

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE: ZELIS REPRICING ANTITRUST
LITIGATION

Lead Action Case No.: 1:25-cv-10734-BEM

This Document Relates To:

Consolidated with Case Nos.:

All Associated Cases

1:25-CV-11092-BEM

1:25-CV-11167-BEM

1:25-cv-11537-BEM

**DEFENDANT UNITEDHEALTH GROUP INC.'S MOTION TO COMPEL
ARBITRATION WITH RESPECT TO DR. DENNIS C. AYER, PACIFIC INPATIENT
MEDICAL GROUP, INC. AND FRANK SCACCIA**

Defendant UnitedHealth Group Inc. (“United”) respectfully moves this Court, pursuant to the Federal Arbitration Act (“FAA”) (9 U.S.C. § 1 et seq.), for an order compelling the individual arbitration of claims asserted in the Amended and Consolidated Class Action Complaint (“Consolidated Complaint”), dated June 11, 2025 (ECF No. 39), against United by Plaintiff Dennis C. Ayer, DDS, LLC, Pacific Inpatient Medical Group, Inc. and Frank Scaccia, M.D., F.A.C.S., L.L.C. and staying their actions against United until any arbitration is resolved. The grounds for this Motion are set forth in the accompanying Memorandum in Support and Declaration thereto.

Dated: August 11, 2025

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: /s/ Rachel S. Brass

Rachel S. Brass (admitted *pro hac vice*)

One Embarcadero Center
Suite 2600
San Francisco, CA 94111-3715
Telephone: 415.393.8200
Facsimile: 415.393.8306
Email: rbrass@gibsondunn.com

Heather L. Richardson (admitted *pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Ave., 54th Floor
Los Angeles, CA 90071
Telephone: 213-229-7409
hrichardson@gibsondunn.com

Allison O'Neil (BBO #641330)
Kara Kelleher (BBO #713274)
TROUTMAN PEPPER LOCKE LLP
111 Huntington Ave., 9th Floor
Boston, MA 02199
Telephone: 617-443-3744
Allison.oneil@troutman.com
Kara.kelleher@troutman.com

*Attorneys for Defendant UnitedHealth Group,
Inc.*

LOCAL RULE 7.1 CERTIFICATE

Pursuant to Local Rule 7.1(a)(2), the undersigned counsel certifies that counsel for Defendants have conferred with counsel for Plaintiffs and have attempted in good faith to resolve or narrow the issues in this Motion but have been unable to do so.

/s/ Rachel S. Brass

Rachel S. Brass

CERTIFICATE OF SERVICE

I hereby certify that, on this 11th day of August, 2025, the foregoing was filed with the Court's electronic filing system, which will send electronic notice of this filing to all counsel of record.

/s/ Rachel S. Brass _____

Rachel S. Brass

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**DEFENDANT UNITEDHEALTH GROUP INC.'S MEMORANDUM IN SUPPORT OF
ITS MOTION TO COMPEL ARBITRATION**

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Defendant UnitedHealth Group, Inc.¹ (“United”) respectfully moves this Court, pursuant to the Federal Arbitration Act (“FAA”) (9 U.S.C. § 1 *et seq.*), for an order compelling the individual arbitration of claims asserted in the Amended and Consolidated Class Action Complaint (“Consolidated Complaint”), dated June 11, 2025 (ECF No. 39), against United by Plaintiffs Dennis C. Ayer, DDS, LLC (“Ayer”), Pacific Inpatient Medical Group, Inc. (“PIMG”), and Frank Scaccia, M.D., F.A.C.S., L.L.C. (“Scaccia”) (collectively, “Arbitrable Plaintiffs”).

I. INTRODUCTION

Arbitrable Plaintiffs have brought claims against Defendant United in this Court despite controlling provisions requiring arbitration on an individual basis of “*any*” and/or “*all*” disputes (the “Arbitration Agreements”). Declaration of Rachel S. Brass (“Brass Decl.”), Ex. A, Ex. B, Ex. C. Their claims against United should be compelled to arbitration for this reason alone.

Arbitrable Plaintiffs have also failed to exhaust the dispute resolution procedures required before any claim can be pursued. *See id.* Consistent with the Arbitration Agreements, Arbitrable Plaintiffs should be required to comply with these procedures before proceeding to arbitration.

And to the extent there are any disputes about these pre-arbitration procedures, or the applicability of the arbitration provisions, those disputes need to be resolved by an arbitrator, given that each arbitration agreement delegates that assessment to the arbitrator.

