to create some type of an issue for purposes of appeal, which, quite candidly, I don't think is appropriate.

011735
011735
011735

And so, therefore, we would ask the Court then for leave to amend, if necessary -- I actually don't think it's necessary, because I think it is square within the pretrial order that they were on notice of our contention. But to the extent that the Court believes necessary, we would ask the Court then to grant our motion for leave.

THE COURT: Thank you. Response, please.

MR. PORTNOI: Yes, Your Honor. After -- the first thing I'll point out is that I think that the motion should be granted or denied based on the rule that the motion itself cites. The rule is not brought under Rule 61. The rule -- the motion is brought under Rule 15. We believe that Rule 15, by virtue of the fact that we've already passed deadlines, now moves into Rule 16 under the case law. I presume Ms. Lundvall was able to read the motion. But unfortunately, it does not cite Rule 61. And we should really -- and that -- so this is something that is very late. And if a Rule 61 motion, Your Honor, is being brought right now, then we're entire -- entitled to notice. We're entitled to an order shortening time. And we're entitled to opposing.

And that's the whole problem with where we're at here, Your Honor. We're at a point where the jury is waiting outside waiting to hear the jury instructions, and we're doing -- we're working on a motion that was filed yesterday. Ms. Lundvall indicated that you invited the motion. You do not invite the motion. Ms. Robinson offered to bring a motion and said would that be helpful. And she did so, I believe, because what we have is under the pretrial order in a section that Ms. Lundvall I believe does not want -- did not point you to, at pages 5 to 6, there is a

011736

011736

011736

section that is required, a 8th District Circuit Rule 2.67. And that rule requires that the Plaintiffs set forth every claim for relief and next to it what type of damages are associated with that claim. And once the pretrial memorandum is filed, it supersedes the pleadings. What notice we had before that is irrelevant to this inquiry, because the pretrial memorandum supersedes the pleadings and there's a very specific requirement.

If you look at the exhibit to the -- to our opposition brief, Plaintiffs wanted to have a [indiscernible] under two -- under that subsection of 2.67 that just listed implied in fact contract, unjust enrichment, and the other two claims and just titles, and not list the claims for damages. And I told -- myself -- I told attorneys for Plaintiffs that does not comply with the rule. We need to know -- before we go into trial, we need to know what claim for damages is associated with what claim -- what claim for -- what underlying claim. And they exceeded to that. And they agreed and they signed the pretrial memorandum, which whether it was entered as an order or whether it became a signed stipulation that was filed with the Court is irrelevant.

As in our briefing, we point out -- we actually point out even if it is not a filed order, then it becomes a signed stipulation. And then under EECRC 7.50, under DCR 16, and under the Nevada Court of Appeals decision cited in our opinion, *Dechambeau v Balkenbush*, when there's a signed stipulation, and that is sought to be amended once the trial has started, then the standard is Rule 16(e). And Rule 16(e) requires manifest injustice and requires that the movant, the person seeking to

011737
011737
011737

alter the stipulation, is the party with the burden to bring evidence, not argument, evidence of manifest injustice, which would presumably be in the form of a stipulation.

Manifest injustice is a very rare standard to come up in the civil context, Your Honor. It really doesn't come up. We struggled to even find cases where any court had found the manifest injustice standard had been met, much less that had been sought. It is more common on the criminal context. And so, context of how it is used there, that is the level of showing that a defendant has to make to withdraw a guilty plea that has been made on the record already to a judge. And it is usually because of effective assistance of counsel. That is the level of standard that, under the applicable *Dechambeau v Balkenbush*, that is needed to alter a filed stipulation over the objection of the other party, and that has not been shown.

And in the event that that doesn't apply, then we also had a deadline from Your Honor to file the motion for -- sorry -- to file the joint pretrial memorandum. There was a stipulation and then we agreed that we would get it in by a particular time. When there's been a deadline to -- and afterwards there's -- you seek to amend, you're no longer in the Rule 15 standard. When you're in the Rule -- you move into the Rule 16 standard, which is good cause. And good cause still requires a evidentiary showing from the Plaintiffs, which has not been made. It has not even been asserted to be made. We're focusing on harmless error standards that aren't even in here, because there is an understanding that these other standards haven't been met in the briefing and cannot

011738
011738
011738

be met. And we can't go back in and start arguing new rules, new evidence, new arguments while the jury is waiting outside. And that's the way that -- what -- that is what's happening. This has been pushed off and pushed off on purpose, so that we would be at this place, so Your Honor would wind up having to decide this with the jury outside and decide whether to go forward with this claim. And that's not fair to Defendants.

THE COURT: Is it -- can you honestly claim you're surprised?

