UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

CYNTHIA PUSEY VIGDOR; ROBERT VIGDOR; VANESSA KROMBEEN; VASHISTA KOKKIRALA; JESSICA HUCK; RICHARD SMITHSON; RONALD EASTER; and PROVIDENCE ANESTHESIOLOGY ASSOCIATES, P.A., on behalf of themselves and other similarly situated persons, Plaintiffs, v. UNITEDHEALTHCARE INSURANCE COMPANY; UNITEDHEALTHCARE OF NORTH CAROLINA, INC.; UMR, INC., UNITEDHEALTH GROUP INCORPORATED, Defendants.	Case No. 3:21-cv-00517

DEFENDANTS' NOTICE OF REMOVAL OF CIVIL ACTION

Defendants UnitedHealthcare Insurance Company, UnitedHealthcare of North Carolina, Inc., UMR, Inc., and UnitedHealth Group Incorporated (collectively, "United") give notice under 28 U.S.C. §§ 1331, 1441, and 1446 that they have removed *Vigdor et al. v. UnitedHealthcare Insurance Co. et al.*, pending in the Superior Court Division for Mecklenburg County, North Carolina, Case No. 2021-cvs-13028 (the "State Court Action"), to the United States District Court for the Western District of North Carolina (Charlotte Division). *Vigdor* is removable under 28 U.S.C. § 1331 because the claims alleged by Providence Anesthesiology Associates, P.A., Cynthia Pusey Vigdor, Robert Vigdor, Vanessa Krombeen, Vashista Kokkirala, Jessica Huck, Richard Smithson, and Ronald Easter ("Plaintiffs") arise under and are completely preempted by the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001, *et. seq.*

("ERISA"). Because Plaintiffs assert claims arising under federal law, this Court has federal question jurisdiction under § 1331, and *Vigdor* is properly removable under § 1441(a).[1]

BACKGROUND

1. Providence Anesthesiology Associates, P.A. ("Providence") was an anesthesia provider in United's network until March 2020. Compl. at p. 2. The remaining Patient Plaintiffs (Cynthia Pusey Vigdor, Robert Vigdor, Vanessa Krombeen, Vashista Kokkirala, Jessica Huck, Richard Smithson, and Ronald Easter) ("Patient Plaintiffs") are North Carolina residents "who have or have had health insurance provided by and through UHC." *Id.*

2. The Patient Plaintiffs claim that they received balance-bills from Providence for out-of-network services and that their United "health benefit plans and policies" have "refused to reimburse" them. *Id.* at p. 2; *see also id.* at ¶¶ 1–6, 19. Some Patient Plaintiffs allege that United has "refus[ed] to pay any" of their bills "for a covered procedure under [their] plan[s]." *See id.* at ¶¶ 39, 46.

3. The Complaint alleges that at least one of the applicable health benefit plans is an employer-sponsored welfare benefit plan. *See id*. ¶ 23 ("Mrs. Vigdor was insured through UHC via her husband, Plaintiff Robert Vigdor's, employer plan.") As such, Mrs. Vigdor's health plan is governed by ERISA. Based on United's review, the other Patient Plaintiffs also participate in ERISA-governed plans.

4. Providence alleges that it has "obtained assignment of benefit forms or the right to receive payment from Patient Plaintiffs" and that these forms "grant Providence the right to take

[1] A notice of removal must contain only "'a short and plain statement of the grounds for removal.'" *Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 87 (2014) (quoting 28 U.S.C. § 1446(a)); *see also id.* ("By design, § 1446(a) tracks the general pleading requirement stated in Rule 8(a) of the Federal Rules of Civil Procedure.").

any actions necessary to recover payments" from United for covered services under the Patient Plaintiffs' plans. Compl. ¶ 7.

FEDERAL QUESTION JURISDICTION

4. Plaintiffs assert two state-law claims against United: a violation of North Carolina's Unfair and Deceptive Trade Practices Act under N.C. Gen. Stat. § 75-1, *et seq.*, and a breach of contract claim. Compl. at pp. 23–24.

5. Although "a defendant may not [generally] remove a case to federal court unless the *plaintiff's* complaint establishes that the case 'arises under' federal law," an exception to the rule exists "[w]hen a federal statute wholly displaces [a] state-law cause of action through complete pre-emption." *Aetna Health, Inc. v. Davila*, 542 U.S. 200, 207 (2004) (citations omitted). "ERISA is one of these statutes." *Id.* at 208. ERISA's primary objective is to "provide a uniform regulatory regime over employee benefit plans." *Id*. To that end, the Supreme Court has recognized that Congress intended ERISA's comprehensive remedial scheme to occupy the field, providing for complete or super preemption of state law claims, even if no explicit federal claim is pleaded on the face of the complaint. *See Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 64–67 (1987). Under ERISA, federal district courts have original jurisdiction over these completely preempted claims, irrespective of the amount in controversy or the citizenship of the parties. *See* 29 U.S.C. §§ 1132(e)(1) and (f); *see also* 28 U.S.C. § 1331.

6. Under the Supreme Court's two-part *Davila* test, ERISA completely preempts claims brought by "an individual, [who] at some point in time, could have brought his claim under ERISA § 502(a)(1)(B), and where there is no independent legal duty that is implicated by a defendant's actions." *Davila*, 542 U.S. at 210. Both *Davila* prongs are satisfied here.

7. Under the first prong, the Patient Plaintiffs are "participants" or "beneficiaries" in

ERISA-governed plans and are indisputably individuals who may bring ERISA claims. *See* 29 U.S.C. § 1132(a) ("participant[s]" or "beneficiar[ies]" seeking "to recover benefits" or "to enforce [their] rights under the terms of a plan" may bring an ERISA actions). Further, Plaintiffs' claims implicate coverage and benefit determinations at the heart of ERISA. *See* Compl. ⁋⁋ 39, 46 (some Patient Plaintiffs allege that United has "refus[ed] to pay any" of their bills "for a covered procedure under [their] plan[s]"); *id.* at ⁋ 129(d) (alleging that United is "refusing to reimburse Plaintiffs for medical care").

