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' MOTION TO DISMISS AMENDED COMPLAINT FOR LACK OF SUBJECT-MATTER JURISDICTION

Pursuant to Rule 12(b)(1), Fed. R. Civ. P., the Georgia Medical Groups,[1] by and through undersigned counsel, respectfully move this Court to dismiss this action with prejudice for lack of subject-matter jurisdiction ("12(b)(1) Motion").

PRELIMINARY STATEMENT

Upon service of the Complaint in this action, Defendants challenged Plaintiffs' purported basis for subject matter jurisdiction, contending that no actual controversy exists between Defendants and the Georgia Medical Groups. (Doc. 29). Accordingly, Defendants moved to dismiss the action, with the supporting declaration of Mr. Kent Bristow, who attested that the Defendants had no present intent to sue Plaintiffs for any of the litigation claims at issue in the lawsuit (the "Litigation Medical Claims"). Plaintiffs rejected the declaration, instead providing their own version of a declaration that would satisfy Defendants that there was no case and controversy. *See* Letter, dated January 23, 2024, from United's counsel, attached hereto as **Exhibit A**. At that time, Defendants did not execute Plaintiffs' proposed stipulation.

After the motion was fully briefed, the Court denied the Motion to Dismiss, finding that the record reflected only a present intent not to sue – not a binding

[1] The "Georgia Medical Groups" are Defendants Hospital Physician Services Southeast, P.C., Inphynet Primary Care Physicians Southeast, P.C., and Redmond Anesthesia & Pain Treatment, P.C.

covenant not to sue. Therefore, the Court concluded that the declaration did not foreclose the possibility of a future lawsuit concerning the Litigation Medical Claims. (Doc. 43 at 9-10).

Thereafter, the parties engaged in discovery, and Plaintiffs have now identified the Litigation Medical Claims.[2] Based upon this specifically identifiable universe of claims, including a total of 21 claims from January 2022 to present, the Georgia Medical Groups executed United's proposed Declaration—verbatim—adding only a reference to the specific Litigation Medical Claims at issue. In a good faith effort to resolve this litigation, Defendants' counsel provided United with the executed declaration via letter on April 8, 2025. *See* Letter, dated April 8, 2025, from Defendants' counsel, attaching Declaration of Kent Bristow (the "April 8, 2025 Bristow Declaration"), attached hereto as **Exhibit B**. In the April 8, 2025 Bristow Declaration, Mr. Bristow, on behalf of the Georgia Medical Groups, unequivocally disclaimed any intent to sue United or any of its subsidiaries or affiliates under state-law theories for additional payment on the identified claims ever. In other words, the Defendants released Plaintiffs from the Litigation Medical Claims.

[2] The medical claims at issue have been identified by United on claim spreadsheets bearing Bates numbers UHC0004828, UHC0004829, UHC0004830, UHC0004831, UHC0010442, and UHC0010443 (the "Litigation Medical Claims"), which are attached to the Declaration of Kent Bristow as Composite Exhibit 1. (Composite Ex. 1 to Ex. D).

This release, however, was insufficient for Plaintiffs, who were unsatisfied with the scope of their own declaration. On April 11, 2025, Plaintiffs' counsel identified specific issues with the April 8, 2025 Bristow Declaration, which Plaintiffs contend "too narrowly" defines the Litigation Medical Claims. A copy of Plaintiffs' April 11, 2025 letter is attached hereto as **Exhibit C**. In a good faith effort to resolve these issues, counsel for the parties conferred to address Plaintiffs' purported concerns, and Defendants revised the April 8, 2025 Bristow Declaration to include additional clarity on the scope of the declaration and the at-issue Litigation Medical Claims. That revised declaration, which is attached hereto as **Exhibit D** (the "April 18, 2025 Bristow Declaration"), incorporates all of Plaintiffs' proposed revisions with one exception—the declaration covers the at-issue Litigation Medical Claims that Plaintiffs have identified in this action and does not extend to speculative, ***future*** claims for medical services that may or may not be rendered to Plaintiffs' members on unknown, future dates that could arise out of circumstances that have not yet occurred. Plaintiffs' insistence that Defendants covenant not sue on medical claims that do not even exist yet is unfounded in the law and is otherwise unreasonable. The April 18, 2025 Bristow Declaration properly divests the Court of jurisdiction over Plaintiffs' Amended Complaint.

