

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
LOUISVILLE DIVISION

*ELECTRONICALLY FILED*

JOANNE BARROWS, SUSAN HAGOOD,  
SHARON MERKLEY, LORRAINE KOHL,  
and DOLLY BALANI, individually and on  
behalf of all others similarly situated,

Plaintiffs,

v.

HUMANA INC.,

Defendant.

Civil Action No. 3:23-cv-00654-RGJ

**DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES TO  
PLAINTIFFS' FIRST AMENDED COMPLAINT**

Michael P. Abate  
Burt Anthony Stinson  
KAPLAN JOHNSON ABATE & BIRD LLP  
710 West Main Street, 4th Floor  
Louisville, KY 40202  
Telephone: 502-416-1630  
E-mail: mabate@kaplanjohnsonlaw.com  
E-mail: cstinson@kaplanjohnsonlaw.com

Kevin D. Feder (*pro hac vice*)  
Jason Yan (*pro hac vice*)  
Gillian Mak (*pro hac vice*)  
O'MELVENY & MYERS LLP  
1625 Eye Street NW  
Washington, DC 20006  
Telephone: 202-383-5164  
E-mail: kfeder@omm.com  
E-mail: jyan@omm.com  
E-mail: gmak@omm.com

*Attorneys for Defendant Humana Inc.*

Subject to its affirmative defenses set forth below, and without waiver of any rights, privileges, or defenses, Defendant Humana Inc. (“Defendant” or “Humana”) hereby submits this Answer to the Amended Complaint (ECF No. 37) (“Amended Complaint”) filed by Plaintiffs Estate of JoAnne Barrows, Susan Hagood, Sharon Merkley, Lorainne Kohl, and Dolly Balini (“Plaintiffs”).

### **PREFATORY STATEMENT**

Plaintiffs’ Amended Complaint alleges that Humana uses an artificial intelligence (“AI”) Model, nH Predict, “in place of real doctors,” “to summarily deny elderly patients care owed to them under Medicare Advantage Plans.” *Plaintiffs’ allegations are false*: Humana did not use nH Predict to make adverse coverage determinations. Instead, any determinations to deny post-acute care coverage are made on an individualized basis, by physician Medical Directors—not artificial intelligence—and based solely on the SNF coverage criteria mandated by CMS in Chapter 8 of the Medicare Benefit Policy Manual. In addition to the faulty premise underlying Plaintiffs’ entire lawsuit, Humana continues to believe, and preserves for appeal or future adjudication in this case, that Plaintiffs’ remaining causes of action are preempted by federal law, and that the Court lacks subject matter jurisdiction because Plaintiffs failed to exhaust their administrative remedies and failed to present their claims to the U.S. Secretary of Health and Human Services, as required by the Medicare Act. *See* Defendant’s Motion to Dismiss the Amended Complaint (ECF No. 40) and supporting briefing (ECF Nos. 49, 68, 73, 76).

Each numbered response in this Answer is made subject to the following limitations:

Any responses in this Answer do not constitute an acknowledgement or admission of the validity or relevance of any allegation.

Where Defendant states that it lacks knowledge or information sufficient to form a belief about the truth of a certain allegation, Humana reserves the right to argue that the allegation is true or false based on the evidence.

This Answer, included the defenses herein, shall not be construed as a waiver of Humana's right to pursue any counterclaims, including but not limited to any other claims Humana might bring against absent class members in any forum, or to move to dismiss any of the claims alleged in the Amended Complaint. Any construction to the contrary would violate Humana's due process rights. To the extent that any other aspect of the Amended Complaint, including headings and subheadings, requires an answer that is not provided below, Humana denies that aspect of the Amended Complaint.

Except to the extent expressly admitted in this Answer, Humana denies each and every allegation in the Amended Complaint.

Humana uses the headings and subheadings from Plaintiffs' Amended Complaint for convenience of reference only. Humana disputes, and does not adopt, those headings. Humana answers the allegations of the like-numbered paragraphs of the Amended Complaint as follows:

### **INTRODUCTION**

1. The allegations in Paragraph 1 constitute legal arguments and/or conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 1.

2. Defendant admits that Paragraph 2 includes Plaintiffs' characterization of their allegations in this case. Defendant denies that it uses "the nH Predict AI Model" to make adverse claim determinations. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 2.

3. Defendant denies the allegations in Paragraph 3.

4. The allegations in Paragraph 4 constitute legal arguments and/or conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 4.

5. Defendant admits that its subsidiaries offer Medicare Advantage plans that collectively provide coverage to millions of Americans under Part C of the Medicare Act. The exact number of enrollees in these plans fluctuates over time. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 5.

6. The allegations in Paragraph 6 purport to characterize quoted text from websites, which speak for themselves, and therefore no response is required. To the extent a response is required, Defendant admits that Jim Rehtin is Humana's current President and Chief Executive Officer. Defendant denies the remaining allegations in Paragraph 6.

7. Defendant denies the allegations in Paragraph 7.

8. Defendant denies the allegations in Paragraph 8.

9. Defendant denies the allegations in Paragraph 9.

10. Defendant denies the allegations in Paragraph 10.

11. Defendant denies the allegations in Paragraph 11.

12. Defendant denies that Plaintiffs and putative class members had their post-acute care coverage determined by the nH Predict AI Model. The allegations in Paragraph 12 constitute

legal arguments and/or conclusions of law to which no response is required. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 12.

13. The allegations in Paragraph 13 constitute legal arguments and/or conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 13.

14. Defendant admits that Plaintiffs purport to seek relief for the allegations in the Amended Complaint. Defendant denies the allegations in Paragraph 14 and further denies that Plaintiffs or the unnamed members of the putative class are entitled to any relief, including damages or injunctive relief.

### **JURISDICTION AND VENUE**

15. The allegations in Paragraph 15 constitute legal arguments and/or conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 15 and denies that this Court has subject matter jurisdiction over the claims brought by Plaintiffs for the reasons explained in Defendant's Motion to Dismiss the Amended Complaint (ECF No. 40) and supporting briefing (ECF Nos. 49, 68, 73, 76).

16. The allegations in Paragraph 16 constitute legal arguments and/or conclusions of law to which no response is required. Defendant continues to believe and preserves for appeal or future adjudication in this case, that Plaintiffs' state law causes of action are preempted by federal law, and that the Court lacks subject matter jurisdiction because Plaintiffs failed to exhaust their administrative remedies and failed to present their claims to the U.S. Secretary of Health and Human Services, as required by the Medicare Act. *See* Defendant's Motion to Dismiss the Amended Complaint (ECF No. 40) and supporting briefing (ECF Nos. 49, 68, 73, 76). To the extent a response is required, Humana denies the allegations in Paragraph 16.

17. Defendant admits that it is headquartered in Kentucky. The remainder of the allegations in Paragraph 17 constitute conclusions of law to which no response is required. Humana otherwise denies the allegations in Paragraph 17.

18. Defendant admits that Humana Inc. is headquartered in the Western District of Kentucky. The remainder of the allegations in Paragraph 18 constitute conclusions of law to which no response is required. Defendant otherwise denies the allegations in Paragraph 18.

### **THE PARTIES**

19. Paragraph 19 does not define what is meant by “all times relevant to this action.” Defendant admits that Plaintiff Barrows appears to have been enrolled in Humana Medicare Advantage plans in 2019, 2020, 2021, and 2022. Humana lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 19 and on that basis, it denies them.

20. Paragraph 20 does not define what is meant by “all times relevant to this action.” Humana admits that Plaintiff Hagood appears to have been enrolled in Humana Medicare Advantage plans between 2019, 2020, 2021, and 2022. Humana lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 20 and on that basis, it denies them.