8. To the extent Providence seeks to leverage an alleged assignment of benefits to recover benefits payments (Compl. ⁋ 7), then it too is the type of party who may bring a claim under ERISA. *See Kearney v. Blue Cross & Blue Shield of N.C.*, 233 F. Supp. 3d 496, 503 (M.D.N.C. 2017) (healthcare providers—while not "participants" or "beneficiaries" with express standing under ERISA—"may acquire derivative standing to sue under ERISA if the provider secures a written assignment from a 'participant' or 'beneficiary' of that individual's right to payment of medical benefits") (citing *Gable Ins. Recovery, Inc. v. Blue Cross & Blue Shield of Fla., Inc.*, 813 F.3d 1333, 1339 (11th Cir. 2015)).

9. *Davila*'s second prong is also satisfied. Neither of the Plaintiffs' claims presents an independent legal duty. *See Southern v. Wakemed*, No. 5:15-cv-35, 2015 U.S. Dist. LEXIS 149180, at *17–18 (E.D.N.C. April 21, 2015) (finding that a plaintiff's breach of contract claim was within § 502(a)'s scope because "[t]he rights guaranteed to plaintiff by his 'Health Benefits Plan,' including the rates at which plaintiff is to be charged for treatment, are derived from rights and obligations established by plaintiff's ERISA-governed healthcare plan").

10. Plaintiffs do not allege that United owed them any independent duty separate and apart from the health plans at issue. Plaintiffs' breach of contract claim is based on the Patient

Plaintiffs' "contract[s] with [United] for the provision of health insurance" and the "implied provisions of good faith and fair dealing" found in those contracts. Compl. ¶¶ 147, 149. To be clear: those "contracts" are the ERISA-governed healthcare plans. *See also Southern*, 2015 U.S. Dist. LEXIS 149180, at *21 ("An independent legal duty is not implicated if determination of defendant's liability requires examination of an ERISA-governed plan.").

11. The factual basis for Plaintiffs' claim under the North Carolina Unfair and Deceptive Trade Practices Act (N.C. Gen. Stat. § 75-1.1) also relies on United's "provision of health insurance," and specifically, United's "refusing to pay or reimburse" Plaintiffs for medical care under these plans (Compl. ¶¶ 135, 142). Thus, determining United's liability turns only on an analysis of ERISA-governed healthcare plans at issue. *See Southern*, 2015 U.S. Dist. LEXIS 149180, at *21.

ALL OTHER REQUIREMENTS FOR REMOVAL ARE SATISFIED

12. On August 16, 2021, Plaintiffs initiated the State Court Action.

13. On September 1, 2021, counsel for United agreed to accept service of the Civil Summons and the Complaint and Jury Demand for all Defendants. A true and correct copy of all process, pleadings, and filings served upon United are attached as Exhibits A–F. *See* 28 U.S.C. § 1446(a).

14. Under Rule 6(a) of the Federal Rules of Civil Procedure and 28 U.S.C. § 1446(b), this Notice of Removal has been filed within thirty days after service of the State Court Action.

15. Venue is proper in this Court under 28 U.S.C. §§ 113(c), 1391, 1441(a), and 1446(a) because the Superior Court Division of Mecklenburg County, where the Complaint in the State Court Action was originally filed, is a state court within the Western District of North Carolina.

16. A copy of this Notice of Removal is being filed with the Clerk in the State Court Action and written notice is being sent to Plaintiffs' counsel in accordance with § 1446(d).

17. The prerequisites for removal under 28 U.S.C. § 1441 have therefore been met.

CONCLUSION

18. Though framed as claims under North Carolina law, Plaintiffs' Complaint seeks, at its core, ERISA-governed benefits under § 502(a). This Court therefore has original jurisdiction under 28 U.S.C. § 1331 and 29 U.S.C. § 1132(e). Because Plaintiffs are the "type of party" who may bring ERISA claims that are within the scope of § 502(a) and involve no "other independent legal duty," both *Davila* prongs are satisfied and Plaintiffs' claims are completely preempted by ERISA.

19. United reserves the right to amend or supplement this Notice of Removal.

20. United reserves all defenses and counterclaims.

Respectfully submitted this the 29th day of September, 2021.

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CERTIFICATE OF SERVICE

I certify that on September 29, 2021, I electronically filed the foregoing **DEFENDANTS' NOTICE OF REMOVAL OF CIVIL ACTION** with the Clerk of Court using the CM/ECF system. A copy of the same was served on counsel for Plaintiffs as indicated below:

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EXHIBIT A

STATE OF NORTH CAROLINA

MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
2021 CVS 13028

CYNTHIA PUSEY VIGDOR; ROBERT VIGDOR; VANESSA KROMBEEN; VASHISTA KOKKIRALA; JESSICA HUCK; RICHARD SMITHSON; RONALD EASTER and PROVIDENCE ANESTHESIOLOGY ASSOCIATES, P.A. on behalf of themselves and other similarly situated persons,

Plaintiffs,

v.

UNITEDHEALTHCARE INSURANCE COMPANY; UNITEDHEALTHCARE OF NORTH CAROLINA, INC.; UMR, INC.; UNITEDHEALTH GROUP, INC.,

Defendants.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

NOW COMES Plaintiffs, Cynthia Pusey Vigdor, Robert Vigdor, Vanessa Krombeen, Vashista Kokkirala, Jessica Huck, Richard Smithson, and Ronald Easter ("Patient Plaintiffs"), and Providence Anesthesiology Associates, P.A. ("Providence") (individually and collectively "Plaintiff(s)"), who bring this **Complaint and Demand for Jury Trial** on behalf of themselves and those similarly situated against Defendants UnitedHealthcare Insurance Company, UnitedHealthcare of North Carolina, Inc., UMR, Inc., and UnitedHealth Group, Inc. (together "Defendants" or "UHC").

