

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

ESTATE OF 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.

Case No. 3:23-cv-00654 (RGJ/CHL)

CLASS ACTION

Hon. Rebecca Grady Jennings
Hon. Colin H. Lindsay

**PLAINTIFFS’ MOTION FOR LEAVE TO FILE UNDER SEAL EXHIBIT 1 TO THE
DECLARATION OF SIMEON A. MORBEY (PROPOSED SECOND AMENDED CLASS
ACTION COMPLAINT)**

Pursuant to Joint Local Rule 5.6, Section 8 of the Court’s Amended Electronic Case Filing Administrative Policies and Procedures, and Paragraph 4(f)(ii)(2) of the Stipulation Regarding Protection of Confidential Information (the “Stipulation”), Plaintiffs the Estate of Joanne Barrows, Susan Hagood, Sharon Merkley, Lorraine Kohl, and Dolly Balani (“Plaintiffs”) respectfully move for leave to file under seal the unredacted version of Exhibit 1 to the Declaration of Simeon A. Morbey in Support of Plaintiffs’ Motion for Leave to File Second Amended Class Action Complaint—Plaintiffs’ proposed Second Amended Class Action Complaint (“SAC”).

Plaintiffs bring this motion because the proposed SAC quotes and describes material that Defendant Humana, Inc. (“Humana”) and non-party naviHealth, Inc. (“naviHealth”) (together, the “Designating Parties”) have designated as confidential under the Stipulation. Plaintiffs have filed the unredacted SAC provisionally under seal and have filed a redacted version on the public

docket. Consistent with Local Rule 5.6(c), Plaintiffs do not ask the Court to seal anything on the strength of those designations alone. Rather, Plaintiffs ask the Court to maintain the provisional seal while the Designating Parties—who alone possess the information needed to justify sealing—make the showing the Sixth Circuit requires, and to unseal any material for which they do not.

BACKGROUND

A. The Stipulation

Plaintiffs and Humana executed the Stipulation on December 29, 2025. It governs the designation and use of material marked “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY,” including material designated by a Non-Party and a Non-Party’s information produced by a Party. *See* Ex. A to Boelter Decl., Stipulation ¶¶ 1(e), 1(v), 8(a). A Receiving Party may use Protected Material to prosecute the Action, “including any amendments to the pleadings.” *Id.* ¶ 4(a). Protected Material may be filed under seal only by Court order. *Id.* ¶ 4(f)(i).

Where, as here, a party files a document containing another’s Protected Material without first agreeing on redactions, the Stipulation directs the filing party to move for leave to seal, to file the document provisionally under seal, and to state that the document was provisionally sealed because the Designating Party designated information in it as Protected Material. *Id.* ¶ 4(f)(ii)(2). The Designating Party must then submit a brief explaining why sealing is required and whether redaction could eliminate or reduce the need for sealing. *Id.* If the Court denies sealing, the filing party may file the information publicly. *Id.* ¶ 4(f).

B. The Designated Material in the Proposed SAC

Concurrently with this motion, Plaintiffs are filing their Motion for Leave to File Second Amended Class Action Complaint, which seeks to add naviHealth as a defendant. The proposed

SAC quotes or describes documents that Humana and naviHealth produced in discovery and designated as Protected Material, including the Post-Acute Care Management Services Agreement between Humana and naviHealth and internal documents concerning naviHealth’s compensation and its role in Humana’s post-acute coverage review process.

That material appears in paragraphs 1, 5, 10, 27, 47, 57–61, 93, 144, 180–181, 199, and 203 of the proposed SAC. Plaintiffs have redacted only the designated words and passages within those paragraphs. The remainder of the proposed SAC—including every other allegation and each cause of action—is on the public docket.

LEGAL STANDARD

The Sixth Circuit draws a sharp line between the discovery stage, where parties may agree to keep information confidential, and the adjudication stage, where material enters the court record. *Shane Grp., Inc. v. Blue Cross Blue Shield of Mich.*, 825 F.3d 299, 305 (6th Cir. 2016). Court records carry a “strong presumption in favor of openness.” *Id.* (quoting *Brown & Williamson Tobacco Corp. v. FTC*, 710 F.2d 1165, 1179 (6th Cir. 1983)). A party seeking to seal must show (1) a compelling interest in sealing, (2) that the interest outweighs the public’s interest in access, and (3) that the seal is narrowly tailored to serve that interest. *Id.* at 305; *Kondash v. Kia Motors Am., Inc.*, 767 F. App’x 635, 637 (6th Cir. 2019). The proponent must analyze “in detail, document by document, the propriety of secrecy, providing reasons and legal citations.” *Shane Grp.*, 825 F.3d at 305–06 (quoting *Baxter Int’l, Inc. v. Abbott Labs.*, 297 F.3d 544, 548 (7th Cir. 2002)). And “the greater the public interest in the litigation’s subject matter, the greater the showing necessary to overcome the presumption of access.” *Id.* at 305.

A confidentiality designation under a protective order does not meet this standard. *Id.* at 305–06. Local Rule 5.6(c) says the same: “Reference to a stipulation that allows a party to

designate certain documents as confidential is not sufficient grounds to establish that a document, or portions thereof warrants filing under seal.”

ARGUMENT

I. Plaintiffs Have Complied with Local Rule 5.6 and the Stipulation.

Plaintiffs must seek leave here. The Stipulation authorizes Plaintiffs to use the Designating Parties’ Protected Material in an amended pleading, Stipulation ¶ 4(a), but forbids filing it under seal without a Court order, *id.* ¶ 4(f)(i). Filing the designated passages publicly, before the Designating Parties have had any opportunity to be heard, would disregard those designations.

As Paragraph 4(f)(ii)(2) of the Stipulation requires, Plaintiffs state that the unredacted proposed SAC has been filed provisionally under seal because Humana and naviHealth designated information in it as Protected Material. Plaintiffs have also kept the request narrow. They have not asked to seal the SAC wholesale: the public version redacts only the designated portions of sixteen paragraphs and leaves the rest of the pleading open to the public.

II. The Court Should Direct the Designating Parties to Justify Sealing and Unseal Any Material They Do Not.

Because the Designating Parties, not Plaintiffs, claim a confidentiality interest in the redacted material, they are the parties positioned to carry the burden *Shane Group* imposes. The Stipulation already obligates each Designating Party to submit a brief explaining why sealing is required and whether narrower redactions would suffice. Stipulation ¶ 4(f)(ii)(2). Because naviHealth is not yet a party, Plaintiffs are serving this motion on its counsel so that it may be heard. *See id.* ¶¶ 5(c), 8(a).

Plaintiffs therefore request that the Court direct Humana and naviHealth each to file, within fourteen (14) days of the date of this motion or such other time as the Court directs, a brief that identifies, paragraph by paragraph, each redaction it seeks to maintain and establishes a compelling

basis for sealing that redaction under *Shane Group*. Any redacted material that neither Designating Party so supports should be unsealed, and Plaintiffs should be permitted to file a correspondingly revised public version of the proposed SAC.

III. Plaintiffs Reserve All Rights and Ask That Sealing Not Delay the Motion for Leave to Amend.

By filing this motion, Plaintiffs do not concede that any of the designated material warrants sealing. The presumption of public access applies with full force to a pleading that frames the claims the Court will adjudicate, and this case concerns the process by which Medicare Advantage enrollees' post-acute care coverage is decided—a subject of substantial public interest. Plaintiffs reserve the right to respond to the Designating Parties' submissions and to challenge any designation under Paragraph 5 of the Stipulation.

Finally, because the Court has the unredacted proposed SAC before it, resolution of this motion need not delay the Court's consideration of Plaintiffs' Motion for Leave to File Second Amended Class Action Complaint.

CONCLUSION

For these reasons, Plaintiffs respectfully request that the Court (1) grant Plaintiffs leave to file the unredacted proposed SAC (Morbey Decl. Ex. 1) under seal, pending further order; (2) direct Humana and naviHealth each to file, within fourteen (14) days, a brief establishing on a paragraph-by-paragraph basis a compelling reason to seal each redaction it seeks to maintain; and (3) order that any redacted material not so supported be unsealed. A proposed order is submitted herewith.

Dated: September 29, 2026

Respectfully submitted,

/s/ Glenn A. Danas

CLARKSON LAW FIRM, P.C.

Ryan J. Clarkson (CA # 237882)
rclarkson@clarksonlawfirm.com
Glenn A. Danas (CA # 270317)
gdanas@clarksonlawfirm.com
Zarrina Ozari (CA # 334443)
zozari@clarksonlawfirm.com
Michael A. Boelter (CA # 353529)
mboelter@clarksonlawfirm.com
Admitted Pro Hac Vice
Adrian Barrio (CA # 219266)
abarrio@clarksonlawfirm.com
Pending Pro Hac Vice Admission
22525 Pacific Coast Highway
Malibu, CA 90265
Tel: (213) 788-4050

Derek Brandt (IL # 6228895)
dbrandt@clarksonlawfirm.com
875 North Michigan Avenue, 31st Fl.
Chicago, IL 60611
Tel: (312) 300-6820
Admitted Pro Hac Vice

Larkin Turner (DC # 1644849)
lturner@clarksonlawfirm.com
1050 Connecticut Ave. NW, Ste. 500
Washington, DC 20036
Tel: (202) 688-2105
Admitted Pro Hac Vice

LOCKRIDGE GRINDAL NAUEN PLLP

Karen Hanson Riebel (MN # 0219770)
khriebel@locklaw.com
David W. Asp (MN # 0344850)
dwasp@locklaw.com
Simeon A. Morbey (MN # 0391338)
samorbey@locklaw.com
Derek C. Waller (MN # 0401120)
dcwaller@locklaw.com
Emma Ritter Gordon (MN # 0404000)

erittergordon@locklaw.com

Admitted Pro Hac Vice

Margaret Eve Grabau (MN # 0505415)

megrabau@locklaw.com

Pro Hac Vice Pending

100 Washington Ave. South, Ste. 2200

Minneapolis, MN 55401

Tel: (612) 339-6900

WHITFIELD CROSBY & FLYNN PLLC

John C. Whitfield

jwhitfield@wcfjustice.com

19 North Main Street

Madisonville, KY 42431

Tel: (270) 821-0656

GUILFOYLE LAW OFFICE

James Guilfoyle

jfg@inkylegal.com

229 West Spring Street

New Albany, IN 47150

Tel: (812) 208-9704

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2026, I electronically filed the foregoing, together with the redacted public version of the proposed Second Amended Class Action Complaint, with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record. I further certify that on the same date I served the provisionally sealed, unredacted proposed Second Amended Class Action Complaint on counsel of record for Defendant Humana, Inc. by electronic mail.

/s/ Glenn A. Danas

Glenn A. Danas

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
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ESTATE OF JOANNE BARROWS, SUSAN
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individually and on behalf of all others
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HUMANA, INC.,

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Case No. 3:23-cv-00654 (RGJ/CHL)

CLASS ACTION

Hon. Rebecca Grady Jennings
Hon. Colin H. Lindsay

**DECLARATION OF MICHAEL A. BOELTER IN SUPPORT OF PLAINTIFFS’
MOTION FOR LEAVE TO FILE UNDER SEAL EXHIBIT 1 TO THE DECLARATION
OF SIMEON A. MORBEY**

I, Michael A. Boelter, declare as follows:

1. I am an attorney with Clarkson Law Firm, P.C., one of the law firms that is counsel of record for Plaintiffs in this action, and I am admitted to practice before this Court *pro hac vice*. I submit this declaration in support of Plaintiffs’ Motion for Leave to File Under Seal Exhibit 1 to the Declaration of Simeon A. Morbey. I have personal knowledge of the facts stated in this declaration and, if called as a witness, could and would testify competently to them.

2. Attached as *Exhibit A* is a true and correct copy of the Stipulation Regarding Protection of Confidential Information, executed by counsel for Plaintiffs and counsel for Defendant Humana Inc. on December 29, 2025. I signed the Stipulation on behalf of Plaintiffs.

3. Attached hereto as *Exhibit B* is a true and correct copy of the redacted version of Plaintiff’s proposed Second Amended Complaint.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 29, 2026, in Bend, Oregon.

/s/ Michael A. Boelter

Michael A. Boelter

EXHIBIT A

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

ESTATE OF JOANNE BARROWS, SUSAN
HAGOOD, SHARON MERKLEY,
LORRAINE KOHL, and DOLLY BALANI,
individually and on behalf of all others
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HUMANA INC.,

Defendant.

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

**STIPULATION REGARDING PROTECTION OF
CONFIDENTIAL INFORMATION**

Discovery in this Action is likely to involve the disclosure and production of confidential, proprietary, commercially sensitive, and/or private information, including protected health information, by both Parties and Non-Parties, for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted, consistent with the public's right of access to court records and processes. Accordingly, Plaintiffs the Estate of Joanne Barrows, Susan Hagood, Sharon Merkley, Lorraine Kohl, and Dolly Balani (together, "Plaintiffs") and Defendant Humana Inc. ("Defendant") hereby agree to the following Stipulation Regarding Protection of Confidential Information (the "Stipulation") governing the disclosures and use of Confidential Information in this Action.

1. Definitions. As used in this Stipulation:

- (a) "Action" means the above-captioned federal lawsuit.

