

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA**

UNITED HEALTHCARE SERVICES,
INC.; UNITEDHEALTHCARE
INSURANCE COMPANY; AND UMR,
INC.,

Plaintiffs,

v.

HOSPITAL PHYSICIAN SERVICES
SOUTHEAST, P.C.; INPHYNET
PRIMARY CARE PHYSICIANS
SOUTHEAST, P.C.; AND REDMOND
ANESTHESIA & PAIN TREATMENT,
P.C.,

Defendants.

Civil Action No. 1:23-cv-05221-JPB

**REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF
UNITED'S MOTION FOR SUMMARY JUDGMENT**

TABLE OF CONTENTS

	Page
INTRODUCTION	1
ARGUMENT	1
I. ERISA Expressly Preempts the Threatened Claims.....	1
A. <i>Rutledge</i> Does Not Save The Threatened Claims From Preemption.....	3
1. Defendants continue to overstate the holding of <i>Rutledge</i>	3
2. Each of Defendants’ efforts to fit this case within the ambit of <i>Rutledge</i> miss the mark	8
B. Defendants Rely On Unpersuasive Cases and Fail To Grapple With Contrary Authority	11
II. Declaratory Relief Is Warranted.....	14
A. No Basis Exists For The Court To Refuse To Exercise Jurisdiction	14
B. There Is a Pressing Need For Declaratory Relief	14
CONCLUSION.....	15

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Access Mediquip L.L.C. v. UnitedHealthcare Ins. Co.</i> , 662 F.3d 376 (5th Cir. 2011).....	11
<i>Am. ’s Health Ins. Plans v. Hudgens</i> , 742 F.3d 1319 (11th Cir. 2014).....	10
<i>Ameritas Variable Life Ins. Co. v. Roach</i> , 411 F.3d 1328 (11th Cir. 2005).....	14
<i>Cal. Div. of Lab. Standards Enf’t v. Dillingham Constr., N.A., Inc.</i> , 519 U.S. 316 (1997)	7
<i>Conn. State Dental Ass’n v. Anthem Health Plans, Inc.</i> , 591 F.3d 1337 (11th Cir. 2009).....	12
<i>Egelhoff v. Egelhoff ex rel. Breiner</i> , 532 U.S. 141 (2001)	2, 5
<i>Emergency Physician Servs. of N.Y. v. UnitedHealth Grp. Inc.</i> , 749 F. Supp. 3d 456 (S.D.N.Y. 2024).....	13
<i>Emergency Servs. of Okla., PC v. Aetna Health, Inc.</i> , 556 F. Supp. 3d 1259 (W.D. Okla. 2021).....	6, 13
<i>Gobeille v. Liberty Mut. Ins. Co.</i> , 577 U.S. 312 (2016)	10
<i>Ingersoll-Rand Co. v. McClendon</i> , 498 U.S. 133 (1990)	2, 8
<i>N.Y. State Conf. of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.</i> , 514 U.S. 645 (1995)	3, 4
<i>NEMS PLLC v. Harvard Pilgrim Health Care of Conn. Inc.</i> , 615 F. Supp. 3d 125 (D. Conn. 2022).....	15
<i>Park Ave. Podiatric Care, P.L.L.C. v. Cigna Health & Life Ins. Co.</i> , 2024 WL 2813721 (2d Cir. June 3, 2024).....	11
<i>Pilot Life Ins. Co. v. Dedeaux</i> , 481 U.S. 41 (1987)	7
<i>Plastic Surgery Ctr., P.A. v. Aetna Life Ins. Co.</i> , 967 F.3d 218 (3d Cir. 2020).....	11

TABLE OF AUTHORITIES
(continued)

	Page(s)
<i>Rowe Plastic Surgery of N.J., L.L.C. v. Aetna Life Ins. Co.</i> , 2025 WL 1907005 (E.D.N.Y. July 10, 2025)	5, 13
<i>Rutledge v. Pharm. Care Mgmt. Ass’n</i> , 592 U.S. 80 (2020)	passim
<i>United States v. Carver</i> , 260 U.S. 482 (1923)	13
<i>UnitedHealthCare Ins. Co. v. Fremont Emergency Servs. (Mandavia), Ltd.</i> , 570 P.3d 107 (Nev. 2025)	12

