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

UNITED'S OPPOSITION TO DEFENDANTS' SECOND MOTION TO DISMISS THE AMENDED COMPLAINT

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PRELIMINARY STATEMENT[1]

Through this action, United seeks to resolve an ongoing and intractable dispute with Defendants regarding the law that governs United's payment of claims for services provided by Defendants.[2] In particular, United seeks a declaration that it may administer these claims in accordance with the Plan terms as required by ERISA and need not accede to Defendants' demands for their full, unilaterally set billed charges under state common law.[3] The resolution of this dispute should be straightforward because ERISA explicitly preempts any state law claim that "relate[s] to" an ERISA plan. ERISA § 514(a), 29 U.S.C. § 1144(a).

Defendants, however, have sought to block adjudication of the merits at every turn. Initially, Defendants attempted to strip this Court of its jurisdiction by submitting a declaration from TeamHealth's Senior Vice President, Kent Bristow, stating that TeamHealth "presently" lacks an intent to litigate in Georgia. ECF 29-

[1] Unless otherwise noted, all emphasis is supplied and all internal quotations and citations are omitted.

[2] This memorandum refers to Plaintiffs United HealthCare Services, Inc., UnitedHealthcare Insurance Company, and UMR, Inc. as "United"; the health plans that United administers in Georgia as the "Plans"; the Employee Retirement Income Security as "ERISA"; and Hospital Physician Services Southeast, P.C., Inphynet Primary Care Physicans Southeast, P.C., and Redmond Anesthesia & Pain Treatment, P.C. as "Defendants."

[3] More particularly, the "Threatened Claims" are claims that provisions or doctrines of Georgia state law other than contract principles—such as quantum meruit, state RICO laws, common law conversion—entitle Defendants to payment of their unilaterally determined billed charges. Am. Compl. ¶¶ 10–12, 56–58, 83.

1 ¶ 8. But this Court correctly rejected that self-serving tactic just nine months ago, finding that there is "a live controversy over the proper rate of reimbursement for out-of-network claims." Order Denying Defs.' Mot. to Dismiss, ECF 43 ("MTD Order") at 11. The Court's decision was informed by the fact that TeamHealth's Chief Executive Leif Murphy threatened litigation against United wherever United terminated a network contract—and making good on this threat—"TeamHealth affiliates have sued United in nine states where United has reimbursed at amounts less than 100%" and terminated a network agreement." *Id.* at 8. The Court rejected Defendants' attempt to extinguish this threat because Mr. Bristow's initial "[d]eclaration [did] not negate the possibility of an action in the future regarding the medical claims," and thus "[did]nothing to alleviate United's potential liability for past, present or ***future conduct***." *Id.* at 10–11.

Discovery has only confirmed the live nature of this dispute. Following the commencement of summary judgment briefing, Defendants again attempted to avoid a decision on the merits by tendering a slightly revised Bristow Declaration. ECF 59-4 ("Revised Bristow Decl."). But as with their earlier attempt to strip this Court of jurisdiction, the Revised Bristow Declaration does not moot the controversy because Mr. Bristow fails to withdraw the threat of future litigation in connection with Ongoing Claims[4] that are indistinguishable from claims over

[4] As described below, Defendants have continued to provide services to members

which Defendants have initiated litigation in the past. Defendants' strident refusal to close the door on the exact same type of litigation over ongoing services means under established law that there is still a live dispute.[5]

Defendants insist that they may keep alive their litigation threats as to Ongoing Claims activity on the ground that "a covenant not to sue need not extend to future acts." Defs.' Second Mot. to Dismiss Am. Compl., ECF 59 ("Mot.") at 20. But Defendants rely upon outdated case law predating the seminal Supreme Court decision, *Already, LLC v. Nike, Inc.* *Already* makes clear that defendants seeking to moot a controversy by voluntary action bear the burden of "demonstrat[ing] that the covenant not to sue is of sufficient breadth and force that [United] can have ***no reasonable anticipation*** of a future [] claim." 568 U.S. 85, 102 (2013) (Kennedy, J., concurring). A time-delimited covenant—like Defendants' here—does not extinguish the threat of a future claim.

Defendants also argue that there is no need to forswear litigation over Ongoing Claims because they supposedly have not previously sued United over claims for non-emergency services that they delivered at out-of-network

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of United Plans since Mr. Bristow's declaration was executed on April 18, 2025. Those past claims as well as all future claims (collectively, the "Ongoing Claims") fall outside the scope of Mr. Bristow's covenant not to sue.

[5] Defendants initially argued that the Court should exercise its discretion to deny declaratory relief, but they have not renewed that argument here. *See* Defs.' First Mot. to Dismiss, ECF 29, at 18–21.

hospitals—the Ongoing Claims at issue in this lawsuit. But Defendants have expressly threatened to sue over ***any*** claim not paid at its full-billed charge. Defendants further acknowledge that they have repeatedly sued over emergency ***and*** non-emergency services, and for services provided at network ***and*** out-of-network hospitals. United can thus draw little comfort from Defendants' fine-toothed parsing of their prior lawsuits. This is particularly so since Defendants do not dispute that the state-law legal theories they have deployed in prior litigation would plainly extend to the Ongoing Claim activity at stake here, nor do they offer any explanation for their refusal to renounce litigation as to the Ongoing Claims to which those theories would apply.

Ultimately, the fact remains that TeamHealth can initiate suit against United at any time on these Ongoing Claims. It follows that with each and every Ongoing Claim for services provided by Defendants that falls outside the scope of the No Surprises Act ("NSA"), United continues to face an impossible choice between adhering to its duties under ERISA and courting litigation from Defendants, or acceding to Defendants' demands and risking exposure to its customers (the Plans' sponsors). "This is the type of Damoclean threat that the Declaratory Judgment Act is designed to avoid" and, under these circumstances, a Declaratory Judgment is both necessary and appropriate. *GTE Directories Publ'g Corp. v. Trimen Am., Inc.*, 67 F.3d 1563, 1568–69 (11th Cir. 1995).

STATEMENT OF FACTS

A. United Administers Claims in Georgia Pursuant to Employee Benefits Plans Subject to ERISA

United is a health insurer and a third-party claims administrator for certain ERISA-governed employee health benefit plans in Georgia ("the Plans"). Decl. of Rebecca Paradise ("Paradise Decl."), ECF 54–3, ¶ 3.[6] United determines benefit payments in accordance with the Plan document when a participant in a Plan obtains covered healthcare treatments (a "Covered Service"). Paradise Decl. ¶ 20.

TeamHealth Holdings, Inc. ("TeamHealth") is an affiliated group of companies that purports to provide practice management services to medical professionals. Decl. of Kent Bristow in Supp. of Defs.' Original Mot. to Dismiss, ECF 29–1 ("Original Bristow Decl."), ¶ 3. The three Defendants are for-profit, private-equity backed healthcare staffing companies affiliated with TeamHealth. Defs.' Answer to the Am. Compl., ECF 44 ("Answer"), ¶¶ 42, 44. Defendants have provided emergency and non-emergency medical services in Georgia to participants in the United Plans. Answer ¶¶ 3–4.