- (b) “Challenging Party” means a Party that challenges the designation of Disclosure or Discovery Material under this Stipulation, or challenges a Party’s or Non-Party’s claim that Disclosure or Discovery Material is Privileged Material.
- (c) “Confidential Information” means information (regardless of how it is generated, stored, or maintained) and tangible things that are eligible for protection pursuant to this Stipulation, including but not limited to Personally Identifiable Information, Proprietary Information, and Protected Health Information.
- (d) “Counsel” means Outside Counsel of Record and House Counsel, as well as their respective support staff.
- (e) “Designating Party” means a Party or Non-Party that designates information in accordance with the terms of this Stipulation. This also includes a Non-Party whose Confidential Information or Highly Confidential Information was produced by a Party in response to a valid discovery request.
- (f) To “Destroy” electronically stored information means to delete from all databases, applications, and file systems so that the information is not accessible without the use of specialized tools or techniques typically used by a forensic expert.
- (g) “Disclosure or Discovery Material” means all items or information, regardless of the medium or manner in which they are generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.
- (h) “Document” means items described in Federal Rule of Civil Procedure 34(a)(1)(A) and (B), including but not limited to deposition testimony and discovery responses.
- (i) “Highly Confidential Information” means any otherwise Confidential Information,

or any portion thereof, that is especially sensitive such that, in the reasonable judgment of the Producing Party, the disclosure of the information would result in prejudice or harm to the Producing Party or a third party. This includes, but is not limited to, the Protected Health Information of Non-Parties (including individuals who may be members of a putative class) and especially sensitive Proprietary Information of a Party or Non-Party.

- (j) “House Counsel” means attorneys who are employees of a Party to this Action. House Counsel does not include Outside Counsel of Record or any other outside counsel.
- (k) “Litigation Documents” means briefs, pleadings, motions, stipulations, letters to the Court or opposing Counsel, mediation statements, and settlement-related correspondence or agreements that are drafted, filed, or sent in the Action, but does not include the exhibits or attachments thereto.
- (l) “Non-Party” means any natural person, partnership, corporation, association, or other legal entity not named as a Party to this Action.
- (m) “Notice” or “Notify” means written notice.
- (n) “Outside Counsel of Record” means attorneys who are not employees of a Party to this Action but are retained to represent or advise a Party to this Action and have appeared in this Action on behalf of that Party or are affiliated with a law firm that has appeared on behalf of that Party, and includes support staff.
- (o) “Party” means a party to this Action, including all of its officers, directors, employees, consultants, retained experts, representatives, and Outside Counsel of Record.

- (p) “Personally Identifiable Information” means Social Security numbers, financial-account numbers or bank account information, taxpayer-identification numbers, driver’s license numbers, birthdates, passport numbers, names of minor children, credit card information, or personal passcodes.
- (q) “Privileged Material” means Documents or other information protected from disclosure by an applicable privilege, including the attorney-client privilege or work product protection.
- (r) “Producing Party” means a Party or Non-Party that produces Disclosure or Discovery Material in this Action.
- (s) “Professional Vendors” means persons or entities that provide litigation support services (*e.g.*, photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium), including e-discovery vendors, and their employees and subcontractors.
- (t) “Proprietary Information” means information not already publicly available that (i) constitutes information subject to protection under the Privacy Act, 5 U.S.C. § 552a, or the Trade Secrets Act, 18 U.S.C. § 1905, or (ii) that is commercially sensitive research, development, pricing, strategy, or other business information.
- (u) “Protected Health Information” or “PHI” mean certain individually identifiable health information (defined as health information that is connected to a patient’s name, address, Social Security number, or other identifying number including HIC number) that may be subject to the Privacy Act, 5 U.S.C. § 552a, to the provisions of 45 C.F.R. §§ 164.102–164.534, to the provisions of 42 U.S.C. § 1306, or for which there may be no waiver by the patient to disclose the information to a person

or entity which is not a Party to the Action.

(v) “Protected Material” means any Disclosure or Discovery Material or Document that contains Confidential Information or Highly Confidential Information and is designated “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in accordance with the terms of this Stipulation.

(w) “Receiving Party” means a Party that receives Disclosure or Discovery Material from a Producing Party.

2. Scope. The protections conferred by this Stipulation cover not only Protected Material, but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

3. Designating Protected Material. Except as otherwise provided in this Stipulation (*see, e.g.,* Paragraphs 3(a)(ii) and 3(b) below), or as otherwise stipulated or ordered, Documents or Disclosure or Discovery Material that qualify for protection under this Stipulation must be clearly so designated before the material is disclosed or produced.

(a) Methods of Designation.

(i) A Producing Party may designate information in documentary form (*e.g.,* paper or electronic Documents, but excluding transcripts of depositions or other pretrial or trial proceedings) as Protected Material by conspicuously marking each page with the word “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

(ii) A Producing Party may designate testimony given in depositions or any

Document used in depositions as Protected Material (1) on the record at the deposition; or (2) after the deposition, by notifying all Outside Counsel of Record and any other Counsel present at the deposition in writing within forty-five (45) days of receiving the transcript or by another deadline mutually agreed to by the Parties, listing the specific pages and lines of the transcript and/or any exhibits or Documents that should be treated as Protected Material.

(1) After a deposition transcript or any Document used in a deposition has been designated as Protected Material, the front of the original and each copy of the deposition transcript shall be marked: “This deposition transcript includes CONFIDENTIAL INFORMATION SUBJECT TO STIPULATION REGARDING PROTECTION OF CONFIDENTIAL INFORMATION” or “This deposition transcript includes HIGHLY CONFIDENTIAL INFORMATION SUBJECT TO STIPULATION REGARDING PROTECTION OF CONFIDENTIAL INFORMATION – ATTORNEYS’ EYES ONLY,” as appropriate.

(2) If such deposition was videotaped, both the recording storage medium (*i.e.*, CD or DVD) and its container shall also be labeled: “This deposition transcript includes CONFIDENTIAL INFORMATION SUBJECT TO STIPULATION REGARDING PROTECTION OF CONFIDENTIAL INFORMATION” or “This deposition transcript includes HIGHLY CONFIDENTIAL

INFORMATION SUBJECT TO STIPULATION REGARDING PROTECTION OF CONFIDENTIAL INFORMATION – ATTORNEYS’ EYES ONLY,” as appropriate.

(iii) The Producing Party may designate information produced in some other form by affixing in a prominent place on the exterior of the container or containers in which the information is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” If only a portion or portions of the information warrants protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

(b) Failure To Designate. The failure to designate Confidential Information or Highly Confidential Information prior to production or disclosure does not, standing alone, waive the Designating Party’s right to secure protection under this Stipulation for such material.

(i) A Party or Non-Party who discloses Confidential Information or Highly Confidential Information that was not designated in accordance with the terms of this Stipulation may provide timely written notice of the error and produce a designated copy of the document.

(ii) Upon such notice, the Receiving Party must use its best efforts to ensure that the Confidential Information or Highly Confidential Information is treated in accordance with the provisions of this Stipulation.

(c) De-designation. A Producing Party may at any time notify a Receiving Party that Disclosure or Discovery Material previously designated as Confidential

Information or Highly Confidential Information should not be treated as Protected Material under the terms of this Stipulation, or that Disclosure or Discovery Material previously designated as Highly Confidential Information should instead be treated as Confidential Information. In either event, the Producing Party shall reproduce the Disclosure or Discovery Material with a corrected legend.

4. Access To and/or Use of Protected Material.

- (a) Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action, including any amendments to the pleadings and appeals. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Stipulation. When the Action has been terminated, a Receiving Party must comply with the provisions of Paragraph 10 below (Final Disposition).
- (b) Storage. Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Stipulation.
- (c) Permitted Disclosure of Confidential Information. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, information designated as Confidential Information may **only** be disclosed to:
 - (i) the Court and its staff;
 - (ii) the Receiving Party's Counsel in this Action, as well as employees and agents of Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;

- (iii) the Receiving Party;
- (iv) the author or recipient of a Document containing the Confidential Information or a custodian or other person who otherwise possessed or knew the Confidential Information;
- (v) a court reporter or videographer retained in connection with this action and their staff;
- (vi) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the Parties engaged in settlement discussions;
- (vii) any person who is retained to assist the Receiving Party in connection with this action (including, but not limited to, expert witnesses, consulting experts, professional jury or trial consultants, mock jurors, and Professional Vendors) and to whom disclosure is reasonably necessary for this action, who has, prior to such disclosure, signed the “Acknowledgement and Agreement to Be Bound” (Attachment A); and
- (viii) during their depositions, witnesses in the Action and their attorneys to whom disclosure is reasonably necessary, provided: (1) the deposing Party requests that the witness sign the form attached as Attachment A hereto; and (2) the witnesses and attorneys for witnesses will not be permitted to keep any Confidential Information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal

Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulation.

(d) Permitted Disclosure of Highly Confidential Information. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, information designated as Highly Confidential Information may only be disclosed to:

- (i) the Court and its staff;
- (ii) the Receiving Party's Counsel in this Action, as well as employees and agents of Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this Action;
- (iii) the author or recipient of a Document containing the Highly Confidential Information or a custodian or other person who otherwise possessed or knew the Highly Confidential Information;
- (iv) a court reporter or videographer retained in connection with this action and their staff;
- (v) the officers, directors, and employees of the Receiving Party to whom disclosure is reasonably necessary for this Action;
- (vi) any mediator or settlement officer, and their supporting personnel, mutually agreed upon by any of the Parties engaged in settlement discussions;
- (vii) any person who is retained to assist the Receiving Party in connection with this action (including, but not limited to, expert witnesses, consulting experts, professional jury or trial consultants, mock jurors, and Professional Vendors) and to whom disclosure is reasonably

necessary for this action, who has, prior to such disclosure, signed the “Acknowledgement and Agreement to Be Bound” (Attachment A); and

(viii) during their depositions, witnesses in the Action and their attorneys to whom disclosure is reasonably necessary, provided: (1) the deposing Party requests that the witness sign the form attached as Attachment A hereto; and (2) the witnesses and attorneys for witnesses will not be permitted to keep any Highly Confidential Information unless they sign the “Acknowledgment and Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material may be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulation.

Notwithstanding this Section 4(d), nothing in this Stipulation shall be construed as prohibiting the disclosure to a Receiving Party of Litigation Documents that may reflect, reference, or describe Highly Confidential Information, to the extent such disclosure is reasonably necessary for the prosecution or defense of this action.

(e) Depositions. If a witness is expected to testify as to Confidential Information or Highly Confidential Information, a Party or Non-Party may request that the witness’s deposition be taken in the presence of only those persons entitled to receive Protected Material.

(f) Filing Protected Material.

(i) A Party that seeks to file under seal any Protected Material must comply with Local Civil Rule 5.6 and Joint General Order 11-02, § 8. Protected

Material may only be filed under seal pursuant to a Court order authorizing the sealing of the specific Protected Material at issue.

(ii) A Party filing a motion, brief, notice, or any other Document containing or reflecting any Protected Material (for the purposes of this subdivision, a “Filing Party”) may do so in accordance with one of the following procedures:

(1) The Filing Party may request to meet and confer with the Designating Party to determine a mutually agreeable set of Documents or redactions that should be filed pursuant to a motion for leave to seal. If the parties reach agreement, the parties shall file a joint motion for leave to seal pursuant to Joint General Order 11-02, § 8(a)(1) and the Filing Party shall file the motion, brief, notice, or Document as a provisionally sealed document pursuant to Joint General Order 11-02, § 8(a)(3).

(2) The Filing Party may instead file a motion for leave to seal pursuant to Joint General Order 11-02, § 8(a)(1) and shall file the motion, brief, notice, or Document as a provisionally sealed document pursuant to Joint General Order 11-02, § 8(a)(3). To the extent that any such motion, brief, notice, or Document is filed provisionally under seal because it contains Protected Material, the motion for leave to file under seal shall state that the pleading was filed provisionally under seal because the Designating Party had designated information as Protected Material. The Designating

Party shall submit a brief to the Court as to why sealing is required and whether redaction could eliminate or reduce the need for sealing, as required by Joint General Order 11-02, § 8(a)(1).

If a motion for leave to file Protected Material under seal is denied by the Court, then the Filing Party may file the information in the public record unless otherwise instructed by the Court.

- (g) Presentation at Pretrial Hearing. A Receiving Party shall not present or use another Party's or Non-Party's Protected Material at a pretrial hearing without providing the Designating Party timely prior notice sufficient to allow it to seek relief from the Court.

5. Challenging Designations.

- (a) Any Party or Non-Party may challenge a designation of confidentiality at any time.

The Challenging Party shall identify the Protected Material it does not believe is Confidential Information or Highly Confidential Information under the terms of this Stipulation by bates number, or by page/line (for testimony) and explain the basis for its belief that the confidentiality designation was not proper. It must then give the Designating Party an opportunity to review the designated material, to reconsider the designation, and, if no change in designation is offered, to explain the basis for the designation.

- (b) Meet and Confer. A Party challenging the designation of Confidential Information or Highly Confidential Information must do so in good faith and must begin the process by conferring directly with counsel for the Designating Party. The Challenging Party must first identify by bates number, or by page/line (for

testimony) the Protected Material in question and explain the basis for its belief that the confidentiality designation was not proper. It must then give the Designating Party an opportunity to review the designated material, to reconsider the designation, and, if no change in designation is offered, to explain the basis for the designation. The Designating Party must respond to the challenge within fourteen (14) days. Unless the Challenging Party is satisfied with the designation/explanations of same, a meet and confer is required and the Challenging Party must identify by bates number or page/line within seven (7) days any confidentiality designations that it continues to believe are improper under this Protective Order and explain the basis for its belief that those confidentiality designations are not proper. If the Designating Party agrees to de-designate any of the Disclosure or Discovery Material subject to the challenge, it shall reproduce such material with revised or no designations.

(c) Changing a Designation by Court Order. If, after meeting and conferring, a Designating Party is unwilling to change the designation of Protected Material, a Challenging Party may move the Court for an order changing the designation. Frivolous challenges, and those made for an improper purpose (*e.g.*, to harass or impose unnecessary expenses, delay, and burdens on other Parties) are strictly prohibited. If the motion relates to Disclosure or Discovery Material produced by a Non-Party, the Parties agree that the Non-Party should be entitled to the same notice and opportunity to be heard on the motion as a Party.