UHC has violated the North Carolina Patient Protection Act, N.C. Gen. Stat. § 58-3-200(d), due to its bad faith and unfair refusal to fairly reimburse and provide healthcare coverage for Plaintiffs for medical services where UHC has purposefully subjected patients to out-of-network

services by the strategic termination of certain providers from its network, and for other unfair and deceptive conduct.

SUMMARY OF COMPLAINT

Patient Plaintiffs and class members are residents of North Carolina who have or have had health insurance provided by and through UHC. Patient Plaintiffs and class members received services for medical procedures and afterward received a "balance bill" from Providence for out-of-network services. Providence is an anesthesia provider and longtime member of UHC's network, but who was forced out of UHC's network in 2020. UHC unilaterally terminated its network relationship with Providence, and demanded that Providence cut its rates by more than 60% to return to the network. UHC took these steps knowing it would harm patients, and planned to make their own insureds responsible for unplanned medical bills in the thousands of dollars each that they knew would result.

When the average American receives an unexpected medical bill for thousands of dollars, merely because one of the nation's largest health insurers has decided not to maintain an adequate network on purpose, it is a significant event to a people and families. It causes patient distress, and it causes anger.

Since the termination of Providence (and many other providers nationwide who UHC has targeted) from its network, UHC has refused to reimburse Plaintiffs and class members at the reasonable, standard rate for medical services performed for these providers. As a result, UHC's insured members are forced to bear medical costs which should be borne by UHC. Under North Carolina law, N.C. Gen. Stat. § 58-3-200(d) ("the Patient Protection Act"), insurers are **prohibited** from "penaliz[ing] an insured or subject[ing] an insured to the out-of-network benefit levels offered under the insured's approved health benefit plan" when they have an insufficient network.

This lawsuit demands that UHC reimburse or pay for the out-of-network medical expenses it has artificially created through its targeted network terminations, and make the Patient Plaintiffs and its class members' whole. As UHC's conduct is alleged to constitute unfair and deceptive trade practices under North Carolina law, this suit seeks treble damages and attorneys' fees to deter UHC from future similar conduct that harms patients and doctors in North Carolina.

PARTIES

1. Cynthia Pusey Vigdor is a resident of Waxhaw, North Carolina, and received medical care from Providence on July 21, 2020 as a part of spinal cord surgery. Her husband Robert Vigdor is also a resident of Waxhaw, North Carolina. Mrs. Vigdor was insured through Mr. Vigdor's UHC plan. UHC has refused to reimburse Mrs. Vigdor for the reasonable cost of that medical care.

2. Vanessa Krombeen is a resident of Charlotte, North Carolina, and received medical care from Providence on January 5, 2021 as part of giving birth to a child. Ms. Krombeen was insured through a UHC plan. UHC refused to reimburse Ms. Krombeen for the reasonable cost of that medical care.

3. Vashista Kokkirala is a resident of Huntersville, North Carolina, and received medical care from Providence on January 19, 2021 as part of giving birth to a child. Ms. Kokkirala was insured through a UHC plan. UHC refused to reimburse Ms. Kokkirala for the reasonable cost of that medical care.

4. Jessica Huck is a resident of Indian Trail, North Carolina, and received medical care from Providence on July 14, 2020 as a part of an abdominal surgery. Ms. Huck was insured through a UHC plan. UHC refused to reimburse Ms. Huck for the reasonable cost of that medical care.

5. Richard Smithson is a resident of Mooresville, North Carolina, and received medical care from Providence on September 14, 2020 when he had shoulder surgery. UHC refused to reimburse Mr. Smithson for the reasonable cost of that medical care.

6. Ronald Easter is a resident of Lexington, North Carolina, and received medical care from Providence on September 23, 2020 when he had shoulder surgery. UHC refused to reimburse Mr. Easter for the reasonable cost of that medical care.

7. Providence is a health care provider that provides anesthesia services. Providence gave care to Plaintiffs and other class members and obtained assignment of benefits forms or the right to receive payment from Patient Plaintiffs and other class members. Pursuant to these arrangements, Providence is the intended recipient of the funds reimbursed to Patients Plaintiffs and class members under their insurance plans with UHC. The assignment of benefits forms grant Providence the right to take any actions necessary to recover payments from UHC.

8. Defendant UnitedHealthcare Insurance Company, is a foreign corporation incorporated in the State of Connecticut.

9. Defendant UnitedHealthcare of North Carolina, Inc. is a domestic corporation formed in North Carolina.

10. Defendant UMR, Inc. is a foreign corporation formed in the State of Delaware.

11. Defendant UnitedHealth Group, Inc. is a foreign corporation formed in the state of Delaware.

12. The four defendant UnitedHealthCare entities are named in an effort to name the proper entities responsible for the wrongful denial of claims set forth in this Complaint.

JURISDICTION AND VENUE

13. This court has subject matter jurisdiction over this action pursuant to N.C. Gen. Stat. § 7A-240 and N.C. Gen. Stat. § 7A-243 because the amount in controversy exceeds $25,000.

14. This Court has personal jurisdiction over Defendants because the action arises out services provided in this state, contracts entered into between Defendants and Plaintiffs and class members in this State, and services performed pursuant to those contracts in North Carolina.

15. Venue is proper in Mecklenburg County pursuant to N.C. Gen. Stat. §§ 1-79 and 1-82 because certain Plaintiffs reside in this county.

FACTUAL ALLEGATIONS

General Background

16. Anesthesia is a medical specialty requiring training, skill, and precision. Qualified anesthesia providers are essential for many surgeries and other medical procedures requiring anesthesia services. Among other procedures, administration of anesthesia is necessary for the intubation of patients suffering with COVID-19 and requiring intubation.

17. Providence is an exemplary provider of anesthesia services in North Carolina, with high-quality practices resulting in procedures with significantly lower cost to payers and significantly better results for patients.