There is no question that there is no live controversy for the Court to adjudicate. The Declaratory Judgment Act authorizes federal courts to "declare the

rights and other legal relations" of parties only where there exists an "actual controversy." 28 U.S.C. § 2201(a). This threshold requirement is no longer met, and the Georgia Medical Groups have now addressed any of the concerns the Court had with regard to the prior declaration. The Georgia Medical Groups, through the April 18, 2025 Bristow Declaration, have formally and irrevocably renounced any intent to pursue litigation against United regarding the medical claims at issue. The April 18, 2025 Bristow Declaration makes clear that the Georgia Medical Groups have made a covenant not to ever sue United for any additional payment on the Litigation Medical Claims, and any other claim for non-emergent services provided at out-of-network hospitals with a date of service on or before the April 18, 2025 Bristow Declaration. This commitment eliminates any threat of future litigation, rendering the case moot. Accordingly, because there is no actual controversy, the Court lacks subject-matter jurisdiction, and this action must be dismissed.

STATEMENT OF FACTS & PROCEDURAL HISTORY

United and its affiliates are a health insurer and a third-party administrator ("TPA") for self-funded ERISA plans. (Doc. 27 ¶¶ 13–16). In these roles, United reviews claims for medical services provided to its members and pays reimbursements to the medical providers. (Doc. 27 ¶¶ 5, 16, 32). The Georgia Medical Groups are medical practices that operate out of hospitals in Georgia. (Doc.

27 ¶¶ 4, 17–21.) They contract with those hospitals to provide emergency and non-emergency medical services to hospital patients. (Doc. 27 ¶ 4).

The Georgia Medical Groups are affiliated with TeamHealth, a practice management entity with affiliated medical practices in forty-seven states. (Doc. 27 ¶ 21; Ex. 29-1 ¶ 11). Since 2019, TeamHealth-affiliated practices have filed lawsuits against United in nine states. (Ex. 29-1 ¶ 11).[3] Those suits have asserted that the rates United paid on commercial, out-of-network emergency services and anesthesia claims were unlawfully low. (Doc. 27 ¶ 9). In each of these disputes, United has argued that the TeamHealth-affiliated practices' state law claims are preempted by ERISA to the extent they challenge the rates paid on claims for services delivered to patients holding coverage under self-funded, ERISA-governed health plans. In each of those cases, the courts have rejected United's argument that ERISA preempted Plaintiffs' state law claims challenging the rate of reimbursement owed.[4]

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[3] *See* Docs. 29-2 through 29-11.

[4] *See, e.g., Fla. Emergency Physicians Kang & Assocs., M.D., Inc. v. United Healthcare of Fla., Inc.*, 526 F. Supp. 3d 1282, 1297-99 (S.D. Fla. 2021) (emergency medical providers' claims not preempted because "the common law causes of action under which Plaintiffs bring their claims all have force and operate independently of the existence of any ERISA plans" and "the Supreme Court has stated that law which increase[s] the costs plans incur in one state versus another does not necessarily have an impermissible connection with an ERISA plan"); *Emergency Servs. of Okla., PC v. Aetna Health, Inc.*, 556 F. Supp. 3d 1259, 1263-65 (W.D. Okla. 2021) (no preemption because "the plans are not the factual basis for Plaintiffs' claims as Plaintiffs are not seeking payment under the plans and have not asserted their claims based upon any terms of any ERISA plan"); *ACS Primary Care Physicians Sw., P.A.*

United filed its original Complaint in this case on November 13, 2023. (Doc. 1). It sought declaratory relief providing that any claims the Georgia Medical Groups theoretically could assert under Georgia state law seeking reimbursement amounts greater than those United has calculated are preempted by ERISA. (Doc. 1 ¶ 83). On January 5, 2024, the Georgia Medical Groups filed their Motion to Dismiss for Lack of Subject-Matter Jurisdiction ("First Motion to Dismiss"). (Doc. 23). Rather than respond, United filed its Amended Complaint on January 26, 2024. (Doc. 27). The only substantive changes in the Amended Complaint consisted of certain new allegations intended to bolster United's position on the existence of an actual controversy. (Doc. 27 ¶¶ 56, 59-63). Notably, United still did not allege that the Georgia Medical Groups or TeamHealth ever threatened to sue United over the specific claims at issue in this case. (Doc. 27 ¶ 59; Doc. 43, p. 8).