(d) Maintaining Confidentiality During a Challenge. Unless or until the Designating Party has waived or withdrawn the confidentiality designation, all Parties shall

continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

6. Inadvertent Disclosure of Protected Material. If a Party or a signatory to the "Acknowledgment and Agreement to Be Bound" (Attachment A) learns that, inadvertently or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulation, the person aware of the disclosure must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Stipulation, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" (Attachment A). The Designating Party will then immediately notify in writing the Non-Party (if applicable) of the unauthorized disclosures.

7. Inadvertent Disclosure of Privileged Material.

(a) A Party or Non-Party that discovers it has inadvertently disclosed or produced Disclosure or Discovery Material subject to a claim of attorney-client privilege, work product protection, or other applicable protection must promptly notify the Receiving Party. If such notice is given, the privilege or protection is not waived as to this Action or any other proceeding.

(b) A Party or a signatory to the "Acknowledgment and Agreement to Be Bound" (Attachment A) that discovers that it may have received inadvertently disclosed or produced Privileged Material must promptly notify the disclosing or producing Party or Non-Party.

(c) A Party or Non-Party that has inadvertently disclosed or produced Disclosure or Discovery Material subject to a claim of attorney-client privilege, work product protection, or other protection, or that is notified or discovers that it may have received Privileged Material, must comply with Fed. R. Civ. P. 26(b)(5)(B).

(d) Challenges.

- (i) *Meet and Confer*. A Party challenging a claim that Disclosure or Discovery Material is Privileged Material must do so in good faith and must begin the process by conferring directly with counsel for the Party asserting the claim. The Challenging Party must first identify by bates number, or by page/line (for testimony) the material in question and explain the basis for its belief that Disclosure or Discovery Material is not Privileged Material. It must then give the Party asserting the claim an opportunity to review the material, to reconsider the claim, and, if the claim is not rescinded, to explain the basis for the claim. The Party asserting the claim must respond to the challenge within fourteen (14) days. Unless the Challenging Party is satisfied with the response, a meet and confer is required and the Challenging Party must identify by bates number or page/line within seven (7) days any material it continues to believe is not Privileged Material and the basis for its belief. Irrespective of the outcome of the meet and confer process, the parties must comply with the terms of this Stipulation and with Fed. R. Civ. P. 26(b)(5)(B).
- (ii) *Changing a Designation by Court Order*. If, after meeting and conferring, the Parties cannot agree on whether the material subject to the challenge

is Privileged Material, any Party may apply to the Court for a ruling and may promptly present the information to the Court under seal for a determination of the claim. The Producing Party must preserve the putative Privileged Material until the claim is resolved in accordance with Fed. R. Civ. P. 26(b)(5)(B).

8. Non-Parties' Protected Material.

(a) *Applicability.* The terms of this Stipulation are applicable to information produced by a Non-Party, or information of a Non-Party produced by a Party in response to a valid discovery request, in this Action and designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Any Protected Material of a Non-Party produced by the Non-Party or a Party in response to a valid discovery request in connection with this litigation is protected by the remedies and relief provided by this Stipulation. A Non-Party may seek to enforce the remedies and relief provided by this Stipulation for the disclosure of that Non-Party’s Protected Material. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) *Serving this Stipulation on a Non-Party.* A Party serving a subpoena on a Non-Party must simultaneously serve a copy of this Stipulation, of Local Civil Rule 5.6, and of Joint General Order 11-02. The Party serving a subpoena in this action also shall provide all other Parties with copies of any documents, information, or objections served by a Non-Party in response to the subpoena.

9. Restrictions on the Use of Artificial Intelligence. The Parties agree that a Receiving Party may use artificial intelligence software and services (together, an “AI Model”) to aid in the

processing, review, and analysis of Disclosure or Discovery Material produced in this Action, provided however that any such AI Model must protect the confidentiality of the Disclosure or Discovery Material in accordance with the terms of this Stipulation. The Parties expressly agree that no Receiving Party will submit any Disclosure or Discovery Material received in this litigation to an AI Model that is open or available to the public, including ChatGPT and similar tools. The Parties further expressly agree that no Receiving Party will submit any Disclosure or Discovery Material received in this litigation to any proprietary or closed AI Model unless it first ensures that the AI Model will not learn from, be trained on, or otherwise incorporate the Disclosure or Discovery Material for any purpose other than the prosecution or defense of this litigation. Before a Receiving Party submits Disclosure or Discovery Material to an AI Model in compliance with this paragraph, the Receiving Party shall make certain that such Disclosure or Discovery Material will not be accessible to unauthorized persons and that it can be deleted from the AI Model, as is or may be required to comply with the Federal Rules of Civil Procedure, the Local Rules, the terms of this Stipulation, or any Court order.

10. Treatment of Protected Material After Final Disposition.

- (a) The obligations imposed by this Stipulation survive and remain in effect after final disposition of this Action, unless or until: (1) all Designating Parties, including Non-Parties, agree otherwise in writing, or (2) a Court order otherwise directs.
- (b) Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or

applications for extensions of time pursuant to applicable law.

(c) Within 60 days after Final Disposition of this Action, each Receiving Party must:

- (i) Return or destroy all Protected Information, including all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material; and
- (ii) Submit a written certification to each Designating Party that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed; and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries, or any other format reproducing or capturing any of the Protected Material, except as permitted pursuant to Section 10(d) below.

(d) Notwithstanding the terms of this subdivision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, Expert reports, attorney work product, and consultant and Expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Stipulation.

11. Security Precautions and Data Breaches.

- (a) Each Receiving Party and signatory to the “Acknowledgment and Agreement to Be Bound” (Attachment A) must make reasonable efforts to protect the confidentiality of all Protected Material disclosed or produced to them in this Action, including by securing any and all systems or places it uses to store or maintain Protected Material.

- (b) A Party or signatory to the “Acknowledgment and Agreement to Be Bound” (Attachment A) who learns of a data breach affecting the systems or places it stored or maintained Protected Material, irrespective of whether it knows any Protected Material was accessed or disclosed, must (1) promptly notify the Designating Party of the scope and nature of the breach, (2) use its best efforts to retrieve all unauthorized copies of Protected Material, if any, and (3) use best efforts to remedy the breach.
12. **Qualified Protective Order.** The Parties agree that this Stipulation meets the requirements for a HIPAA-Qualified Protective Order complying with 45 C.F.R. § 164.512(e)(l)(v)(A) and (B) and authorizing disclosure of protected health information pursuant to 45 C.F.R. § 164.512(e)(l)(iv)(A).
13. **Right to Further Relief.** Nothing in this Stipulation abridges the right of any Party or Non-Party to seek additional or alternate relief from the Court in the future.
14. **Right To Assert Other Objections.** By agreeing to this Stipulation, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulation. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Stipulation.
15. **Party’s Disclosure of Protected Documents.** Nothing in this Stipulation is intended to limit a Designating Party’s use, disclosure, or communication of its own Protected Material, nor to prevent the Designating Party from disclosing its own Protected Material to any person. Such disclosures shall not affect any designation of confidentiality made pursuant to the terms of this Stipulation, so long as the disclosure is made in a manner reasonably calculated to maintain the confidentiality of the information.

16. **Binding on Parties, Counsel, and Others.** This Stipulation shall be binding upon the Parties hereto, upon their Counsel, and upon the Parties' and their Counsel's successors, executors, personal representatives, administrators, heirs, legal representatives, assignees, subsidiaries, divisions, employees, agents, independent contractors, or other persons or organizations over which they have control.
17. **Violation of Stipulation.** Any violation of this Stipulation may be punished by any and all appropriate measures including, without limitation, contempt proceedings and/or monetary sanctions. Any Producing Party may seek to enforce the remedies and relief provided by this Stipulation for the disclosure of its Protected Material.

Dated: December 29, 2025

It is so stipulated and agreed,

/s/ Michael A. Boelter

Glenn A. Danas (*pro hac vice*)
Ryan J. Clarkson (*pro hac vice*)
Zarrina Ozari (*pro hac vice*)
Michael A. Boelter (*pro hac vice*)
CLARKSON LAW FIRM, P.C.
22525 Pacific Coast Highway
Malibu, CA 90265
Telephone: 213-788-4050
rclarkson@clarksonlawfirm.com
gdanas@clarksonlawfirm.com
zozari@clarksonlawfirm.com
mboelter@clarksonlawfirm.com

David W. Asp (*pro hac vice*)
Derek C. Waller (*pro hac vice*)
Emma Ritter Gordon (*pro hac vice*)
LOCKRIDGE GRINDAL NAUEN PLLP
100 Washington Ave S, Suite 2200
Minneapolis, MN 55401
Telephone: 612-339-6900
dwasp@locklaw.com
dcwaller@locklaw.com
erittergordon@locklaw.com

James Guilfoyle
GUILFOYLE LAW OFFICE
229 West Spring Street
New Albany, IN 47150
Telephone: (812) 208-9704
jfg@inkylegal.com

John C Whitfield, Esq.
WHITFIELD CROSBY & FLYNN
PLLC
19 North Main Street
Madisonville, KY 42431
Telephone: (270) 821-0656
JWhitfield@wcfjustice.com
Attorneys for Plaintiffs

Dated: December 29, 2025

/s/ Samuel R. Lehman

Kevin D. Feder (*pro hac vice*)
Samuel R. Lehman (*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
kfeder@omm.com
jyan@omm.com
gmak@omm.com

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

Attorneys for Defendant Humana Inc.

ATTACHMENT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], hereby acknowledge that I have read in its entirety and understand the
Stipulation Regarding Protection of Confidential Information, dated _____
("Stipulation"), applicable to the case of *Barrows et al. v. Humana Inc.*, Case No. 3:23-cv-00654-
RGJ, in the United States District Court for the Western District of Kentucky ("Action"), and I
agree to comply with and to be bound by all the terms of this Stipulation. I agree that I will not
disclose in any manner any information or item that is subject to this Stipulation to any person or
entity except in strict compliance with the provisions of this Stipulation. The undersigned further
agrees that any documents, materials, or information furnished to me will be used only for the
purposes of this Action, including any appeals and for no other purpose, and, upon conclusion of
this Action, including any appeals, I will promptly return or destroy any documents, materials, or
information furnished to me and provide written certification of the same in accordance with the
terms of this Stipulation.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Kentucky for enforcing the terms of this Stipulation.

Date: _____

Printed name: _____

Signature: _____

EXHIBIT B

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY**

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

Plaintiffs,

v.

HUMANA, INC., and NAVIHEALTH, INC.,

Defendants.

Civil File No. 3:23-cv-00654 (RGJ/CHL)

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

PLAINTIFFS' SECOND AMENDED CLASS ACTION COMPLAINT

Plaintiffs, Estate of JoAnne Barrows, Susan Hagood, Sharon Merkley, Lorraine Kohl, and Dolly Balani (“Plaintiffs”), individually and on behalf of all others similarly situated (the “Class” or “Classes”), by and through their attorneys, bring this class action against Defendant Humana, Inc. (“Humana”), and Defendant naviHealth, Inc. (“naviHealth”) (collectively, “Defendants”), and allege as follows:

INTRODUCTION

1. This putative class action arises from Humana’s illegal and undisclosed deployment of artificial intelligence (AI) in place of real doctors, and from naviHealth’s creation, design, and purposeful sale of that AI technology to Humana for exactly that use. Humana employs this process to summarily deny elderly patients care owed to them under Medicare Advantage Plans on false pretenses. The AI Model, known as nH Predict, is used to override real treating physicians’ determinations as to medically necessary care patients require. Humana knows that the nH Predict AI Model predictions are highly inaccurate and are not based on patients’ medical needs but

continues to use this system, and naviHealth—which built nH Predict, owns all proprietary rights in it, and is [REDACTED]—knows the same thing and continues to sell and support it for that purpose.

2. naviHealth created and designed the nH Predict AI Model as its own proprietary AI tool to use in the adjudication of post-acute care claims. naviHealth then sold its services as a third-party claims administrator, including the use of its nH Predict AI Model, to Humana and other health insurers. In doing so, naviHealth and Humana ensured that the nH Predict AI Model was used to adjudicate critical post-acute care claims, rather than adjudicating claims through meaningful individual review by licensed physicians. naviHealth did not merely operate a tool at Humana’s direction; it conceived of, engineered, marketed, and profited from nH Predict as a product built precisely for the use to which Humana put it.

3. By this action, Plaintiffs challenge the process employed by Humana and naviHealth to make claim determinations—i.e., Humana enlisting naviHealth’s services, including the design, sale, and use of the nH Predict AI Model—and not the denial of any individual claim.

4. Despite the high rate of wrongful denials, Humana continues to employ naviHealth to systemically use this flawed AI Model to deny claims, and naviHealth continues to sell, operate, and profit from it, because they know that only a tiny minority of policyholders (roughly 0.2%)¹ will appeal denied claims, and the vast majority will either pay out-of-pocket costs or forgo the remainder of their prescribed post-acute care. Humana banks on the patients’ impaired conditions, lack of knowledge, and lack of resources to appeal the wrongful AI-powered decisions.

5. The fraudulent scheme affords Humana a clear financial windfall in the form of

¹ Karen Pollitz, et al., *Claims Denials and Appeals in ACA Marketplace Plans in 2021*, KFF (Feb. 9, 2023), <https://www.kff.org/private-insurance/claims-denials-and-appeals-in-aca-marketplace-plans/> (last visited Nov. 13, 2023).

policy premiums without having to pay for promised care, while the elderly are prematurely kicked out of care facilities nationwide, forced to deplete family savings to continue receiving necessary medical care, or forced to forgo care altogether, all because an AI Model “disagrees” with their real live doctors’ determinations. The scheme affords naviHealth its own, separate financial windfall: [REDACTED]

[REDACTED]. naviHealth builds and operates the very tool that produces those results.