Two of the Defendants and United were previously parties to a network participation agreement that set forth reimbursement rates for certain services; the

[6] Defendants have raised a factual challenge to this Court's jurisdiction. *See* Mot. 12. "[I]n a factual challenge to subject matter jurisdiction, a district court can 'consider extrinsic evidence such as deposition testimony and affidavits.'" *Houston v. Marod Supermarkets, Inc.*, 733 F.3d 1323, 1336 (11th Cir. 2013).

third has never been party to such an agreement. Answer ¶ 44; Ex. 14,[7] ECF 54–17. On July 9, 2019, United terminated that agreement, and it has not been renewed, reinstated, or replaced. Answer ¶ 44; Ex. 15, ECF 54–18, Notice of Termination dated July 9, 2019. Defendants now render their services to the Plans' members as "out-of-network" providers at both in-network and out-of-network hospitals. Answer ¶¶ 3, 45; Paradise Decl. ¶¶ 18, 20. In this context, where there is no agreement with a provider, United's obligation as claims administrator under ERISA is to pay the benefit amounts prescribed by the Plans. Paradise Decl. ¶ 20.

B. TeamHealth Disputes United's Payment Determinations as Part of a Global Strategy to Compel Higher Reimbursement

Defendants have submitted to United millions of dollars in claims for Covered Services provided to participants in the Plans on an out-of-network basis, demanding payment of the billed charges they have determined unilaterally. Decl. of Joao C. dos Santos, ECF 54–35 ("Santos Decl."), ¶ 14, Table 4; Exs. 31–36, ECF 54–36 – 54–41 (claims data). Even after January 1, 2022, the TeamHealth Defendants have continued to submit claims for their full-billed charges for Covered Services to participants in Plans on an out-of-network basis that are not subject to the NSA. Santos Decl. ¶¶ 12–13; Exs. 31–36.

TeamHealth, and Kent Bristow in particular, "ha[s] the authority to

[7] "Ex." refers to the exhibits to Plaintiffs' Motion for Summary Judgment, ECF 54.

determine what reimbursement rates are acceptable to TeamHealth and its affiliates, including the Georgia Medical Groups." Decl. of Kent Bristow in Supp. of Defs.' Second Mot. to Dismiss Am. Compl., ECF 59–4 ("Revised Bristow Decl."), ¶ 3. Bristow also has the authority to decide "whether to take legal action against health insurers and/or third-party administrators, including United. *Id.* Bristow has, throughout this lawsuit, purported to speak on behalf of the Defendants and to make decisions for Defendants. Original Bristow Decl. ¶ 3; Revised Bristow Decl. ¶ 3. Similarly, before TeamHealth-affiliated providers filed several prior lawsuits against United, it was Mr. Bristow—not the local TeamHealth providers—who sent a letter to United demanding payment of full-billed charges for the providers' out of network services and threatening litigation if they did not. *See* Ex. 17, ECF 54–20, July 2019 Letters from Bristow.

Mr. Bristow and other TeamHealth senior officials have repeatedly asserted that TeamHealth is always entitled to its full-billed charges from claims administrators like United.[8] Moreover, TeamHealth officials have repeatedly

[8] Ex. 19, ECF 54–23, *Emergency Physician Servs. of N.Y. v. UnitedHealth Group, Inc*., (S.D.N.Y.) April 12, 2023 Deposition of K. Bristow at Tr. 80:15–81:14; Ex. 20, ECF 54–24, *Gulf to Bay Anesthesiology Assoc. LLC v. UnitedHealthcare of Florida, Inc*. (Fl. Cir. Ct.), June 29, 2022 Deposition of K. Bristow at Tr. 47:22–48:16; Ex. 21, ECF 54–25, *Fremont Emergency Servs. (Mandavia), Ltd v. UnitedHealth Group, Inc.* (D. Nev.), May 13, 2021 Deposition of K. Bristow at Tr. 318:3–319:2; Ex. 22, ECF 54–26 *Emergency Physician Servs. of N.Y. v. Unitedhealth Group, Inc.* (S.D.N.Y.), March 17, 2023 Deposition of P. Bevilacqua at Tr. 81:20–82:14; *see also* Plaintiffs' Statement of Undisputed Material Facts in

testified that they consider any claim that is reimbursed at less than 100% of billed charges to be subject to dispute and potential litigation regardless of the nature of the services or the network status of the facility at which the services were provided. *Id.* For example, Mr. Bevilacqua testified that TeamHealth always disputes health plan payments that amount to less than their full-billed charges:

> Q. So is it a practice that, whenever TeamHealth receives . . . less than full-billed charges on an out-of-network claim, they will always dispute it?
>
> A. Yes.

Ex. 22, ECF 54–26, Deposition of P. Bevilacqua at Tr. 81:20–82:14.

In fact, during negotiations over reimbursement rates, TeamHealth's CEO, Leif Murphy, told United that TeamHealth intended to "pursue[] litigation as a strategy" and "the public fight is going to be ugly." Ex. 23, ECF 54–27, April 18, 2019 Email; Ex. 24, ECF 54–28, Oklahoma Trial Tr. (Day 11) 88:19–89:1, 95:6–11. Mr. Murphy further informed United that TeamHealth has "gotten really good at the litigation route and have a template [complaint] to file in every state for every contract." Ex. 23, ECF 54–27, April 18, 2019 Email. Mr. Murphy asserted that "[f]or every UHG termination, we'll file a TeamHealth lawsuit." *Id.*

Making good on this threat, TeamHealth affiliates have already brought eleven separate lawsuits against United in nine states across the country asserting

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Support of Motion for Summary Judgment, ECF 54–2 ("SUMF"), ¶¶ 84–90.

that various provisions or doctrines of state law that are not grounded in contract principles—such as unjust enrichment, quantum meruit, state RICO laws, common law conversion, civil conspiracy, good faith and fair dealing, or consumer protection law—require United to pay claims at the providers' full-billed charges ("Threatened Claims"), regardless of the Plans' benefit language. Bristow Original Decl. ¶ 10; Answer ¶¶ 9–10; *see* Exs. 26–28, ECF 54–30 – 54–32; SUMF ¶¶ 100, 103–105 (listing other lawsuits).[9] Indeed, TeamHealth sued United in four of the five other states that were covered by the July 9, 2019 termination notice that United issued to two of the Defendants here. SUMF ¶¶ 106–107; *compare* Ex. 15, ECF 54–18, July 2019 Termination Letter (terminating the network contracts of TeamHealth providers in Texas, Florida, New Jersey, Ohio, and New York), *with*