On February 8, 2024, Defendants filed their Motion to Dismiss the Amended Complaint for Lack of Subject Matter Jurisdiction ("Second Motion to Dismiss").

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v. UnitedHealthcare Ins. Co., 514 F. Supp. 3d 927, 939-42 (S.D. Tex. 2021), *rev'd on other grounds*, 60 F.4th 899 (same); *United Healthcare Ins. Co. v. Eighth Jud. Dist. Ct. in & for Cnty. of Clark*, 489 P.3d 915 (Nev. 2021) (same); *Gulf-to-Bay Anesthesiology Assocs., LLC v. UnitedHealthcare of Fla., Inc.*, No. 17-CA-011207 (Fla. 13th Cir. Ct., Hillsborough Cnty., Feb. 10, 2019); *Gulf-to-Bay Anesthesiology Assocs., LLC v. UnitedHealthcare of Fla., Inc.*, No. 20-CA-008606 (Fla. 13th Cir. Ct., Hillsborough Cnty., Dec. 1, 2021); *Emergency Physician Servs. of N.Y. v. UnitedHealth Grp., Inc.*, 2021 WL 4437166, at *8–9 (S.D.N.Y. Sept. 28, 2021); *Emergency Group of Az. Prof'l Corp. v. United Healthcare, Inc.*, No. CV-2019-004510 (Ariz. Sup. Ct. Nov. 20, 2023).

(Doc. 29). After briefing was complete (Doc. 30 and Doc. 33), United filed a Leave to File Surreply and a Conditional Motion for Jurisdictional Discovery (Doc. 38). On July 1, 2024, United filed a Notice of Supplemental Authority. (Doc. 41).

Thereafter, this Court entered an Order denying the Second Motion to Dismiss. (Doc. 43). In rendering its decision, the Court stated:

> Stated differently, the record shows that Defendants have submitted claims for services provided to United's members in Georgia and have demanded their full billed charges in each case. The record also demonstrates that United has consistently not paid the full amount and instead followed what it believes is its obligation to pay the claims according to the Plans' reimbursement terms. Under these facts, the Court is satisfied that this case involves "a substantial controversy between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.
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> (Doc. 43, p. 11).

The Court further found the declaration of Mr. Bristow filed in support of the Second Motion to Dismiss "only reflects a present intent not to sue—not a covenant not to ever sue United." (Doc. 43, pp. 9–10.) The Court found that the declaration did not "negate the possibility of an action in the future regarding the medical claims." (Doc. 43, p. 10.)

Before Defendants filed their Second Motion to Dismiss, United's counsel, Greg Jacob, sent Kent Bristow, the Senior Vice President of Revenue Management for TeamHealth Holdings, Inc. ("TeamHealth"), a letter requesting that Mr. Bristow, on behalf of the Georgia Medical Groups, execute the attached declaration, affirming

that the Georgia Medical Groups would not sue United or any of its affiliates using state common law causes of action to seek increased payments on any of the claims at issue in the Geogia lawsuit. (Doc. 31 and 31-1).

At the time, discovery was in its infancy, and United had not identified the specific claims that were at issue in the Georgia lawsuit. It was not until January 16, 2025, that United first identified several spreadsheets of claims bearing Bates numbers: UHC0004828, UHC0004829, UHC0004830, UHC0004831, UHC00010442, and UHC00010443, which identified the claims at issue in this action (the "Litigation Medical Claims").[5]

[5] On October 17, 2024, the Georgia Medical Groups served discovery seeking information on the claims at issue in this case. *See* Defendants' First Set of Requests for Production of Documents to Plaintiffs, attached hereto as **Exhibit E**. On January 16, 2025, United's counsel produced claims spreadsheets bearing Bates numbers UHC0004828, UHC0004829, UHC0004830, and UHC0004831, reflecting the claims at issue in this action. *See* Letter, dated January 16, 2025, from Plaintiffs' counsel, attached hereto as **Exhibit F**. Then, on March 10, 2025, United notified the Geogia Medical Groups that it had identified additional claims at issue in this action and provided two spreadsheets identifying the six additional claims at issue in this action, which were produced on March 25, 2025, bearing Bates numbers UHC00010442 and UHC00010443. *See* Letter, dated March 25, 2025, from Plaintiffs' counsel, attached hereto as **Exhibit G**. On April 1, 2025, one day before United's corporate representative deposition, United informed the Georgia Medical Groups that three claims previously identified as at-issue claims were no longer at issue in the litigation. *See* Letter, dated April 1, 2025, from Plaintiffs' counsel, attached hereto as **Exhibit H**.