21. Paragraph 21 does not define what is meant by “all times relevant to this action.” Defendant admits that Plaintiff Merkley appears to have been enrolled in a Humana Medicare Advantage plan in 2019, 2020, 2021, 2022, 2023, 2024, and 2025. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 21 and on that basis, it denies them.

22. Paragraph 22 does not define what is meant by “all times relevant to this action.” Defendant admits that Plaintiff Kohl appears to have been enrolled in a Humana Medicare Advantage plan in 2021, 2022, 2023, 2024, and 2025. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 22 and on that basis, it denies such allegations.

23. Paragraph 23 does not define what is meant by “all times relevant to this action.” Defendant admits that Plaintiff Balani appears to have been enrolled in a Humana Medicare Advantage plan in 2023. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 23 and on that basis, it denies such allegations.

24. The allegations in Paragraph 24 purport to characterize information from a website, which speaks for itself, and therefore no response is required. Defendant admits that Humana Inc. is incorporated in Delaware and is headquartered at 500 West Main St., Louisville, KY 40202. Defendant admits that Humana Inc. has a license to use the federally registered service mark “HUMANA.” Defendant denies the remaining allegations in Paragraph 24.

## **FACTUAL ALLEGATIONS**

### **A. BACKGROUND**

25. Defendant admits that its subsidiaries offered Medicare Advantage plans to Medicare-eligible consumers in certain geographic areas. No class has been certified in this case, and certification of the proposed class would be inappropriate. To the extent a further response is required, Humana denies the remaining allegations in Paragraph 25.

26. Defendant admits that the Medicare Advantage program, also known as Medical Part C, is a heavily regulated federal health benefit program administered by the federal Centers

for Medicare and Medicaid Services (“CMS”) and governed by federal statutes, regulation, and CMS guidance. Since approximately 2023, slightly more than 50% of Medicare beneficiaries have enrolled in a Medicare Advantage plan. To the extent a further response is required, Humana denies the remaining allegations in Paragraph 26.

27. Defendant admits that Plaintiffs were enrolled in certain Medicare Advantage plans at various points in time. Defendant admits that all Medicare Advantage enrollees in its subsidiaries’ plans are provided with a plan-specific Evidence of Coverage document that explains the details about the enrollees’ Medicare health plan for that year. Humana denies that the Evidence of Coverage document obligates Defendant to provide benefits for covered health services; instead, it admits that pursuant to federal law, Medicare Advantage plans must cover all services covered by Original Medicare (Medicare Part A and Part B) and must follow Original Medicare’s coverage rules. To the extent a further response is required, Humana denies the remaining allegations in Paragraph 27.

28. Defendant admits that “post-acute care” can sometimes include, for example, skilled nursing and/or therapy service provided for a discrete period of time after an inpatient hospitalization. Defendant admits that some, but not all, post-acute care may be covered by Medicare Advantage plans, which, as explained above, must follow Medicare coverage rules proscribed by Congress and CMS. Defendant denies that all of the Plaintiffs’ requested post-acute care was covered under Medicare coverage rules. Defendant lacks information and knowledge sufficient to form a belief as to the truth of the allegations related to the unnamed putative class members and denies those allegations in Paragraph 28 on that basis. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 28.

29. Defendant admits that Paragraph 29 of the Amended Complaint contains a high-level description of various types of services that could, in certain circumstances, fall within the broad term “post-acute care”. Defendant denies that all of these types of post-acute care are properly within the scope of the allegations in this case and further denies that such “post-acute care” is necessarily covered by Medicare coverage rules.

30. Defendant refers Plaintiffs to the extensive Medicare coverage and payment rules that exist under federal law, which speak for themselves. Defendant further notes that payment arrangements with post-acute care providers can vary. To the extent a further response is required, Humana denies the remaining allegations in Paragraph 30.

31. Defendant admits that the first sentence of Paragraph 31 of the Amended Complaint correctly indicates that coverage determinations can be made both before and during an enrollee’s post-acute care and are often referred to as “prior-authorization requests” and “concurrent review”. Defendant denies the remaining allegations in Paragraph 31.

32. Defendant admits that some coverage determinations are made prior to an enrollee receiving post-acute care. Defendant denies that it uses the nH Predict AI model to deny prior authorization requests. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 32.

33. Defendant denies the allegations in Paragraph 33. The allegations in Paragraph 33 contain legal arguments and/or conclusions of law to which no response is required. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 33.

34. Defendant denies the allegations in Paragraph 34.

35. The allegations in Paragraph 35 purport to characterize documents, which speak for themselves and therefore no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 35.

36. Defendant denies the allegations in Paragraph 36.

37. Defendant denies the allegations in Paragraph 37.

38. Defendant admits that Medicare Advantage can potentially cover up to a maximum of 100 days in a skilled nursing facility when Medicare coverage criteria are met. Defendant lacks information sufficient to form a belief about the last sentence in Paragraph 38 and on that basis denies it. Defendant denies all other allegations in Paragraph 38.

39. Defendant denies the allegations in Paragraph 39.

40. Defendant admits that under the Medicare Act, first-level denials of requests for certain post-acute care are appealable to independent third-party organizations, including in certain circumstances Quality Improvement Organizations (“QIOs”), which were established to review certain Medicare Advantage determinations. Defendant admits that QIOs may uphold or overturn certain Medicare Advantage determinations. Defendant denies the remaining allegations in Paragraph 40.

41. Defendant lacks information and knowledge sufficient to form a belief about the statistics included in the first and second sentences of Paragraph 41 and on that basis, denies them. Defendant denies the remaining allegations in Paragraph 41.

42. Defendant denies the allegations in Paragraph 42. For example, at least two of the named Plaintiffs had successful appeals.

43. Defendant denies the allegations in Paragraph 43, and Defendant further denies that the allegations in Paragraph 43 correctly describe the way Medicare coverage rules operate with respect to ongoing post-acute care coverage determinations.

44. Defendant lacks information and knowledge sufficient to form a belief regarding the allegations in Paragraph 44 and on that basis, it denies them.

45. The allegations in the first sentence of Paragraph 45 constitute legal arguments and/or conclusions of law to which no response is required. To the extent a response is required, Defendant denies that Plaintiffs would suffer irreparable harm if required to exhaust the mandatory Medicare administrative appeals process, including for the reasons previously set forth in Defendant's Motion to Dismiss the Amended Complaint (ECF No. 40) and supporting briefing. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 45.

46. Defendant denies that it has committed any misconduct. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 46.

47. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the alleged statistics contained in Paragraph 47 and on that basis, it denies them. Defendant denies the remaining allegations in Paragraph 47.

48. The allegations in Paragraph 48 constitute legal arguments and/or conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 48.

49. The allegations in Paragraph 49 constitute legal arguments and/or conclusions of law to which no response is required. To the extent a response is required, Defendant denies that it evades the federal rules applicable to Medicare Advantage plan coverage determinations.

Defendant also denies that it has delegated the process for reviewing patient claims to the nH Predict AI model to review and deny claims. Defendant further denies that it owns the nH Predict AI Model. Defendant lacks information and knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 49 and on that basis, it denies them.

50. Defendant denies the allegations in Paragraph 50.

**B. Plaintiff JoAnne Barrows**

51. Defendant admits that Plaintiff JoAnne Barrows was enrolled in a Humana Medicare Advantage Plan in 2019, 2020, 2021, and 2022. Upon information and belief, Ms. Barrows passed away on November 14, 2024.