18. UHC (through various related corporate entities and affiliates) is a large health insurance company operating in North Carolina and throughout the United States. In 2020, UHC reported over $257 billion in revenue, and $15 billion in profits.

19. UHC insures and/or administers thousands of health benefit plans and policies, including many that cover patients who receive anesthesia services from Providence.

20. Plaintiffs and class members are patients who received medical care from Providence during and after the period UHC engaged in unfair and unethical negotiation tactics to extort more money from Providence in order to terminate Providence from their network, and from other similarly situated medical providers who were unfairly deemed out-of-network by UHC.

UHC Members, including Plaintiffs and other Class Members, Face Hardship Because Of UHC's Unfair and Deceptive Scheme.

21. UHC members, including Patient Plaintiffs and other class members, pay premiums to UHC, and expect in-network benefits when having surgeries at in-network facilities. But UHC's actions in declaring Providence out-of-network have caused a substantial financial burden to shift from UHC to its members.

22. Each of the Patient Plaintiffs below, and other class members, received medical services at an in-network facility where Providence's anesthesia portion of their care was out-of-network only because UHC unilaterally terminated Providence from its network in 2020. As a result, Patient Plaintiffs have received unexpected bills in the thousands of dollars, for care that should be covered by UHC.

Ms. and Mr. Vigdor

23. Plaintiff Cynthia Pusey Vigdor underwent spinal cord surgery at Providence on July 21, 2020. Mrs. Vigdor was insured through UHC via her husband, Plaintiff Robert Vigdor's, employer plan.

24. Prior to her surgery, Providence notified Mrs. Vigdor that Providence was out-of-network with UHC. Mrs. Vigdor was concerned that Providence's network status would impact her ability to have her surgery, and the cost of her surgery.

25. Mrs. Vigdor called UHC to ask them about the impact of Providence's out-of-network status, and the representative for UHC with whom Mrs. Vigdor spoke informed Mrs. Vigdor that it would be "no problem."

26. UHC's representative did not specify what UHC meant by Providence's out-of-network status being "no problem," but, based on this assurance from UHC, Mrs. Vigdor went ahead with her surgery as scheduled.

27. Mrs. Vigdor's surgery was successful. The billed amount for anesthesia services for Mrs. Vigdor's surgery would ordinarily be covered by the plan Mr. and Mrs. Vigdor had with UHC.

28. On August 14, 2020, UHC paid only $189.30 on Mrs. Vigdor's bill for anesthesia services, leaving an out-of-network balance of $4,510.70 to be the patient' responsibility because services were not provided by a network provider.

29. Mrs. and Mr. Vigdor filed with UHC for reconsideration on December 2, 2020. On February 24, 2020, UHC denied Mrs. Vigdor reconsideration of her claim.

30. Mrs. and Mr. Vigdor have been very worried about this outstanding bill, and UHC's refusal to pay Mrs. Vigdor's bill for a covered surgery under her plan has caused Mrs. and Mr. Vigdor stress and anguish.

31. Mrs. and Mr. Vigdor's stress and frustration are amplified by the fact that they inquired about this procedure and the possible impact of Providence's network status before Mrs. Vigdor underwent surgery, and were informed by a UHC representative that it would be "no problem."

32. Mrs. Vigdor contacted Providence for assistance and for a status update on March 4, 2021. Mrs. Vigdor completed the necessary paperwork to allow Providence to appeal her claim

to UHC directly, and on April 19, 2021, Providence appealed the claim to UHC. Providence also mailed a waiver to NC DOI on Ms. Vigdor's behalf on March 25, 2021.

33. To date, UHC has not paid, or offered to pay, the remaining balance of Mrs. Vigdor's anesthesia bill for her procedure.

Ms. Krombeen

34. Vanessa Krombeen delivered a baby on January 5, 2021. Providence provided her anesthesia care.

35. Ms. Krombeen's delivery was successful. The anesthesia services for Ms. Krombeen's surgery would be ordinarily covered by the plan Ms. Krombeen had with UHC.

36. After her surgery, Ms. Krombeen was notified that UHC would not pay the cost of Providence's services because Providence was not in-network with UHC.

37. The remaining portion of the bill for Providence's services, which UHC determined was Ms. Krombeen's sole responsibility, was $3,995.00.

38. Ms. Krombeen filed for reconsideration of her claim. UHC denied Ms. Krombeen's reconsideration on June 30, 2021.

39. Ms. Krombeen has been worried about this outstanding bill, and UHC's refusal to pay any of Ms. Krombeen's bill for a covered procedure under her plan has caused Ms. Krombeen stress and anguish.

40. To date, UHC has not paid, or offered to pay, the remaining balance of Ms. Krombeen's bill for her procedure.

Ms. Kokkirala

41. Vashista Kokkirala delivered a baby on January 19, 2021. Providence provided her anesthesia care.

42. Ms. Kokkirala's delivery was successful. The anesthesia services for Ms. Kokkirala's surgery would be ordinarily covered by the plan Ms. Kokkirala had with UHC.

43. After her surgery, Ms. Kokkirala was notified that UHC would not pay the cost of Providence's services because Providence was not in-network with UHC.

44. The remaining portion of the bill for Providence's services, which UHC determined was Ms. Kokkirala's sole responsibility, was $3,995.00.

45. Ms. Kokkirala filed for reconsideration of her claim on June 10, 2021. UHC denied Ms. Kokkirala's reconsideration on June 30, 2021.

46. Ms. Kokkirala has been worried about this outstanding bill, and UHC's refusal to pay any of Ms. Kokkirala's bill for a covered procedure under her plan has caused Ms. Kokkirala stress and anguish.