INTRODUCTION

Defendants’ opposition confirms that summary judgment in United’s favor is warranted.¹ Defendants continue to rely on *Rutledge v. Pharmaceutical Care Management Association*, 592 U.S. 80 (2020), as their sole bulwark against preemption. But as United has shown, Defendants misread that decision, which simply applied existing precedent to spare from preemption a law that exerted only *indirect* economic influence on ERISA plans. The Threatened Claims are of a different stripe. Indeed, Defendants give the game away when they concede that “the existence of an ERISA plan is essential to the specific claim[s]” at issue because those claims would require a plan to reimburse out-of-network services at a higher rate than provided by plan terms. Defs. Opp. Br. 14 (emphasis omitted). For the reasons elaborated below and set forth in United’s briefs, this Court should grant United’s motion for summary judgment and deny Defendants’ cross-motion.

ARGUMENT

I. ERISA Expressly Preempts the Threatened Claims

As United explained in both its own motion for summary judgment and in its opposition to Defendants’ cross-motion, ERISA’s express preemption clause, Section 514, preempts the Threatened Claims. The Threatened Claims “relate[] to”

¹ This brief employs the same abbreviations as United’s Memorandum of Law In Opposition to Defendants’ Summary Judgment Motion, Dkt. 80 (“United Opp. Br.”). Defendant’s Memorandum of Law in Opposition to United’s Summary Judgment Motion, Dkt. 81, is abbreviated as “Defs. Opp. Br.”

ERISA within the meaning of Section 514 under the standards established by the Supreme Court because they both bear a “connection with” and make “reference to” ERISA plans. *Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141, 147 (2001) (quotation omitted). The Claims bear a “connection with” ERISA plans because, by overriding plan payment terms as to the authorized reimbursement amount for out-of-network services and requiring a plan to instead make a higher payment pursuant to state law, the Claims impermissibly “govern[] ... a central matter of plan administration” and “interfere[] with nationally uniform plan administration.” *Id.* at 148; *see* United SJ Br. 12–14; United Opp. Br. 13–15. And they make “reference to” ERISA plans because it is only by virtue of United’s obligation under plan terms to make payments for the out-of-network services plan members receive that United could ever bear liability under the Threatened Claims. *See* United SJ Br. 14–15; United Opp. Br. 15–18. The Threatened Claims are therefore “premised on ... the existence of a[n ERISA] plan,” triggering preemption under Section 514. *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 140 (1990).

Defendants’ first response to this straightforward application of ERISA’s express preemption doctrine is to distort United’s arguments. According to Defendants, United’s case for preemption hinges on an outdated “plain meaning construction” of the term “relate to.” Defs. Opp. Br. 6. Not so. United has never relied on a literal construction of “relate to,” but instead has repeatedly

demonstrated that the Threatened Claims are preempted under the Supreme Court-dictated “connection with” and “reference to” standards that Defendants concede are applicable here. *See id.* at 7 n.5. Defendants attack a strawman.

When Defendants confront the arguments actually presented in this case, they are unable to escape preemption. Neither their continued misplaced reliance on *Rutledge* nor their renewed invocation of the same set of poorly reasoned cases misapplying that decision—all without grappling with the ample contrary authority cited by United—suffices to insulate the Threatened Claims from ERISA’s express preemption clause.

A. *Rutledge* Does Not Save The Threatened Claims From Preemption

Rutledge remains the centerpiece of Defendants’ case against preemption. Yet as United has shown, Defendants misunderstand that decision. Each of their efforts to liken the Threatened Claims to the law in *Rutledge* misses the mark.