Following the identification of the Litigation Medial Claims and the close of discovery, Mr. Bristow executed the declaration requested by United verbatim, swearing and unequivocally affirming that:

> [T]he Georgia Medical Groups and TeamHealth and its subsidiaries and affiliates will not bring claims against United or any of its subsidiaries and affiliates for payment of the Litigation Medical Claims at issue in *United Healthcare Services, Inc., et. al. v. Hospital Physician Services Southeast, P.C., et. al.* under state common law theories (save and except for breach of contract theories).

(Ex. B, ¶ 5.)

Upon receipt of the executed declaration, Plaintiffs reneged on their offer to accept the Declaration, as drafted, as sufficient to resolve the issues in this litigation. Instead, Defendants now requested a revised declaration, that broadly expanded the scope of any requested relief to not just claims that have already accrued, but to any and all causes of action for future claims that have not occurred, that may never occur, and that arise under unknown facts and circumstances. Despite this change in position, and in order to address certain of Plaintiffs' concerns regarding the scope of Mr. Bristow's declaration, Defendants revised the declaration to include both state common law theories and state statutory claims, as well as to specifically provide that the declaration is a covenant not to sue. The April 18, 2025 Bristow Declaration now affirms that:

> [T]he Georgia Medical Groups and TeamHealth and its subsidiaries and affiliates will not bring claims against United or any of its subsidiaries and affiliates for payment of the Litigation Medical Claims

> at issue in *United Healthcare Services, Inc., et. al. v. Hospital Physician Services Southeast, P.C., et. al.* under state common law theories and state statutory claims (save and except for breach of contract theories).
>
> This Declaration is a covenant not to sue on the at-issue Litigation Medical Claims identified on Composite Exhibit 1.
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> * * *
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> [F[or clarity and the avoidance of any doubt, by this Declaration, the Georgia Medical Groups and TeamHealth and its subsidiaries and affiliates ***fully and finally extinguish*** any and all claims seeking increased payment on the Litigation Medical Claims, and any other claim for non-emergent services provided at out-of-network hospitals with a date of service on or before the date of this Declaration.

(Ex. D, ¶¶ 6–7.)

Thus, the record clearly reflects that the Georgia Medical Groups have no intention of suing United for additional reimbursement related to the Litigation Medical Claims at issue, or for any other claim for non-emergent services provided at out-of-network hospitals with a date of service on or before the April 18, 2025 Bristow Declaration, and have fully and finally resolved to never sue United on those claims. (Doc. 29-1).

LEGAL STANDARD

The DJA provides that "[i]n a ***case of actual controversy*** within its jurisdiction … any court of the United States … may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U.S.C. § 2201(a) (emphasis added). The term "case of actual controversy" refers to the same "case or controversy"

requirement for federal court jurisdiction set forth in Article III, § 2 of the Constitution. *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 127 (2007); *see also Cambridge Christian Sch., Inc. v. Fla. High Sch. Athletic Ass'n*, 942 F.3d 1215, 1251 (11th Cir. 2019) (explaining that "[t]he Declaratory Judgment Act does not enlarge the jurisdiction of the federal courts, meaning that, at the very least, a controversy under the Act must also be a 'case or controversy' under Article III") (cleaned up). Thus, when a plaintiff brings a claim under the DJA, "the threshold question is whether a justiciable controversy exists[.]" *Atlanta Gas Light Co. v. Aetna Cas. & Sur. Co.*, 68 F.3d 409, 414 (11th Cir. 1995).