47. To date, UHC has not paid, or offered to pay, the remaining balance of Ms. Kokkirala's bill for her procedure.

Ms. Huck

48. Jessica Huck underwent exploratory abdominal surgery on July 14, 2020. Providence provided her anesthesia care. Ms. Huck's surgery was scheduled approximately two to three months in advance, due to COVID-19. Ms. Huck obtained prior authorization for her surgery in May 2020, and she was given an estimate at that time of what her costs would be after the surgery. In May of 2020, Ms. Huck was told she would owe approximately $2,500 for the entirety of her surgical procedure.

49. Ms. Huck again requested an estimate of the costs of the procedure on the day of the surgery. At that time, Ms. Huck was told the surgery would cost her a total of $2,500. Ms.

Huck was told that she met her deductible, and that insurance would be covering roughly 80% of the cost of her procedure.

50. Ms. Huck's surgery was successful. The anesthesia services for Ms. Huck's surgery would be ordinarily covered by the plan Ms. Huck had with UHC.

51. After her surgery, on August 5, 2020, Ms. Huck was notified that UHC would not pay the cost of Providence's services because Providence was not in-network with UHC. UHC paid only $97.98 of the cost of Ms. Huck's services from Providence, despite providing multiple assurances to Ms. Huck that they would pay approximately 80% of her costs.

52. The remaining portion of the bill for Providence's services, which UHC determined was Ms. Huck's sole responsibility, was $2,323.02.

53. Ms. Huck filed for reconsideration of her claim. UHC denied Ms. Huck's reconsideration on October 13, 2020.

54. Ms. Huck has been worried about this outstanding bill, and UHC's refusal to pay a reasonable amount of Ms. Huck's bill for a covered surgery under her plan has caused Ms. Huck stress and anguish.

55. Ms. Huck's stress and frustration is amplified by the fact that she received an estimate during the prior authorization for her surgery. She planned to make sure she could meet her financial commitments.

56. Ms. Huck contacted Providence for assistance, and completed the necessary paperwork to allow Providence to appeal her claim to UHC directly. On March 25, 2021, Providence appealed the claim to UHC. Providence also mailed a waiver to NC DOI on Ms. Huck's behalf on March 25, 2021.

57. To date, UHC has not paid, or offered to pay, the remaining balance of Ms. Huck's bill for her procedure.

Mr. Smithson

58. Richard Smithson underwent shoulder surgery on September 14, 2020.

59. Mr. Smithson's surgery was successful. The billed amount for anesthesia services for Mr. Smithson's surgery was $6,969. Ordinarily, a surgery of this type is covered by the plan Mr. Smithson had with UHC.

60. On October 23, 2021, UHC paid only $318.30 on Mr. Smithson's claim. This amount was later recouped, and on June 16, 2021 payment of $4,990.80 was made.

61. UHC considers the remaining $1,978.20 to be Mr. Smithson's responsibility because services were not provided by a network provider.

62. Mr. Smithson filed for reconsideration on March 8, 2021. On March 26, 2021, UHC denied the reconsideration.

63. Mr. Smithson's stress and frustration is amplified by the fact that he is not currently employed, and not in a position to pay a large and unexpected medical bill.

64. Providence also mailed a waiver to NC DOI on Mr. Smithson's behalf on April 15, 2021.

65. To date, UHC has not paid, or offered to pay, the remaining balance of Mr. Smithson's bill for his procedure.

Mr. Easter

66. Ronald Easter underwent shoulder surgery on September 23, 2020.

67. Mr. Easter's surgery was successful, and he is physically doing well now. The billed amount for anesthesia services for Mr. Easter's surgery was $4,414.14. Ordinarily, a surgery of this type is covered by the plan Mr. Easter had with UHC.

68. On June 4, 2021, UHC paid only $264.77 on Mr. Easter's claim.

69. UHC still considers the remaining $4,149.23 to be Mr. Easter's responsibility because services were not provided by a network provider.

70. Mr. Easter filed for reconsideration on February 15, 2021. On March 15, 2021, UHC denied the reconsideration.

71. Mr. Easter completed the necessary paperwork to allow Providence to appeal his claim to UHC directly, and on March 15, 2021, Providence appealed the claim to UHC.

72. Providence also mailed a waiver to NC DOI on Mr. Easter's behalf on March 15, 2021.

73. To date, UHC has not paid, or offered to pay, the remaining balance of Mr. Easter's bill for his procedure.

Other Harmed Patients

74. Upon information and belief, UHC members who were scheduled to have procedures using Providence's anesthesiology services canceled or refused their procedures because of Providence's out-of-network status, and the resulting financial burden that UHC would impose on the member.

75. UHC anticipated and planned on this outcome, and has utilized the tremendous financial burden on its insured members to exert pressure on Providence to accept lower reimbursement rates for its services.

UHC's Removal of Providence from its Network was Unethical and Unfair

76. Network contracts are foundational in the healthcare industry. Providers that have contracts with payers of medical services, such as insurers, are referred to as "in-network" providers.

77. In a network contract, providers and payers negotiate acceptable payment rates between them, typically constituting a discount off the providers' usual billed charges.

78. In a typical network arrangement, the parties agree that insured members/patients will not be billed for any difference between the discounted network rate and the providers' billed charges.

79. Without a network contract in place, a provider is considered "out-of-network." Without a network contract, the difference between the amount the insurance provider pays and the total amount billed by the providers is imputed to the patients.

80. Patients who are insured by UHC and who receive medical treatment at an in-network facility might not always learn that they will be responsible for paying increased bills for out-of-network services performed in connection with their procedure—such as anesthesia services.

81. Providence's most recent contract with UHC to be an in-network provider dates back over 15 years. UHC and Providence executed a Medical Group Participation Agreement on December 7, 2004. UHC, as the Payer under the Medical Group Participation Agreement, contracted to pay claims for covered services according to the lesser of Providence's customary charge or the applicable fee schedule (described in an Appendix to the Agreement), subject to applicable Payment Policies and minus any copayment, deductible, or applicable coinsurance under the customer's benefit plan.

82. Pursuant to the Agreement, UHC contracted to give Providence 90 days' notice for any non-routine fee schedule changes that would substantially alter the overall methodology or reimbursement level of the fee schedule.