52. Defendant admits that documents indicate Ms. Barrows was admitted to Methodist Hospital, in November 2021. To the extent that Paragraph 52 purports to characterize medical records, Defendant refers to the medical records themselves with respect to evidence of their contents and denies any characterization inconsistent with the true status of the patient.

53. Defendant admits that documents indicate Ms. Barrows was discharged from Methodist Hospital and admitted to Good Samaritan Society Ambassador, a skilled nursing facility, on or around November 26, 2021.

54. Defendant admits that a Notice of Medicare Non-Coverage was issued on or around December 9, 2021, indicating that coverage for Ms. Barrows' skilled nursing services would end December 11, 2021.

55. To the extent that Paragraph 55 purports to characterize medical records, Defendant refers to the medical records themselves with respect to evidence of their contents and denies any characterization inconsistent with the true status of the patient. Defendant lacks information and

knowledge sufficient to form a belief about the remaining allegations in Paragraph 55 and on that basis denies them.

56. Defendant admits that Ms. Barrows or her family submitted a first level appeal, which was denied. Defendant refers to the appeal resolution letters sent to Ms. Barrows for a full and complete explanation of the appeal determinations. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 56.

57. Defendant lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 57 and on that basis, it denies them.

58. Defendant lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 58 and on that basis, it denies them.

59. Defendant lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 59 and on that basis, it denies them.

60. Defendant lacks knowledge or information sufficient to form a belief as to the allegations in Paragraph 60 and on that basis, it denies them.

61. Defendant denies the allegations in Paragraph 61.

**C. Plaintiff Susan Hagood**

62. Defendant admits that Susan Hagood was enrolled in a Humana Medicare Advantage plan in 2019, 2020, 2021 and 2022. Defendant denies that Ms. Hagood is currently enrolled in a Humana plan because, upon information and belief, she enrolled in another Medicare plan in 2023.

63. Defendant admits that documents indicate that Ms. Hagood was admitted to Mission Hospital on or around September 10, 2022. To the extent that Paragraph 63 purports to characterize medical records, Defendant refers to the medical records themselves with respect to

evidence of their contents and denies any characterization inconsistent with the true status of the patient.

64. Defendant admits that documents indicate that Ms. Hagood was discharged from Mission Hospital on or around October 26, 2022. To the extent that Paragraph 64 purports to characterize medical records, Defendant refers to the medical records themselves with respect to evidence of their contents and denies any characterization inconsistent with the true status of the patient.

65. Defendant admits that documents indicate that Ms. Hagood was transferred to the Oaks at Brevard rehabilitation facility on or around October 26, 2022. To the extent that Paragraph 65 purports to characterize medical records, Defendant refers to the medical records themselves with respect to evidence of their contents and denies any characterization inconsistent with the true status of the patient.

66. To the extent that Paragraph 66 purports to characterize medical records, Defendant refers to the medical records themselves with respect to evidence of their contents and denies any characterization inconsistent with the true status of the patient.

67. Defendant lacks information and knowledge sufficient to form a belief as to the allegations in Paragraph 67 and on that basis, it denies them.

68. Defendant admits that documents indicate that Ms. Hagood was readmitted to Mission Hospital on or around November 28, 2022. To the extent that Paragraph 68 purports to characterize medical records, Defendant refers to the medical records themselves with respect to evidence of their contents and denies any characterization inconsistent with the true status of the patient.

69. Defendant admits that it paid claims for Ms. Hagood's skilled nursing facility care between October 26, 2022 and November 13, 2022. Defendant admits that a Notice of Medicare Non-Coverage was issued on or around December 11, 2022, which indicated that coverage of Ms. Hagood's skilled nursing services would end on December 13, 2023. Defendant refers to the aforementioned correspondence sent by Humana to Ms. Hagood for an explanation of the determination related to Ms. Hagood's coverage request. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 69.

70. Defendant lacks knowledge or information sufficient to form a belief as to the amount that Ms. Hagood and her family may have paid out of pocket and on that basis, it denies that portion of Paragraph 70. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 70.

71. Defendant lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 71 and on that basis, it denies them.

**D. Plaintiff Sharon Merkley**

72. Defendant admits that Plaintiff Sharon Merkley was enrolled in a Humana Medicare Advantage plan in 2019, 2020, 2021, 2022, 2023, 2024, and 2025. Defendant admits that premium amounts can fluctuate between enrollment years and denies the remaining allegations on that basis.

73. To the extent that Paragraph 73 purports to characterize medical records, Defendant refers to the medical records themselves with respect to evidence of their contents and denies any characterization inconsistent with the true status of the patient.

74. Defendant admits that documents indicate Ms. Merkley was admitted to Vanderbilt University Medical Center on or around November 4, 2023. To the extent that Paragraph 74

purports to characterize medical records, Defendant refers to the medical records themselves with respect to evidence of their contents and denies any characterization inconsistent with the true status of the patient.

75. Defendant admits that documents indicate that Ms. Merkley was treated at Vanderbilt until she was discharged and transferred to Signature Healthcare on or around November 16, 2023.

76. Defendant admits that the prior authorization request for skilled nursing care was approved on or around November 16, 2023, and that a letter was sent to Ms. Merkley confirming the approval. Defendant refers to the November 16, 2023, letter for a full and complete statement of this determination.

77. Defendant denies that Ms. Merkley's coverage determinations were processed by the nH Predict AI Model. Defendant lacks information and knowledge sufficient to form a belief regarding the allegations in Paragraph 77 and on that basis, it denies them.

78. Defendant admits that a Notice of Medicare Non-Coverage was issued on or around December 6, 2023, which indicated that coverage of Ms. Merkley's skilled nursing services would end on December 8, 2023. Defendant refers to the aforementioned correspondence sent to Ms. Merkley for an explanation of the determination related to Ms. Merkley's coverage request.

79. Defendant admits that Ms. Merkley submitted a first-level appeal to Kepro. On December 7, 2023, Kepro sent Ms. Merkley a letter reinstating coverage. Defendant refers to the aforementioned correspondence sent by Kepro to Ms. Merkley for a full explanation of the determination related to Ms. Merkley's appeal. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 79.

80. Defendant admits that a Notice of Medicare Non-Coverage was issued on or around December 11, 2023, indicating that coverage for skilled nursing services would end December 13, 2023. Defendant denies the remaining allegations in Paragraph 80.

81. Defendant admits that on December 13, 2023, Kepro sent Ms. Merkley a letter indicating that it had determined coverage should be reinstated. Defendant refers to the aforementioned correspondence sent by Kepro to Ms. Merkley for a full explanation of the determination related to Ms. Merkley's appeal. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 81.

82. Defendant admits that a Notice of Medicare Non-Coverage was issued on or around December 14, 2023, indicating that coverage for Ms. Merkley's skilled nursing services would end on December 16, 2023. On December 16, 2023, Kepro sent Ms. Merkley a letter indicating that it had determined coverage should be reinstated. Defendant refers to the aforementioned correspondence sent by Kepro to Ms. Merkley for a full explanation of the determination related to Ms. Merkley's appeal. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 82.

83. Defendant admits that a Notice of Medicare Non-Coverage was issued on or around December 20, 2023, indicating that coverage for Ms. Merkley's skilled nursing services would end on December 22, 2023. On December 21, 2023, Kepro sent Ms. Merkley a letter indicating that it had determined coverage should be reinstated. Defendant refers to the aforementioned correspondence sent by Kepro to Ms. Merkley for a full explanation of the determination related to Ms. Merkley's appeal. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 83.