1. *Defendants continue to overstate the holding of Rutledge*

Defendants again proffer an overbroad reading of *Rutledge*, contending that the case stands for the proposition that “ERISA does not preempt state regulation of medical reimbursement rates.” Defs. Opp. Br. 2. As United has explained, that is wrong. *See* United SJ Br. 15–19; United Opp. Br. 18–23. *Rutledge* merely engaged in a straightforward application of the Supreme Court’s prior decision in *New York State Conference of Blue Cross & Blue Shield Plans v. Travelers*

Insurance Co., 514 U.S. 645, 668 (1995), reaffirming longstanding principles of ERISA preemption: laws that affect ERISA plans only indirectly by way of market economics by increasing the total costs of services for which plans provide coverage, without requiring specific plan benefit payments that would override plan terms or limitations and without relying on the existence of ERISA plans to establish liability, do not trigger preemption under Section 514. See United SJ Br. 15–19; United Opp. Br. 18–23.

Defendants thus err in asserting that *Rutledge* establishes that the Threatened Claims neither bear a connection with nor make reference to ERISA plans. According to Defendants, the Threatened Claims do not force ERISA plans to “adopt a particular scheme of substantive coverage” or otherwise interfere with central matters of plan administration, as required to bear a “connection with” ERISA plans, because laws that merely “dictate *how much ERISA plans must pay* for goods and services” are exempted from preemption under *Rutledge*. Defs. Opp. Br. 12. What Defendants fail to grasp, however, is that the *Rutledge/Travelers* rule provides only that laws that merely exert “*indirect economic influence*” on plans are not preempted. *Travelers*, 514 U.S. at 659 (emphasis added). That rule does not encompass causes of action that—like the Threatened Claims—would actually require the plan itself to deviate from plan terms and pay a particular benefit (such as out-of-network services) in a particular

way (requiring 100% of the providers' billed charges to be paid by the plan). *See Rutledge*, 592 U.S. at 86–87 (reaffirming that state laws requiring plans “to structure benefit plans in particular ways” and “requiring payment of specific benefits” by plans are among the “primar[y]” targets of ERISA preemption); *Rowe Plastic Surgery of N.J., L.L.C. v. Aetna Life Ins. Co.*, 2025 WL 1907005, at *5–6 (E.D.N.Y. July 10, 2025) (recognizing that claims analogous to the Threatened Claims are preempted because they “would ‘require payment of specific benefits’ under an ERISA plan” “beyond that which Aetna paid” pursuant to plan terms).

Defendants' hypothetical regarding IVF coverage confirms their misunderstanding of the basic principles of preemption applicable here. Defendants assert that “a hypothetical state law requiring ERISA plans to pay a certain amount for IVF if they independently choose to cover it would not be preempted.” Defs. Opp. Br. 12 (emphasis omitted). Defendants are mistaken. A state law that requires an ERISA plan to deviate from plan terms specifying the amount that the plan agrees to contribute toward the cost of IVF treatment and instead pay some other specified amount would clearly be preempted because it would “govern[] a central matter of plan administration” by requiring a specific payment contrary to plan terms. *Egelhoff*, 532 U.S. at 148. Such a law would not only discourage plans from covering IVF treatment, but would also render “uniform plan administration” impossible, triggering preemption, *id.*, since all 50

states could dictate different payment amounts. To be analogous to the law in *Rutledge* and therefore not preempted, the hypothetical law would have to instead require only that IVF providers be paid a certain total sum from *all* sources—including any plan coverage and the patient’s own pocket. *See Rutledge*, 592 U.S. at 90 (describing law that set “a floor” for the total “cost” of the covered prescriptions drugs—that is, “how much” a PBM “and its beneficiary . . . owe[]”). A law that regulates the “total bill” owed to a provider, without binding a plan to make any particular payment in disregard of plan terms, would be a non-preempted cost regulation that merely affects market economics and therefore falls under the *Rutledge* rule—as Defendants’ own authority recognizes. *See* Defs. Opp. Br. 18 n.10 (citing *Emergency Servs. of Okla., PC v. Aetna Health, Inc.*, 556 F. Supp. 3d 1259, 1264–65 (W.D. Okla. 2021) (distinguishing between claims that concern “the rate of reimbursement for the *total* bill” and claims that regulate “how the Plan calculates its portion of the bill versus the patient’s portion of the bill,” and recognizing that the latter category would be preempted (emphasis added; quotation omitted))). The Threatened Claims, by contrast, require a plan’s administrator to make a payment on the plan’s behalf that is contrary to plan terms. *Rutledge* does not shield such claims from preemption.