Because the argument that a complaint for declaratory relief fails to present an actual controversy challenges the court's subject-matter jurisdiction, the appropriate procedural vehicle is a motion under Federal Rule of Civil Procedure 12(b)(1). *See, e.g., GEICO Gen. Ins. Co. v. Farag*, 597 F. App'x 1053, 1057 (11th Cir. 2015) ("Declaratory Judgment Act's 'actual controversy' requirement is jurisdictional and, thus, a threshold question in an action for declaratory relief must be whether a justiciable controversy exists … [the court] therefore construe[s] the district court's decision as a dismissal of the claim for lack of subject matter jurisdiction under Fed. R. Civ. P. 12(b)(1)"); *FedEx Corp. Servs., Inc. v. Eclipse IP LLC*, 15 F. Supp. 3d 1346, 1348 (N.D. Ga. 2013) (noting that a plaintiff seeking declaratory relief must establish the existence of a case or controversy, and that if

"no such controversy exists, the case must be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure").

Motions under Rule 12(b)(1) come in two distinct forms: facial attacks and factual attacks. *Kennedy v. Floridian Hotel, Inc.*, 998 F.3d 1221, 1230 (11th Cir. 2021). "A facial attack challenges whether a plaintiff has sufficiently alleged a basis of subject matter jurisdiction, and the allegations in his complaint are taken as true for purposes of the motion." *Id*. In contrast, a factual attack challenges "the existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings, such as testimony and affidavits are considered." *McElmurray v. Consol. Gov't of Augusta-Richmond Cty.*, 501 F.3d 1244, 1251 (11th Cir. 2007). The court "needn't accept the plaintiff's facts as true; rather, the district court is free to independently weigh facts and make the necessary findings." *Gardner v. Mutz*, 962 F.3d 1329, 1340 (11th Cir. 2020). Importantly, "[i]n the face of a factual challenge to subject matter jurisdiction, the burden is on the plaintiff to prove that jurisdiction exists." *OSI, Inc. v. United States*, 285 F.3d 947, 951 (11th Cir. 2002). Defendants' attack in this case is factual.

ARGUMENT

The "actual controversy" requirement is satisfied only where a plaintiff can identify an actual, present controversy involving harm already suffered or imminently threatened. This determination is made "on a case-by-case basis," and

the alleged controversy "must be more than conjectural." *Atlanta Gas*, 68 F.3d at 414. As the Eleventh Circuit has explained, "[t]he party who invokes a federal court's authority must show, at an irreducible minimum, that at the time the complaint was filed, he has suffered some actual or threatened injury resulting from the defendant's conduct…." *Id.* (quotation marks omitted). The distinction between a concrete, justiciable dispute and a case not yet ripe for adjudication is one of degree, assessed based on the totality of the circumstances. *Id.* (citing *BP Chems. Ltd. v. Union Carbide Corp.*, 4 F.3d 975, 977–78 (Fed. Cir. 1993)); *see also Houston v. Marod Supermarkets, Inc.*, 733 F.3d 1323, 1340 (11th Cir. 2013) (interpreting the "immediate threat of future injury" requirement and finding that "immediacy" means "reasonably fixed and specific in time and not too far off"). The plaintiff bears the burden of proving the existence of such a controversy throughout the litigation. *MedImmune, Inc. v. Genentech, Inc.,* 549 U.S. 118, 127, 127 S.Ct. 764, 166 L.Ed.2d 604 (2007)) (quoting *Aetna Life Ins. Co. v. Haworth,* 300 U.S. 227, 240–41 (1937)); *see also Preiser v. Newkirk,* 422 U.S. 395, 401 (the actual controversy "must be extant at all stages of review, not merely at the time the complaint is filed").

I. THE COURT LACKS JURISDICTION BECAUSE THERE IS NO ACTUAL CONTROVERSY BETWEEN UNITED AND THE GEORGIA MEDICAL GROUPS

The Court lacks subject-matter jurisdiction here because there is no actual controversy between United and the Georgia Medical Groups. The Georgia Medical

Groups have conducted discovery and the record before this Court makes clear that the Georgia Medical Groups will not sue United for additional reimbursement pertaining to the Litigation Medical Claims at issue. Therefore, the controversy alleged in United's Amended Complaint is purely conjectural and cannot support subject matter jurisdiction.