84. Defendant admits that a Notice of Medicare Non-Coverage was issued on or around December 22, 2023, indicating that coverage for Ms. Merkley's skilled nursing services would end on December 24, 2023. On December 23, 2023, Kepro sent Ms. Merkley a letter indicating that it had determined coverage should be reinstated. Defendant refers to the aforementioned correspondence sent by Kepro to Ms. Merkley for a full explanation of the determination related to Ms. Merkley's appeal. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 84.

85. Defendant admits that it issued a Notice of Medicare Non-Coverage indicating that coverage for Ms. Merkley's skilled nursing services would end on December 30, 2023. On December 29, 2023, Kepro sent Ms. Merkley a letter indicating that it had determined coverage should be reinstated. Defendant refers to the aforementioned correspondence sent by Kepro to Ms. Merkley for a full explanation of the determination related to Ms. Merkley's appeal. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 85.

86. Defendant admits that a Notice of Medicare Non-Coverage was issued on January 5, 2024, indicating that coverage for Ms. Merkley's skilled nursing services would end on January 7, 2024. On January 6, 2024, Kepro sent Ms. Merkley a letter indicating that it had determined that the decision was medically appropriate, and on January 10, 2024, Kepro upheld the previous decision. Defendant refers to the aforementioned correspondence sent by Kepro to Ms. Merkley for a full explanation of the determination related to Ms. Merkley's appeal. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 86.

87. Defendant lacks information and knowledge sufficient to form a belief regarding the allegations in Paragraph 87 and on that basis, it denies them.

88. Defendant lacks information and knowledge sufficient to form a belief regarding the allegations in Paragraph 88 and on that basis, it denies them.

89. Defendant admits that documents indicate that on or around February 1, 2024, Ms. Merkley was admitted to Owensboro Health Regional Hospital. To the extent that Paragraph 89 purports to characterize medical records, Defendant refers to the medical records themselves with respect to evidence of their contents and denies any characterization inconsistent with the true status of the patient. Defendant admits that Ms. Merkley's request for prior authorization for skilled nursing care at Chautauqua Health and Rehabilitation of Owensboro was approved on or around February 6, 2024.

90. Defendant admits that a Notice of Medicare Non-Coverage was issued on or around February 14, 2024, indicating that coverage for Mrs. Merkley's skilled nursing services would end on February 16, 2024. On February 15, 2025, Kepro sent Ms. Merkley a letter indicating that it had determined coverage should be reinstated. Defendant refers to the aforementioned correspondence sent by Kepro to Ms. Merkley for a full explanation of the determination related to Ms. Merkley's appeal. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 90.

91. Defendant admits that a Notice of Medicare Non-Coverage was issued on or around February 19, 2024, indicating that coverage for Ms. Merkley's skilled nursing services would end on February 21, 2024. On February 21, 2024, Kepro sent Ms. Merkley a letter indicating that it had determined coverage should be reinstated. Defendant refers to the aforementioned correspondence sent by Kepro to Ms. Merkley for a full explanation of the determination related to Ms. Merkley's appeal. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 91.

92. Defendant admits that a Notice of Medicare Non-Coverage was issued on or around February 26, 2024, indicating that coverage for Ms. Merkley's skilled nursing services would end on February 28, 2024. On February 27, 2024, Kepro sent Ms. Merkley a letter indicating that it had determined coverage should be reinstated. Defendant refers to the aforementioned correspondence sent by Kepro to Ms. Merkley for a full explanation of the determination related to Ms. Merkley's appeal. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 92.

93. Defendant admits that a Notice of Medicare Non-Coverage was issued on or around March 5, 2024, indicating that coverage for Ms. Merkley's skilled nursing services would end on March 7, 2024. On March 7, 2024, Kepro sent Ms. Merkley a letter indicating that it had determined coverage should be reinstated. Defendant refers to the aforementioned correspondence sent by Kepro to Ms. Merkley for a full explanation of the determination related to Ms. Merkley's appeal. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 93.

94. Defendant admits that a Notice of Medicare Non-Coverage was issued on or around March 11, 2024, indicating that coverage for Ms. Merkley's skilled nursing services would end on March 13, 2024. On March 13, 2024, Kepro sent Ms. Merkley a letter indicating that it had determined that the decision was medically appropriate. However, Defendant denies that Kepro denied Ms. Merkley's second-level appeal because a letter that Kepro sent to Ms. Merkley on March 18, 2024, indicates that an independent reconsideration peer reviewer determined that coverage should be reinstated. Defendant refers to the aforementioned correspondence sent by Kepro to Ms. Merkley for a full explanation of the determination related to Ms. Merkley's appeals.

To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 94.

95. Defendant lacks knowledge or information sufficient to form a belief as to the allegations contained in Paragraph 95 and on that basis, it denies them.

**E. Plaintiff Lorraine Kohl**

96. Defendant admits that Lorraine Kohl was enrolled in a Humana Medicare Advantage plan in 2021, 2022, 2023, 2024, and 2025. Defendant admits that premium amounts can fluctuate between enrollment years and denies the remaining allegations on that basis.

97. Defendant admits that documents indicate that Ms. Kohl was admitted to St. Elizabeth Hospital on or around December 15, 2022, for injuries related to a fall. On or around December 20, 2022, Ms. Kohl was transferred to Oakridge Gardens Nursing Center.

98. Defendant admits that a Notice of Medicare Non-Coverage was issued on or around January 4, 2023, indicating that coverage for Ms. Kohl's skilled nursing services would end on January 6, 2023. Defendant lacks knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 98 and on that basis, it denies them.

99. Defendant admits that Ms. Kohl submitted a first-level appeal to Livanta. On January 6, 2023, Livanta denied Ms. Kohl's appeal, stating "[t]here are no documented medical issues to support the need for daily skilled nursing care." Defendant refers to the aforementioned correspondence sent by Livanta to Ms. Kohl for a full explanation of the determination related to Ms. Kohl's appeal.

100. Defendant admits that Ms. Kohl did not request a second-level appeal from Livanta, and that Humana received a letter from Ms. Kohl's family dated January 5, 2023.

101. Defendant admits that documents indicate that Ms. Kohl was admitted to Ascension Northeast Wisconsin St. Elizabeth's Hospital on or around January 28, 2023. Defendant admits a Notice of Denial of Medical Coverage was issued on February 1, 2023, denying Ms. Kohl's request for a stay at a skilled nursing facility. Defendant refers to the aforementioned correspondence sent to Ms. Kohl for a full explanation of the coverage determination.

102. Defendant admits that documents indicate that Ms. Kohl was transferred to a skilled nursing facility on or around February 1, 2023. Defendant lacks information and knowledge sufficient to form a belief regarding the remaining allegations in Paragraph 102 and on that basis, it denies them.

103. Defendant lacks information and knowledge sufficient to form a belief regarding the allegations in Paragraph 103 and on that basis, it denies them.

104. Defendant admits that it received a call from Ms. Kohl's daughter on February 21, 2023, to initiate an expedited appeal of the prior authorization determination. Defendant further admits that on February 27, 2023, it granted the appeal and reinstated coverage for Ms. Kohl's skilled nursing facility care from January 31, 2023, through February 27, 2023.

105. Defendant admits that a Notice of Medicare Non-Coverage was issued on or around March 1, 2023, indicating that coverage for Ms. Kohl's skilled nursing services would end on March 3, 2023. On March 3, 2023, Livanta sent Ms. Kohl a letter indicating that it had determined coverage should be reinstated. Defendant refers to the aforementioned correspondence sent by Livanta to Ms. Kohl for a full explanation of the determination related to Ms. Kohl's appeal. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 105.