Defendants likewise err in asserting that *Rutledge* establishes that the Threatened Claims do not make “reference to” ERISA plans. Defendants’ only

argument in support of that contention is that the Threatened Claims “affect ERISA plans and non-ERISA entities in an evenhanded manner” and that they only “happen[] to be applied to claims under ERISA plans in individual instances.” Defs. Opp. Br. 13–14. As an initial matter, Defendants misframe the inquiry: as the Supreme Court’s cases establish, although common law claims are always of general applicability when viewed in the abstract, ERISA preempts them whenever they bear a “connection with” or “reference to” ERISA plans when deployed in a particular case. *See, e.g., Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 48 (1987) (plaintiff’s common-law breach of contract and tort claims were preempted because, as pleaded in that case, they were “each based on alleged improper processing of a benefit claim under an employee benefit plan”). There is no reservoir of absolute protection for laws of “general applicability.”

Indeed, as United has explained, *see* United Opp. Br. 24, the Supreme Court has articulated a *disjunctive* test for “reference-to” preemption, the second prong of which zeroes in on purported laws of “general applicability”—*viz.*, a law “refers to” ERISA plans if it “acts immediately and exclusively upon ERISA plans *or* where the existence of ERISA plans is essential to the law’s operation.” *Rutledge*, 592 U.S. at 88 (emphasis added; quotations omitted); *see also, e.g., Cal. Div. of Lab. Standards Enf’t v. Dillingham Constr., N.A., Inc.*, 519 U.S. 316, 325 (1997) (describing the test as consisting of two separate prongs and citing different cases

to exemplify preemption under each prong). Defendants’ analysis impermissibly collapses the two distinct prongs and, under the proper analysis, “the existence of ERISA plans” being “essential to the law’s operation” is a standalone basis for preemption. Defendants’ concession that “the existence of an ERISA plan is essential *to the specific claim*” that they seek to perfect against United, Defs. Opp. Br. 14, is thus dispositive and the Supreme Court’s precedents dictate that the Threatened Claims are preempted. *See, e.g., Ingersoll-Rand*, 498 U.S. at 140 (claims preempted if “premised on ... the existence of a[n ERISA] plan”).

2. *Each of Defendants’ efforts to fit this case within the ambit of Rutledge miss the mark*

United’s summary judgment motion and its opposition to the cross-motion detailed the distinctions between the law in *Rutledge* and the Threatened Claims at issue here. *See* United SJ Br. 18–19; United Opp. Br. 20–22. Defendants make two attempts to diminish the force of those differences. Each is unavailing.

First, Defendants accuse United of mischaracterizing the law in *Rutledge*, contending that the “law directly regulated the amounts paid by PBMs, which—like United—are third-party administrators of ERISA plans.” Defs. Opp. Br. 16. Defendants misconstrue both the role of PBMs as conceived by *Rutledge* and the nature of the law at issue in *Rutledge*. According to *Rutledge*, when a PBM makes a payment to a pharmacy, it discharges its *own* contractual reimbursement obligation to the pharmacy before separately seeking reimbursement from the plan.

See 592 U.S. at 84. The role of a third-party administrator like United is entirely different: when United pays a provider’s claim, it acts as the plan’s own claims-paying mechanism, and its payment discharges *the plan’s* own benefit obligation to the participant. *See* Def. SUMF, Dkt. 79-2 ¶ 42 (acknowledgment by Defendants that for self-funded plans, United “reviews and adjudicates claims” on behalf of the plan). The law in *Rutledge*—which, as explained, *see supra* at 6, the Supreme Court viewed as simply setting “a floor” for the total “cost” due to pharmacies without requiring plans to pay any particular percentage or benefit amount and without regulating how payment responsibility to pharmacies was allocated among PBMs, plans, and plan participants—thus did not have any direct effect on ERISA plans that could trigger Section 514 preemption. Indeed, plan terms were left entirely unaffected: if a plan promised members it would pay \$100 for a particular drug, with the remainder of any charges being the members’ responsibility, the plan could still promise to pay only \$100 after the law’s enactment.