6. Defendant Humana, Inc. is one of the nation’s largest insurance companies. Humana provides Medicare Advantage health insurance plans for 5.1 million eligible Americans.²

7. Humana masquerades as an insurer that brings “the human side of healthcare,” claiming, “Our approach is simple—offer personalized care from people who care.”³ Humana’s CEO Bruce Broussard claims Humana is “continuously working to remove barriers to health and to provide quality care.”⁴ In reality, Humana systematically deploys the nH Predict AI Model to prematurely and in bad faith discontinue payment for healthcare services for elderly individuals with serious diseases and injuries. These elderly patients are left either with overwhelming medical debt, or without the medical care that they require.

8. The nH Predict AI Model determines Medicare Advantage patients’ coverage criteria in post-acute care settings with rigid and unrealistic predictions for recovery.⁵ Relying on the nH Predict AI Model, Humana purports to predict how much care an elderly patient “should” require but overrides real doctors’ determinations as to the amount of care a patient in fact requires

² *For Each Person*, HUMANA, [humana.com/about/impact/individual](https://www.humana.com/about/impact/individual) (last visited Nov. 30, 2023).

³ *About Humana*, Humana, <https://www.humana.com/about> (last updated Nov. 9, 2023).

⁴ *Letter From Humana’s President and Chief Executive Officer*, HUMANA, <https://www.humana.com/about/ceo-message> (last updated Nov. 9, 2023).

⁵ Casey Ross and Bob Herman, *Denied by AI: How Medicare Advantage plans use algorithms to cut off care for seniors in need*, STAT (Mar. 13, 2023), <https://www.statnews.com/2023/03/13/medicare-advantage-plans-denial-artificial-intelligence/>.

to recover. As such, Humana makes coverage determinations not based on individual patient's needs but based on the outputs of the nH Predict AI Model, thus maximizing the likelihood of inappropriate denial of necessary care prescribed by the patients' doctors. Humana's implementation of the nH Predict AI Model resulted in a significant increase in the number of post-acute care coverage denials.

9. Through this faulty process, Humana intentionally limits its employees' discretion to deviate from the nH Predict AI Model predictions by collaborating with naviHealth to set targets to keep stays at post-acute care facilities within 1% of the days projected by the AI Model.⁶ Employees who deviate from the nH Predict AI Model projections are disciplined and terminated, regardless of whether a patient requires more care.⁷ naviHealth is an affirmative actor in this arrangement: naviHealth designed the 1%-of-projected-days target methodology and applies it as part of the utilization-management services it sells to Humana under the parties' Post-Acute Care Management Services Agreement, described further below.

10. The nH Predict AI Model saves Humana money by allowing them to deny claims they are obligated to pay and otherwise would have paid by eliminating the labor costs associated with paying doctors and other medical professionals for the time needed to conduct an individualized, manual review of each of its insured's claims. The nH Predict AI Model likewise saves naviHealth money and generates revenue for naviHealth: naviHealth is [REDACTED]
[REDACTED]
[REDACTED]—meaning naviHealth profits directly and

⁶ Casey Ross and Bob Herman, *UnitedHealth Pushed Employees to Follow an Algorithm to Cut Off Medicare Patients' Rehab Care*, STAT (Nov. 14, 2023), <https://www.statnews.com/2023/11/14/unitedhealth-algorithm-medicare-advantage-investigation/#:~:text=The%20nation's%20largest%20health> (Humana uses the same nH Predict model as UnitedHealth).

⁷ *Id.*

specifically from the very denials at issue in this action.

11. Humana also utilizes the nH Predict AI Model to aggressively deny coverage because they know they will not be held accountable for wrongful denials.

12. In many instances, Humana purposefully shifts the financial responsibilities of funding post-acute care of its insureds to American taxpayers. In its coverage denial letters, Humana informs patients who qualify for Medicare that their coverage is being denied solely due to their Medicare eligibility. Humana directs these patients to enroll in the government-subsidized Medicare program despite knowing that its use of the nH Predict AI Model will result in wrongful denials of coverage.

13. Plaintiffs and Class members had their post-acute care coverage determined by the nH Predict AI Model. Humana failed to use reasonable standards in evaluating the individual claims of Plaintiffs and Class members and instead allowed their coverage needs to be wholly determined by AI.

14. By engaging in this misconduct, Humana breached its fiduciary duties, including the duties of good faith and fair dealing, because its conduct serves Humana's own economic self-interest and elevates Humana's interests above the interests of the insureds. naviHealth designed, built, and sold Humana the very instrument of that misconduct—for naviHealth's own profit—with full knowledge of how claims determinations for Humana members were being made and Humana's obligation to provide individualized, doctor-led review that nH Predict was deployed to displace.

15. By bringing this action, Plaintiffs seek to remedy Humana's and naviHealth's past improper and unlawful conduct by recovering damages to which Plaintiffs and the Class are rightfully entitled and enjoin Humana and naviHealth from continuing to perpetrate their scheme

against Humana's Medicare Advantage insureds.

JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction over Plaintiffs' claims pursuant to 28 U.S.C. § 1332(d)(2). This is a class action in which there is a diversity of citizenship between at least one Plaintiff Class member and one Defendant; the proposed Classes each exceed one hundred members; and the matter in controversy exceeds the sum of \$5,000,000.00, exclusive of interest and costs.

17. In addition, under 28 U.S.C. §1367, this Court may exercise supplemental jurisdiction over the state law and common law claims against Humana and naviHealth alike because all claims are derived from a common nucleus of operative facts and are such that Plaintiffs would ordinarily expect to try them in one judicial proceeding.

18. This Court has personal jurisdiction over Humana, Inc. because Humana, Inc. is headquartered in Kentucky, has sufficient minimum contacts with Kentucky, and otherwise purposefully avail themselves of the benefits and protections of Kentucky law, so as to render the exercise of jurisdiction by this Court proper and consistent with traditional notion of fair play and substantial justice.

19. This Court also has personal jurisdiction over Defendant naviHealth, Inc. naviHealth purposefully directed its conduct at Kentucky and at this District by negotiating and entering into the Post-Acute Care Management Services Agreement ("PACSA") with a Kentucky-headquartered insurer, by designing, marketing, and operating the nH Predict AI Model specifically for use by that Kentucky-headquartered insurer in making coverage determinations for its members nationwide (including in this District), and by agreeing to Kentucky choice-of-law and Kentucky-situs dispute-resolution provisions in the PACSA itself. naviHealth thereby

availed itself of the benefits and protections of Kentucky law, and the exercise of personal jurisdiction over naviHealth in this Court comports with traditional notions of fair play and substantial justice.

20. Venue is proper in this Court pursuant to 28 U.S.C. § 1391. Humana, Inc. regularly conducts business in this District, and a substantial part of the events giving rise to the claims asserted herein occurred in this District. Humana, Inc. resides in this District, being headquartered at 500 West Main St., Louisville, KY 40202. Venue is likewise proper as to naviHealth because a substantial part of the events giving rise to the claims against naviHealth—including naviHealth’s sale of its services, including nH Predict, for use by a Kentucky-headquartered insurer, and naviHealth’s provision of coverage-determination services under the PACSA for members whose claims were adjudicated in and from this District—occurred in this District, and because naviHealth is subject to personal jurisdiction here.

THE PARTIES

21. Plaintiff JoAnne Barrows. JoAnne Barrows was at all times relevant to this action a citizen of Minnesota, residing in Hennepin County. At all relevant times mentioned herein, Ms. Barrows was covered by a Medicare Advantage Plan policy provided by Humana.

22. Plaintiff Susan Hagood. Susan Hagood was at all times relevant to this action a citizen of North Carolina, residing in Buncombe County. At all relevant times mentioned herein, Ms. Hagood was covered by a Medicare Advantage Plan policy provided by Humana.

23. Plaintiff Sharon Merkley. Plaintiff Sharon Merkley was at all times relevant to this action a citizen of Kentucky, residing in Daviess County. At all relevant times mentioned herein, Mrs. Merkley was covered by a Medicare Advantage Plan policy provided by Humana.

24. Plaintiff Lorraine Kohl. Plaintiff Lorraine Kohl was at all times relevant to this

action a citizen of Wisconsin, residing in Outagamie County. At all relevant times mentioned herein, Mrs. Kohl was covered by a Medicare Advantage Plan policy provided by Humana.

25. Plaintiff Dolly Balani. Plaintiff Dolly Balani was at all times relevant to this action a citizen of Texas, residing in Cameron County. At all relevant times mentioned herein, Mrs. Balani was covered by a Medicare Advantage Plan policy provided by Humana.

26. Defendant Humana, Inc. Humana, Inc. is a Delaware corporation, headquartered at 500 West Main St., Louisville, KY 40202. Humana, Inc. conducts insurance operations throughout the country, representing to consumers that it “mak[es] healthcare more equitable and accessible,” and that it “make[s] it easier for people to achieve their best health.”⁸ Humana, Inc. has a license to use the federally registered service mark “HUMANA,” markets and issues health insurance and insures, issues, administers, and makes coverage and benefit determinations related to the health care policies nationally through its controlled agents and undisclosed principals and agents. Defendant Humana, Inc. is licensed and registered to conduct business in all 50 states, and does conduct business in all 50 states, and is thereby subject to the laws and regulations of all 50 states.

27. Defendant naviHealth, Inc. naviHealth, Inc. is a Delaware corporation with its principal place of business in Brentwood, Tennessee. naviHealth is a technology and care-management company that created, designed, owns, and operates the nH Predict AI Model. naviHealth licenses and sells nH Predict, and related utilization-management services, to health insurers throughout the country—including Humana—pursuant to services agreements such as the PACSA between naviHealth and Humana Insurance Company, effective August 1, 2017. Under the PACSA, naviHealth is [REDACTED]

⁸ *Humana’s Impact*, HUMANA, <https://www.humana.com/about/impact> (last updated Nov. 9, 2023).

[REDACTED]. naviHealth is registered and/or otherwise authorized to, and does, conduct business in Kentucky and throughout the United States, and is thereby subject to the laws and regulations of Kentucky and the other states in which the Class and Subclasses reside.

FACTUAL ALLEGATIONS

A. Background

28. Humana offered and sold Medicare Advantage health insurance plans to consumers, including Plaintiffs and Class members.

29. A Medicare Advantage plan is a type of health plan offered by private companies that contract with Medicare. Medicare Advantage is a taxpayer-funded alternative to traditional Medicare that covers 30.8 million people.⁹ Medicare Advantage accounts for more than half (51 percent) of the eligible Medicare population, and \$454 billion (or 54 percent) of total federal Medicare spending.¹⁰

30. Plaintiffs and Class members enrolled with Humana to receive Medicare Advantage health insurance coverage. Humana provided Plaintiffs and members of the Class with written terms explaining the plan coverage Humana offered to them. According to these terms, Humana is obligated to provide benefits for covered health services and must pay all reasonable and medically necessary expenses incurred by a covered member.

31. From at least December 12, 2019, to the present (the “Relevant Period”), Plaintiffs and Class members were referred to and received “post-acute care”—medically necessary care for patients recovering from serious illnesses and injuries. Post-acute care is covered by the terms of

⁹ Nancy Ochieng, et al., *Medicare Advantage in 2023: Enrollment Update and Key Trends*, KFF (Aug. 9, 2023), <https://www.kff.org/medicare/medicare-advantage-in-2026-enrollment-update-and-key-trends/> (last visited Nov. 13, 2023).

¹⁰ *Id.*

their insurance agreements provided by Humana.

32. Post-acute care encompasses skilled care, therapy, and other services provided by home health agencies (HHAs), skilled nursing facilities (SNFs), inpatient rehabilitation facilities (IRFs), acute inpatient rehab facilities (AIRs), acute rehab units (ARUs), and long-term care hospitals (LTCHs), collectively known as post-acute care (PAC) providers because they typically furnish care after an inpatient hospital stay.

33. Medicare Advantage providers use a prospective payment system for each type of PAC provider. Under this system, insurers pay PAC providers an upfront fee that is based on estimates of the national average cost of providing covered care for a specified period of time.

34. Due to the nature of the prospective payment system, insurers' coverage decisions occur before or during a patient's post-acute care. When the insurer decides to end coverage before the doctor's requested discharge date for the patient, the patients are left with an impossible choice: to either forgo their post-acute care despite not being well enough to function without it or pay out-of-pocket to continue receiving care they were wrongfully denied—if they can afford it.

35. Other patients are denied coverage before they receive any post-acute care. When patients are referred to post-acute care facilities by their doctors, Defendants use the nH Predict AI Model to deny prior authorization requests, regardless of the patients' actual conditions or doctors' recommendations.