106. Defendant admits that on March 3, 2023, Livanta sent Ms. Kohl a letter upholding the denial of coverage. Defendant admits that Livanta noted that Ms. Kohl “currently requires maximal help to total dependence for self-care activities, such as dressing, bathing, and toileting. The patient no longer requires skilled services to preserve function or prevent decline. The patient can be transitioned to a different setting of care at this time.” Defendant refers to the aforementioned correspondence sent by Livanta to Ms. Kohl for a full explanation of the determination related to Ms. Kohl’s appeal. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 106.

107. Defendant lacks knowledge or information sufficient to form a belief as to the allegations related to Ms. Kohl’s outstanding balance and on that basis, denies them.

**F. Plaintiff Dolly Balani**

108. Defendant admits that Dolly Balani appears to have been enrolled in a Humana Medicare Advantage plan in 2023. Defendant admits that premium amounts can fluctuate between enrollment years and denies the remaining allegations on that basis.

109. Defendant admits that documents indicate that Ms. Balini was admitted to Valley Baptist Medical Center on or around November 28, 2023. To the extent that Paragraph 109 purports to characterize medical records, Defendant refers to the medical records themselves with respect to evidence of their contents and denies any characterization inconsistent with the true status of the patient. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 109 and on that basis, it denies them.

110. Defendant lacks information and knowledge sufficient to form a belief regarding the allegations in Paragraph 110 and on that basis, it denies them.

111. Defendant admits that Ms. Balani's provider requested prior authorization for inpatient rehab care beginning December 1, 2023. Defendant refers to the Notice of Denial of Medical Coverage dated December 7, 2023, which was sent to Ms. Balani for a full explanation of the determination. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 111.

112. Defendant admits that documents indicate that Ms. Balani was discharged from Valley Baptist Medical Center on or around December 12, 2023. Defendant lacks information or knowledge related to the amount that Ms. Balani may have paid out-of-pocket for inpatient rehabilitation facility care and denies the remaining allegations in Paragraph 112 on that basis.

113. Defendant lacks information and knowledge sufficient to form a belief regarding the allegations in Paragraph 113 and on that basis, it denies them.

114. Defendant admits that Humana received Ms. Balani's request for reconsideration on December 7, 2023. On December 8, 2023, Humana sent Ms. Balani a letter indicating that a Humana medical director reviewed all the appeal information and Humana maintained its original decision not to approve coverage for inpatient rehabilitation services. Humana forwarded the case file to Maximus, an Independent Review Entity ("IRE") for second-level review, as was required by CMS. Defendant admits that on December 14, 2023, Maximus denied the second-level appeal, finding that the "requested IRF care is not considered medically reasonable and necessary based on Medicare guidelines." Defendant refers to the December 8, 2023, correspondence from Humana to Ms. Balani and the December 14, 2023, correspondence from Maximus to Ms. Balani for full explanations of the determinations. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 114.

115. As described above, Defendant admits that Humana forwarded the case file to Maximus for second-level review, as was required by CMS, and that Maximus denied the second-level appeal. Defendant refers to the December 14, 2023, correspondence from Maximus to Ms. Balani for the full explanation of the determination. To the extent a further response is required, Defendant denies the remaining allegations in Paragraph 115.

116. Defendant lacks information and knowledge sufficient to form a belief regarding the allegations in Paragraph 116 and on that basis, it denies them.

117. Defendant admits the allegations in Paragraph 117. Defendant refers to ALJ Zina Daimi Ashourian's February 29, 2024, decision, which upheld the denial, for a full explanation of this determination.

118. Defendant admits that Ms. Balani appealed the ALJ's decision to the Medicare Appeals Council.

119. Defendant lacks information and knowledge sufficient to form a belief regarding the allegations in Paragraph 119 and on that basis, it denies them.

### **CLASS ALLEGATIONS**

120. Paragraph 120 asserts legal arguments and/or conclusions of law to which no response is required. To the extent a response is required, Defendant admits that Plaintiffs purport to bring this action on behalf of a putative class of participants described in Paragraph 120. Defendant denies that this case, or the putative class described in Paragraph 120, is appropriate for class certification.

121. Paragraph 121 asserts conclusions of law to which no response is required. To the extent a response is required, Defendant admits that Plaintiffs purport to bring this action on behalf

of a putative class of participants described in Paragraph 121. Defendant denies that this case, or the putative class described in Paragraph 121, is appropriate for class certification.

122. Paragraph 122 asserts conclusions of law to which no response is required. To the extent a response is required, Defendant admits that Plaintiffs purport to bring this action on behalf of a putative class of participants described in Paragraph 122. Defendant denies that this case, or the putative class described in Paragraph 122, is appropriate for class certification.

123. Paragraph 123 asserts conclusions of law to which no response is required. To the extent a response is required, Defendant admits that Plaintiffs purport to bring this action on behalf of a putative class of participants described in Paragraph 123. Defendant denies that this case, or the putative class described in Paragraph 123, is appropriate for class certification.

124. Paragraph 124 asserts conclusions of law to which no response is required. To the extent a response is required, Defendant admits that Plaintiffs purport to bring this action on behalf of a putative class of participants described in Paragraph 124. Defendant denies that this case, or the putative class described in Paragraph 124, is appropriate for class certification.

125. Paragraph 125 asserts conclusions of law to which no response is required. To the extent a response is required, Defendant admits that Plaintiffs purport to bring this action on behalf of a putative class of participants described in Paragraph 125. Defendant denies that this case, or the putative class described in Paragraph 125, is appropriate for class certification.

126. Paragraph 126 asserts conclusions of law to which no response is required. To the extent a response is required, Defendant admits that Plaintiffs purport to bring this action on behalf of a putative class of participants described in Paragraph 126. Defendant denies that this case, or the putative class described in Paragraph 126, is appropriate for class certification.

127. The allegations of Paragraph 127 assert conclusions of law that require no response. To the extent Paragraph 127 contains allegations requiring a response, Defendant denies the allegations in Paragraph 127. Defendant denies that this case is appropriate for class certification.

128. The allegations of Paragraph 128 assert conclusions of law that require no response. To the extent Paragraph 128 contains allegations requiring a response, Defendant denies the allegations in Paragraph 128 and its subparts.

129. The allegations of Paragraph 129 assert conclusions of law that require no response. To the extent Paragraph 129 contains allegations requiring a response, Defendant denies the allegations in Paragraph 129.

130. Paragraph 130 asserts conclusions of law that require no response. To the extent Paragraph 130 contains allegations requiring a response, Defendant denies the allegations in Paragraph 130.

131. The allegations of Paragraph 131 assert conclusions of law that require no response. To the extent Paragraph 131 contains allegations requiring a response, Defendant denies the allegations in Paragraph 131.

132. The allegations of Paragraph 132 assert conclusions of law that require no response. To the extent Paragraph 132 contains allegations requiring a response, Defendant denies the allegations in Paragraph 132.

133. The allegations of Paragraph 133 assert conclusions of law that require no response. To the extent Paragraph 133 contains allegations requiring a response, Defendant denies the allegations in Paragraph 133.

134. The allegations of Paragraph 134 assert conclusions of law that require no response. To the extent Paragraph 134 contains allegations requiring a response, Defendant denies the

allegations in Paragraph 134. Defendant further denies that Plaintiffs or the unnamed putative class members are entitled to any of the relief sought in Paragraph 134.