A. The Evidence Confirms that There Is No Actual Controversy between United and the Georgia Medical Groups

Following discovery, the *evidence* confirms that no actual controversy exists between United and the Georgia Medical Groups. In support of this Motion, the Georgia Medical Groups submit the Declaration of Kent Bristow, TeamHealth's Senior Vice President for Revenue Management. (Ex. D, ¶ 2.) In that capacity, Mr. Bristow has the authority to determine whether the Georgia Medical Groups initiate, or refrain from initiating, legal action against health insurers such as United. (Ex. D, ¶ 3.) Particularly relevant after identifying through discovery the specific claims at issue in this action, Mr. Bristow executed the declaration United requested, affirming under oath that the Georgia Medical Groups, as well as TeamHealth and its subsidiaries and affiliates, will not pursue any claims against United or its subsidiaries or affiliates related to the Litigation Medical Claims, except for breach of contract claims. (Ex. D, ¶¶ 5–6.) Accordingly, because no actual controversy exists between United and the Georgia Medical Groups, the Court must dismiss the Amended Complaint for lack of subject-matter jurisdiction.

In the Court's Order denying the Second Motion to Dismiss, the Court found that the Declaration of Mr. Bristow filed in support of the Second Motion to Dismiss "only reflects a present intent not to sue—not a covenant not to ever sue United." (Doc. 43, pp. 9–10.) The Court found that the declaration did not "negate the possibility of an action in the future regarding the medical claims." (Doc. 43, p. 10.). To address the Court's concerns regarding the scope of the covenant not to sue, Mr. Bristow has now executed the April 18, 2025 Bristow Declaration, which now unequivocally disclaims any intent to sue on the Litigation Medical Claims. Mr. Bristow confirmed that the Declaration "is a covenant not to sue on the at-issue Litigation Medical Claims identified on Composite Exhibit 1" and that the Declaration "***fully and finally extinguish[es]*** any and all claims seeking increased payment on the Litigation Medical Claims." **Exhibit D.** These clear statements are intended to resolve any doubt that there is no case or controversy.

In light of the April 18, 2025 Bristow Declaration, the authorities upon which the Court relied in the Motion to Dismiss are now distinguishable. For example, the Court relied on *C.R. Bard, Inc. v. Schwartz*, 716 F. 2d 874, 881 (Fed. Cir. 1983), wherein the Plaintiff was equivocal as to whether it would ever bring a claim for infringement against Defendant based on an existing license agreement. Likewise, *YKK Corp. of Am., Inc. v. Silver Line Bldg. Prods. Corp.*, No. CV 305-155, 2007 WL 9711195 (S.D. Ga. May 14, 2007) involved claims arising out of a specific

patent, and the threat of litigation arising out of that existing patent. Here, in contrast, Mr. Bristow has unequivocally sworn and affirmed that the Georgia Medical Groups, along with TeamHealth and its subsidiaries and affiliates, will not ***ever*** assert any claims against United or any of its subsidiaries or affiliates for payment of the Litigation Medical Claims at issue in this action. Accordingly, this Court should dismiss this action.[6]

[6] Here, there is not only an absence of a present controversy, but also no basis to anticipate one arising in the future. United's hypothesized dispute with the Georgia Medical Groups rests entirely on the fact that other TeamHealth affiliates in other states have sued United over reimbursement rates. However, those lawsuits have uniformly involved claims for underpayment of out-of-network *emergency* medical services and/or emergency and non-emergency anesthesia services rendered at *in-network* hospitals. (Ex. D, ¶ 7.) In contrast, here, United seeks a declaratory judgment concerning the Litigation Medical Claims, which include claims with dates of services after January 1, 2022 for *non-emergency* hospitalist services and/or anesthesia services delivered at *out-of-network* hospitals. Even if it were somehow proper for United to use this lawsuit as a vehicle to test the general viability of its ERISA preemption theory based on speculation about a future dispute, such speculation is entirely untethered from the factual and historical precedents that United relies. The claims at issue here are fundamentally different in kind. Moreover, because the Georgia Medical Groups have never sought additional reimbursement on any underlying claim or asserted a legal basis to do so, to grant the relief United seeks, the Court would not only have to assume the existence of a hypothetical dispute, it would have to assume hypothetical facts and hypothetical legal theories – something it cannot do. Accordingly, the Court must dismiss this case. *See, e.g., Atlanta Gas Light Co. v. Aetna Cas. & Sur. Co.*, 68 F.3d 409, 415–16 (11th Cir. 1995) (no justiciable controversy where policyholder sought declaration on coverage for environmental cleanup costs before any regulatory action had occurred).