The Threatened Claims, by contrast, fall in the heartland of Section 514 preemption by requiring United to deviate from plan terms in making a payment on the plan’s behalf in an amount other than that decreed by those terms. For that reason, Defendants err in again insisting, just as they did in their cross-motion for summary judgment, that the law in *Rutledge* is analogous to the Threatened Claims. Def. SJ Br. 14–15.

Second, Defendants again advance the misguided assertion that the Threatened Claims are not preempted simply because they are asserted against a third party rather than the ERISA plan itself. *See* Defs. Opp. Br. 16. As United has shown, that argument is squarely foreclosed by Supreme Court and Eleventh Circuit precedent. *See* United Opp. Br. 23–24; *see also Am. ’s Health Ins. Plans v. Hudgens*, 742 F.3d 1319, 1331 (11th Cir. 2014) (rejecting identical argument); *Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312, 323 (2016) (finding state law directed at a plan’s third-party administrator preempted); *Rutledge*, 592 U.S. at 86–92 (conducting ordinary preemption analysis rather than treating law’s third-party focus as determinative).

There is likewise no merit to Defendants’ related suggestion that the Threatened Claims would not “compel United to pass along any added costs imposed by state law to the ERISA plans or plan members.” Defs. Opp. Br. 16. That argument again betrays Defendants’ fundamental misunderstanding of the role of claim administrators like United, who—as described above, *see supra* at 8-9—discharge *the plan’s own obligations* in accordance with plan terms when they make payments to providers. Indeed, no claim administrator would accept a contract that requires it to pay claims out of its own pocket without being compensated by the plan. The interference with plan administration, and the reliance upon an ERISA-forged relationship in order to impose liability, is

effectuated at the moment that one of the Threatened Claims, if successful, requires United to make payment on behalf of the plan in contravention of plan terms.

B. Defendants Rely On Unpersuasive Cases and Fail To Grapple With Contrary Authority

United marshaled ample authorities determining that state-law claims like the Threatened Claims are preempted, including numerous decisions that reject the overbroad reading of *Rutledge* Defendants advance. *See* United SJ Br. 14–15; United Opp. Br. 15–18. Defendants have little to say in response. They attempt to brush aside pre-*Rutledge* cases as irrelevant. *See* Defs. Opp. Br. 14 n.8. Yet Defendants eventually concede that *Rutledge* applied a “long recognized” principle established in the Supreme Court’s 1995 *Travelers* decision. *Id.* at 9 n.6. There is thus no reason to doubt the continued force of post-*Travelers* cases such as *Plastic Surgery Center, P.A. v. Aetna Life Insurance Co.*, 967 F.3d 218 (3d Cir. 2020), and *Access Mediquip L.L.C. v. UnitedHealthcare Insurance Co.*, 662 F.3d 376, 386 (5th Cir. 2011). Defendants offer no explanation of how *Rutledge* could have undermined these cases by simply applying the longstanding *Travelers* rule.

In any event, the reasoning of those courts has been reaffirmed in the many post-*Rutledge* cases cited by United. *See* United Opp. Br. 16–17 (citing *Park Ave. Podiatric Care, P.L.L.C. v. Cigna Health & Life Ins. Co.*, 2024 WL 2813721 (2d Cir. June 3, 2024)); *id.* at 17–18, 21–22 (collecting district court cases).

Defendants’ only response is to label those cases “outlier[s]” without discussing

them. Defs. Opp. Br. 17. Needless to say, Defendants cannot so easily wish away the many decisions that lay bare the flaws in Defendants' analysis.