**FIRST CAUSE OF ACTION**  
**BREACH OF CONTRACT—NATIONWIDE**  
***(On Behalf of Plaintiffs and the Nationwide Class)***

135. Defendant refers to and incorporates by reference its answers to Paragraphs 1 through 134 above.

136. The allegations of Paragraph 136 include legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the allegations in Paragraph 136.

137. The allegations of Paragraph 137 include legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the allegations in Paragraph 137.

138. The allegations of Paragraph 138 include conclusions of law to which no response is required. To the extent a further response is required, Defendant denies the allegations in Paragraph 138.

139. Defendant refers to the text of the named Plaintiffs' individual Evidence of Coverage documents, which speak for themselves. Defendant also denies that Plaintiffs entered into an "insurance agreement" with Defendant.

140. Defendant refers to the text of the named Plaintiffs' individual Evidence of Coverage, which speak for themselves. Defendant also denies that Plaintiffs entered into an "insurance agreement" with Defendant.

141. The allegations of Paragraph 141 include conclusions of law to which no response is required. To the extent a further response is required, Defendant denies the allegations in Paragraph 141.

142. The allegations of Paragraph 142 include conclusions of law to which no response is required. To the extent a further response is required, Defendant denies the allegations in Paragraph 142. Defendant further denies that the stated alleged breaches described in Paragraph 142 remain live after the Court's decision on Defendant's Motion to Dismiss the Amended Complaint. *See* ECF No. 82 at PageID# 992 (“[A]s with the breach of contract, [the breach of implied covenant of good faith and fair dealing claim] alleges a breach due to use of nH Predict when the contract promised an individualized assessment”).

143. The allegations of Paragraph 143 include legal conclusions to which no response is required. Defendant denies that it used nH Predict to deny coverage for Plaintiffs and unnamed class members' post-acute care. Defendant contracted with naviHealth to provide utilization management functions for only certain types of post-acute care, and only in certain states or geographic areas that changed over time. For example, for the states in which naviHealth was responsible for utilization management for certain post-acute care, naviHealth was not necessarily responsible for all plan members in that state. To the extent a further response is required, Defendant denies the allegations in Paragraph 143.

144. The allegations of Paragraph 144 include legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the allegations in Paragraph 144.

145. The allegations of Paragraph 145 include legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the allegations in Paragraph 145.

146. The allegations of Paragraph 146 include legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the allegations in Paragraph 146. Defendant further denies that Plaintiffs or the unnamed putative class members are entitled to any of the relief sought in Paragraph 146. Defendant also continues to believe and preserves for appeal or future adjudication in this case, that Plaintiffs' First Cause of Action is preempted by federal law and that the Court lacks subject matter jurisdiction because Plaintiffs failed to exhaust their administrative remedies and failed to present their claims to the Secretary of Health and Human Services as required by the Medicare Act. *See* Defendant's Motion to Dismiss the Amended Complaint (ECF No. 40) and supporting briefing (ECF Nos. 49, 68, 73, 76).

**SECOND CAUSE OF ACTION**  
**BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING—**  
**NATIONWIDE**  
*(On Behalf of Plaintiffs and the Nationwide Class)*

147. Defendant refers to and incorporates by reference its answers to Paragraphs 1 through 146 above.

148. The allegations of Paragraph 148 include conclusions of law to which no response is required. To the extent a further response is required, Defendant denies the allegations in Paragraph 148.

149. The allegations of Paragraph 149 include legal conclusions to which no response is required. To the extent a response is required, Defendant denies the remaining allegations in Paragraph 149.

150. The allegations of Paragraph 150 include legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the allegations in Paragraph 150 and its subparts.

151. The allegations of Paragraph 151 include legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the allegations in Paragraph 151.

152. The allegations of Paragraph 152 include legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the allegations in Paragraph 152.

153. The allegations of Paragraph 153 include legal conclusions to which no response is required. To the extent a further response is required, Defendant denies the allegations in Paragraph 153.

154. The allegations of Paragraph 154 include legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 154. Defendant further denies that Plaintiffs or the unnamed putative class members are entitled to any of the relief sought in Paragraph 154.

155. The allegations of Paragraph 155 include conclusions of law to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 155. Defendant further denies that Plaintiffs or the unnamed putative class members are entitled to any of the relief sought in Paragraph 155. Defendant also continues to believe and preserves for appeal or future adjudication in this case, that Plaintiffs' Second Cause of Action is preempted by federal law, and that the Court lacks subject matter jurisdiction because Plaintiffs failed to exhaust their administrative remedies and failed to present their claims to the Secretary of Health and Human Services, as required by the Medicare Act. *See* Defendant's Motion to Dismiss the Amended Complaint (ECF No. 40) and supporting briefing (ECF Nos. 49, 68, 73, 76).

**THIRD CAUSE OF ACTION**  
**UNJUST ENRICHMENT**

*(On Behalf of Plaintiffs and The Nationwide Class and, Alternatively, the North Carolina, Minnesota, Kentucky, Wisconsin, and Texas Subclasses)*

156. Defendant refers to and incorporates by reference its answers to Paragraphs 1 through 155 above.

157. To the extent that the allegations in Paragraph 157 contain argument and/or assert conclusions of law, no response is required. To the extent that Paragraph 157 contains allegations requiring a response, Humana denies the allegations in Paragraph 157.

158. Paragraph 158 contains conclusions of law to which no response is required. To the extent that Paragraph 158 contains allegations requiring a response, Humana denies the allegations in Paragraph 158.

159. Paragraph 159 contains conclusions of law to which no response is required. To the extent that Paragraph 159 contains allegations requiring a response, Humana denies the allegations in Paragraph 159.

160. Paragraph 160 contains conclusions of law to which no response is required. To the extent that Paragraph 160 contains allegations requiring a response, Humana denies the allegations in Paragraph 160.

161. Paragraph 161 contains conclusions of law to which no response is required. To the extent that Paragraph 161 contains allegations requiring a response, Humana denies the allegations in Paragraph 161.

162. Paragraph 162 contains conclusions of law to which no response is required. To the extent that Paragraph 162 contains allegations requiring a response, Humana denies the allegations in Paragraph 162.

163. Paragraph 163 contains conclusions of law to which no response is required. To the extent that Paragraph 163 contains allegations requiring a response, Humana denies the allegations in Paragraph 163. Defendant continues to believe and preserves for appeal or future adjudication in this case, that Plaintiffs' Third Cause of Action is preempted by federal law, and that the Court lacks subject matter jurisdiction because Plaintiffs failed to exhaust their administrative remedies and failed to present their claims to the Secretary of Health and Human Services, as required by the Medicare Act. *See* Defendant's Motion to Dismiss the Amended Complaint (ECF No. 40) and supporting briefing (ECF Nos. 49, 68, 73, 76).

**FOURTH CAUSE OF ACTION**  
**VIOLATION OF N.C. GEN. STAT. § 58-63-15—NORTH CAROLINA UNFAIR CLAIMS**  
**SETTLEMENT PRACTICES**  
***(On Behalf of Plaintiff Susan Hagood and the North Carolina Subclass)***

164. Defendant refers to and incorporates by reference its answers to Paragraphs 1 through 16 above.

165. The Court dismissed the Fourth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 165 is required.

166. The Court dismissed the Fourth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 166 is required. Further, Paragraph 166 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 166.

167. The Court dismissed the Fourth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 167 is required. To the extent a response is required, Defendant denies the allegations in Paragraph 167.

168. The Court dismissed the Fourth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 168 is required. Further, Paragraph 168 includes

conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 168.

169. The Court dismissed the Fourth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 169 is required. Further, Paragraph 169 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 169.