36. Humana created and instituted a process designed to override and circumvent doctors from determining individual coverage for post-acute care in a thorough, fair, and objective manner, instead using the nH Predict AI Model to supplant real doctors' recommendations and patients' medical needs. naviHealth, in turn, created and designed the nH Predict AI Model, and purposefully sold its services to Humana precisely so that Humana could benefit from the process

described in this paragraph. Humana's use of the nH Predict AI Model, which directs Humana's medical review employees to prematurely stop covering care without considering an individual patient's needs, is systematic, illegal, malicious, and oppressive.¹¹

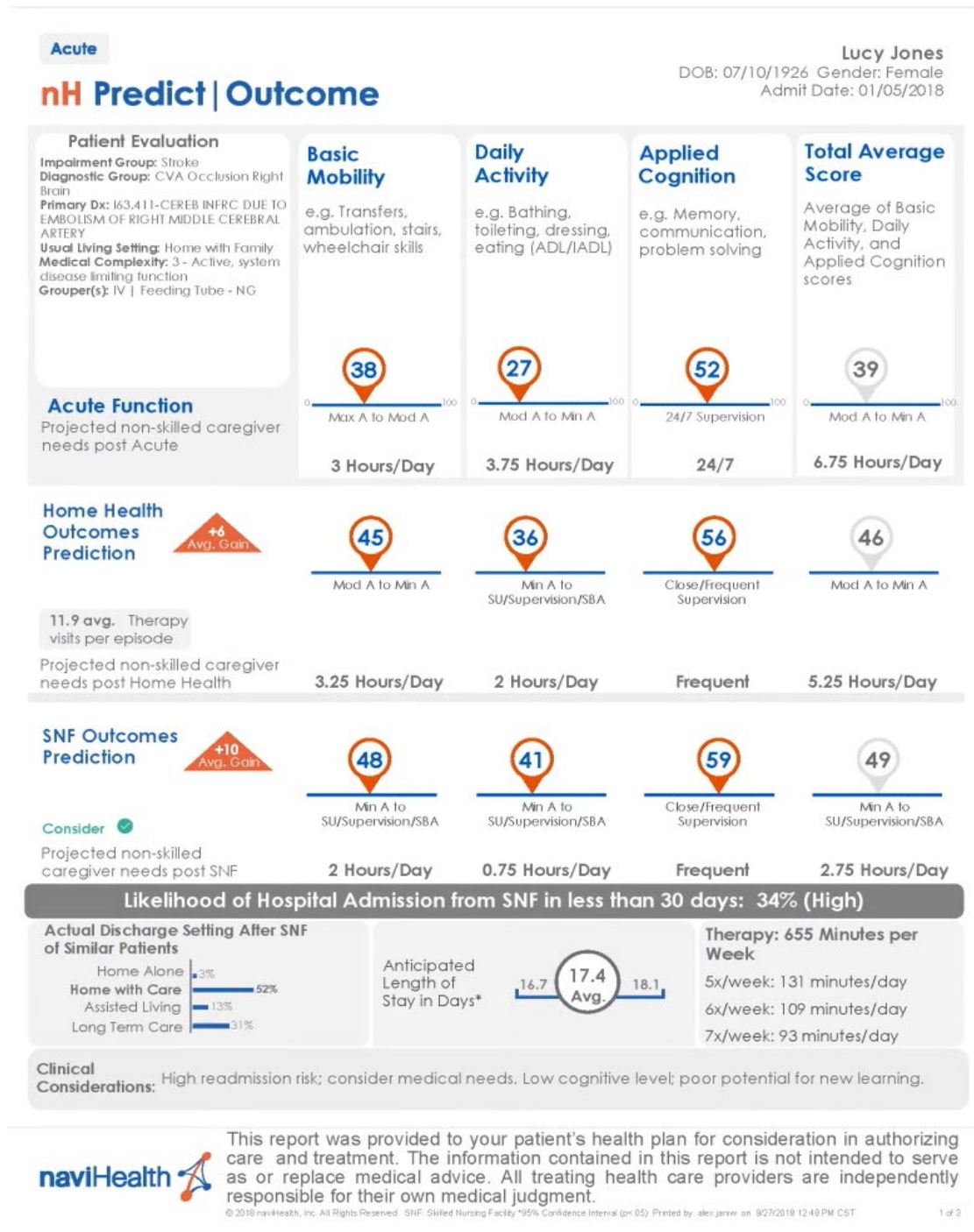
37. The nH Predict AI Model attempts to predict the amount of post-acute care a patient "should" require, pinpointing the precise moment when Humana will cut off payment for a patient's treatment. If the nH Predict AI Model determines the patient shouldn't require any post-acute care, it recommends denial of prior authorization. The nH Predict AI Model compares a patient's diagnosis, age, living situation, and physical function to similar patients in a database of six million patients it compiled over the years of working with providers to predict patients' medical needs, estimated length of stay, and target discharge date.¹²

38. The following is a true and correct representation of a sample nH Predict Outcome sheet, taken from a naviHealth presentation.¹³ The Outcome sheet bears naviHealth's own branding and is generated by naviHealth's proprietary software, underscoring that nH Predict—and the methodology it applies—is naviHealth's product, not Humana's.

¹¹ Casey Ross and Bob Herman, *Denied by AI: How Medicare Advantage plans use algorithms to cut off care for seniors in need*, STAT (Mar. 13, 2023), <https://www.statnews.com/2023/03/13/medicare-advantage-plans-denial-artificial-intelligence/> (last visited Nov. 13, 2023).

¹² *Id.*

¹³ *NaviHealth Guiding the Way – Animated Explainer*, ECG PRODUCTIONS, <https://www.ecgprod.com/navihealth-guiding-the-way-animated-explainer/> (last visited Nov. 13, 2023).



39. Humana wrongfully delegates its obligation to evaluate and investigate claims to the nH Predict AI Model. naviHealth wrongfully accepted that delegation and profits from it. The nH Predict AI Model spits out generic recommendations based on incomplete and inadequate medical records and fails to adjust for a patient's individual circumstances and conflicts with basic

rules on what Medicare Advantage plans must cover.

40. Upon information and belief, the nH Predict AI Model applies rigid criteria from which Humana’s employees are instructed not to deviate. The employees who deviate from the nH Predict AI Model prediction are disciplined and terminated, regardless of whether the additional care for a patient is justified.

41. Under Medicare Advantage Plans, patients who have a three-day hospital stay are typically entitled to up to 100 days in a nursing home. With the use of the nH Predict AI Model, Humana cuts off payment in a fraction of that time. Patients rarely stay in a nursing home more than 14 days before they start receiving payment denials.¹⁴

42. Upon information and belief, the outcome reports generated by nH Predict are rarely, if ever, communicated with patients or their doctors. When patients and doctors request their nH Predict reports, naviHealth’s employees deny their requests and tell them that the information is proprietary. As alleged in greater detail below, that “proprietary” designation refers to naviHealth’s own nH Predict methodology, which naviHealth refuses to disclose to patients or providers to protect naviHealth’s commercial interests and to conceal its misconduct.

43. Denials issued by Humana are appealable to Quality Improvement Organizations (“QIOs”), independent third-party organizations established to review claims determinations, per the Medicare Act. These QIOs can overturn denials and reinstate benefits in individual cases. There is, therefore, no way for any individual patient to understand the actual basis for Humana’s refusal to pay and there is no way for any individual patient to challenge the systematic process that leads to that refusal.

¹⁴ Casey Ross and Bob Herman, *Denied by AI: How Medicare Advantage plans use algorithms to cut off care for seniors in need*, STAT (Mar. 13, 2023), <https://www.statnews.com/2023/03/13/medicare-advantage-plans-denial-artificial-intelligence/> (last visited Nov. 13, 2023).

44. Upon information and belief, over 90 percent of patient claim denials are reversed through either an internal appeal process or through federal Administrative Law Judge (ALJ) proceedings. Additionally, over 80 percent of prior authorization request denials are reversed on appeal.¹⁵ This demonstrates the blatant inaccuracy of the nH Predict AI Model, and the lack of human review involved in the coverage denial process. The problem with this process is systemic. It is inherently unfair for Humana to employ a coverage determination process that it knows will result in improper denials while ignoring the recommendations of doctors. It is likewise inherently unfair for naviHealth to have designed, and to continue to sell and operate, a coverage determination process that it knows will result in improper denials at this rate.

45. Plaintiffs' and the Class's use of this appeals system is generally futile. Under the Medicare Act, the decisionmakers on appeal only have the authority to reinstate benefits—they lack the authority to enjoin Humana from abusing the nH Predict AI Model to make coverage determinations, which is a part of the relief sought by Plaintiffs.

46. Additionally, upon information and belief, even if Plaintiffs or the Class succeed on any individual appeal, Humana and its contractor naviHealth request updated medical records, issue another denial, and force patients to restart the appeals process with the goal of depriving patients of the opportunity to receive additional care.

47. Upon information and belief, naviHealth employees are given a length of stay “budget,” and if the cases they oversee come in under that budget, they receive bonus compensation. This bonus structure is not limited to individual employee incentives: naviHealth itself, as a company, is [REDACTED]

¹⁵ *Examining Health Care Denials and Delays in Medicare Advantage Before the Permanent Subcommittee on Investigations*, 118th Cong. (2023) (statement of Sen. Richard Blumenthal, Chairman, Permanent Subcommittee on Investigations).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] naviHealth thus has a direct and continuing financial stake in the outcomes produced by the very nH Predict AI Model it designed and operates.

48. If Plaintiffs were required to exhaust their administrative remedies before bringing this action in court, they would suffer irreparable harm. To reach the highest level of appeal before the Medicare Appeals Council often takes years.¹⁶ While waiting for a decision, Plaintiffs, like all patients, would be left with two options: (1) to stay in post-acute care facility and risk being responsible for months' or years' worth of medical bills if their appeals are denied; or (2) to forgo care while they wait for a decision to be made on their appeals. Plaintiffs are elderly and/or ill patients who have suffered serious medical traumas. If they opt to forgo care while waiting for a decision on appeal, they risk further serious injury.

49. If Plaintiffs were required to exhaust their appeals before bringing this action in court, Humana's misconduct would be capable of repetition while evading review. Humana knows that if patients are required to exhaust their remedies, they need only pay the relatively small claims appealed before they reach the highest level of appeal, and their systemic misconduct would never be reviewable in court.

50. Roughly 0.2% of consumers appeal their health insurance claim denials. Far fewer pursue their appeal to the third level, before an administrative law judge. Upon information and

¹⁶ Casey Ross and Bob Herman, *Denied by AI: How Medicare Advantage plans use algorithms to cut off care for seniors in need*, STAT (Mar. 13, 2023), <https://www.statnews.com/2023/03/13/medicare-advantage-plans-denial-artificial-intelligence/> (quoting Chris Comfort, COO of Calvary Hospital, as stating that the appeals process lasts up to 2.5 years, often leading to appeals that “outlast[] the beneficiary”).

belief, when a patient appeals to an ALJ, Humana selectively does not contest the appeal after scrutinizing the assessment of the nH Predict AI Model—Humana instead agrees to pay the claims. Upon information and belief, in doing so, Humana pays the claims of less than 0.2% of consumers and ensures that no claims make it to the Medicare Appeals Council, and thus nobody exhausts their administrative remedies. In this way, Humana ensures that if patients are required to exhaust their administrative remedies, they will be able to fraudulently review and deny over 99% of claims without their misconduct being reviewable in court.

51. Humana fraudulently misled its insureds into believing that their health plans would individually assess their claims and pay for medically necessary care.

52. Had Plaintiffs and Class members known that Humana would evade the legally required process for reviewing patient claims and instead delegate that process to its nH Predict AI Model to review and deny claims, they would not have enrolled with Humana and/or would not have paid for their plan the amount they had to pay to be enrolled.

53. Humana's use of the nH Predict AI Model to deny its insureds' claims undermines the principles of fairness and meaningful claim evaluation, which insureds expect from their insurers.

B. naviHealth's Creation, Design, and Deployment of the nH Predict AI Model

54. naviHealth created and designed the nH Predict AI Model. naviHealth built nH Predict's predictive algorithm, assembled and maintains the underlying database of patient records against which nH Predict compares each Medicare Advantage member, and authored the software that generates the "outcome sheets," such as the one reproduced above, that naviHealth uses to make coverage determinations.

55. When naviHealth sells its services to an insurer such as Humana, naviHealth is

selling access to the nH Predict tool and the savings it provides insurers by denying claims.

56. naviHealth and Humana entered into the PACSA, effective August 1, 2017, under which naviHealth agreed to provide, and Humana agreed to pay for, utilization-management services built around the nH Predict AI Model. The PACSA and its accompanying Statement(s) of Work set the terms on which naviHealth designed, deployed, and continues to operate nH Predict for Humana's Medicare Advantage line of business.

57. Article II(e) of the PACSA provides that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] naviHealth thus [REDACTED]
[REDACTED]
[REDACTED]—confirming that nH Predict is naviHealth's own product, marketed and sold to Humana via naviHealth's services, rather than a tool Humana itself created or controls.

58. Article IV of the PACSA, titled [REDACTED] provides that [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Article IV further provides that [REDACTED]
[REDACTED]
[REDACTED]

59. naviHealth knew, at all times relevant to this action, of Humana's contractual obligations to the Medicare Advantage members whose post-acute care claims naviHealth

administered. Under the PACSA, Humana was required to provide naviHealth the Benefit Plan designs applicable to the members naviHealth would service, including CMS-approved changes to those designs, and naviHealth accepted delegated responsibility for utilization management functions addressing benefit coverage and medical necessity. Consistent with that arrangement, in November 2023 a naviHealth National Accounts director expressly acknowledged to Humana that

[REDACTED]

[REDACTED] naviHealth therefore knew that the post-acute care determinations it made and/or administered were required to conform to Humana members' plan terms, including contractual obligations alleged herein governing individualized, doctor-informed review.

60. In addition to creating and designing nH Predict, naviHealth exercised delegated responsibility over the post-acute coverage review process. In 2018, Humana described naviHealth as having [REDACTED] and stated that naviHealth used its proprietary predictive model [REDACTED]. Humana's description confirms that naviHealth's role extended beyond supplying software: naviHealth was delegated utilization management responsibility and used its own predictive methodology in making the level-of-care and length-of-stay determinations at issue here,

61. nH Predict functioned as part of the decision-making process, rather than merely as an informational or predictive tool. In a June 2023 presentation, Humana expressly categorized nH Predict as a [REDACTED] and identified its [REDACTED] as including [REDACTED]. The same presentation depicted nH Predict [REDACTED]

[REDACTED] Thus,

naviHealth and its proprietary nH Predict model were incorporated directly into the process for making the post-acute care coverage determinations at issue here.

62. naviHealth's own utilization-management employees, applying nH Predict, directly communicated coverage determinations to Plaintiffs, without disclosing that those determinations were generated by a population-based algorithm rather than an individualized clinical assessment, as alleged further below with respect to Plaintiffs Merkley and Kohl.