The cases upon which Defendants rely, meanwhile, all exemplify those flaws. The decision in *UnitedHealthCare Ins. Co. v. Fremont Emergency Servs. (Mandavia), Ltd.*, 570 P.3d 107 (Nev. 2025), for instance, entirely failed to grapple with the “reference to” prong of Section 514 preemption, conclusorily asserting that it was not “not at issue,” *id.* at 118. Even more problematically, the court relied on a distinction between “rate of reimbursement” and “right to reimbursement” claims—a distinction that, as United has explained, *see* United SJ Br. 20–24, some courts have erroneously imported from the complete preemption context. *See* 570 P.3d at 118 (rejecting preemption because “[t]he sole issue in this case is the rate of reimbursement for emergency services”). That reasoning defeats itself. In the ERISA context, complete preemption is a “differ[ent]” and “narrower” doctrine than express preemption that turns on distinct requirements (such as the absence of an “independent” state-law “legal duty”) and has distinct consequences (such as permitting “removal to federal court”). *Conn. State Dental Ass’n v. Anthem Health Plans, Inc.*, 591 F.3d 1337, 1344–45, 1353 (11th Cir. 2009). Unlike in the complete preemption context, the fact that a provider’s state-law claim challenged the “rate of reimbursement” for services is the *reason* it is expressly preempted: the “rate of reimbursement” for which the plan provides

coverage is necessarily prescribed by the plan, and the claim would require the plan’s administrator to pay a different “rate of reimbursement” on behalf of the plan and its members. *Fremont*’s own analysis thus confirms express preemption.²

Defendants’ other authorities are equally unpersuasive. Much like *Fremont*, *Emergency Services of Oklahoma* deployed reasoning that should have led it to recognize that the state-law claims before it were preempted, but failed to properly apply its own framework. *See supra* at 6 (describing the court’s recognition that claims that interfere with “how the Plan calculates its portion of the bill” would be preempted (quoting 556 F. Supp. 3d at 1264–65)). *Emergency Physician Services of New York v. UnitedHealth Group Inc.*, 749 F. Supp. 3d 456 (S.D.N.Y. 2024), meanwhile, parrots Defendants’ errors in overreading *Rutledge*—as a better-reasoned case has recognized. *See Rowe*, 2025 WL 1907005, at *6 (refusing to follow *Emergency Physician Services* because, *inter alia*, it “relied on and applied the Supreme Court’s preemption framework from *Rutledge*,” which “has no application here”). Defendants’ remaining authorities contain similar flaws. *See United Opp. Br.* 22–23 (describing errors, as well as Defendants’ misplaced

² Defendants also misconstrue the significance of the U.S. Supreme Court’s denial of certiorari. Defs. Opp. Br. 11. Denial of review by the Supreme Court, which grants only a small fraction of petitions, “imports no expression of opinion upon the merits of the case.” *United States v. Carver*, 260 U.S. 482, 490 (1923). Indeed, the denial may well have reflected the perfect uniformity among federal appellate courts in finding such claims to be preempted. *See United Opp. Br.* 16–17.

reliance on inapposite cases involving shared savings network contracts).

II. Declaratory Relief Is Warranted

Defendants' renewed efforts to avoid this Court's consideration of the merits of the preemption question are equally meritless and should be rejected.

A. No Basis Exists For The Court To Refuse To Exercise Jurisdiction

Much like they did in their cross-motion, Defendants again assert that this Court should refrain from exercising its jurisdiction to enter a declaratory judgment in this action, insisting that "there is no live dispute." Defs. Opp. Br. 1. As United has explained, *see* United Opp. Br. 5–12, that assertion is contrary to this Court's prior rulings affirming the existence of an ongoing live controversy, and Defendants have offered no basis for this Court to depart from that determination. *See* Dkt. 77 at 12; *see also* Dkt. 43 at 13–14 (rejecting Defendants' argument that the Court should discretionarily abstain under *Ameritas Variable Life Insurance Co. v. Roach*, 411 F.3d 1328 (11th Cir. 2005) (per curiam)—an argument Defendants have not renewed). A declaratory judgment is warranted.