83. The Medical Group Participation Agreement permits UHC to terminate Providence immediately for cause under certain conditions. None of those conditions are claimed by UHC in this case.

84. The Agreement may also be terminated by either party upon 90 days written notice effective at the end of the initial term or at the end of any renewal term.

85. Providence and UHC normally negotiated new contract rates as part of the contract renewal process. UHC has had a historic pattern during the renewal term of the Agreement to wait until the week before the contract end date to provide a counter offer to Providence to pressure Providence into accepting lower rates to stay in-network.

86. In September of 2019, during the ongoing debate of legislation against surprise billing practices at the Federal level, UHC started a negotiation for lower contract rates with Providence.

87. On September 30, 2019, UHC served a notice of termination of its contract, and informed Providence that the contract would terminate—rendering Providence an out-of-network provider—on March 1, 2020. The notice stated that UHC would inform state agencies, members, customers, and participating providers (including hospitals at which Providence renders services) of Providence's impending change in network status. However, UHC claimed it "remains open to negotiating a mutually agreeable participation agreement with competitive rates that would allow [Providence] to continue in-network participation with [UHC]."

88. The September 30, 2019 notice was also accompanied by a proposal to re-join the network, but which reduced Providence's reimbursement ***by over 60%.*** The proposed rate reduction was so drastic that it would be impossible for Providence to continue providing patients with the highest quality of care. Providence informed UHC of this via letter dated October 11, 2019.

89. Despite UHC's offer to "negotiate" with Providence, and despite Providence's diligent and good faith efforts to negotiate with UHC for a return to in-network status, UHC never made a fair or good faith offer.

90. UHC's termination of its network contract with Providence was not for any legitimate purpose. UHC never identified any issues with Providence's anesthesia services, certificates, licensure, or any other problems that would justify terminating the contract with Providence.

91. Instead, UHC deemed Providence an out-of-network provider for the purpose of pressuring Providence to accept a substantially lower reimbursement rate than Providence historically accepted from UHC, and a substantially lower reimbursement rate than allowed by North Carolina's Patient Protection Act.

92. On January 22, 2020, UHC admitted that its termination of Providence's contract was part of a negotiation strategy by offering Providence the choice to elect whether the contract would be terminated mutually for all products or terminated unilaterally by UHC for the commercial line of business only.

93. If UHC had wanted to materially amend the contract, such as by changing the fees or terminating only the commercial line of business, the Agreement provided a process for such changes.

94. Instead of executing a contract amendment, UHC unilaterally terminated the contract and proposed new terms. UHC knew that its termination of the contract would render Providence out of network with UHC and harm patients. UHC counted on the threat of out-of-network status and resulting hardship to Plaintiff Patients and class members to exert undue pressure on Providence, using patients as leverage in its contract negotiations with Providence.

95. Providence informed UHC via letter dated January 30, 2020 that, though it was not Providence's desire to leave UHC's network, Providence was disappointed that UHC was unable to enter into productive, good faith negotiations for a value-based agreement.

96. On February 5, 2020, UHC requested Providence consent to keep the contract alive an additional 30 days prior to the termination, to give UHC more time to inform Medicaid members of the termination. Upon information and belief, the request was not in good faith but was instead an attempt to further exert pressure on Providence to accept unreasonably low rates to remain in-network with UHC.

97. After March 1, 2020, UHC has refused to reimburse Providence, Plaintiffs, and other class members for medical care provided to Plaintiffs at a reasonable rate.

98. Despite these tactics, Providence continued negotiating in good faith, submitting additional counter-proposals.

99. During this period, UHC began to make misleading comments to hospital partners of Providence that Providence had not responded to UHC's attempts to negotiate, that Providence had made no counter-offers, or that Providence had refused to negotiate in good faith with UHC. These statements were completely untrue, and were designed to cause Providence's hospital partners to exert additional pressure on Providence to stay in-network and accept UHC's unreasonable new proposed contract terms.

100. Providence clearly communicated to UHC, via letter dated February 20, 2020, that Providence did not request termination of the contract, and Providence objected to UHC's misleading statements to Providence's hospital partners.

101. On March 17, 2020, Providence sent a letter to UHC requesting a temporary emergency reinstatement of the prior contract terms for a period of 90 days, due to the COVID-19 crisis, as a way to pause ongoing negotiations and allow Providence to provide necessary care to its (and UHC's) patients during an unprecedented, ongoing, global epidemic. Patients who are intubated due to COVID-19 complications require administration of anesthesia.

102. UHC refused to temporarily extend the contract. Instead, UHC referred to its prior proposals to cut Providence's rates. UHC would not pause negotiations for the benefit of its insured members unless Providence agreed to an unreasonable reimbursement rate. UHC did this knowing that Providence's out-of-network status could impact patients during the COVID-19 global crisis.

103. Providence submitted yet another counter-proposal to UHC on May 22, 2020, despite Providence now being out of network. Approximately one month later, UHC rejected this latest counter-proposal, stating that they didn't like their own prior contracts: "Clearly the rates that we had in our contract are not sustainable for us long term, and we must move them to a more reasonable level." UHC did not explain how their drastic price cut proposals were "reasonable."

UHC Refuses to Utilize MultiPlan Contract Rates, Instead Needlessly Financially Burdening its Members

104. Several of UHC's benefit plans and policies are "in-network" with third-party wrap network MultiPlan.

105. On information and belief, UHC, or another representative of those benefit plans and policies, entered into a contract with MultiPlan or its affiliate or representative, outlining the

terms of the plans/policies' participation as network payers and obligating them to pay the network rates negotiated by MultiPlan to participating providers.

106. UHC members covered by the plans and policies participating in the MultiPlan network often have a MultiPlan logo on the insurance cards they present when seeking medical care. This signals to medical providers that services provided to these UHC members will be paid in accordance with the MultiPlan network.