There are no reasons here to contravene strong state and federal policies favoring the enforcement of arbitration agreements like those in Arbitrable Plaintiffs’ respective agreements with United, nor any other reason why the arbitration provisions in the Arbitration Agreements should not be enforced. United asks this Court to compel arbitration and stay this case pending conclusion of arbitration proceedings as doing so will allow for effective and expeditious

¹ UnitedHealth Group Inc. is an improper defendant, as it is a holding company and does not have any role in the operation of health plans or administration of claims.

resolution of the dispute consistent with the parties' agreement.

II. BACKGROUND

a. **Arbitration Agreements Govern Arbitrable Plaintiffs' Relationships with United**

Arbitrable Plaintiffs are healthcare providers that have asserted claims against United in this case. Each Arbitrable Plaintiff entered into a provider agreement to provide in-network dental, chiropractic, and medical services to members of health plans administered by United affiliates during the time period at issue in this case (collectively, the "Provider Agreements"). Brass Decl., ¶ 2. The Agreements govern the relationship between Arbitrable Plaintiffs and any United affiliate (including the United entity that is a defendant here), and include terms relating to the medical services covered, payment and processing of claims, duties of the medical group, duties of the insurer or payer, dispute resolution processes, and procedures for termination of the agreement. *Id.*, Ex. A, B, C. Each Provider Agreement for the Arbitrable Plaintiffs contain provisions stating that the parties to the Provider Agreement agree to submit "any disputes" between them to arbitration ("Arbitration Agreement").

i. **Plaintiff Dennis C. Ayer, DDS, LLC**

Ayer's Provider Agreement includes a dispute resolution process for "any disputes" arising between Ayer and United ("Arbitration Agreement").² Regardless of the nature of the conflict, the Arbitration Agreement requires parties to:

work together in good faith to resolve *any disputes* about their business relationship, including, but not limited to, all questions of arbitrability, the validity, scope or termination of this Agreement or any term thereof.

² Ayer's Arbitration Agreement was entered into by "Dental Benefit Providers, Inc.[,] its subsidiaries, and its affiliated companies . . . and [Plaintiff] Dennis C. Ayer DDS, LLC." Brass Decl., Ex. A at 1. Dental Benefit Providers, Inc. is an affiliate of parent organization United. *Id.*, ¶ 6; *see infra* at Section III.C.

Brass Decl., Ex. A, Art. 7 (emphasis added). If unable to resolve the dispute, Ayer and United alike must provide formal written notice of the dispute to the other party. *Id.* If the parties remain unable to resolve the dispute within 60 days of written notice, the Arbitration Agreement requires submission of the issue to arbitration:

If the parties are unable to resolve *any such dispute* within 60 days following the date one party sent written notice of the dispute to the other party, and if either party wishes to pursue the dispute it shall submit it to binding arbitration in accordance with the Commercial Dispute Procedures of the American Arbitration Association [“AAA”], as they may be amended from time to time.

Id. (emphasis added). The Arbitration Agreement further states that the decision of the AAA arbitrator “on the points in dispute will be binding” and that “judgment on the award may be entered in any court having jurisdiction thereof.” *Id.* Arbitrations are to be conducted “in such location as the parties may mutually agree” and “shall be bound by controlling law.” *Id.* The Arbitration Agreement also contains an anti-consolidation clause, requiring that “any dispute between the parties be resolved *on an individual basis* so that no other dispute with any third party(ies) may be consolidated or joined with [this] dispute.” *Id.* (emphasis added). Finally, the parties acknowledge that the FAA applies because the Agreements affect interstate commerce. *Id.*

ii. Plaintiff Pacific Inpatient Medical Group, Inc.

PIMG’s Arbitration Agreement establishes a dispute resolution process for “all disputes” arising between PIMG and United.³ Regardless of the nature of the conflict, the Arbitration Agreement requires parties to “resolve *all disputes* between [PIMG and United] by following the dispute procedures set out in our Administrative Guide.” Brass Decl., Ex. B at 3 (emphasis added). If either party wishes to pursue the dispute beyond those procedures, the Arbitration Agreement

³ PIMG’s Agreement was entered into by and between “UnitedHealthcare Insurance Company, on behalf of itself and its affiliates” and PIMG. Brass Decl., Ex. B at 1-2. UnitedHealthcare Insurance Company is an affiliate of parent organization United. *Id.*, ¶ 7; *see infra* at Section III.C.

states the parties “will submit the dispute to binding arbitration in accordance with the Commercial Dispute Procedures of the American Arbitration Association [] within one year.” *Id.*

The Agreement further states that the arbitration will be conducted in San Francisco County, California and “will be bound by governing law.” *Id.* The Arbitration Agreement contains a class action waiver, requiring that “any dispute between [the parties] be resolved on ***an individual basis*** so that no other dispute with any third party(ies) may be consolidated or joined with [this] dispute.” *Id.* (emphasis added). The parties acknowledge that the FAA applies because the Provider Agreement affects interstate commerce. *Id.* Lastly, the parties agree that the arbitration provision “shall survive and govern any termination of this agreement.” *Id.*

iii. Plaintiff Frank J. Scaccia, M.D., F.A.C.S., L.L.C.