B. There Is a Pressing Need For Declaratory Relief

As United's summary judgment motion demonstrated, *see* United SJ Br. 20–25, the urgency of declaratory relief is underscored not only by the need to clarify the legal relationship between parties that are concretely committed to diametrically opposing legal positions, but also the persistent confusion among courts addressing similar claims. Defendants' response is that there are at most

“one or two stray, outlier decisions” that cut against their position. Defs. Opp. Br. 17. This Court should not credit that wishful thinking: as the foregoing discussion should make clear, *see supra* at 11, there is a substantial body of both pre- and post-*Rutledge* decisions, including every relevant federal appellate case, rejecting Defendants’ position.³ And as Defendants’ cited decisions demonstrate, there are also a substantial number of cases that exhibit muddled reasoning, including cases that mistakenly import the “right vs. rate” of reimbursement distinction from the complete preemption context into the express preemption analysis. *See supra* at 12-13 (describing *Fremont* decision). This fragmented legal landscape will benefit from the clarification that this Court’s declaratory judgment can provide.

CONCLUSION

The Court should grant United’s motion for summary judgment and deny Defendants’ cross-motion for summary judgment.

³ Defendants quote *NEMS PLLC v. Harvard Pilgrim Health Care of Connecticut Inc.*, 615 F. Supp. 3d 125, 141–42 (D. Conn. 2022) for the proposition that “[e]very court confronted with this question” has agreed with their position, *see* Defs. Opp. Br. 10, 17, but *NEMS* purported to refer only to the narrower “question of whether a surprise billing law similar to the one [before it] is preempted by ERISA,” 615 F. Supp. 3d at 141–42. In any event, *NEMS* cited only cases that lack persuasive value for the reasons explained, *see supra* at 12-14; United Opp. Br. 22–23, and it did not address the ample contrary authority, some of which postdated *NEMS*.

Respectfully submitted,

Dated: May 4, 2026

William H. Jordan
R. Blake Crohan
ALSTON & BIRD LLP
One Atlantic Center
1201 West Peachtree Street
Suite 4900
Atlanta, GA 30309-3424
Tel.: (404) 881-7000
Fax: (404) 881-7777
bill.jordan@alston.com
blake.crohan@alston.com

Emily Seymour Costin (*pro hac vice*)
ALSTON & BIRD LLP
The Atlantic Building
950 F Street, NW
Washington, DC 20004-1404
Tel.: (202) 239-3300
Fax: (202) 239-3333
emily.costin@alston.com

/s/ Greg Jacob
Greg Jacob (*pro hac vice*)
Brian D. Boyle (*pro hac vice*)
Meredith Garagiola (*pro hac vice*)
O'MELVENY & MYERS LLP
1625 Eye Street, NW
Washington, DC 20006
Tel.: (202) 383-5300
Fax: (202) 383-5414
gjacob@omm.com
bboyle@omm.com
mgaragiola@omm.com

William D. Pollak (*pro hac vice*)
O'MELVENY & MYERS LLP
1301 Avenue of the Americas
Suite 1700
New York, NY 10019
Tel.: (212) 326-2000
Fax: (212) 326-2061
wpollak@omm.com

*Attorneys for Plaintiffs United
HealthCare Services, Inc.,
UnitedHealthcare Insurance Company,
and UMR, Inc.*

LOCAL RULE 7.1(D) CERTIFICATION

In accordance with L.R. 7.1(D), the undersigned counsel hereby certifies that, consistent with L.R. 5.1(C), the foregoing document was prepared in Times New Roman font, 14 point.

/s/ Greg Jacob
Greg Jacob (*pro hac vice*)
1625 Eye Street, NW
Washington, DC 20006
Tel.: (202) 383-5300
Fax: (202) 383-5414
gjacob@omm.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused a true and correct copy of the foregoing to be filed with the Clerk of Court using the CM/ECF system, which will send a notification of such filing to all counsel of record.

This 4th day of May, 2026.

/s/ Greg Jacob
Greg Jacob (*pro hac vice*)
O'MELVENY & MYERS LLP
1625 Eye Street, NW
Washington, DC 20006
Tel.: (202) 383-5300
Fax: (202) 383-5414
gjacob@omm.com

Attorney for Plaintiffs United HealthCare Services, Inc., UnitedHealthcare Insurance Company, and UMR, Inc.