107. Providence is an in-network provider with MultiPlan. Providence's MultiPlan contract includes a rate schedule that applies when Providence provides services to patients covered by MultiPlan-participating plans and policies. Both UHC and Providence have agreed contractually to applicable network rates from MultiPlan.

108. UHC knows that MultiPlan network rates must be paid by MultiPlan network participating payers, and it has a duty to process and pay those claims accordingly. Yet, in many cases when the MultiPlan network rates should have applied, UHC has ignored this network arrangement when processing and paying claims.

109. On information and belief, UHC has failed to honor contractual wrap network obligations in order to reduce its payments to Providence to below reasonable, mutually-agreed rates as a means to coerce Providence into accepting unsustainable reimbursement rates from UHC.

Plaintiffs and other Class Members Object to UHC's Scheme

110. Providence has helped bring UHC's pattern of out-of-network underpayments to the attention of the North Carolina Department of Insurance ("DOI"). To date, UHC has not addressed these issues to the satisfaction of DOI.

111. Providence was required on multiple occasions to file appeals of UHC's improper denial of, or improper handling of claims.

112. Many UHC members have appealed their bills in response to UHC's attempts to shift the cost from UHC to its members. UHC has attempted to rely on non-existent legislation in response to deny these appeals, citing N.C. Gen. Stat. "§ 58-3-201(d)." There is no such thing as N.C. Gen. Stat. 58-3-201(d)—it is merely proposed, but not enacted, legislation. Yet, UHC in response to valid appeals from its members who were unfairly balance-billed, attempted to mislead and misdirect its own members by citing to unenacted legislation.

UHC Retaliates Against Providence for Refusing to Accept Bad-Faith and Unreasonable Proposals

113. Because UHC is one of the largest health insurance providers in the country, and because UHC has contacts and contracts with so many hospitals and other providers of medical care, UHC's decision to render Providence an out-of-network provider has been financially harmful to Patient Plaintiffs and Providence.

114. Upon information and belief, UHC has taken steps to disrupt the relationships between Providence and its patients, the facilities and surgeons Providence supports, and the administration of group health plan benefits, by misleading patients and interfering with access to Providence's anesthesia services.

115. Upon information and belief, UHC informed Providence's facility partners when Providence was rendered out-of-network, intending Providence's facility partners to pressure Providence to return to UHC's network and accept unsustainable payment rates.

116. Upon information and belief, UHC has intentionally interfered with Providence's relationship with its patients. The removal of Providence from UHC's network exposes patients to substantially increased medical bills without any decrease in their premiums.

117. Upon information and belief, UHC has excluded Providence from UHC's online provider portal, to prevent or hinder patients from selecting Providence as their anesthesia provider for procedures performed at in-network facilities.

118. Upon information and belief, UHC's exclusion of Providence from the online provider portal made it impossible for authorizations for anesthesia services to be obtained, causing some patients to cancel scheduled surgeries and other patients to not seek care they otherwise would have sought from Providence.

119. UHC's tactics are disruptive to patient care, patient access to competent care, and member expectations regarding their financial responsibility for care received.

Patient Protection Act

120. N.C. Gen. Stat. § 58-3-200(d), the Patient Protection Act, prohibits insurers from "penaliz[ing] an insured or subject[ing] an insured to the out-of-network benefit levels offered under the insured's approved health benefit plan . . . unless contracting health care providers able to meet health needs of the insured are reasonably available to the insured without unreasonable delay."

121. Defendants, by refusing to reimburse Plaintiffs and class members at the reasonable customary rate for services performed by out-of-network providers acted and is acting in violation of N.C. Gen. Stat. § 58-3-200(d).

122. UHC has engaged in a similar unfair behavior elsewhere in North Carolina and nationwide, rendering providers of anesthesiology services out-of-network to pressure them to accept very low reimbursement rates for their services.

CLASS ALLEGATIONS

123. This action has been brought, and may be properly maintained, under Rule 23 of the North Carolina Rules of Civil Procedure.

124. Plaintiffs bring this action as a Class Action on behalf of themselves and all other similarly situated as a class, defined as follows: All patients who are residents of North Carolina and insured through UHC, who received care from Providence at an otherwise in-network facility, or from other providers similar to Providence who were unfairly deemed by UHC to be out-of-network while providing services at an otherwise in-network facility, and who were subjected to our of network benefit levels as defined by N.C.G.S. § 58-3-200(d).

125. Plaintiffs reserve the right to amend the class definition if information received during discovery and further investigation requires such.

126. Excluded from this class are Defendants, any entities in which Defendants have a controlling interest, any officers, directors, or employees of Defendant, and the legal representatives, heirs, successors and assigns of Defendant.

127. The members of the Class are so numerous and widely dispersed that joinder of them in one action is impractical. On information and belief, Defendants insure many thousands of people in North Carolina who received care from medical providers deemed out-of-network by UHC because UHC unilaterally terminated one of those providers to attempt to negotiate lower rates. While the exact number of class members is unknown at this time, and can be ascertained only through appropriate discovery, Plaintiffs allege that the class consists thousands of members.

128. The proposed class definition is definite enough so that it is administratively plausible for the Court to ascertain whether an individual is a class member. Identifying class members is a manageable process that does not require any individual factual inquiry, as class

members can be ascertained by reference to objective criteria, such as records in the possession of class members and Defendants.

