IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

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.	Case No. 1:23-cv-05221-JPB

DEFENDANTS' RESPONSE TO PLAINTIFFS'
NOTICE OF FILING SUPPLEMENTAL AUTHORITY

Defendants ("Georgia Medical Groups") file this Response to Plaintiffs' ("United") Notice of Filing Supplemental Authority ("Notice") (Dkt. 41) and state as follows:

United submitted as supplemental authority *Exxon Mobil Corporation v. Arjuna Capital, LLC*, __ F. Supp. 3d __, 2024 WL 3075862 (N.D. Tex. June 17, 2024), a recent decision from the United States District Court for the Northern District of Texas. United believes that *Exxon Mobil* supports its position that the

Georgia Medical Groups' "mere declaration of a 'present intent' not to sue over United's claims adjudications in Georgia—and reserving the ability to engage in the complained-of conduct based on unspecified 'factors' and 'conditions'—is insufficient to negate a case or controversy." (Notice at 2-3.) That position finds no support in *Exxon Mobil,* nor does it accurately state the Georgia Medical Groups' argument.

Exxon Mobil dealt with the voluntary cessation doctrine. Exxon had sued Arjuna Capital, an activist investor, to block a shareholder proposal pertaining to greenhouse gas emissions. 2024 WL 3075862, at *1. Arjuna then attempted to moot the lawsuit by withdrawing its proposal. *Id.* The court held that this was insufficient, because Arjuna could simply reraise the proposal after the lawsuit had been dismissed. However, a signed stipulation in which Arjuna committed never again to raise the proposal *was* sufficient to moot the proceeding, necessitating a dismissal for lack of subject-matter jurisdiction. *Id.* at *3-4. Thus, the question presented in *Exxon Mobil* was: how sweeping and definitive must a defendant's cessation of its actionable conduct be, in order to terminate an active, ongoing case or controversy such that a federal court is divested of its jurisdiction to resolve the dispute?

Here, in contrast, the Court cannot be divested of its jurisdiction, because it *has never had* jurisdiction in the first instance. That is because there *has never been* a controversy between United and the Georgia Medical Groups. The Georgia

Medical Groups have not sued United. And the Georgia Medical Groups disclaimed any present intention to sue United because United has not done anything in the past—and is not doing anything at present—for which they desire to sue. Of course, the Georgia Medical Groups cannot commit unequivocally to *never* suing United—at any time, under any hypothetical set of circumstances—because it is conceivable that United could do something *in the future* that would merit a lawsuit. But that possibility is purely speculative, and it is not a basis for the Court to exercise jurisdiction *at present*. *Malowney v. Fed. Collection Deposit Grp.*, 193 F.3d 1342, 1347 (11th Cir. 1999) (actual controversy must be "real and immediate" rather than "conjectural, hypothetical, or contingent").

Respectfully submitted, this 10th day of July, 2024.

/s/ James W. Cobb
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Counsel for Defendants

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 10th day of July, 2024.

/s/ James W. Cobb
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Counsel for Defendants