Scaccia’s Arbitration Agreement establishes a dispute resolution process for any disputes arising between Scaccia and United.⁴ Regardless of the nature of the conflict, the Arbitration Agreement requires parties to:

Work together in good faith to resolve ***any and all disputes*** between them [] following the dispute procedures set out in our Administrative Guide. Disputes may include, but not be limited to the existence, validity, scope or termination of this Agreement or any term thereof, and all questions of arbitrability, with the exception of any question regarding the availability of class arbitration or consolidated arbitration, which is expressly waived below.

Brass Decl., Ex. C at 2 (emphasis added). If the parties are unable to resolve “[a]ny dispute within 60 days after notice,” the Agreement requires submission of the issue to arbitration:

If the parties are unable to resolve any Dispute within 60 days after notice, either party may submit the Dispute to binding arbitration conducted by the American Arbitration Association (“AAA”). The arbitrators will use the AAA Healthcare Payor Provider Arbitration Rules, as amended.

⁴ Scaccia’s Agreement was entered into by and between “UnitedHealthcare Insurance Company . . . on behalf of itself [] and its other affiliates” and Scaccia. Brass Decl., Ex. C at 1. UnitedHealthcare Insurance Company is an affiliate of parent organization United. *Id.*, ¶ 8; *see infra* at Section III.C.

Id. The Arbitration Agreement further states that the decision of the AAA arbitrator “on the points in dispute will be binding” and that “judgment on the award may be entered under seal in any court having jurisdiction thereof.” *Id.* at 2, 3. Arbitrations are to be conducted in Essex County, New Jersey and “will be bound by controlling law.” *Id.* The Arbitration Agreement further states that “[i]f arbitration is not initiated in that time frame, the right to pursue the Dispute in any forum is waived.” *Id.* The Arbitration Agreement contains an anti-consolidation clause, requiring that “any arbitration be conducted on *an individual basis*, so that no third parties may be consolidated or joined or allowed to proceed with class arbitration.” *Id.* (emphasis added). The parties acknowledge “that because this Agreement affects interstate commerce, the Federal Arbitration Act applies.” *Id.* Lastly, the Arbitration Agreement explicitly states that it “will survive any termination of this Agreement.” *Id.*

b. Plaintiffs’ Claims in this Litigation

Arbitrable Plaintiffs unambiguously agreed to dispute resolution provisions in their respective Agreements. Although required under their respective Arbitration Agreements, Arbitrable Plaintiffs did not seek to discuss their claims with United, serve a notice of dispute, or submit any issue to arbitration. Brass Decl. ¶ 3. Rather, they filed this lawsuit on March 31, 2025, despite the Agreements requiring arbitration of “any” and/or “all” disputes with United. *See* ECF No. 1; Brass Decl., Ex. A, Art. 7; Ex. B at 3; *id.*, Ex. C at 2-3. Now, after meet-and-confer attempts by United, Arbitrable Plaintiffs continue to pursue this litigation rather than voluntarily submit this dispute to the agreed arbitration. Brass Decl., ¶ 4.

Plaintiffs have filed a claim against United and other Defendants in federal court under Section 1 of the Sherman Act, 15 U.S.C. § 1, alleging that the Defendants conspired to “collectively use Zelis’s repricing tools to collusively fix payment amounts for [out-of-network] healthcare services performed by [out-of-network] Providers in the United States.” ECF No. 39

(“Consol. Compl.”), ¶ 1. That is, Plaintiffs allege that claims they submitted for out-of-network healthcare services would have received greater payments from the Defendants but for the alleged antitrust conspiracy. *Id.* ¶ 386.

III. ARGUMENT

United entered into valid Arbitration Agreements with each Arbitrable Plaintiff, Arbitrable Plaintiffs are bound by those agreements, and Arbitrable Plaintiffs’ claim in this lawsuit falls within the scope of those Agreements. The Arbitration Agreements expressly adopt the FAA; strong policy favoring enforcement compels arbitration here. To the extent Arbitrable Plaintiffs attempt to argue that their respective Arbitration Agreements with United do not encompass their claims, the Agreements delegate all such questions of arbitrability to the arbitrator. As other courts have done, this Court should grant United’s motion to compel arbitration of each Arbitrable Plaintiffs’ claims on an individual basis and stay this action against United. *See Order Granting United Health Group, Inc.’s Petition to Compel Arbitration* (attached hereto as Exhibit D.)

a. The FAA Broadly Favors the Enforcement of the Parties’ Arbitration Agreements.