MR. PORTNOI: Yes, Your Honor. I would like you to -- if you look for the first verdict form they filed, their first verdict form said that they were only seeking -- this was filed -- that they were only seeking punitive damages on unfair claims practices. It was only when they filed an amended one on Friday, two days before the charge conference, that they added unjust enrichment to their verdict form.

And I would also point out that -- so as -- so yes, we were, in fact, surprised. To be honest, Your Honor, I was -- we were surprised on October 4th when Plaintiffs first sent the joint pretrial memorandum, and they were willing to exceed to that. We weren't surprised because of the first amended complaint and the second amended complaint. When we look at the second amended complaint, it only lists punitive damages underneath that claim. We were expecting to inform Plaintiffs at that time you are limited to the second amended complaint, and you have to -- and but because you're limited to the second amended complaint, you can only pursue punitive damages on the Unfair Claims Practices Act claim.

011739

011739

011739

But that's been the, that's been the claim along with the -- along with certain claims that were dismissed after we filed our motion for summary judgments. Those are the claims that were there. And throughout this litigation, from the first amended complaint to the second amended complaint, Plaintiffs listed under the individual claims in the complaint where they were seeking punitive damages. And they never did put unjust [indiscernible]. They never did in the first complaint. They never did in the first amended complaint. They never did in the second amended complaint. They never did in the joint pretrial order.

The first time that this came up was with the amended verdict form on Friday and the motion that was filed yesterday, the day before closing. So it is inappropriate. It is prejudice to us. And they do [indiscernible] in addition, even if you were under the liberal standard of Rule 15, which we disagree. They were required to submit a declaration showing the due diligence why their motion could not have been brought early, why their motion to amend could not have been brought earlier.

When they filed their verdict form, they knew -- when they filed an amended verdict form, they knew they had -- that they had not included it in a Rule 2.67. This -- and go -- so this has been going back. And they've just been choosing to not file the motion that they were required to file. And they still haven't filed a motion under -- that meets the exacting standards of Rule 16(e), Rule 16 more broadly, or Rule 15.

THE COURT: And how would you have defended differently?

011740

011740

011740

MR. PORTNOI: We would have defended differently by, for instance, focusing Mr. Haben on needing to get to -- on questioning, for instance, that would get us to -- that would target clear and convincing evidence, for instance, on how was the benefit retained, how was the -- how was the benefit retained by us as opposed to patients. How is it that we knowing -- how did we show that we knowingly were retaining that benefit.

I understand that that's relevant when it comes to the unjust -- underlying unjust enrichment claim as well, but it's important to understand that obviously punitives are a central focus since we're the big dollar money in. And we've already been jammed by having to put on our presentation at lightning speed, we've had to make choices -- we've had to make choices about how to focus our presentation and how to focus of cross-examination. And as a result, we made trial preparation choices.

We made examination choices that were based on the statement that is in the joint pretrial memorandum or the joint pretrial order, however we want to characterize it, that is -- that are -- you know, that are based on that and that are designed to be based on that. There's a reason why the rule reads the way it does, and that is because there's a desire to have the pleadings narrowed, so that we can all understand what is the target we are looking for.

And so, as a result, it -- we do -- as a result, Your Honor, yes, we do argue that we have been prejudiced and not been able to put on the presentation. We would have prepared for a different presentation

011741

011741

011741

pretrial, which is the focus here, had we had the opportunity to know that Plaintiffs were going to amend the second amended complaint to add punitive damages to this claim.

THE COURT: And when I read paragraph 8, page 15, with respect to TeamHealth Plaintiffs unfair settlement -- oh, sorry. Whoa. Whoa. Paragraph 11. Whether TeamHealth Plaintiff have presented sufficient evidence to support their claim under 686(a), including when, if at all, Defendants' liability -- oh, okay. I keep reading the wrong thing. Sorry.

Well, anyway, the way I read the -- maybe it's paragraph 8. Is it --

MS. LUNDVALL: It's paragraph 8, Your Honor.

THE COURT: It's paragraph 8. Okay. Whether the Plaintiffs -- and I'm paraphrasing -- present evidence sufficient to establish that the Defendants are guilty of oppression, et cetera, to support the imposition of punitive damages for any of TeamHealth Plaintiff's claims and whether punitive damages are available to TeamHealth Plaintiffs on any claim for which that category of damages is asserted. Was that not notice to you?

MR. PORTNOI: No, Your Honor. That was simply us signaling on -- when we're talking about any claim. That's simply belt and suspenders. That simply is making sure that we're clear that no matter what they say, that no matter what arguments come up in the future, that we are going to dispute that punitive damages are available. If they had said that -- if they had come mid-trial, for instance, and

011742

011742

011742

moved for leave to amend to add it to the contract claim, that's there to say well, no, you can't do that because, at that time, we're going to be saying that it is -- we're going to be saying that it is -- excuse me, Your Honor. We're going to be saying that you can't get punitive damages for a contract claim.