129. The named Plaintiffs and unnamed members of the class each have an interest in the same issues of law or of fact, and those issues predominate over issues affecting only individual class members, including but not limited to:

a. Whether Defendants breached their contracts with Plaintiffs and class members, and violated state law, by refusing to reimburse them at a rate consistent with North Carolina General Statute § 58-3-200(d);

b. Whether UHC's contracts with Plaintiffs require UHC to reimburse Plaintiffs and class members at the contracted rate for the medical care they received at in-network facilities;

c. Whether UHC's unfair and unethical negotiation tactics, which are intentionally harmful primarily to Plaintiffs and use Plaintiffs' suffering as leverage against providers, are in violation of North Carolina patient-protection laws;

d. Whether Defendants' breached their contracts with Plaintiffs and class members by refusing to reimburse Plaintiffs for medical care performed by providers deemed out-of-network by UHC as part of UHC's unethical negotiations strategy;

130. Plaintiffs' claims are typical of the class they seek to represent. The claims of Plaintiffs and the class arise out of the same course of conduct by UHC, and the same legal theories. Plaintiffs challenge Defendants' practices and course of conduct with respect to the class as a whole.

131. Plaintiffs are adequate representatives of the class because Plaintiffs interests do not conflict with the interests of class members Plaintiffs seek to represent. Plaintiffs have retained

counsel that is competent and experienced in class action litigation who intend to vigorously prosecute this action.

132. A class action is superior to other available methods for the fair and efficient adjudication of this controversy since joinder of all class members is impracticable.

133. Furthermore, no individual class members can justify the commitment of the large financial resources to vigorously prosecute a lawsuit against Defendants, and the adjudication of this controversy through a class action will avoid the possibility of inconsistent and potentially conflicting adjudication of the claims asserted herein. There will be no difficulty in the management of this action as a class action.

COUNT I
Unfair or Deceptive Trade Practices
N.C. Gen. Stat. § 75-1.1

134. Plaintiffs re-allege and incorporate by reference all preceding paragraphs of the Complaint as if fully set forth herein.

135. Defendants' conduct in refusing to pay or reimburse Plaintiffs and class members reasonably, or in an amount that complies with North Carolina law, for medical care they received from out-of-network providers such as Providence is unfair and deceptive, and violates State law. Subjecting members to out of network costs under the facts of this case directly violates § 58-3-200(d).

136. Defendants' practice of calculating an arbitrary and unreasonably low out-of-network reimbursement rate for Providence's anesthesia services is deceptive to Plaintiffs and other class members, whose premiums have not changed or reduced and who sought medical care from an in-network facility.

137. Defendants' practice of calculating an unreasonably low out-of-network reimbursement rate for Providence's anesthesia services is unfair because Providence's network contract was terminated for invalid reasons, as part of UHC's unlawful attempt to increase its profits by coercing providers to accept unreasonably low rates.

138. Defendants' conduct has unfairly prevented or interfered with Plaintiffs and other class members from receiving competent medical care from the provider of their choice.

139. Defendants' conduct has unfairly prevented or interfered with its members from access to reliable anesthesia services during the ongoing COVID-19 epidemic, when intubation of COVID-19 patients requires administration of anesthesia.

140. Defendants' conduct as described herein is in violation of N.C. Gen. Stat. § 58-3-200(d) and N.C. Gen. Stat. § 58-63-1, *et seq*.

141. Defendants' conduct is offensive to public policy, as Defendants are prioritizing profit over patient care, patient choice, and patient financial security during a global pandemic.

142. Defendants are engaged in the provision of health insurance, which is in or affecting commerce as defined and contemplated by Chapter 75 of the North Carolina General Statutes.

143. Defendants' conduct as alleged and described herein is an unfair trade practice.

144. Plaintiffs, including Providence as well, and other class members have suffered significant financial and other damages as a result of Defendants' conduct.

145. Plaintiffs and class members are entitled to treble damages.

COUNT II
Breaches of Contract – UHC Insurance Plans

146. Plaintiffs re-allege and incorporate by reference all preceding paragraphs of the Complaint as if fully set forth herein.

147. Each of the Patient Plaintiffs and class members entered into, or were intended beneficiaries of, a contract with Defendants for the provision of health insurance.

148. Each of the contracts includes provisions requiring UHC to calculate the "allowed amount", or the amount of the total bill for medical services paid by UHC, in accordance with North Carolina law.

149. Each of the contracts, like all North Carolina contracts, includes implied provisions of good faith and fair dealing.

150. By refusing to reimburse Plaintiffs and other class members at the reasonable rate normally paid in North Carolina for the provision of medical services, Defendants have violated North Carolina law and breached their contracts with Plaintiffs and other class members.

151. By refusing to process Plaintiffs' and other class members' claims through MultiPlan (in violation of their contracts with MultiPlan) or other applicable agreements, UHC has placed the primary burden of payment for receipt of medical care on its insured members.

152. To date, Defendants have not reimbursed Plaintiffs or other class members at the reasonable rate for the medical care Plaintiffs and other class members received.

153. UHC has deliberately and maliciously misled members by citing a non-existent statute in support of UHC's decision to wrongfully balance-bill its members rather than paying valid claims.

154. UHC did not protect the interests of its members, and instead used its members as improper leverage in its ongoing contract negotiations with Providence, and did not meaningfully attempt to prevent its members from suffering the negative impacts of Providence lapsing into out-of-network status.

155. By these actions and others, UHC has also breached the implied covenant of good faith and fair dealing that exists in every contract it has with Plaintiffs and other class members.

156. Through this action, Plaintiffs and other class members seek to recover damages in the amount of the reasonable reimbursement for medical care they received.

PRAYER FOR RELIEF

Plaintiffs, individually and for members of the class, respectfully request that the Court enter judgment in their favor against Defendants as follows:

1. Certify the proposed class, including appointment of Plaintiffs' counsel as class counsel and Plaintiff as class representative;

2. Judgment on all claims in favor of Plaintiffs;

3. Costs, restitution, damages, and disgorgement in an amount to be determined at trial;

4. An order requiring Defendants to pay both pre-and post-judgment interest on any amount awarded;

5. An award of costs and attorneys' fees;

6. Treble damages as permitted by law; and

7. Such other or further relief as may be appropriate.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury of all the claims asserted in this Complaint.

This, the 16th day of August, 2021.

SMITH, ANDERSON, BLOUNT, DORSETT, MITCHELL & JERNIGAN, L.L.P.

By: _____

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