[9] *See* Exs. 26–28, ECF 54-30 – 54-32, *Atl. ER Physicians Team Pediatric Assocs., PA v. UnitedHealth Grp., Inc.*, No. 1:20-cv-20083, ECF No. 2 (D.N.J. Dec. 21, 2020); *Fla. Emergency Physicians Kang & Assocs., M.D., Inc. v. United Healthcare of Fla., Inc.*, No. 0:20-cv-60757, ECF No. 27 (S.D. Fla. June 9, 2020); *Emergency Grp. of Ariz. Pro. Corp. v. United Healthcare Inc.*, No. 2:19-cv-04687, ECF No. 18 (D. Ariz. Aug. 9, 2019)); *see also Gulf-to-Bay Anesthesiology Assocs., LLC v. United Healthcare of Fla., Inc.*, No. 8:20-cv-02964 (M.D. Fla. Dec. 11, 2020); *Fremont Emergency Servs. (Mandavia) Ltd. v. UnitedHealth Grp., Inc.*, No. 2:19-cv-00832 (D. Nev. Jan. 7, 2020); *Emergency Care Servs. of Pa., P.C. v. UnitedHealth Grp., Inc.*, No. 1:19-cv-01195 (M.D. Pa. July 11, 2019); *Gulf-to-Bay Anesthesiology Assocs., LLC v. UnitedHealthcare of Fla., Inc.*, No. 17-CA-011207 (Fla. 13th Judicial Cir., Hillsborough Cnty. Dec. 15, 2017); *Hill Country Emergency Med. Assocs., P.A. v. UnitedHealthCare Ins. Co.,* No. D-1-GN-19-002050 (Travis Cnty. Dist. Ct., Tx. Apr. 15, 2019); *Emergency Dep't Physicians P.C. v. United HealthCare, Inc.*, No. 2:19-cv-12052 (E.D. Mich. Jul. 10, 2019); *Gulf-to-Bay Anesthesiology Assocs., LLC v. United Healthcare of Fla., Inc.*, No. 2023-CA-016780 (Fla. 13th Judicial Cir., Hillsborough Cnty. Nov. 21, 2023).

n.9, *supra*; SUMF ¶ 100 (listing litigation in Texas, Florida, New Jersey, and New York). Those lawsuits include claims for emergency ***and*** non-emergency services, Revised Bristow Decl. ¶ 7, and services provided at ***both*** network and out-of-network hospitals. Declaration of E. Hutchins ¶¶ 8–13; Decl. of Amy Jones ¶ 5.

The dispute is ongoing. Defendants have continued to demand full-billed charges from United on claims submitted after the enactment of the NSA in 2022.[10] Santos Decl. ¶¶ 12–13; Exs. 31–36. While the NSA has channeled disputes over many claims to arbitration, United faces ongoing exposure to Defendants' Threatened Claims whenever the hospitals or other facilities at which Defendants provide services leave United's contractual networks, even temporarily—as the NSA does not apply to non-emergency services provided at non-network facilities. 26 U.S.C. § 9816(a)(1); Paradise Decl. ¶ 16; Decl. of Valerie Leach, ECF 54–44 ("Leach Decl."), ¶ 5. For example, during the relevant period, several hospitals and other facilities in Georgia terminated their participating provider agreements and left United's network of providers, including facilities such as AdventHealth – Redmond E.R. at which Defendants provide services. Leach Decl. ¶ 6; *see also*

[10] United has excluded from this action out-of-network claims that are subject to the dispute-resolution provisions of the NSA, Consolidated Appropriations Act, 2021, Pub. L. No. 116-260, div. BB, tit. 1, 134 Stat. 1182, 2758–2890 (2020) ("NSA"). Am. Compl., ECF 27, ¶ 47. Under the NSA, claims for emergency services and claims for services provided at network facilities delivered on or after January 1, 2022 are subject to special nonjudicial dispute-resolution provisions.

Exs. 31–36, ECF 54–36 – 54–41 (claims data); Decl. of Amy Jones ¶ 6.

United thus continues to face the difficult choice of following the Plans' reimbursement terms and courting litigation from Defendants, or acceding to Defendants and risking exposure to the Plans' sponsors. *See* SUMF ¶¶ 74–79.

C. TeamHealth Equivocates About Its Future Intentions

At the outset of this action, on January 23, 2024, and after Defendants launched their first effort to defeat subject matter jurisdiction in this case, United sent Mr. Bristow a letter asking that he retract TeamHealth's prior litigation threats and confirm that Defendants will not bring the Threatened Claims to obtain increased payments on any of the claims at issue in this lawsuit. Ex. 29, ECF 54–33. Instead of reassuring United, Defendants cemented their threats by expressly refusing to renounce litigation in Georgia with respect to claims for both past and future services. Original Bristow Decl. ¶ 8; Ex. 30, ECF 54–34, Plaintiffs' Counsel January 29, 2024 Letter on Behalf of K. Bristow. Defendants confirmed that they may initiate suit against United in Georgia at any time based on their evaluation of unspecified "factors" and "conditions." *Id*.

On August 16, 2024, this Court denied Defendants' Motion to Dismiss finding that "there is a substantial controversy between parties" and "the controversy is of sufficient immediacy to warrant the issuance of a declaratory judgment." MTD Order at 7–8. Notably, the Court rejected Defendants' attempt to

moot the dispute by relying upon Bristow's Declaration that he lacked a "present" intent to take legal action, holding that "this type of present intention not to sue does nothing to alleviate United's potential liability for past, present or ***future conduct***." *Id*. at 10. Bristow's Declaration "merely suspend[ed] the threat of suit instead of extinguish[ing] it" and "the Court f[oun]d that United has a reasonable apprehension that Defendants may bring an action in the future." *Id.* at 10–11.

On April 11, 2025, United filed its Motion for Summary Judgment, which set forth the undisputed evidence showing that there is an ongoing dispute between the parties as well as the binding legal precedent demonstrating that Defendants' Threatened Claims are preempted by ERISA. ECF 54–1 at 10–19. Instead of responding to those arguments in their opposition to summary judgment, on April 8, 2025, Defendants sent United a revised draft of the Bristow declaration that more definitively disclaimed any intent to sue United on ***historical*** claims but pointedly refused to extend that covenant not to sue to similarly situated claims for any ***future*** services. Declaration of William Pollak ("Pollak Decl.") at ¶ 2.

On April 11, 2025, United identified to Defendants a number of gaps in Bristow's April 8 declaration, including that Bristow had not disavowed the possibility of litigation over ongoing out-of-network services delivered by Defendants in Georgia. *Id.* ¶ 3; *see* Exhibit C to Defendants Second Motion to Dismiss, ECF 59-3. Counsel for the parties conferred on April 14, 2025 and, the

next day, United provided a revised draft of Bristow's declaration that extended TeamHealth's covenant not to sue to include Ongoing Claims in Georgia. Pollak Decl. ¶ 4. United also provided Defendants with the long line of legal precedents holding that a covenant not to sue does not moot a case or controversy if it only covers past, not future, conduct. *Id.* ¶ 5. On April 18, 2025, Defendants renewed their jurisdictional challenge by filing their second motion to dismiss and submitting the Revised Bristow Declaration that does not address Defendants' intentions as to Ongoing Claims. Revised Bristow Decl.; Mot. 3.

LEGAL STANDARD

The Declaratory Judgment Act ("DJA") permits a federal court to "declare the rights . . . of any interested party seeking such declaration." 28 U.S.C. § 2201(a). Because DJA actions often involve "a somewhat hypothetical set of facts," the "threshold question is whether a justiciable controversy exists." *GTE*, 67 F.3d at 1568–69 (explaining declaratory relief can be "proper even though there are future contingencies that will determine whether a controversy ever actually becomes real." (quoting 10A C. Wright, A. Miller & M. Kane, FEDERAL PRACTICE AND PROCEDURE, Section(s) 2757, at 586 (2d ed. 1983))). It follows that a mere threat of litigation is typically sufficient to establish jurisdiction. *Am. Heritage Life Ins. Co. v. Johnston*, 2022 WL 30175, at *3 n.3 (11th Cir. Jan. 4, 2022); *Fastcase, Inc. v. Lawriter, LLC*, 907 F.3d 1335, 1339–40 (11th Cir. 2018).