63. naviHealth sells the utilization-management services described herein, including access to nH Predict, to insurers other than Humana. naviHealth's commercial interest in nH Predict is thus independent of, and broader than, any single insurer's business, including Humana's; naviHealth acts to advance its own, separate commercial enterprise—selling an algorithmic coverage determination product to the health insurance industry generally—and not merely to protect or advance Humana's interest in performing Humana's own contracts with its members.

C. Plaintiff JoAnne Barrows

64. Plaintiff JoAnne Barrows is enrolled in the Medicare Advantage Plan provided by Humana.

65. In November of 2021, 86-year-old JoAnne Barrows fell at home and fractured her leg. On or around November 23, 2021, Ms. Barrows was admitted to Methodist Hospital in St. Louis Park, Minnesota, where she was placed in a cast and put on a non-weight-bearing order for six weeks.

66. On or around November 26, 2021, Ms. Barrows was discharged from Methodist Hospital and admitted to the Good Samaritan Society Ambassador rehabilitation facility in Robbinsdale, Minnesota.

67. On or around December 9, 2021, Humana informed Ms. Barrows that they were terminating her coverage in two days, on December 11, after only approximately two weeks of care.

68. Ms. Barrows and her doctor were bewildered by Humana's premature termination of coverage because Ms. Barrows was still under a non-weight-bearing order for four more weeks. Ms. Barrows's doctor recommended that she continue rehabilitation treatment, but Humana refused to cover additional treatment.

69. Ms. Barrows and her family vigorously appealed Humana's denial, but their efforts were unsuccessful. The appeals were denied, and Humana deemed Ms. Barrows ready to return home despite being bedridden and using a catheter.

70. Because Ms. Barrows was not yet fit to return home, her family had no choice but to pay for her stay at the Good Samaritan Society Ambassador rehabilitation facility out of pocket.

71. Due to the high cost of the Good Samaritan Society Ambassador rehabilitation facility, Ms. Barrows's family made the difficult decision to transfer her to an assisted living facility, which was less expensive.

72. Unfortunately, the care provided at the assisted living facility was substandard, resulting in the deterioration of Ms. Barrows's condition.

73. As a result, Ms. Barrows's family had to make another difficult decision and end her care due to the poor quality of care she was receiving. On or around December 22, 2021, Ms. Barrows returned home, but she was not in a physical state to be there safely. She was unable to use her injured leg, could not go to the restroom without assistance, and still had a catheter in.

74. Due to Humana's wrongful denial of coverage, Ms. Barrows health was significantly impacted as she could not afford to receive the care she needed and was entitled to.

Ms. Barrows also suffered significant economic losses in the form of out-of-pocket payments for treatment that should have been otherwise covered by her plan.

D. Plaintiff Susan Hagood

75. Plaintiff Susan Hagood is enrolled in the Medicare Advantage plan provided by Humana.

76. On or around September 10, 2022, Ms. Hagood was admitted to Mission Hospital in Asheville, North Carolina, with a urinary tract infection, sepsis, and a spinal infection.

77. On or around October 26, 2022, Ms. Hagood was discharged from Mission Hospital with eleven discharging diagnoses, including sepsis, acute kidney failure, kidney stones, nausea and vomiting, a urinary tract infection, osteomyelitis of lumbar spine, and an L3 phlegmon.

78. She was admitted to a skilled nursing facility, The Oaks at Brevard, the same day. During her time at the skilled nursing facility, Ms. Hagood was on a maximum allowable dose of oxycodone and constantly endured exceptionally high pain levels.

79. Additionally, Ms. Hagood suffered from low oxygenation, which developed into pneumonia.

80. After a telehealth conference with her infectious disease specialist on or around November 15, 2022, Ms. Hagood scheduled an appointment at Mission Hospital for November 28, 2022.

81. Upon return to Mission Hospital on November 28, 2022, she experienced a rapid spike in blood pressure and was taken to the emergency room, where it was discovered that Ms. Hagood's condition had worsened considerably. She was diagnosed with a multi-level disc edema with discitis osteomyelitis, consolidative phlegmon within her epidural spaces, a large staghorn calculus in each kidney, and pneumonia.

82. On or around November 27, 2022, Humana denied Ms. Hagood's claim for the treatment she received at The Oaks at Brevard between November 14 and November 28, refusing to pay for half of her month-long stay. Despite Ms. Hagood's critical condition, Humana denied her coverage, explaining that Ms. Hagood did not require the level of care a skilled nursing facility provided and should be discharged home.

83. Ms. Hagood and her family have incurred over \$24,000 in out-of-pocket medical expenses for treatment that Humana should have covered.

84. To date, Ms. Hagood remains in a skilled nursing facility and requires ongoing medical care due to her health condition.

E. Plaintiff Sharon Merkley

85. Plaintiff Sharon Merkley is enrolled in a Medicare Advantage plan with Humana. She pays a monthly premium of \$46.00 for that plan.

86. Mrs. Merkley suffers from Parkinson's Disease, HTN, atrial fibrillation, and arthritis.

87. On or around November 4, 2023, Mrs. Merkley was admitted to Vanderbilt University Medical Center in Nashville, Tennessee, after experiencing severe hives, high blood pressure, and an inability to walk. Mrs. Merkley was diagnosed with an autoimmune disease called bullous pemphigoid.

88. Mrs. Merkley was treated at Vanderbilt until November 16, 2023, when she was discharged and transferred to a skilled nursing facility, Signature Healthcare in Hartford, Kentucky.

89. On or around November 16, 2023, Humana approved prior authorization for the skilled nursing care, sending Mrs. Merkley a letter confirming the approval. However, Humana

did not specify a length of stay (denoted by “Unit(s) Approved”) in the letter.

90. On or around November 17, 2023, naviHealth sent Mrs. Merkley a letter noting the prior authorization, indicating that Mrs. Merkley’s coverage determinations would be processed by naviHealth and the nH Predict AI Model. Unlike Humana’s letter, naviHealth limited Mrs. Merkley’s length of stay to “3” Unit(s) Approved. This letter was naviHealth’s own direct communication with Mrs. Merkley, sent on naviHealth’s own letterhead and applying naviHealth’s own nH Predict AI Model; it did not disclose that the “3” Unit(s) Approved figure was generated by comparing Mrs. Merkley to a population-based dataset rather than by an individualized assessment of her actual condition.

91. On or around December 6, 2023, Humana issued a Notice of Medicare Non-Coverage, terminating Mrs. Merkley’s coverage, effective December 8, 2023.

92. Mrs. Merkley appealed this denial to Kepro, a QIO. On or around December 7, 2023, Kepro granted Mrs. Merkley’s appeal, reinstating coverage. Kepro determined that the skilled nursing services were medically necessary, because Mrs. Merkley “[could] not walk and require[d] maximum assistance with two-person assistance for bed mobility,” could only “stand for 25 seconds,” required “moderate assistance with upper body dressing and toileting and maximum assistance with upper and lower body bathing and lower body dressing,” and she had “an open wound to [her] sacrum.” Kepro determined that Mrs. Merkley required 24-hour care.

93. Despite Mrs. Merkley’s condition, Humana issued another denial just four days later, on or around December 11, 2023. Coverage was to be terminated on December 13, 2023. On information and belief, naviHealth’s [REDACTED] under the PACSA rewarded naviHealth for exactly this pattern—repeated, rapid re-issuance of length-of-stay-limiting determinations regardless of Kepro’s intervening reversals—giving naviHealth its own financial incentive,

separate from Humana's, to limit Mrs. Merkley's care.

94. Mrs. Merkley again appealed the denial to Kepro, and on or around December 13, 2023, Kepro determined that skilled nursing care was still medically necessary, reinstating coverage.

95. Humana issued another denial the very next day, on or around December 14, 2023, terminating coverage effective December 16, 2023. Mrs. Merkley appealed, and Kepro once again overturned the denial.

96. Humana issued a fourth denial on or around December 20, 2023, terminating coverage effective December 22, 2023. Mrs. Merkley appealed, and Kepro once again overturned the denial.

97. Humana issued a fifth denial the very same day, on or around December 22, 2023, terminating coverage on Christmas Eve, December 24, 2023. Mrs. Merkley appealed, and Kepro once again overturned the denial.

98. Humana issued a sixth denial on or around December 28, 2023, terminating coverage effective December 30, 2023. Mrs. Merkley appealed, and Kepro once again overturned the denial.

99. Humana issued a seventh denial on or around January 5, 2024, terminating coverage effective January 7, 2024. Mrs. Merkley appealed, but this time Humana received the break it had been fishing for—Kepro denied the appeal. Mrs. Merkley elevated to a second-level appeal, which Kepro again denied on or around January 10, 2024. After her appeals were resolved, on January 18, 2024, Mrs. Merkley returned home. She was not medically fit to return home—she was unable to walk, she had active sores requiring wound care, and she still required 24-hour care to function. On information and belief, the individualized clinical facts that repeatedly persuaded

Kepro to reverse Humana's and naviHealth's denials—Mrs. Merkley's inability to walk, her wound care needs, and her need for 24-hour care—were facts naviHealth's own nH Predict AI Model never adequately accounted for.

100. At home, Mrs. Merkley's rehab care was limited to twice-weekly home-healthcare visits.

101. On or around January 30, 2024, Mrs. Merkley contacted the skilled nursing facility to schedule her Dupixent injection, for which she was a week past due. The facility informed her that Humana refused to pay for the injection. Mrs. Merkley was unable to receive her injection and suffered from a renewed breakout of hives caused by her bullous pemphigoid.

102. On or around February 1, 2024, Mrs. Merkley was admitted to Owensboro Health Regional Hospital in Owensboro, Kentucky, because of the consequences of not receiving her injection and a urinary tract infection. On or around February 6, 2024, Humana refused to cover any further inpatient care in Owensboro Health Regional Hospital. Upon discharge on or around February 6, 2024, she was transferred to another skilled nursing facility, Chautauqua Health and Rehabilitation of Owensboro.

103. On or around February 14, 2024, Humana issued a Notice of Medicare Non-Coverage, terminating coverage effective February 16, 2024. Mrs. Merkley appealed, and Kepro overturned the denial, reinstating coverage.

104. Three days later, on or around February 19, 2024, Humana issued another denial, terminating coverage effective February 21, 2024. Mrs. Merkley appealed, and Kepro once again overturned the denial.

105. On or around February 26, 2024, Humana issued a third denial, terminating coverage effective February 28, 2024. Mrs. Merkley appealed, and Kepro once again overturned

the denial.

106. On or around March 5, 2024, Humana issued a fourth denial, terminating coverage effective March 7, 2024. Mrs. Merkley appealed, and Kepro once again overturned the denial.

107. On or around March 11, 2024, Humana issued a fifth denial, terminating coverage effective March 13, 2024. Mrs. Merkley appealed, but this time Kepro denied her appeal. Mrs. Merkley elevated the appeal to a second-level appeal, which Kepro also denied. Mrs. Merkley was informed over the phone that her appeal had been denied, and she was not informed that she could appeal the decision further.

108. Starting on March 14, 2024, Mrs. Merkley has paid out-of-pocket for her skilled nursing care. To date, she has paid \$10,000, and has another outstanding bill for \$15,000. She remains in the skilled nursing facility, working towards her recovery.

F. Plaintiff Lorraine Kohl

109. Plaintiff Lorraine Kohl is enrolled in a Medicare Advantage plan with Humana. She pays a monthly premium of \$224.00 for that plan.

110. On or around December 15, 2022, Mrs. Kohl fell and fractured her right hip. She was admitted to St. Elizabeth Hospital in Appleton, Wisconsin, where she underwent surgery to treat the fracture on or around December 17, 2022. On or around December 20, 2022, Mrs. Kohl was transferred to Oakridge Gardens Nursing Center, a skilled nursing facility in Menasha, Wisconsin.

111. On or around January 4, 2023, just shy of three weeks after fracturing her hip, Humana issued a denial, refusing to cover Mrs. Kohl's rehabilitation care effective January 6, 2023. The same day, Mrs. Kohl received a separate letter from naviHealth, explaining that coverage was denied and claiming she needed "little" help to move around and perform self-care

skills. At the time of the denial, Mrs. Kohl was unable to walk, as she could not lift her right leg unassisted. As with the letter naviHealth sent to Mrs. Merkley, naviHealth's letter to Mrs. Kohl was naviHealth's own direct communication, applying naviHealth's own Model, and did not disclose that the "little" help determination rested on a population-based comparison rather than an individualized examination of Mrs. Kohl's actual, un rebutted inability to walk.

112. On or around January 4, 2023, Mrs. Kohl appealed the denial to Livanta. On January 6, 2023, Livanta denied her appeal, claiming the care was no longer medically necessary.

113. Rather than elevating to a second-level appeal before Livanta, Mrs. Kohl's family opted to write a letter on or around January 6, 2023, and appeal the decision through Humana directly. On or around January 7, 2023, Mrs. Kohl was informed that Humana denied her appeal.

114. On or around January 28, 2023, Mrs. Kohl suffered another fall while at Oakridge Gardens, fracturing her left hip. She was transported by ambulance to St. Elizabeth Hospital, where she remained and received care until February 1, 2023. On or around February 1, 2023, Mrs. Kohl and her doctor sought prior authorization from Humana to receive further skilled nursing care, but Humana denied prior authorization, stating that she did not meet the criteria for skilled nursing services.

115. Despite this denial, Mrs. Kohl was then transferred back to Oakridge Gardens for more skilled nursing care—her doctor was adamant that she needed skilled nursing care to recover, so Mrs. Kohl decided to appeal the prior authorization and, if all else failed, pay out-of-pocket to get the care she needed.

116. On or around February 14, 2023, Mrs. Kohl visited her doctor, who provided a written recommendation that she continue receiving skilled nursing care. Her doctor stated that skilled nursing care was "very medically necessary considering her injuries, subsequent surgeries,

and need for additional physical therapy and conditioning. She has demonstrated adequate progression and will need to continue these therapies at Oak Ridge in order to improve her overall mobility and to maintain her safety.”