B. There is No Actual Controversy Because Defendants Executed Plaintiffs' Proposed Declaration and Defendants Cannot Covenant Not Sue on Future, Nonexistent Medical Claims

Prior to filing their Second Motion to Dismiss, Defendants received a letter from United's counsel, Greg Jacob, requesting that Mr. Bristow—on behalf of the Georgia Medical Groups—execute an attached declaration. The proposed declaration sough to affirm that the Georgia Medical Groups would not sue United or any of its affiliates using state common law causes of action to seek increased payments on any of the claims at issue in the Geogia lawsuit. (Doc. 31 and 31-1). On April 8, 2025, Defendants' counsel responded with a letter enclosing the April 8, 2025 Bristow Declaration. (Ex. B.) The April 8, 2025 Bristow Declaration mirrored the language Plaintiffs' counsel requested the declaration contain, with the limited addition of identifying the specific at-issue Litigation Medical Claims which Plaintiffs had not previously identified at the time the proposed declaration was circulated. (Ex. B, ¶ 4.) With Defendants' execution of Plaintiffs' proposed declaration, no actual controversy exists between the parties. Defendants provided Plaintiffs with the precise assurances Plaintiffs requested to extinguish the threat of litigation.

However, those assurances were not sufficient for Plaintiffs, who now find that their own proposed declaration is insufficient to extinguish the threat of litigation. On April 11, 2025, Plaintiffs' counsel identified specific issues with the

April 8, 2025 Bristow Declaration, which Plaintiffs contend "too narrowly" defines the Litigation Medical Claims. (Ex. C.) In a good faith effort to address Plaintiffs' evolving concerns, the parties conferred, and Defendants revised the April 8, 2025 Bristow Declaration to include additional clarity on the scope of the declaration and the at-issue Litigation Medical Claims. That revised April 18, 2025 Bristow Declaration, which is attached hereto as **Exhibit D**, incorporates all of Plaintiffs' requested edits—except one. The declaration only covers the at-issue Litigation Medical Claims that Plaintiffs have identified in this action did not extend to unidentified, future medical services that might be rendered to United members on unknown dates, for claims that do not yet exist. In short, Defendants have irrevocably disclaimed any right to pursue litigation on the specific Litigation Medical Claims identified in this action. The April 18, 2025 Bristow Declaration divests the Court of jurisdiction over Plaintiffs' Amended Complaint.

United's contention that Plaintiffs' covenant not to sue must extend to speculative, unidentified future medical services that may or may not be rendered to United members on unknown dates—resulting in claims that do not yet exist—in order to divest this Court of jurisdiction is both legally unfounded and factually speculative. Such a position seeks to manufacture a controversy where none exists. And while Courts have recognized that covenants not to sue may, in limited contexts, extend to future conduct—such as in patent or trademark infringement actions or

product liability disputes—those cases uniformly involve present and identifiable rights or products that are the subject of an actual dispute.

For example, in *Nike, Inc. v. Already, LLC*, 663 F.3d 89, 96 (2d Cir. 2011), aff'd, 568 U.S. 85 (2013), and *Hitachi Koki Co. v. Techtronic Indus. Co.*, 2013 WL 10110347, at *4 (N.D. Ga. Feb. 6, 2013), the courts addressed covenants not to sue including future claims in the context of existing patents or products that were already in the marketplace and had given rise to a justiciable controversy. These decisions do not support the proposition that a party must provide a forward-looking covenant covering hypothetical patents, products, or claims that have not yet come into existence and may never arise.

Extending jurisdictional analysis to encompass entirely speculative future claims—particularly in the healthcare context, where the services, patients, medical conditions, and dates of service are all unknown—is contrary to the controversy requirement. It would impose an impossible and unworkable standard, essentially requiring parties to anticipate and disclaim claims that are neither legally cognizable nor factually present. Courts have rejected the need for such hypothetical approaches.

As the Federal Circuit has recognized, "[w]hether a covenant not to sue will divest the trial court of jurisdiction depends on what is covered by the covenant." *Revolution Eyewear, Inc. v. Aspex Eyewear, Inc.,* 556 F.3d 1294, 1297 (Fed. Cir.

