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VIA ELECTRONIC FILING

Re: Lokken, et al. v. UnitedHealth Group, Inc., et al., No. 23-CV-03514 (JRT/SGE)

Dear Judge Tunheim,

Plaintiffs write to oppose UHC's request for permission to file a motion for reconsideration of the Court's Order on Defendants' Motion to Dismiss (ECF 95), pursuant to Local Rule 7.1(j). A party seeking reconsideration bears the burden to show "compelling circumstances" warranting reconsideration. LR 7.1(j). Compelling circumstances may exist where reconsideration is necessary to "correct manifest errors of law or fact or to present newly discovered evidence." *Fuller v. Hafoka*, 2020 WL 5350270, at *1 (D. Minn. Sept. 4, 2020). But "[a] party cannot use a motion to reconsider as a vehicle to reargue the merits of the underlying motion." *Id.*; *see also Julianello v. K-V Pharm. Co.*, 791 F.3d 915, 923 (8th Cir. 2015) ("A motion for reconsideration is not a vehicle to identify facts or legal arguments that could have been, but were not, raised at the time the relevant motion was pending."). UHC has failed to identify any errors of law or fact or to present newly discovered evidence. Instead, it merely rehashes issues already litigated—its request should be denied.

Courts in this District routinely deny such requests where, as here, the requesting party presents no new facts or evidence but instead seeks to relitigate issues already considered by the court. *See, e.g., Fuller*, 2020 WL 5350270, at *2 (denying a reconsideration request where the requesting party failed to raise "any matter that was not or could not have been addressed in his briefing . . . and is merely seeking to relitigate issues already considered by the Court."); *Arends v. Extendicare Homes, Inc.*, 2008 WL 1924172, at *1 (D. Minn. Apr. 28, 2008) (denying a reconsideration request where the defendant "ha[d] not established extraordinary circumstances" and "merely attempt[ed] to relitigate an old issue"); *Woodward v. Credit Serv. Int'l Corp.*, 2024 WL 626904, at *2 (D. Minn. Feb. 14, 2024) (denying a reconsideration request where "Counsel's letter [sought] to reargue matters the Court ha[d] already considered and present[ed] primarily a disagreement with the Court's ruling.").

The first basis for UHC's request is that because the contract imposes obligations similar to those imposed by Medicare guidelines, the contract claims must be preempted. ECF 95. The Court already considered and rejected this argument. *See* ECF No. 65 at 12 (UHC's reply brief making this argument). As stated by the Court, Plaintiffs' contract claims are not preempted because

analysis of those claims would require the Court only to "investigate whether UHC complied with its own written documents." ECF 91 at 19. The contract imposes obligations on UHC, and UHC can be liable for breaching those obligations without implicating preemption. *See, e.g., Am. Airlines v. Wolens*, 513 U.S. 219, 232–33 (1995) (holding that ADA preemption does not apply to contract claims by "a party who claims and proves that [a party] dishonored a term [the party] itself stipulated," so long as the action was confined to the terms of the agreement); *Worldwide Aircraft Servs. v. Conn. Gen. Life Ins. Co.*, 2024 WL 4201726, at *15 (M.D. Fla. Sept. 16, 2024) (holding that contract terms are "privately ordered obligations that can be enforced through a breach of contract claim," even if the terms cover subject matter governed by the ADA).

Second, UHC argues that Plaintiffs' only measure of damages is the value of the denied benefits, and evaluation of those damages would require the Court to determine whether coverage determinations were appropriate under the Medicare Act. ECF 95. Again, the Court considered and rejected these arguments. ECF 65 at 13. Moreover, Plaintiffs' damages are not restricted to this theory. For example, Plaintiffs pleaded a diminution-in-value theory, seeking the difference in value between what they paid for (a plan that was supposed to use doctors to make medical necessity determinations) and what they received—a plan that uses AI in place of doctors to make medical necessity determinations, jeopardizing access to necessary medical care. *See* Am. Compl. ¶ 55. Calculation of this damages theory or similar theories would not require the Court to determine whether individual determinations were appropriate under the Medicare Act.

Third, UHC claims that EOC contracts cannot predicate breach of contract claims because CMS "comprehensively regulates" EOCs and because the Medicare Act provides a "remedial scheme" for correcting breach of EOC terms—the Medicare appeals process. ECF 95. This also restates UHC's arguments on the motion to dismiss. ECF 43 at 29–30. The Medicare appeals process allows only challenges to benefits determinations, not other breaches of EOC terms. ECF 91 at 19; Am. Compl. ¶¶ 45, 50. Plaintiffs assert challenges to UHC's claims determination process, which falls outside the scope of the Medicare appeals process. *Id.* UHC cites no new authority to support the proposition that EOCs cannot predicate contract claims—it cites only its briefing on the motion to dismiss, which the Court already considered.

Fourth, UHC argues that Plaintiffs' bases for their contract claims other than failure to utilize physician review of claims must be preempted because they "reference the fairness and individualized nature of the claim investigation and whether the reasons for claim denial were accurately disclosed." ECF 95. This argument was already made and rejected. ECF 43 at 30.

UHC's plea for reconsideration is simply an attempt to relitigate issues already considered and decided by the Court. Even if the Court considers UHC's bases for reconsideration, UHC fails to show Plaintiffs' contract claims should be preempted. Thus, the Court should deny UHC's request to allow a motion for reconsideration.

Respectfully submitted,

Glenn A. Danas