117. On or around February 21, 2023, Mrs. Kohl appealed her prior authorization denial to Humana directly. On or around February 27, 2023, Humana granted her appeal and paid for her care for the month of February.

118. On or around March 1, 2023, Humana issued a denial letter, terminating Mrs. Kohl’s coverage as of March 3, 2023. That same day, Mrs. Kohl appealed the denial to Livanta.

119. On or around March 3, 2023, Livanta denied Mrs. Kohl’s appeal. Livanta noted that Mrs. Kohl “currently requires maximal help to total dependence for self-care activities, such as dressing, bathing, and toileting.”

120. Mrs. Kohl was billed out-of-pocket from March 4, 2023, to April 4, 2023, when she left Oakridge Gardens and returned home. She has an outstanding balance of \$22,806.70.

G. Plaintiff Dolly Balani

121. Plaintiff Dolly Balani is enrolled in a Medicare Advantage plan with Humana. She pays a monthly premium of \$137.40 for that plan. Starting December 1, 2023, Mrs. Balani's monthly premium was increased to \$262.10.

122. Mrs. Balani suffers from Parkinson’s Disease and arthritis, causing her to be at-risk of falls. On or around November 28, 2023, Mrs. Balani suffered a fall, fracturing her hip. She was admitted to Valley Baptist Medical Center in Brownsville, Texas.

123. Mrs. Balani’s doctor recommended she be transferred to an inpatient rehab facility for two weeks. During preadmission screening, Mrs. Balani required substantial to maximal assistance with bed mobility, transfers, and ambulation. She was also deemed a fall risk.

124. On December 1, 2023, Humana denied prior authorization for Mrs. Balani's inpatient rehab care, claiming inpatient rehab was not medically necessary.

125. On December 11, Mrs. Balani was discharged from Valley Baptist Medical Center and was transferred to South Texas Rehabilitation Hospital, in inpatient rehabilitation facility. Because of Humana's denial, she paid out-of-pocket for one week of care. Mrs. Balani paid \$8,724 for her week in South Texas Rehabilitation Hospital.

126. Mrs. Balani made significant progress towards her recovery during her week in South Texas Rehabilitation Hospital. Unfortunately, Mrs. Balani was unable to pay for a second week of care out of pocket, so she did not receive the full two weeks of care recommended by her doctor.

127. Mrs. Balani appealed the decision to Maximus, a QIO. On December 14, 2023, Maximus denied the appeal, upholding the finding that the care was not medically necessary.

128. Mrs. Balani submitted a second-level appeal, seeking reconsideration from Maximus. Maximus denied the appeal.

129. On December 19, Mrs. Balani was discharged from South Texas Rehabilitation Hospital, and returned home. She still required physical therapy, occupational therapy, and wound care. Mrs. Balani received weekly in-home therapy and wound care until April of 2024. She now receives weekly home-health visits.

130. On December 26, 2023, Mrs. Balani again elevated her appeal, seeking review by an administrative law judge. On February 15, 2024, the ALJ held a hearing on the matter. On February 29, 2024, the ALJ upheld the denial, finding that inpatient rehab services were not medically necessary.

131. Mrs. Balani has appealed the ALJ's decision to the Medicare Appeals Council. A

hearing is yet to be calendared.

132. On January 1, 2024, Mrs. Balani did not renew her Humana Medicare Advantage plan, instead opting to enroll in traditional Medicare.

CLASS ALLEGATIONS

133. Plaintiffs bring this action on their own behalf and on behalf of all other persons similarly situated pursuant to Rule 23 of the Federal Rules of Civil Procedure. The Class which Plaintiffs seek to represent comprises:

“All persons who purchased Medicare Advantage Plan health insurance from Defendant in the United States within the Class Period.”

Said definition may be further defined or amended by additional pleadings, evidentiary hearings, a class certification hearing, and orders of this Court.

134. The North Carolina Subclass which Plaintiffs seek to represent comprises:

“All persons who purchased Medicare Advantage Plan health insurance from Defendant in the state of North Carolina within the Class Period.”

135. The Minnesota Subclass which Plaintiffs seek to represent comprises:

“All persons who purchased Medicare Advantage Plan health insurance from Defendant in the state of Minnesota within the Class Period.”

136. The Kentucky Subclass which Plaintiffs seek to represent comprises:

“All persons who purchased Medicare Advantage Plan health insurance from Defendant in the state of Kentucky within the Class Period.”

137. The Wisconsin Subclass which Plaintiffs seek to represent comprises:

“All persons who purchased Medicare Advantage Plan health insurance from Defendant in the state of Wisconsin within the Class Period.”

138. The Texas Subclass which Plaintiffs seek to represent comprises:

“All persons who purchased Medicare Advantage Plan health insurance from Defendant in the state of Texas within the Class Period.”

Said definition may be further defined or amended by additional pleadings, evidentiary hearings, a class certification hearing, and orders of this Court.

139. The Class Period accords with the relevant statutes of limitations, curtailed by the date on which Humana first partnered with naviHealth to adjudicate post-acute care claims (August 1, 2017), as follows:

Class Period Start Date	State(s) in which Humana Policy Issued
August 1, 2017 (10-year statute of limitations)	Illinois, Iowa, Kentucky, Louisiana, Missouri, Rhode Island, West Virginia, Wyoming
December 12, 2017 (6-year statute of limitations)	Alabama, Arizona, Connecticut, Georgia, Hawaii, Indiana, Maine, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oregon, South Dakota, Tennessee, Utah, Vermont, Washington, Wisconsin
December 12, 2018 (5-year statute of limitations)	Arkansas, Florida, Idaho, Kansas, Nebraska, Oklahoma, Virginia
December 12, 2019 (4-year statute of limitations)	California, Pennsylvania, Texas
December 12, 2020 (3-year statute of limitations)	Alaska, Colorado, Delaware, District of Columbia, Maryland, Mississippi, New Hampshire, North Carolina, South Carolina

140. Plaintiffs bring the claims asserted against naviHealth (unjust enrichment and tortious interference with contract) on behalf of the Class and Subclasses as defined above, all of whose members’ post-acute care coverage were, on information and belief, determined using the nH Predict AI Model that naviHealth designed and operated.

141. The Class is so numerous that their individual joinder herein is impracticable. On information and belief, members of the Class number in the thousands to millions throughout the United States and the named states. The precise number of Class members and their identities are

unknown to Plaintiffs at this time but may be determined through discovery. Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Humana and third-party retailers and vendors.

142. Common questions of fact and law predominate over questions that may affect individual class members, including the following:

- a. Whether Humana's delegation of coverage determinations to an automated procedure resulted in a failure to diligently conduct a thorough, fair, and objective investigation into determinations of claims for medical expenses submitted by insureds and/or healthcare providers;
- b. Whether Humana automatically denied coverage for claims submitted by insureds and/or healthcare providers;
- c. Whether Humana's denials of coverage are based on its use of nH Predict AI Model to determine a patients' care needs based on Humana's or naviHealth's internally-generated criteria;
- d. Whether Humana failed to adopt and implement reasonable standards for the prompt investigation and processing of claims arising under insurance policies; and
- e. Whether Humana has a practice of relying on the nH Predict AI Model to make coverage denials instead of engaging in good-faith individual coverage determinations.;
- f. Whether naviHealth created and designed the nH Predict AI Model and purposefully sold naviHealth's services to Humana for the specific purpose of deciding post-acute care coverage claims;

- g. Whether naviHealth had knowledge of the Humana–Member plan contracts’ promise of individualized, doctor-led review, and intended that Humana use nH Predict to depart from that promise;
- h. Whether naviHealth’s conduct in designing, selling, and operating nH Predict tortiously interfered with the Humana–Member plan contracts, and whether any privilege or justification excuses that conduct; and
- i. Whether naviHealth was unjustly enriched by retaining services fees and length-of-stay-based bonus compensation for designing, selling, and operating nH Predict.

143. Plaintiffs’ claims are typical of the claims of the Class and arise from the same common practice and scheme used by Humana and naviHealth to deny coverage for the members of the Class. In each instance, Humana used the nH Predict AI Model to review, process, and reduce coverage without adhering to the coverage determination standards set by Medicare. Plaintiffs will fairly and adequately represent and protect the interests of the Class. Plaintiffs have retained competent and experienced counsel in class action and other complex litigation.

144. Plaintiffs and the Class have suffered injury in fact and have lost money as a result of Humana’s misconduct and naviHealth’s misconduct. Plaintiffs and the Class had their coverage automatically and illegally denied by Humana’s use of the nH Predict AI Model without individualized evaluation of their medical records by Humana’s medical directors. naviHealth, for its part, was [REDACTED] for designing, selling, and operating the nH Predict AI Model that produced that result.

145. A class action is superior to other available methods for fair and efficient adjudication of this controversy. The expense and burden of individual litigation would make it

impracticable or impossible for the Class to prosecute their claims individually.

146. The trial and litigation of Plaintiffs' claims are manageable. Individual litigation of the legal and factual issues raised by Humana's and naviHealth's conduct would increase delay and expense to all parties and the court system. The class action device presents far fewer management difficulties and provides the benefits of a single, uniform adjudication, economics of scale, and comprehensive supervision by a single court.

147. Humana and naviHealth have acted on grounds generally applicable to the entire Class, thereby making final injunctive relief and/or corresponding declaratory relief appropriate with respect to the Class as a whole. The prosecution of separate actions by individual Class members would create the risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for Humana and naviHealth.

148. Absent a class action, Humana and naviHealth will likely retain the benefits of their wrongdoing. Because of the small size of the individual Class members' claims, few, if any, Class members could afford to seek legal redress for the wrongs complained of herein. Absent a representative action, the Class will continue to suffer losses and Humana and naviHealth will be allowed to continue their respective violations of law and to retain the proceeds of their ill-gotten gains.

FIRST CAUSE OF ACTION
BREACH OF CONTRACT—NATIONWIDE
(On Behalf of Plaintiffs and the Nationwide Class, Against Defendant Humana, Inc.)

149. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

150. Humana formed an agreement and entered into a contract of insurance ("insurance

agreement”) with Plaintiffs and Class members including offer, acceptance, and consideration.

151. Pursuant to that insurance agreement, Plaintiffs and the Class paid money to Humana in exchange for Humana providing a health insurance policy to Plaintiffs and the Class. Humana received premiums in exchange for the issuance of a policy of health insurance.

152. Each insurance agreement included, without limitation, Defendant's duty to exercise its fiduciary duties to policyholders, abide by applicable state laws, and adequately review and inform policyholders prior to a claim denial.

153. Each insurance agreement included a provision stating: “At Humana, a process called Utilization Management (UM) is used to determine whether a service or treatment is covered and appropriate for payment under your benefit plan. Humana does not reward or provide financial incentives to doctors, other individuals or Humana employees for denying coverage or encouraging under use of services. In fact, Humana works with your doctors and other providers to help you get the most appropriate care for your medical condition.”

154. Each insurance agreement included a provision stating: “If our answer is no to part or all of what you requested, we will send you a written statement that explains why we said no.”

155. Plaintiffs and the Class performed their obligations under the contract by timely paying the amounts due under the contract.

156. Humana breached each insurance agreement by, without limitation, failing to keep its promise to fulfill its fiduciary duties to policyholders, abide by applicable state laws, provide a thorough, fair, and objective investigation of each submitted claim prior to a claim denial, and provide written statements to Plaintiffs and the Class, accurately listing all bases for Humana's denial of claims and the factual and legal bases for each reason given for such denial.

157. Humana breached each insurance agreement by making coverage determinations

based upon the prediction of the nH Predict AI Model, rather than “work[ing] with your doctors and other providers to help you get the most appropriate care for your medical condition.”

158. Humana breached each insurance agreement by failing to disclose that the nH Predict AI Model prediction was the basis for coverage determinations and for providing false pretextual reasons for the determinations, rather than providing an accurate “written statement that explains why we said no.”

159. By using the nH Predict AI Model to resolve Plaintiffs' and Class members' claims without an adequate individualized investigation, Humana breached the insurance agreement.

160. As a direct and proximate result of Humana's breach of contract, Plaintiffs and the Class have suffered damages in an amount to be proven at trial.

SECOND CAUSE OF ACTION
BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR
DEALING—NATIONWIDE
(On Behalf of Plaintiffs and the Nationwide Class, Against Defendant Humana, Inc.)

161. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

162. Plaintiffs and Class members entered into written insurance agreements with Humana that provided for coverage for medical services administered by healthcare providers.

163. Pursuant to the contracts, Humana implied and covenanted that they would act in good faith and follow the law and the contracts with respect to the prompt and fair payment of Plaintiffs' and Class members' claims.

164. Humana has breached its duty of good faith and fair dealing by, among other things:

- a. Improperly delegating its claims review function to the nH Predict AI Model system which uses an automated process to summarily deny claims;
- b. Failing to require its agents to conduct a thorough, fair, and objective

investigation of each submitted claim, such as examining patient records, reviewing coverage policies, and using their expertise to decide whether to approve or deny claims to avoid unfair denials.

165. Humana's practices as described herein violated its duties to Plaintiffs and Class members under the insurance contracts.

166. Humana's practices as described herein failed to provide Plaintiffs and Class members a thorough, fair, individualized, and objective investigation of each of their claims in breach of the implied covenant of good faith and fair dealing arising from Humana's insurance agreements.

167. Humana's breach of Plaintiffs' and Class members' right to a thorough, fair, and objective investigation damaged Plaintiffs and Class members.

168. As a direct and proximate result of Humana's breaches, Plaintiffs and Class members have suffered and will continue to suffer in the future, economic losses and other general, incidental, and consequential damages in amounts according to proof at trial. Plaintiffs and Class members are also entitled to recover statutory and nominal damages, and prejudgment interest, against Humana.