2009). In order to moot a defendant's counterclaims, courts have consistently held that a covenant not to sue need not extend to future acts because "[t]he residual possibility of a future infringement suit based on [the defendant's] future acts is simply too speculative a basis for jurisdiction over [the defendant's] counterclaim for declaratory judgments of invalidity." *Super Sack Mfg. Corp. v. Chase Packaging Corp.*, 57 F.3d 1054, 1060 (Fed. Cir. 1995), *overruled on other grounds by MedImmune, Inc.,* 549 U.S. at 127; *see also Amana Refrigeration, Inc. v. Quadlux, Inc.,* 172 F.3d 852, 855 (Fed. Cir. 1999) (holding that "an actual controversy cannot be based on a fear of litigation over future products" referring to potentially modified products that were not yet in existence and that were not included in the charge of infringement in the prior litigation). Further, a covenant "need not cover potentially infringing activities in the future," but must be sufficiently broad to cover "the past and present activities that constitute the 'actual controversy' between the parties." *MedImmune, Inc. v. Genentech, Inc.,* 535 F. Supp. 2d 1000, 1005 (C.D. Cal. 2008).

In *Super Sack,* the court found that because the covenant shielded the defendant from suits based on products it "currently manufactured and sold," it was sufficient to eliminate the controversy in question. *Id.* at 1059-60; *see also Dow Jones & Co., Inc. v. Ablaise Ltd.,* 606 F.3d 1338 (Fed. Cir. 2010) (holding that covenant not to sue Dow Jones for any acts of infringement of its 530 patent extinguished any current or future case or controversy between the parties, and

divested the district court of subject matter jurisdiction); *Intellectual Prop. Dev., Inc. v. TCI Cablevision of Calif., Inc.,* 248 F.3d 1333, 1342 (Fed. Cir. 2001) (statement of non-liability divested the district court of Article III jurisdiction); *Amana Refrigeration, Inc.,*172 F.3d at 855 ("[A] covenant not to sue for any infringing acts involving products 'made, sold, or used' on or before the filing date is sufficient to divest a trial court of jurisdiction over a declaratory judgment action.").[7]

Here, the April 18, 2025 Bristow Declaration divests the Court of subject matter jurisdiction because the Georgia Medical Groups, through the Declaration, have formally and irrevocably renounced any intent to pursue litigation against United regarding the Litigation Medical Claims at issue in this action. The Declaration is unequivocal that the Georgia Medical Groups have made a covenant not to ever sue United for any additional payment on the Litigation Medical Claims.

[7] In *Gen. Protecht Grp., Inc. v. Leviton Mfg. Co.*, No. CIV 10-1020 JB/LFG, 2012 WL 1684573, at *1 (D.N.M. May 12, 2012), plaintiff filed a declaratory judgment in the District of New Mexico, asserting claims of noninfringement and enforcement of covenant. Patent owner countered by asserting counterclaims of infringement. The court granted plaintiff's claim for enforcement of covenant, and as a result, patent owner's counterclaims of infringement were dismissed, with prejudice. *Id.* Because the infringement claims were dismissed with prejudice, the court held that plaintiff had no "sufficiently immediate and real future controversy to warrant the issuance of a declaratory judgment." *Id.* at 24-25. The court further held that plaintiff's fear of future lawsuits for future products is not an "actual controversy," and jurisdiction for a court to hear a declaratory judgment action "cannot be based on a fear of litigation over future products" that were "not yet in existence." *Id.* at 22.

(Ex. D, ¶ 6.) The Declaration eliminates any credible threat of future litigation on the Litigation Medical Claims, rendering the case moot.

Plaintiffs' effort to manufacture jurisdiction based on hypothetical future claims—claims that may never exist and that are not part of this case—is legally untenable. Accordingly, because there is no actual controversy between the parties, the Court lacks subject-matter jurisdiction, and this action must be dismissed.

CONCLUSION

For all the foregoing reasons, the Court should grant the Motion and dismiss the Amended Complaint.

Respectfully submitted, this 18th day of April, 2025.

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CERTIFICATE OF COMPLIANCE

Pursuant to L.R. 7.1(D), I hereby certify that the foregoing document was prepared using Times New Roman font in 14 point, one of the font and point selections approved by L.R. 5.1(C).

This 18th day of April, 2025.

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CERTIFICATE OF SERVICE

I hereby certify that I have 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 18th day of April, 2025.

/s/ James W. Cobb
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