So those are -- that was simply belt and suspenders to say we don't think that there is any claim in this case that is supported by punitive damages. That suggest that we were calling out unjust enrichment and saying yeah, we see unjust enrichment there, and that's what that is. It's not as if -- clearly, even Plaintiffs agree that doesn't signal that every -- that they sought punitive damages for every claim. They haven't asked for punitive damages from Prompt Pay Act. They haven't asked for punitive damages for the implied contract claim.

011743

011743

But also, you have to look at the document as a whole. The rules have a specific section that say where you are supposed to write what claims are being asserted and what forms of relief are after that. And that is the section that we should be looking to to determine whether there is notice of what claims and what forms of damages are being sought. It doesn't make sense to kind of read one section in isolation and excise from it the actual section and which point is affirmatively said and filed and signed, that said what form of damages are being sought next to what claim [indiscernible].

THE COURT: Thank you.

MR. PORTNOI: Thank you.

THE COURT: Your reply, please.

011743

MR. SMITH: Your Honor, can I just make one additional point -- I apologize --

THE COURT: You may.

MR. SMITH: -- to bring up the technical issue. But there is no such thing as a motion under Rule 61. That's for correcting or deciding whether errors that have been introduced during the trial warrant a new trial or other remedy. What we're asking for here -- or what Plaintiffs are asking for here is to introduce an error that has not yet occurred into the trial. That's inappropriate. We -- this is the time to stop an error from happening not to introduce the error in the letters that's harmless.

MR. PORTNOI: Yeah. So, Your Honor, in order to have a proper Rule 61 motion, Plaintiffs have to identify an error made by Your Honor.

MR. SMITH: There's no such thing as a Rule 61 motion. And on the last point, on the joint pretrial memorandum that they did submit, the reason why there was no communication, as Ms. Lundvall says, is because if you read the order as a -- if you read the amendment as a whole, it's clear. You take paragraph 8, which is just our defense that we don't think that they're entitled to punitive damages on any claim, and then you read that together with the specific claims that they set out. And they're -- they are explicit. They are explicit that in their claims for breach of contract, they're seeking compensatory damages.

In their claim for the Unfair Claims Practices Act, they're seeking compensatory damages and punitive damages. On the unjust

011744
011744
011744

enrichment claim, they're seeking only compensatory damages. That's the communication we got. That was the clarity we had.

But I just want to make a point on the any claims language. That's not a concession that Plaintiffs were or could seek punitive damages on any claim. Of course, on the breach of contract, there is no such thing as punitive damages. And if we had been put on notice, we would have said the same thing about the unjust enrichment claim. That's a quasi-contract thing. We cited all the authorities. But you don't get punitive damages on unjust enrichment either.

And on the Unfair Claims Practices Act for which they were seeking punitive damages, we didn't think they were entitled to punitive damages, because they didn't have the evidence to support that. That's all paragraph 8 was. That is our defense. Where they needed to alert us to the existence of a punitive damages claim on unjust enrichment was in their section on the claims they were being -- on the damages that they were seeking under unjust enrichment, which solely stated that this was for compensatory damages only.

Your Honor, throughout this case, we've heard time and again that, you know, an issue had been decided. We weren't allowed to file -- we weren't allowed to present RFPs eight days after the discovery deadline. Your Honor, we are at the literal doorstep of closing arguments. Now is not the time to amend the pretrial order. Thank you.

THE COURT: And the reply, please.

MS. LUNDVALL: Very briefly, Your Honor. Counsel suggests that somehow that they were not noticed of a proper standard that

011745

011745

011745

should be being looked at. If they had fully read the Walters case, what they would know is that Rule 61 was the appropriate rule that the Court had identified that the standard would be applied.

Number two is, quite candidly, I'm going to acknowledge that I think it's disingenuous for them to contend that they had no notice until last Friday when we have submitted a proposed verdict form. That's not accurate. During our case in chief, at the very minimum, we filed our trial brief that said we were requesting punitive damages and were entitled to punitive damages under the unjust enrichment claim. How do we know that? Even during -- you know, with an admission, they briefed the issue in their Rule 50 motion. This issue was already looked at, argued, and decided by the Court. To suggest that somehow that that notice, at minimum, let alone all of the other previous [indiscernible] we articulated when it comes to the second amended complaint, the pretrial order, the Rule 61 submissions, et cetera. They had sufficient time during their own case in chief to somehow suggest that if they thought that there was an inadequate factual basis or if there was additional facts that they needed to address that particular issue after the Court had already made its decision.

Their case-in-chief hadn't even started. They could have put on a witness that addressed this particular issue. And I disagree that they -- somehow, that there is a difference with the distinction. But even if you take their argument at fair notice or fair value, they have reasonable opportunity by which to do that.