170. The Court dismissed the Fourth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 170 is required. Further, Paragraph 170 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 170.

171. The Court dismissed the Fourth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 171 is required. To the extent a response is required, Defendant denies the allegations in Paragraph 171.

172. The Court dismissed the Fourth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 172 is required. Further, Paragraph 172 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 172.

173. The Court dismissed the Fourth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 173 is required. Further, Paragraph 173 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 173.

174. The Court Dismissed the Fourth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 174 is required. Further, Paragraph 174 includes

conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 174 and denies that Plaintiffs and the unnamed putative class members are entitled to any relief.

**FIFTH CAUSE OF ACTION**  
**VIOLATION OF N.C. GEN. STAT. § 75-1.1—NORTH CAROLINA UNFAIR METHODS**  
**OF COMPETITION**  
***(On Behalf of Plaintiff Susan Hagood and the North Carolina Subclass)***

175. Defendant refers to, and incorporates by reference, its answers to Paragraphs 1 through 174, above.

176. The Court dismissed the Fifth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 176 is required.

177. The Court dismissed the Fifth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 177 is required. Further, Paragraph 177 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 177.

178. The Court dismissed the Fifth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 178 is required. Further, Paragraph 178 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 178.

179. The Court dismissed the Fifth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 179 is required. Further, Paragraph 179 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 179.

180. The Court Dismissed the Fifth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 180 is required. Further, Paragraph 180 includes

conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 180 and denies that Plaintiffs and the unnamed putative class members are entitled to any relief.

**SIXTH CAUSE OF ACTION**  
**INSURANCE BAD FAITH**  
***(On Behalf of Plaintiffs and the Multi-State Class)***

181. Defendant refers to and incorporates by reference its answers to Paragraphs 1 through 180 above.

182. The Court dismissed the Sixth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 182 is required.

183. The Court dismissed the Sixth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 183 is required.

184. The Court dismissed the Sixth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 184 is required. Further, Paragraph 184 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 184.

185. The Court dismissed the Sixth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 185 is required. Further, Paragraph 185 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 185.

186. The Court dismissed the Sixth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 186 is required. Further, Paragraph 186 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 186.

187. The Court dismissed the Sixth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 187 is required. Further, Paragraph 187 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 187.

188. The Court dismissed the Sixth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 188 is required. Further, Paragraph 188 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 188.

189. The Court dismissed the Sixth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 189 is required. Further, Paragraph 189 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 189.

190. The Court dismissed the Sixth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 190 is required. Further, Paragraph 190 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 190.

191. The Court dismissed the Sixth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 191 is required. Further, Paragraph 191 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 191.

192. The Court dismissed the Sixth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 192 is required. Further, Paragraph 192 includes conclusions of law that do not require a response. To the extent a response is required, Defendant

denies the allegations in Paragraph 192 and denies that Plaintiffs and the unnamed putative class members are entitled to any relief, including damages.

193. The Court dismissed the Sixth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 193 is required. Further, Paragraph 193 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 193 and denies that Plaintiffs and the unnamed putative class members are entitled to any relief, including damages.

194. The Court dismissed the Sixth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 194 is required. Further, Paragraph 194 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 194 and denies that Plaintiffs and the unnamed putative class members are entitled to any relief, including damages.

195. The Court dismissed the Sixth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 195 is required. Further, Paragraph 195 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 195.

196. The Court dismissed the Sixth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 196 is required. Further, Paragraph 196 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 196.

197. The Court dismissed the Sixth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 197 is required. Further, Paragraph 197 includes

conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 197.

198. The Court dismissed the Sixth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 198 is required. Further, Paragraph 198 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 198.

199. The Court dismissed the Sixth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 199 is required. Further, Paragraph 199 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 199 and denies that Plaintiffs and the unnamed putative class members are entitled to any relief, including damages.

200. The Court dismissed the Sixth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 200 is required. Further, Paragraph 200 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 200 and denies that Plaintiffs and the unnamed putative class members are entitled to any relief, including attorneys' fees and litigation expenses.

201. The Court dismissed the Sixth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 201 is required. Further, Paragraph 201 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 201.

202. The Court dismissed the Sixth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 202 is required. Further, Paragraph 202 includes

conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 202.

203. The Court Dismissed the Sixth Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 203 is required. Further, Paragraph 203 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 203 and denies that Plaintiffs and the unnamed putative class members are entitled to any relief, including attorney's fees and costs.

**SEVENTH CAUSE OF ACTION**  
**UNFAIR AND DECEPTIVE INSURANCE PRACTICES—MINNESOTA**  
***(On Behalf of Plaintiff Barrows and the Minnesota Subclass)***

204. Defendant refers to, and incorporates by reference, its answers to Paragraphs 1 through 203, above.

205. The Court dismissed the Seventh Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 205 is required.

206. The Court dismissed the Seventh Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 206 is required. To the extent a response is required, Defendant denies the allegations in Paragraph 206.

207. The Court dismissed the Seventh Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 207 is required. Further, Paragraph 207 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 207.

208. The Court dismissed the Seventh Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 208 is required. Further, Paragraph 208 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 208.

209. The Court dismissed the Seventh Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 209 is required. Further, Paragraph 209 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 209.

210. The Court dismissed the Seventh Cause of Action in the Amended Complaint (ECF No. 82), and thus no response to Paragraph 210 is required. Further, Paragraph 210 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 210.

**EIGHTH CAUSE OF ACTION**  
**COMMON LAW FRAUD**  
**(On Behalf of Plaintiffs, the North Carolina, Minnesota, Kentucky, Wisconsin, and Texas Subclasses)**

211. Defendant refers to, and incorporates by reference, its answers to Paragraphs 1 through 210, above.

212. Paragraph 212 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 212.

213. Paragraph 213 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 213.

214. Paragraph 214 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 214.

215. Paragraph 215 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 215 and further denies that Plaintiffs or the unnamed putative class members suffered any damages or losses.

216. Paragraph 216 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 216.

217. Paragraph 217 includes conclusions of law that do not require a response. To the extent a response is required, Defendant denies the allegations in Paragraph 217.

218. Defendant denies the allegations in Paragraph 218. Defendant further denies that Plaintiffs or the unnamed putative class members are entitled to punitive damages or any other relief. Defendant continues to believe, and preserves for appeal or future adjudication in this case, that Plaintiffs' Eighth Cause of Action is preempted by federal law, and that the Court lacks subject matter jurisdiction because Plaintiffs failed to exhaust their administrative remedies and failed to present their claims to the Secretary of Health and Human Services, as required by the Medicare Act. *See* Defendant's Motion to Dismiss the Amended Complaint (ECF No. 40) and supporting briefing (ECF Nos. 49, 68, 73, 76).

#### **PRAYER FOR RELIEF**

The "Prayer for Relief" in the Amended Complaint asserts conclusions of law to which no response is required. To the extent a response is required, Defendant denies each and every allegation in the Prayer for Relief and all of its subparts, and Defendant further denies that Plaintiffs and the unnamed putative class members are entitled to any relief on their claims.

### **AFFIRMATIVE DEFENSES**

1. **(Failure to State a Claim)** Plaintiffs' Amended Complaint fails to state a claim upon which relief can be granted, including, but not limited to, because Plaintiffs cannot pursue an Unjust Enrichment cause of action to the extent the Court finds there is an express contract, the conclusory Common Law Fraud count fails to meet the 9(b) pleading standard, and for the reasons previously set forth in Defendant's Motion to Dismiss (ECF No. 40).

2. **(Lack of Standing)** Plaintiffs lack standing to bring the claims alleged.