A party's decision to hold "litigation in abeyance" or to "forestall litigation indefinitely . . . does not eliminate the case or controversy" and immunize the party from DJA relief. *Nike, Inc. v. Already, LLC*, 663 F.3d 89, 95–96 (2d Cir. 2011) ("the threat of future litigation remains relevant in determining whether an actual controversy exists"), *aff'd*, 568 U.S. 85 (2013). Under the voluntary cessation doctrine, the party seeking to moot an action has the "formidable burden of showing that it is absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur." *Already*, 568 U.S. at 91 (quoting *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 190 (2000)).

Rule 12(b)(1) motions challenge whether a justiciable controversy exists through a facial or factual attack. *Helton v. United States*, 532 F. Supp. 813, 818 (S.D. Ga. 1982); *see also Brannen v. McGlamery*, 2021 WL 6072558, at *2 (S.D. Ga. Dec. 23, 2021). Defendants style their challenge as a factual attack. Mot. 12. "[I]n a factual challenge to subject matter jurisdiction, a district court can 'consider extrinsic evidence." *Houston*, 733 F.3d at 1336; *Ingram v. Spondivits Real Estate, LLC*, 2020 WL 13856937, at *1 (N.D. Ga. Apr. 14, 2020) (Boulee, J.P.).

ARGUMENT

Defendants claim that the Revised Bristow Declaration deprives this Court of subject matter jurisdiction. But, crucially, Bristow's covenant not to sue does not extend to Ongoing Claims that are similarly situated to the conduct over which

Defendants have both threatened and initiated litigation in the past. Defendants have not, therefore, met their "***formidable burden*** of showing that it is ***absolutely clear*** that the allegedly wrongful behavior could not reasonably be expected to recur." *Already,* 568 U.S. at 91 (quoting *Friends of the Earth*, 528 U.S. at 190). To the contrary, Defendants' refusal to renounce the exact same type of litigation over future services only highlights the ongoing case or controversy between the parties.

I. Defendants Have Not Met Their Burden of Showing That It Is "*Absolutely Clear*" That They Will Not Bring a Future Claim on the Same Theories They Have Invoked in the Past

The Supreme Court disfavors attempts like this one to moot a case at the eleventh hour to avoid an unfavorable decision:

> [A] defendant cannot automatically moot a case simply by ending its unlawful conduct once sued. Otherwise, a defendant could engage in unlawful conduct, stop when sued to have the case declared moot, then pick up where he left off, repeating this cycle until he achieves all his unlawful ends.

Already, 568 U.S. at 91 (citing *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982)).[11] To discourage this tactic, the Supreme Court has set a high

[11] *See Knox v. Serv. Emps. Int'l Union, Local 1000*, 567 U.S. 298, 307 (2012) (noting "post[suit] maneuvers designed to insulate [from judicial review] . . . must be viewed with a critical eye"); *Troiano v. Supervisor of Elections*, 382 F.3d 1276, 1282 (11th Cir. 2004) ("Mere voluntary cessation of allegedly illegal conduct does not moot a case[.]" (quotation omitted)); *Diamonds.net LLC v. Idex Online, Ltd.*, 590 F. Supp. 2d 593, 596 (S.D.N.Y. 2008) ("federal jurisdiction is not (or least should not be) subject to manipulation by parties who might contrive to moot cases that otherwise would be likely to produce unfavorable precedents.").

bar—"a defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur." *Friends of the Earth,* 528 U.S. at 190. A covenant not to sue can only satisfy that "formidable burden" when it completely extinguishes the possibility of a future suit. *Already*, 568 U.S. at 102 (the defendant "must demonstrate that the covenant not to sue is of sufficient breadth and force that [the plaintiff] can have no reasonable anticipation of a future [] claim") (Kennedy, J., concurring).

The covenant at issue in *Already* is illustrative of the high bar that Defendants must clear. In that case, Nike promised that it would not initiate trademark or unfair competition claims based on "any of Already's existing footwear designs ***or any future Already designs*** that constituted a colorable imitation of Already's current products." 568 U.S. at 89. In finding that this covenant was sufficient to moot the parties' dispute, the Supreme Court emphasized that "it covers not just current or previous designs" but future conduct as well. As a result, any threat of litigation was "nonexistent" because "it is hard to imagine a scenario that would potentially infringe [Nike's trademark] and yet not fall under the Covenant." *Id.* at 93–94, 102.[12]

[12] *See Nursery Decals & More, Inc. v. Neat Print, Inc.,* 2023 WL 4884803, at *2, *6 (5th Cir. Aug. 1, 2023) ("the Updated Covenant was broad enough to preclude any claim of future injury" because it expressly extended to "any products now or

By contrast, a covenant not to sue that does not cover future, as well as past, activity and products does not moot an actual controversy. *See Sasson v. Hachette Filipacchi Presse*, 2016 WL 1599492, *5 (S.D.N.Y. Apr. 20, 2016). In *Revolution Eyewear, Inc. v. Aspex Eyewear, Inc.,* for example, Revolution covenanted that it would not sue Aspex for patent infringement "based upon any activities and/or products made, used, or sold ***on or before the dismissal of this action***." 556 F.3d 1294, 1296 (Fed. Cir. 2009). Revolution's covenant was explicitly limited to past conduct because it contended that "it is not obligated to repudiate suit for future infringement." *Id.* at 1300. The Federal Circuit disagreed, holding that "by retaining that right [to bring suit over future conduct], Revolution preserved this controversy at a level of 'sufficient immediacy and reality' to allow Aspex to pursue its declaratory judgment counterclaims." *Id.*

In *Hitachi Koki Co. v. Techtronic Industries Co.*, the plaintiff went a step further and renounced litigation not just for ***past*** sales, but also for ***future*** sales of products that are "the same or substantially identical to those products being

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in the future"); *McKee Foods Corp. v. BFP Inc.*, 2025 WL 968404, at *12 (E.D. Tenn. Mar. 31, 2025) (an "unqualified stipulation" that "unambiguously stated" that the defendant "would not pursue reinstatement under [the challenged statute] ***or any future version***" was sufficient to moot the claim), *appeal docketed*, No. 25-5416 (6th Cir. May 5, 2025); *Exxon Mobil Corp. v. Arjuna Cap., LLC*, 737 F. Supp. 3d 444, 447 (N.D. Tex. 2024) (covenant not to sue mooted the case because it covered future conduct by "unconditionally and irrevocably covenant[ing] to refrain ***henceforth*** from submitting any proposal . . . .").

offered . . . for sale" on the date of the covenant. 2013 WL 10110347, at *4 (N.D. Ga. Feb. 6, 2013). Yet Judge Duffey still held that this covenant did "not eliminate the parties' [] controversy" because it did not cover ***all*** future conduct, including "potentially-infringing products that Defendants . . . will introduce after March 13, 2012." *Id.*