169. Humana's misconduct was committed intentionally, in a malicious, fraudulent, despicable, and oppressive manner, entitling Plaintiffs and Class members to punitive damages against Defendant.

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, Against All Defendants)

170. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

A. Defendant Humana

171. By delegating the claims review process to the nH Predict system, Humana knowingly charged Plaintiffs and Class members insurance premiums for a service that Humana failed to deliver; this was done in a manner that was unfair, unconscionable, and oppressive.

172. Humana knowingly received and retained wrongful benefits and funds from Plaintiffs and Class members. In so doing, Humana acted with conscious disregard for the rights of Plaintiffs and Class members.

173. As a result of Humana's wrongful conduct as alleged herein, Humana has been unjustly enriched at the expense of, and to the detriment of, Plaintiffs and members of the Class.

174. Humana's unjust enrichment is traceable to, and resulted directly and proximately from, the conduct alleged herein.

175. Under the common law doctrine of unjust enrichment, it is inequitable for Humana to be permitted to retain the benefits they received from Plaintiffs and the Class because Humana delegated its claims process to the nH Predict AI Model in an unfair, unconscionable, and oppressive manner. Humana's retention of such funds is inequitable and constitutes unjust enrichment.

176. The financial benefits derived by Humana rightfully belong to Plaintiffs and Class members. Humana should be compelled to return in a common fund for the benefit of Plaintiffs and members of the Class all wrongful or inequitable proceeds received by Humana.

176. Plaintiffs and members of the Class have no adequate remedy at law. Plaintiffs plead this count in the alternative and in addition to their breach of contract claim. Under this alternative theory, Plaintiffs allege that the contract between the parties is unenforceable or void,

or that the terms are materially disputed so as to prevent a meeting of the minds.

B. Defendant naviHealth

178. Plaintiffs and the Class paid Humana premiums for the promise of individualized review. Humana, in turn, paid naviHealth services fees under PACSA Article III(a) and budget-linked bonus compensation, for creating, designing, and operating the very tool built to decide those members' post-acute care claims. naviHealth was paid specifically for building and running the mechanism used to decide Plaintiffs' own claims.

179. naviHealth designed nH Predict specifically to be sold to insurers like Humana to replace individualized, doctor-led review of post-acute care claims, and was paid fees and bonus compensation for exactly that purpose. naviHealth was aware of, and benefited from, the compensation it received for a product it built and marketed for this use.

180. naviHealth built and sold access to, for profit, the very tool that supplanted the individualized review Humana had promised its members, and was paid—including through [REDACTED] [REDACTED] — for delivering exactly the substitution the insurance agreements did not authorize. Retaining that compensation while Plaintiffs paid premiums for a different, promised process is inequitable.

181. Plaintiffs and the Class have no adequate remedy at law against naviHealth. naviHealth is not a party to the Humana–Member plan contracts, and no contract between Plaintiffs and naviHealth exists or could exist. Nor does any legal remedy against Humana reach naviHealth's separately retained [REDACTED] under the PACSA, which are an entirely separate category from the premium payments recoverable in connection with the breach of contract claim asserted against Humana.

182. As a direct result of naviHealth's unjust enrichment, Plaintiffs and the Class have sustained damages in an amount to be determined at trial, and naviHealth should be compelled to disgorge, for the benefit of Plaintiffs and the Class, all wrongful or inequitable proceeds it has received in connection with the conduct alleged herein.

FOURTH CAUSE OF ACTION
COMMON LAW FRAUD

(On Behalf of Plaintiffs, the North Carolina, Minnesota, Kentucky, Wisconsin, and Texas Subclasses, Against Defendant Humana, Inc.)

183. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

184. As alleged more fully above, Defendant made material omissions of fact to Plaintiff and Class members. Specifically, prior to Plaintiffs and the Class purchasing and renewing their insurance policies with Defendant, Defendant failed to disclose (1) its coverage determinations would be made by an algorithm under a process designed to deny claims on sham pretenses, and (2) the algorithm would not conduct an individualized objective investigation.

185. Defendant knew that its material omissions were false and misleading when made.

186. Defendant intended that Plaintiffs and Class members rely on these material omissions when purchasing and renewing insurance policies with Defendant. Plaintiffs and the Class reasonably relied on these omissions. Had Defendant conspicuously disclosed the truth in its contract of insurance or pre-sale marketing, Plaintiffs would have been aware of it.

187. Defendant's material omissions were a substantial factor and proximate cause in causing damages and losses to Plaintiffs and Class members.

188. Defendant engaged in this fraud to Plaintiffs' and the Class's detriment to increase Defendant's own sales and profits.

189. Plaintiffs and Class members were injured as a direct and proximate result of

Defendant's conduct because they would not have purchased medical coverage from Defendant had they known the truth; or at minimum, they would have paid less for insurance coverage from Defendant.

190. Plaintiffs seek damages according to proof at trial. By reason of the conduct of Defendant as alleged herein, Plaintiffs are also entitled to punitive damages.

FIFTH CAUSE OF ACTION
TORTIOUS INTERFERENCE WITH CONTRACT
(On Behalf of Plaintiffs and the Nationwide Class, Against Defendant naviHealth, Inc.)

191. Plaintiffs reallege and incorporate by reference all preceding allegations as though fully set forth herein.

192. As alleged above, Humana formed an agreement and entered into a contract of insurance ("insurance agreement") with Plaintiffs and Class members including offer, acceptance, and consideration.

193. naviHealth created and designed the nH Predict AI Model and purposefully sold and operated it on behalf of Humana specifically for use in deciding post-acute care coverage under Medicare Advantage plans, including the plan contracts described herein. naviHealth built and sold the tool for the specific purpose of deciding post-acute care coverage under agreements like the ones at issue here, and thereby knew of those agreements and knew what they promised.

194. naviHealth designed nH Predict—a population-based predictive algorithm—for the specific purpose of having Humana use it to decide coverage. Thus, naviHealth intended that Humana would decide coverage by algorithm rather than by the individualized physician review the insurance agreements promised. naviHealth purposefully sold a tool built to replace the promised process with a different one, which is intentional conduct directed at exactly the substitution that constitutes the breach.

195. Humana's actual use of nH Predict—the very product naviHealth designed and sold to it for this purpose—to make the coverage determinations underlying Plaintiffs' and the Class's denials caused Humana's breach of the insurance agreements alleged in the First Cause of Action above.

196. naviHealth built nH Predict for its own commercial purposes and sells it to multiple insurers, as alleged above. naviHealth thereby acted to advance its own independent commercial interest—not solely to protect Humana's interest in performing Humana's own contract.

197. naviHealth is a fee-for-service independent contractor, not an owner, officer, director, shareholder, secured creditor, or joint venturer with an equity- or profit-sharing-type stake in Humana's business.

198. naviHealth had a duty to disclose the true, population-based nature of the nH Predict methodology to Plaintiffs and their treating physicians. Indeed, as the Model's designer and operator, naviHealth alone knew that its methodology compares patients to a population-based dataset rather than individually assessing them, a fact unavailable to Plaintiffs or their physicians by any other means. naviHealth partially disclosed material facts in a manner that created a false impression of full disclosure, including in its denial letters, without disclosing that a population-based algorithm designed and sold by naviHealth, not a treating-physician review, generated the actual result.

199. naviHealth failed to disclose the nH Predict methodology despite this duty. When patients and physicians directly requested nH Predict reports, they were affirmatively refused and told the information was “proprietary” — active concealment in response to a specific inquiry, not passive silence about an observable fact. On information and belief, that “proprietary” designation refers to naviHealth's own trade secret in the algorithm, protected as naviHealth's exclusive

property under PACSA Article II(e) and defined as [REDACTED] under PACSA Article VI(a), and naviHealth required or directed that Humana withhold that information in order to protect naviHealth's own commercial interest in a product it licenses to other insurers as well.

200. naviHealth's own direct communications with Plaintiffs Merkley and Kohl, described above, were naviHealth's own omissions, not omissions merely imputed to it through Humana: naviHealth itself sent those letters, on its own behalf, applying its own Model, without disclosing the Model's actual methodology.

201. naviHealth's financial incentive to keep the methodology concealed was independent of Humana's: because naviHealth's bonus compensation was tied to keeping patients' length-of-stay under the Model's projected targets, naviHealth had its own stake, separate from Humana's, in preventing physicians from learning of and successfully challenging the population-based methodology, since disclosure would predictably increase the successful appeals of the kind described above with respect to Plaintiff Merkley.

202. As a direct and proximate result of naviHealth's tortious interference with the Humana–Member plan contracts, Plaintiffs and the Class have suffered damages in an amount to be proven at trial.

203. naviHealth's conduct was committed intentionally, in a malicious, fraudulent, wanton, and oppressive manner, entitling Plaintiffs and the Class to punitive damages against naviHealth. As alleged above, naviHealth designed nH Predict and the accompanying 1%-of-projected-days utilization target with knowledge that doing so would produce widespread erroneous denials of medically necessary post-acute care, and did so because naviHealth's own

[REDACTED]

[REDACTED]. This was conduct undertaken for naviHealth's own

pecuniary gain, not mere carelessness or mistake. naviHealth compounded that conduct through affirmative concealment, i.e., failing to disclose the nH Predict methodology to patients and physicians. And even as Kepro reversed naviHealth's denials of Plaintiff Merkley's coverage six times in a row over the course of a month, naviHealth continued to apply the same population-based methodology to issue new denials of her care rather than reassess its approach, a pattern reflecting a conscious and continuing disregard for Plaintiffs' and the Class's rights, not an isolated lapse in judgment.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, request that this Court enter an order granting the following relief against Defendants:

- a. Awarding actual damages, consequential damages, statutory damages, nominal damages, exemplary/punitive damages, costs and attorneys' fees;
- b. Awarding damages for emotional distress;
- c. Awarding disgorgement and/or restitution, including of the services fees and bonus compensation naviHealth received under the PACSA
- d. Awarding pre-judgment interest to the extent permitted by law;
- e. Appropriate declaratory and injunctive relief enjoining Humana from continuing its improper and unlawful claim handling practices as set forth herein, and enjoining naviHealth from continuing to design, sell or operate nH Predict, or any successor algorithmic tool, for use by Humana or other insurers in a manner that violates the law;
- f. Such other and further relief as the Court may deem just and proper.

JURY TRIAL DEMANDED

Plaintiffs demand a jury trial on all triable issues.

DATED: September 29, 2026

Respectfully submitted,

CLARKSON LAW FIRM, P.C.

By: /s/ Glenn A. Danas

Ryan J. Clarkson (CA # 237882)
rclarkson@clarksonlawfirm.com
Glenn A. Danas (CA # 270317)
gdanas@clarksonlawfirm.com
Ryan J. Clarkson (CA # 237882)
rclarkson@clarksonlawfirm.com
Zarrina Ozari (CA # 334443)
zozari@clarksonlawfirm.com
Michael A. Boelter (CA # 353529)
mboelter@clarksonlawfirm.com
Admitted *Pro Hac Vice*
Adrian Barrio (CA # 219266)
abarrio@clarksonlawfirm.com
Pending *Pro Hac Vice* Admission
22525 Pacific Coast Highway
Malibu, CA 90265
Tel: (213) 788-4050

Derek Brandt (IL # 6228895)
dbrandt@clarksonlawfirm.com
875 North Michigan Avenue, 31st Fl.
Chicago, IL 60611
Tel: (312) 300-6820
Admitted *Pro Hac Vice*

Larkin Turner (DC # 1644849)
lturner@clarksonlawfirm.com
1050 Connecticut Ave. NW, Ste. 500
Washington, DC 20036
Tel: (202) 688-2105
Admitted *Pro Hac Vice*

LOCKRIDGE GRINDAL NAUEN PLLC

Karen Hanson Riebel (MN # 0219770)

khriebel@locklaw.com

David W. Asp (MN # 0344850)

dwasp@locklaw.com

Simeon A. Morbey (MN # 0391338)

samorbey@locklaw.com

Derek C. Waller (MN # 0401120)

dcwaller@locklaw.com

Emma Ritter Gordon (MN # 0404000)

erittergordon@locklaw.com

Admitted *Pro Hac Vice*

Margaret Eve Grabau (MN #0505415)

megrabau@locklaw.com

Pro Hac Vice Pending

100 Washington Ave. South, Ste. 2200

Minneapolis, MN 55401

Tel: (612) 339-6900

WHITFIELD CROSBY & FLYNN PLLC

John C. Whitfield

jwhitfield@wcfjustice.com

19 North Main Street

Madisonville, KY 42431

Tel: (270) 821-0656

GUILFOYLE LAW OFFICE

James Guilfoyle

jfg@inkylegal.com

229 West Spring Street

New Albany, IN 47150

Tel: (812) 208-9704

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

ESTATE OF 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.

Case No. 3:23-cv-00654 (RGJ/CHL)

CLASS ACTION

Hon. Rebecca Grady Jennings
Hon. Colin H. Lindsay

ORDER

This matter is before the Court on Plaintiffs' Motion for Leave to File Under Seal Exhibit 1 to the Declaration of Simeon A. Morbey (Proposed Second Amended Class Action Complaint). The Court being otherwise sufficiently advised, **IT IS HEREBY ORDERED** as follows:

1. The Motion is **GRANTED**. The unredacted proposed Second Amended Class Action Complaint shall remain **SEALED** pending further order of the Court.
2. Within fourteen (14) days of entry of this Order, Defendant Humana, Inc. and non-party naviHealth, Inc. shall each file a brief identifying, paragraph by paragraph, each redaction it seeks to maintain and establishing a compelling reason for sealing that redaction under *Shane Group, Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299 (6th Cir. 2016). Plaintiffs may respond within seven (7) days thereafter.
3. Any redacted material not supported by a timely brief shall be unsealed, and Plaintiffs may file a correspondingly revised public version of the proposed Second Amended Class Action Complaint.

Hon. Rebecca Grady Jennings, United States
District Judge