Third, Your Honor, I think that the citation that they have to

011746

011746

011746

the cases that suggest that, somehow, that an order cannot be amended. There's a different standard that a joint pretrial memo that can't be amended.

And last, the point I would make is this. If you request punitive damages, what you're obligated to do is to put on evidence of oppression, fraud, or malice. There has been evidence of oppression, fraud, and malice that has been presented to this jury. And the Court thought that we had made a sufficient prima facie showing so as to defeat their Rule 50 motion. Not only from a legal standpoint but also from the factual standpoint the Court made that particular finding. And so, legally, they've been on full notice and have exercised that full notice.

But one of the things that I think is a bit of a contradiction is to suggest that somehow that there's a difference in the factual predicate of our underlying claims. That is different when it comes to the proof on punitive damages. It is still the same no matter what claim that you're making the assertion upon. Moreover, they had reasonable opportunity to put on any witness that they chose during their case in chief.

And when I hear Mr. Portnoi's argument is that the contention that they suggest that somehow their rights have been substantially damaged, that maybe they would have asked Mr. Haben different questions concerning the benefit so as to address the clear and convincing standard versus the preponderance of the evidence standard, they had that opportunity if they wished. But I don't think it is a difference with a distinction. And so with that, Your Honor, we submit.

THE COURT: You know, I -- it was clear to me throughout the

011747

trial and throughout the case that the Plaintiffs were going to seek punitive damages on all of their causes of action. I think that Paragraph 8 of the joint pretrial memo figured that as well. It should have to the Defendants.

The pretrial's not an order. It's something the two of you agreed on, and so everything that's been argued with regard to this issue was in the amended complaint. It was in the proposed jury instructions. I thought the Defendant acknowledged that it was defending punitive damages on all causes of action. As proposed, the motion will be granted.

Now, do you -- it's 11:20. Do you want a short break, or do you want to just read the jury instructions and then take lunch? I'm fine going forward.

MR. ZAVITSANOS: The latter.

THE COURT: The latter? Great. Okay. Where are the instructions?

MS. ROBINSON: Your Honor?

THE COURT: Yes.

MS. ROBINSON: I did want to move for judgment as a matter of law and affirmative defense. I don't think it'll take more than a couple minutes.

THE COURT: I'm not going to even consider it. Let's just move forward.

MS. ROBINSON: It's just really for the record.

THE COURT: Well, what would it be on?

011748
011748
011748

MS. ROBINSON: Sorry?

THE COURT: What would it be on?

MS. ROBINSON: Just on the -- it was really just a record making exercise, Your Honor. That's why I didn't think it would take long. I was going to move for judgment as a matter of law and the affirmative defense of unclean hands on the grounds that there's no evidence of damage as required in the *Las Vegas Fetish and Fantasy* case, and so we would ask the Court to render a judgment against the affirmative defense.

THE COURT: And give me two sentences in opposition. I'm going to deny the motion anyway.

MR. PORTNOI: Your Honor, the response is that as you said. *Las Vegas Fetish and Fantasy* requires a balancing of seriousness of the harm and egregiousness of the misconduct. We presented evidence of the egregiousness of the misconduct. Legals have provided efforts in terms of the claims processing and in terms of the fact that there was clear impropriety and fraud on the -- that has been committed by the Plaintiffs. Enough to go to the jury.

THE COURT: Thank you. Go ahead and bring in the jury, Marshal.

MS. ROBINSON: Is it -- Judge, is my motion denied?

THE COURT: I was going to give you a chance to reply while he's doing that.

MS. ROBINSON: Oh, okay. Sorry, I was just jumping right to the ruling. I was just going to say, you know, I -- under the *Las Vegas*

011749
011749
011749

Fetish and Fantasy case, which we've already filed. I don't have the citation on hand, but we've already filed that with our jury instructions on unclean hands. We believe that harm is a necessary part of unclean hands. We believe there has been no evidence of harm and therefore that should not be sent to the jury.

THE COURT: Okay. So the motion will be denied, and so the marshal -- can you guys run up the jury instructions for me?

MS. ROBINSON: Thank you, Your Honor.

THE COURT: Thank you.

THE MARSHAL: All rise for the jury.

[Jury in at 11:20 a.m.]

THE COURT: Thanks everyone. Please be seated.

THE COURT: I will now instruct you on the law that applies in this case.

Jury Instruction Number 1. It is now my duty as judge to instruct you in the law that applies in this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence. You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be. It would be a violation of your oath to base a verdict upon any other view of the law than that given in these instructions.

Number 2. If, in these instructions, any rule, direction, or idea is repeated or stated in different ways, no emphasis thereon is intended by me, and none may be inferred by you. For that reason, you

011750

011750

011750