Courts across the country have reached the same conclusion on similar facts. *See Synopsys, Inc v. Risk Based Sec., Inc.,* 70 F.4th 759, 767 (4th Cir. 2023) ("The absence of language unequivocally disavowing future litigation or other action [] makes the covenant not to sue here a far cry from the one at issue in *Already*."); *Element Cap. Mgmt., LLC v. Element Fin., Inc.,* 2024 WL 2786055, at *4 (N.D. Tex. Mar. 12, 2024) (plaintiff's failure to "clearly take the position that no such conduct could occur that falls outside the covenant's protection . . . preserve[d] this controversy at a level of sufficient immediacy and reality to allow defendant to pursue its declaratory judgment counterclaims").[13] Like the covenants challenged

[13] *Covet & Mane, LLC v. Invisible Bead Extensions, LLC*, 2023 WL 2919554, at *7 (S.D.N.Y. Mar. 23, 2023) ("the Covenant does not cover future products and services that [the defendant] may seek to make and sell" and thus is insufficient to divest court of jurisdiction), *report and recommendation adopted by* 2023 WL 6066168 (S.D.N.Y. Sept. 18, 2023); *Warrior Sports, Inc. v. Wilson Sporting Goods Co.*, 2023 WL 11814193, at *6 (E.D. Mich. Nov. 29, 2023) (same); *Diamonds.net LLC*, 590 F. Supp.2d at 600 (same); *compare McKee Foods Corp. v. BFP, Inc.*, 2024 WL 1213808, at *6 (6th Cir. Mar. 21, 2024) (stipulation not to seek reinstatement under the current version of the law was insufficient), *with McKee*, 2025 WL 968404, at *12 (revised "unqualified stipulation" that included future versions of the law was sufficient to moot the dispute).

in *Revolution Eyewear*, *Hitachi* and these other cases, Bristow's covenant does not extend to claims for services delivered on or after the date of his declaration—April 18, 2025. There is thus a live controversy because TeamHealth is free to initiate litigation against United at any time on any of these Ongoing Claims under the precise theories encompassed by this lawsuit.

Defendants argue that "a covenant not to sue need not extend to future acts." Mot. 20. But the cases they rely upon—the Federal Circuit's decisions in *Super Sack*, *Amana*, and *Intellectual Prop.*—preceded the Supreme Court's decisions in *Already* and *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118 (2007).[14] Prior to *MedImmune,* the Federal Circuit required a party to show "both (1) an explicit threat or other action by the patentee, which creates a reasonable apprehension on the part of the declaratory plaintiff that it will face an infringement suit, and (2) ***present*** activity which could constitute infringement or concrete steps taken with the intent to conduct such activity." *Super Sack*, 57 F.3d at 1058. In *MedImmune,* the Supreme Court rejected the Federal Circuit's test, finding that it conflicted with the Court's prior decisions, and "[i]nstead … imposed a totality-of-the-circumstances test for deciding whether there is indeed an actual controversy,

[14] Mot. 20–21 (citing *Super Sack Mfg. Corp. v. Chase Packaging Corp.*, 57 F.3d 1054, 1060 (Fed. Cir. 1995); *Amana Refrigeration, Inc. v. Quadlux, Inc.*, 172 F.3d 852, 855 (Fed. Cir. 1999); *Intellectual Prop. Dev., Inc. v. TCI Cablevision of Calif., Inc.*, 248 F.3d 1333, 1342 (Fed. Cir. 2001)).

on the particular facts and relationships involved." *Revolution Eyewear*, 556 F.3d at 1297; *MedImmune*, 549 U.S. at 132 n.11.[15] Importantly, "*MedImmune* articulated a 'more lenient legal standard' for the availability of declaratory judgment relief in patent cases." *Cat Tech LLC v. TubeMaster, Inc*., 528 F.3d 871, 880 (Fed. Cir. 2008) ("In the wake of *MedImmune*, several opinions of this court have reshaped the contours of the first prong of our declaratory judgment jurisprudence.").

In *Revolution Eyewear*, the Federal Circuit recognized that this change in doctrine had undermined its prior analysis in *Super Sack* and *Amana*. 556 F.3d at 1297. Indeed, the plaintiff in *Revolution* advanced an argument identical to the one Defendants make here—that "it [wa]s not obligated to repudiate suit for future infringement"—and the Federal Circuit soundly rejected it. *Id*. at 1300; *see also* p. 17–18, *supra* (collecting cases).

The Federal Circuit's decisions in *Super Sack*, *Amana*, and *Intellectual Prop.* are also distinguishable because in all three cases the court found that it was highly speculative whether the parties would engage in any future conduct outside the

[15] *See, e.g.*, *SanDisk Corp. v. STMicroelectronics, Inc.*, 480 F.3d 1372, 1379–80 (Fed. Cir. 2007) ("The Supreme Court's opinion in *MedImmune* represents a rejection of our reasonable apprehension of suit test."); *Lear Auto. Dearborn, Inc. v. Johnson Controls, Inc.*, 528 F. Supp. 2d 654, 670, 673 nn. 8, 11 (E.D. Mich. 2007) ("As the Federal Circuit has recognized in its recent decisions the jurisdictional test applied in *Super Sack* was rejected by the Supreme Court in *MedImmune*[.]" (internal citations omitted)).

scope of the covenant.[16] For example, the result in *Super Sack* does not help Defendants because, as the Federal Circuit noted, the covenant in *Super Sack* expressly "extended to ***future*** production and sale[s] of the same products that were subject to suit" and thus "there was not a reasonable apprehension of [future] suit." 556 F.3d at 1298; *see also Super Sack*, 57 F.3d at 1057 ("Plaintiff reports that it has unconditionally promised not to sue Defendant ***in the future*** . . . .").[17] Here, by contrast, there is no dispute that the parties will "engage in [future] activities not covered by the covenant" because Defendants continue to submit claims to United for services provided to members of United Benefit Plans, some of which will fall outside the scope of the NSA. 568 U.S. at 94; *see Element Cap. Mgmt.*, 2024 WL 2786055, at *4 (the defendant must show "that no such conduct ***could*** occur that falls outside the covenant's protection"); *see also Sunshine Kids Juv. Prods., LLC v. Ind. Mills & Mfg., Inc.*, 2011 WL 862038, at *4 (W.D. Wash.

[16] *See Intellectual Prop.*, 248 F.3d at 1341 (holding that a broad statement disavowing the defendants' liability for any infringement of the patent, which "estop[ped] [plaintiffs] and any successors in interest to the '202 patent from asserting liability" meant that defendants had no "reasonable apprehension" that it will face an infringement suit in the future); *Amana*, 172 F.3d at 856 ("Here [] the future existence of a reissue patent is wholly speculative and, therefore, cannot create a present controversy.").

[17] *See Super Sack*, 57 F.3d at 1059–60 ("Plaintiff reports that it has unconditionally promised not to sue Defendant in the future" and "Chase has, of course, never contended that it has already taken meaningful preparatory steps toward an infringing activity . . . . [As a result,] The residual possibility of a future infringement suit based on Chase's future acts is simply too speculative.").