3. **(No Injuries, Pecuniary Loss, or Material Loss)** Plaintiffs and putative class members are not entitled to any of the relief sought because they have not suffered injuries in fact, pecuniary loss, or material loss proximately caused by any acts or omissions of Defendant or as a result of Defendant's alleged conduct.

4. **(Benefits Already Provided)** Plaintiffs' claims and those of the putative class members are barred, in whole or in part, because Plaintiffs and the putative class members have received all benefits due them under the terms of their plans.

5. **(Requested Damages are Unconstitutional)** Plaintiffs and the putative class members are not entitled to punitive damages because it would violate the United States Constitution, each state's constitution, as well as other applicable state-law limitations on punitive damages.

6. **(Improper Venue)** Plaintiffs' claims and the claims of the putative class members are barred, in whole or in part, because they are brought in an improper venue.

7. **(Medicare Act Preemption)** Plaintiffs' claims and the claims of the putative class members are barred, in whole or in part, because they are preempted by the Medicare Act.

8. **(Assignment)** Plaintiffs' claims and the claims of the putative class members are barred, in whole or in part, to the extent they assigned their benefits relating to the services at issue in this lawsuit.

9. **(Statute of Limitations)** Plaintiffs' claims and the claims of the putative class members are barred, in whole or in part, to the extent that any applicable statute of limitations has lapsed.

10. **(Proposed Classes Are Improper)** The Amended Complaint does not allege a class properly certifiable under Rule 23 because, among other reasons, Plaintiffs are not adequate class representatives, their claims are not typical of those of the putative class members, common issues do not predominate, and a class action would be unmanageable and inferior to other methods of adjudicating the claims of Plaintiffs and the putative class they seek to represent. The putative classes are also overbroad, poorly defined, and suffer from an ascertainability problem.

11. **(Named Plaintiffs Have Individualized Facts)** Plaintiffs' claims cannot be properly joined with the claims of any potential class members because Plaintiffs' claims involve highly individualized facts and circumstances.

12. **(Contributory Negligence)** Plaintiffs' alleged injuries and damages and the injuries and damages of the putative class members, if any, were proximately caused or contributed to, in whole or in part, by the negligence or fault of the Plaintiffs themselves.

13. **(Good Faith Compliance with Industry Standards)** Defendant acted reasonably and within acceptable industry standards, in good faith, and in compliance with applicable laws and regulations, including but not limited to those issued by CMS.

14. **(Outside Scope of Plan Benefits)** Plaintiffs' claims and the claims of the putative class members are barred, in whole or in part, to the extent they seek services, treatment, or other benefits not covered under the terms of any provisions of their plans, the Medicare Program, or CMS rules.

15. **(Not Covered During Relevant Time Period)** Plaintiffs' claims and the claims of the unnamed putative class members are barred, in whole or in part, to the extent they were not covered by a Humana Medicare Advantage Plan during the relevant time period.

16. **(Failure to Mitigate)** Plaintiffs' claims and those of the unnamed putative class members are barred, in whole or in part, because Plaintiffs and the putative class have acted unreasonably in failing to mitigate alleged injuries and damages, if any, and therefore, any such relief must be reduced or eliminated in accordance with the degree to which any such relief could have been mitigated by reasonable effort.

17. **(Lack of Reliance)** Plaintiffs and the unnamed putative class members did not reasonably rely on any alleged misrepresentations or omissions.

18. **(Alleged Injuries Already Redressed)** Plaintiffs' claims and the claims of the unnamed putative class members are barred, in whole or in part, to the extent any injury or damage they allegedly suffered has already been redressed.

19. **(Prior Settlements or Agreements)** Plaintiffs' claims and the claims of the unnamed putative class members are barred, in whole or in part, to the extent they were released in settlements or other agreements.

20. **(Exhaustion)** Plaintiffs' claims and the claims of the unnamed putative class members are barred because they arise under the Medicare Act and Plaintiffs and the putative class members have not exhausted Medicare's mandatory administrative appeals process or presented

their claims to the U.S. Secretary of Health and Human Services.

21. **(Evidence of Coverage (“EOC”) Is Not a Contract)** Plaintiffs’ and the unnamed putative class members’ breach of contract and breach of implied covenant of good faith and fair dealing claims are barred because the EOC is not a contract.

22. **(Res Judicata and Collateral Estoppel)** Plaintiffs’ claims and the claims of the unnamed putative class members are barred, in whole or in part, under the doctrines of res judicata and/or collateral estoppel.

23. **(Waiver, Estoppel, Laches, Ratification, and Unclean Hands)** Plaintiffs’ claims and the claims of the unnamed putative class members are barred, in whole or in part, under the doctrine of waiver, estoppel, laches, ratification, and/or unclean hands.

24. **(Attorneys’ Fees)** Plaintiffs’ claims and those of the unnamed putative class members do not support an award of attorneys’ fees incurred by Plaintiffs and the unnamed putative class members in the litigation of this action. If, however, it is found that attorneys’ fees are awardable and, in the event Defendant prevails in this action, it should be awarded reasonable attorneys’ fees.

25. **(Agency/Vicarious Liability)** Plaintiffs’ claims and the claims of the unnamed putative class members are barred to the extent the challenged conduct or statements occurred outside the scope of agency or vicarious liability.

26. **(Responsibility of Others)** Plaintiffs’ claims and those of the unnamed putative class members are barred, in whole or in part, because, to the extent Plaintiffs and the unnamed putative class members suffered any compensable injuries, those injuries were proximately caused by the acts, omissions, or fault of persons or entities over which Defendant exercised no control and for whose acts, omissions, or fault Defendant cannot be held liable. Recovery against

Defendant, if any, must be reduced or precluded entirely by such activities of such other parties, persons, entities, or corporations.

27. **(Acts/Omissions of Third Parties)** Plaintiffs' alleged injuries and damages and the injuries and damages of the unnamed putative class members, if any, were proximately caused or contributed to, in whole or in part, by the acts and/or omissions of third parties.

28. **(Reservation of Right to Amend Answer and Affirmative Defenses)** Defendant reserves the right to assert and hereby gives notice that it intends to rely upon any other defense that may become available or appear during discovery proceedings or otherwise in this case and hereby reserves the right to amend its Answer to assert any such defense.

Dated: September 12, 2025

Respectfully Submitted,

/s/ Michael P. Abate

Michael P. Abate  
Burt Anthony Stinson  
KAPLAN JOHNSON ABATE & BIRD LLP  
710 West Main Street, 4th Floor  
Louisville, KY 40202  
Telephone: 502-416-1630  
E-mail: [mabate@kaplanjohnsonlaw.com](mailto:mabate@kaplanjohnsonlaw.com)  
E-mail: [cstinson@kaplanjohnsonlaw.com](mailto:cstinson@kaplanjohnsonlaw.com)

Kevin D. Feder (*pro hac vice*)  
Jason Yan (*pro hac vice*)  
Gillian Mak (*pro hac vice*)  
O'MELVENY & MYERS LLP  
1625 Eye Street NW  
Washington, DC 20006  
Telephone: 202-383-5164  
E-mail: [kfeder@omm.com](mailto:kfeder@omm.com)  
E-mail: [jyan@omm.com](mailto:jyan@omm.com)  
E-mail: [gmak@omm.com](mailto:gmak@omm.com)  
*Attorneys for Defendant Humana Inc.*

**CERTIFICATE OF SERVICE**

I hereby certify that, on September 12, 2025, a copy of the foregoing was electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to all counsel of record.

/s/ Michael P. Abate

Michael P. Abate  
*Counsel for Defendant*