Mar. 9, 2011) (distinguishing *Super Sack* on the grounds that the plaintiff had taken "meaningful preparatory steps towards a potential infringing activity, which were absent in *Super Sack*"). Because of these Ongoing Claim submissions, TeamHealth cannot possibly meet its burden of demonstrating that there is no reasonable possibility of a future lawsuit.[18]

The gravamen of the dispute remains live: TeamHealth continues to assert that it is entitled to receive its unilaterally set full-billed charges on Ongoing Claims that fall outside its covenant, and it has now—***for a second time***—refused to rescind its prior threats to initiate litigation at a time and place of its choosing when United does not meet those demands. At the same time, TeamHealth continues to "vigorously" dispute that the Threatened Claims are preempted by ERISA. *West Virginia v. EPA*, 597 U.S. 697, 720 (2022). Indeed, even though they press the Court to dismiss this case solely on jurisdictional grounds, Defendants reiterate their position that ERISA is no bar to the Threatened Claims at all. Mot. 5; *see Jager v. Douglas Cnty. Sch. Dist.*, 862 F.2d 824, 833–34 (11th Cir. 1989) (finding no mootness when defendants "never promised not to resume the prior practice" and "continue[d] to press on appeal that the voluntarily ceased conduct

[18] Defendants' rejoinder that their refusal to covenant as to Ongoing Claims is defensible because they involve unknown "services, patients, medical conditions, and dates of service," Mot. 19, is irrelevant because none of those details bear on whether ERISA pre-empts Defendants' threatened state common law claims.

should be declared constitutional").

In short, the Defendants have not—and cannot—come close to satisfying their "formidable burden" of demonstrating "that the covenant not to sue is of sufficient breadth and force that [United] can have ***no reasonable anticipation*** of a future [] claim" and it is "***absolutely clear***" that United will not face future litigation. *Already*, 568 U.S. at 102 (Kennedy, J., concurring).

II. Defendants' Pattern of Prior Litigation Underscores the Live Dispute Between the Parties

Defendants also contend that "there is . . . no basis to anticipate [a controversy] arising in the future" because they supposedly have not yet sued United over claims that bear the precise characteristics of the Ongoing Claims that they have excluded from their covenant—namely, claims for non-emergency services that Defendants provide at out-of-network hospitals. Mot. 16 n.6. But the previously communicated litigation threats make no such distinction. *See, e.g.*, Ex. 23, ECF 54–27. To the contrary, TeamHealth officials have repeatedly testified that they consider ***any claim*** that is reimbursed at less than 100% of billed charges to be subject to litigation regardless of the nature of the services or the network status of the facility at which the services were provided. *See* Exs. 19–22, ECF 54–23 – ECF 54–26; SUMF ¶¶ 84–90. Moreover, as Bristow acknowledges, TeamHealth affiliates have repeatedly sued United over broad swaths of emergency ***and*** non-emergency services, Revised Bristow Decl. ¶ 7, and those

lawsuits have in fact encompassed services provided at ***both*** network and out-of-network hospitals. Declaration of Elizabeth Hutchins ¶¶ 8–9; Declaration of Amy Jones ¶ 5.

Having sued United in the past on numerous claims bearing each of these characteristics individually, Defendants offer no explanation as to why United should not fear a similar lawsuit over Ongoing Claims that bear both characteristics together.[19] Defendants' prior complaints against United confirms United's apprehension, as the state-law theories that Defendants have deployed in these prior litigations plainly extend to the Ongoing Claim activity here.[20]

Moreover, Defendants' insistence that there is no possibility of litigation over ongoing non-emergency claims at out-of-network facilities makes their refusal to covenant with respect to such claims inexplicable—and belies any suggestion that a lawsuit on these claims is improbable. *See McKee Foods*, 2024 WL 1213808, at *6 (collecting cases and holding that a declaration issued in the

[19] Indeed, while not necessary to sustain the existence of a dispute over the Ongoing Claims, among the lists of historically disputed claims bearing each individual characteristic, there is limited overlap of at least one claim. Hutchins Declaration ¶ 11; *see also* Declaration of A. Jones ¶ 5.

[20] *See, e.g.*, *Gulf-to-Bay Anesthesiology Assocs., LLC v. UnitedHealthcare of Fla., Inc.*, No. 17-CA-011207, Dkt. 28 (Am. Compl.) at ¶ 85 (Fla. 13th Jud. Cir. Dec. 15, 2017); *Emergency Physician Servs. of N.Y. v. UnitedHealth Grp., Inc.*, 749 F. Supp. 3d 456, 461 (S.D.N.Y. 2024) at ¶ 29–32; *Fla. Emergency Physicians Kang & Assocs., M.D., Inc. v. United Healthcare of Fla., Inc.*, 526 F. Supp. 3d 1282, 1288 (S.D. Fla. 2021) at ¶ 24–26; *Gulf-to-Bay Anesthesiology Assocs., LLC v. United Healthcare of Fla., Inc.*, 2021 WL 1718808, at ¶ 18 (M.D. Fla. Apr. 30, 2021).

midst of litigation without any change in factual circumstances "raises suspicion that it may not be genuine" and may resume once the litigation is over); *see also Knox*, 567 U.S. at 307 (same). Bristow's insistence on expressly reserving the right to bring a lawsuit on these Ongoing Claims whenever he wants and for whatever reason he wants can only be explained by a desire to keep United under the same "Damoclean" threat that this lawsuit was intended to resolve. *See GTE*, 67 F.3d at 1568–69.

CONCLUSION

As this Court recognized previously, because Bristow's Revised "Declaration does not negate the possibility of an action in the future . . . [and] does nothing to alleviate United's potential liability for past, present or ***future conduct***," this Court retains jurisdiction. MTD Order at 10. That remains just as true today as it was nine months ago—Bristow's Revised Declaration does not strip this Court of jurisdiction because it does not extinguish TeamHealth's threat to sue over future Ongoing Claims between the parties.

For the foregoing reasons United requests that the Court deny Defendants' second Motion to Dismiss the Amended Complaint.

Respectfully submitted,

Dated: May 9, 2025

/s/ Greg Jacob

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LOCAL RULE 7.1(D) CERTIFICATION

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

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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 9th day of May, 2025.

/s/ Greg Jacob

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

UNITED HEALTHCARE SERVICES, INC.; UNITED HEALTHCARE 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

DECLARATION OF AMY JONES

I, Amy Jones, declare and state as follows:

1. I am employed by United HealthCare Services, Inc. ("UHS") as a Director of Network Contracting for UHS and its affiliates ("United").

2. I have been employed by UHS for approximately 16 years. In my role, I am familiar with United's network contracts for certain physician groups and facilities in Arizona. I have personal knowledge of the following facts and, if called and sworn as a witness, could and would testify completely thereto.

3. United provides health insurance and serve as third-party claims administrators for certain health benefit plans ("the United Benefit Plans" or the "Plans").

4. Healthcare providers who have entered into contracts with United specifying mutually agreed reimbursement amounts for services provided to participants in United Benefit Plans are referred to by United as "network" or "participating" providers, and the contracts are referred to as "participating provider agreements." Healthcare providers who do not have participating provider agreements with United subsidiaries governing reimbursement amounts for services provided to participants in United Benefit Plans are referred to as out-of-network or "non-participating" providers.

5. United did not have participating provider agreements in place with the Abrazo Surprise Hospital between January 1, 2019 and January 31, 2021. As a result, during the periods specified, the Abrazo Surprise Hospital provided services as an out-of-network provider.

6. In my experience, hospitals and other facilities occasionally terminate their participating provider agreements for various reasons, thus leaving United's network of providers. Sometimes, United is able to quickly come to terms with the departing hospital or facility on a mutually acceptable participating provider

agreement, such that the loss of the provider from the network is temporary. At other times, the loss of the provider from the network is extended.

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

Executed this 8th day of May, 2025 in Maryland.

/s/ Amy Jones

Amy Jones

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

DECLARATION OF WILLIAM D. POLLAK, ESQ. IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANTS' SECOND MOTION TO DISMISS THE AMENDED COMPLAINT

I, William D. Pollak, declare and state as follows:

1. I am an attorney with O'Melveny & Myers LLP, counsel to Plaintiffs United Healthcare Services, Inc., UnitedHealthcare Insurance Company, and UMR, Inc. (collectively, "United"). I submit this Declaration in support of United's Opposition to Defendants' Second Motion to Dismiss the Amended Complaint, ECF 59. I have personal knowledge of the following facts and, if called and sworn as a witness, could and would testify completely thereto.

2. On April 8, 2025, Defendants sent United a draft declaration by Kent Bristow that disclaimed any intent to sue United on historical claims in Georgia but refused to extend that covenant not to sue to similarly situated claims for any future services.

3. On April 11, 2025, United identified for Defendants a number of gaps in Bristow's April 8, 2025 declaration, including that Bristow had not disavowed the possibility of litigation over ongoing out-of-network services delivered by Defendants in Georgia.

4. Counsel for the parties conferred on April 14, 2025. The next day, United provided a proposed revised draft of Bristow's declaration that extended Defendants' covenant not to sue to include ongoing claims in Georgia.

5. On April 16, at Defendants' request, counsel for United also provided Defendants with legal precedents holding that a covenant not to sue does not moot a case or controversy if it only covers past, not future, conduct.

6. On April 18, 2025, Defendants filed their second motion to dismiss.

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

Executed this 9th day of May, 2025 in New York, New York.

/s/
William D. Pollak

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

UNITED HEALTHCARE SERVICES, INC.; UNITED HEALTHCARE 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

DECLARATION OF ELIZABETH HUTCHINS

May 9, 2025

I. INTRODUCTION

1. I, Elizabeth Hutchins, have been retained by Plaintiffs United Healthcare Services, Inc., UnitedHealthcare Insurance Company, and UMR, Inc. ("United") to analyze claims data in connection with the above-referenced dispute with Defendants: Hospital Physician Services Southeast, P.C., InPhyNet Primary Care Physicians Southeast P.C., and Redmond Anesthesia & Pain Treatment, P.C. ("Defendants").

2. I am a Senior Managing Director with Ankura Consulting, Inc. ("Ankura"), a global litigation and management consulting firm and a member of the firm's Healthcare & Life Sciences Disputes & Economics practice. I have two decades of experience assisting a variety of clients in data-focused litigation and investigation matters providing consulting and expert services. Across these matters, I have developed extensive experience analyzing high volumes of structured electronic data to identify trends, summarize information, and calculate damages. My work often involves clients in the healthcare industry where my analyses frequently focus on the review of healthcare claims benefits adjudication data in the context of disputes between payors and providers including issues related to reimbursement rates, benefits administration and other claims processing related issues. I have a B.A. in Economics from the University of California, Berkeley and an M.B.A. from the University of California, Los Angeles. I am also a Certified Fraud Examiner (CFE) and a Certified Business Intelligence Professional (CBIP) in Data Analysis & Design.

3. The work on this matter was performed personally by me or by professionals working directly under my supervision. Ankura is being compensated at the rate of $775 per hour for my time on this matter. Compensation paid to Ankura is not contingent upon any action or event resulting from the calculations included herein.

II. REVIEW OF TEAMHEALTH / UNITED PRIOR LAWSUITS DISPUTED CLAIMS

a. Non-Emergency Claims

4. In this declaration, I was asked by Counsel for United to review the Disputed Claims in Prior Lawsuits to (i) identify claims containing no standard coding indicators per the claims data that the services were performed in the context of an emergency and (ii) identify claims performed at a specific hospital during a certain period.

5. TeamHealth affiliates have brought a number of lawsuits against United in multiple states across the country where the TeamHealth affiliates have disputed United's adjudication of certain claims and demanded payment under state law of the billed charges they submitted for covered services provided to participants in United Benefit Plans on an out-of-network basis. These cases include the following below (among others):

i. *Emergency Grp. of Ariz. Pro. Corp. v. United Healthcare Inc.*, CV2019-004510 (Ariz. Superior Ct., Maricopa Cnty. June 10, 2019) ("Arizona");

ii. *Emergency Care Servs. of Pa., P.C. v. UnitedHealth Grp., Inc.,* Sept. Term 2020 No. 000598 (Pa. Ct. of Common Pleas, Phila. Cnty. Sept. 15, 2020) ("Pennsylvania");

iii. *Emergency Physician Services of New York v. UnitedHealth Grp, Inc.,* 1:20-cv-09183 (S.D.N.Y. Nov. 2, 2020) ("New York");

iv. *Atl. ER Physicians Team Pediatric Assocs., PA v. UnitedHealth Grp., Inc.*, No. GLO-L-001196-20 (N.J. Superior Ct., Gloucester Cnty. Nov. 2, 2020) ("New Jersey").

I refer to these cases collectively as the "Prior Lawsuits."

6. For these Prior Lawsuits, I received a set of the claims data files produced by Plaintiffs which contain the disputed claims in these Prior Lawsuits ("Disputed Claims").[1] I also received a set of claims data from United via counsel which included additional claims information for the disputed claims per United's records that provided additional detail related to these claims.

7. I was asked by counsel for United to identify claims that were services performed in the context of an emergency. I reviewed four data attributes in the claims data to perform this assessment: (a) Current Procedure Terminology (CPT) code, (b) place of service, (c) revenue code, and (d) emergent indicator.

i. CPT Codes: The data for the Disputed Claims provided by Plaintiffs in the Prior Lawsuits includes the Current Procedure Terminology (CPT) code for each service. CPT codes were developed by American Medical Association. According to the American Academy of Professional Coders, CPT codes are the "language spoken between providers and payers."[2] CPT codes refer to a set of medical codes used by providers to describe the services they perform and are used to report procedures to payers for reimbursement for healthcare services rendered.[3]

   1. Emergency Department Evaluation and Management Codes: There are specific CPT codes that relate to physician services performed in the emergency department: 99281 to 99285.[4] These CPT codes are not time-based services but consider the level of service based on whether a physician is required and the complexity of the medical decision making (e.g., a 99285 requires a high level of medical decision making as compared to a 99281 which may not require the presence of a physician or qualified healthcare professional).[5]

   2. Critical Care Codes: There are also specific CPT codes that relate to critical care services (99291, 99292) and include treatment of vital organ failure or prevention of life-threatening conditions.[6] Critical care codes are time-based services and can be performed in the emergency department but may also be performed in other places of services such as the coronary care unit (CCU), intensive care unit (ICU), respiratory care unit.[7]

ii. Place of Service: The United data produced for the Disputed Claims in the Prior Lawsuits includes the place of service which specifies where the services were rendered. Per CMS, the emergency room place of service has a place of service code of 23 (Emergency Room – Hospital: a portion of the hospital where emergency diagnosis and treatment of illness or injury is provided).[8]

iii. Revenue Code: The United data produced for the Disputed Claims in the Prior Lawsuits includes the revenue code for the claim. Specific revenue codes (starting with 45) relate to the emergency room (for example, revenue code 450 is the general emergency room revenue code).[9]

[1] The Disputed Claims listings produced by Plaintiffs include the following: Arizona: EPSW000053_A, New Jersey: PLAS000001_A, New York: PLAINTIFFS384437, Pennsylvania: PLAS00000429.

[2] https://www.aapc.com/resources/what-is-cpt?

[3] https://www.aapc.com/resources/what-is-cpt?

[4] https://www.aapc.com/resources/what-are-e-m-codes?; https://www.aapc.com/codes/cpt-codes-range/99281-99285/

[5] https://www.ama-assn.org/system/files/2023-e-m-descriptors-guidelines.pdf

[6] https://www.aapc.com/codes/cpt-codes-range/99291-99292

[7] https://www.aapc.com/codes/cpt-codes/99291; https://www.aapc.com/codes/cpt-codes/99292

[8] https://www.cms.gov/medicare/coding-billing/place-of-service-codes/code-sets

[9] https://med.noridianmedicare.com/web/jea/topics/claim-submission/revenue-codes

iv. Emergency Room ("ER") Indicator: The United data produced for the Disputed Claims in the Prior Lawsuits includes an ER Indicator field which I understand relates to services rendered in the emergency room.

8. I filtered the Disputed Claims for the Prior Lawsuits to non-emergency claims by excluding any claims with the following claims data indicators: (a) emergency department evaluation and management CPT codes and critical care codes[10], (b) emergency room place of service[11], (c) emergency room revenue codes[12] and (d) ER indicator[13]. As a result, I identified 370 claims[14] that do not contain an indicator that they pertain to emergency services based on the above attributes. **Table 1** below summarizes the total claims without a claims data indicator that the services were performed in an emergency context in each of the Prior Lawsuits Disputed Claims:

Table 1: Disputed Claims in Prior Lawsuits without Emergency Indicators per Claims Data

Case Abbreviation	Prior Lawsuits' Disputed Claims without Emergency Indicators
Arizona	196
New Jersey	74
New York	51
Pennsylvania	49
Total	**370**

9. **Exhibit A.1** to this declaration is a true and correct copy of the detailed claim information associated with these 370 claims without emergency indicators in the claims data.

10. I am also aware that for similar prior lawsuits between TeamHealth affiliate: Gulf-to-Bay Anesthesiology Associates and United that the majority of disputed services do not have claims data indicators that show the claim is in the context of an emergency per Plaintiffs' Disputed Claims listings.

i. In *Gulf-to-Bay Anesthesiology Assocs., LLC v. UnitedHealthcare of Fla., Inc.*, No. 17-CA-011207 (Fla. 13th Judicial Cir., Hillsborough Cnty. Dec. 15, 2017) ("GTB I"), 23,781 of the 23,990 services (over 99%) were identified as not emergent[15] per Plaintiff's Disputed Claims Listing.[16]

ii. Similarly, in *Gulf-to-Bay Anesthesiology Assocs., LLC v. UnitedHealthcare of Fla., Inc.,* No. 20-CA-008606 (Fla. 13th Judicial Cir., Hillsborough Cnty. May 20, 2021) ("GTB II"), In GTB II, 22,833 of the 22,986 disputed services (over 99%) were identified as not emergent[17] per Plaintiff's Disputed Claims Listing.[18]

11. Similar to the Prior Lawsuits described above, I also reviewed the CPT codes per Plaintiffs' listings and United's place of service fields for GTB I and GTB II to determine whether they had a standard

[10] I used the CPT code data field (*BILLED CPT*) in Plaintiffs' Disputed Claims listing to exclude CPT codes: 99281-5 and 99291-2.

[11] I used the place of service data field (*POS* or *AMA_POS* filtered to "23" or "06") in United's claims data to exclude claims with an emergency room place of service.

[12] I used the revenue code data field (*RevenueCode* filtered to values starting with "45") in United's claims data to exclude claims with an emergency room revenue code.

[13] I used the ER indicator field (*ER_Indicator*; value: "Y") in United's claims data to exclude claims with an emergent indicator.

[14] A claim reflects a distinct account number (field: *ACCOUNT NUM*) per Plaintiffs' Disputed Claims listings.

[15] I used the emergent data field (*EMERGENT;* filtered to "YES") in Plaintiffs' Disputed Claims listing to identify emergent claims.

[16] PLAINTIFF PHI CONFIDENTIAL 005737 (prev 005474) - DISPUTED CLAIMS 2-16-21

[17] I used the emergent data field (*EMERGENT;* filtered to "YES") in Plaintiffs' Disputed Claims listing to identify emergent claims.

[18] GTB-0000013

coding indicator that pointed to an emergency.[19] **Table 2** summarizes the services without an emergency indicator in the claims data for GTB I and GTB II.

Table 2: Disputed Services in GTB I and GTB II Lawsuits without Emergency Indicators per Claims Data

Case Abbreviation	Prior Lawsuits' Disputed Services without Emergency Indicators
GTB I	23,340
GTB II	22,225
Total	**45,565**

12. **Exhibit A.2** is a true and correct copy of the data associated with these 45,565 GTB I and GTB II disputed services without an emergency indicator in the claims data.

b. Claims at Abrazo Surprise Hospital Between January 1, 2019 and January 31, 2021

13. I was also asked by counsel for United to identify the Disputed Claims in the Prior Lawsuits that were performed by TeamHealth providers to United's members at Abrazo Surprise Hospital between January 1, 2019 and January 31, 2021. I identified 129 Disputed Claims for the Prior Lawsuits[20] that were performed at Abrazo Surprise Hospital for services rendered by TeamHealth providers to United's members during the above-referenced dates of service.[21] **Exhibit B** to this declaration provides detail for these 129 claims. At least one of these Abrazo Surprise Hospital claims between January 2019 and January 2021 does not contain a claims data indicator it pertains to emergency services based on the attributes described in paragraphs 7 and 8 (as shown in **Exhibit A.1**).

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

Executed May 9, 2025 at Chicago, Illinois.

Elizabeth Hutchins

[19] The revenue code and the emergent indicator was not available in United's claims data for GTB I and GTB II.

[20] A claim reflects a distinct account number (*ACCOUNT NUM*) per Plaintiffs' Disputed Claims listings. These claims were all in dispute in the Arizona Prior Lawsuit.

[21] I used the facility data field (*FACILITY*) and date of service data field (*DOS*) specified in the Plaintiffs' Disputed Claims listings to identify these claims.

Exhibit A.1

Filed Under Seal

Exhibit A.2

Filed Under Seal

Exhibit B

Filed Under Seal