The FAA reflects a liberal “national policy favoring arbitration and places arbitration agreements on equal footing with all other contracts,” providing that any agreement within its scope “shall be valid, irrevocable, and enforceable.” *See* 9 U.S.C. § 2; *Vaiano v. United Nat’l Corp.*, 733 F.Supp.3d 32, 39 (D. Mass. 2024) (quoting *Soto-Fonalledas v. Ritz-Carlton San Juan Hotel Spa & Casino*, 640 F.3d 471, 474 (1st Cir. 2011) (internal citations omitted)); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 345–346 (2011). “The overarching purpose of the FAA . . . is to ensure the enforcement of arbitration agreements according to their terms so as to facilitate streamlined proceedings.” *Concepcion*, 563 U.S. at 344. If an agreement is governed by the FAA, courts *must* effectuate the intent of Congress “to move the parties to an arbitrable dispute out of

court and into arbitration as quickly and easily as possible.” *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 22 (1983).

Each Arbitrable Plaintiff’s Arbitration Agreement expressly states that because the Agreements affect interstate commerce, the Federal Arbitration Act applies. *See* Brass Decl., Ex. A, Art. 7; Ex. B at 3; Ex. C at 2-3; *see also* *DirecTV, Inc. v. Imburgia*, 577 U.S. 47, 53–54 (2015) (“[P]arties to an arbitration contract [have] considerable latitude to choose what law governs some or all of its provisions”). Because courts must “enforce arbitration agreements according to their terms,” the FAA and related substantive law governs the enforceability of the Agreement. *See* *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 502 (2018) (the FAA requires that arbitration agreements providing for individualized proceedings must be enforced).

b. Arbitrable Plaintiffs’ Agreement to Arbitrate “Any” and/or “All” Disputes Includes This Lawsuit

Under the FAA, a court should compel arbitration if it finds that “that a valid agreement to arbitrate exists, the movant has the right to enforce it, the other party is bound by it, and that the claim asserted falls within the scope of the arbitration agreement.” *Vaiano*, 733 F.Supp.3d at 39 (internal citations omitted). Parties are free to delegate to arbitrators the resolution of these “fundamental arbitration questions[,]” including whether an arbitration provision “applies to a certain type of controversy.” *Lamps Plus, Inc. v. Varela*, 587 U.S. 176, 185–186 (2019). After the petitioning party has shown the existence of an arbitration agreement governing a plaintiff’s claims, the court must order arbitration and stay the action upon a party’s request, unless the opposing party carries its burden of proving some ground for revoking the arbitration agreement to overcome the strong presumption in favor of enforcement. *See* 9 U.S.C. §§ 2–4; *Vaiano*, 733 F. Supp. 3d at 39 (noting the burden shifting).

i. Arbitrable Plaintiffs Each Agreed to Arbitrate “Any” and/or “All” Disputes with United

Each Arbitrable Plaintiff entered into an Arbitration Agreement with United that requires that “any” and/or “all” disputes which remain unresolved will be submitted to binding arbitration conducted by the American Arbitration Association. *See* Brass Decl., Ex. A, Art. 7 (“If either party wishes to pursue the dispute it shall submit it to binding arbitration in accordance with the Commercial Dispute Procedures of the American Arbitration Association, as they may be amended from time to time.”); *id.*, Ex. B at 3 (“If either of us wishes to pursue the dispute beyond those procedures, they will submit the dispute to binding arbitration in accordance with the Commercial Dispute Procedures of the American Arbitration Association [] within one year.”); *id.*, Ex. C at 2-3 (“If the parties are unable to resolve any Dispute within 60 days after notice, either party may submit the Dispute to binding arbitration conducted by the American Arbitration Association.”).

Ordinary state contract principles are used to determine whether parties agree to arbitrate. *See, e.g., GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 590 U.S. 432, 437 (2020) (courts apply state-law doctrines related to the enforcement of arbitration agreements); *Campbell v. General Dynamics Gov't Sys. Corp.*, 407 F.3d 546, 552 (1st Cir. 2005) (“principles of state contract law control the determination of whether a valid agreement to arbitrate exists”).

a) Ayer’s Agreement is Valid Under Kansas Contract Law

Ayer’s Agreement with United was executed in Kansas (*see* Brass Decl., Ex. A at 4); as such, Kansas contract law applies. Under Kansas law, a valid contract requires (1) offer, (2) acceptance, and (3) consideration. *Howard v. Ferrellgas Partners, L.P.*, 92 F. Supp. 3d 1115, 1124 (D. Kan. 2015). Formation of a contract is judged by the parties’ outward expression of assent, rather than their actual or real intent. *Pipeline Prods., Inc. v. Madison Cos., LLC*, 446 F. Supp. 3d 733, 739 (D. Kan. 2020) (internal citations omitted). Here, a valid arbitration agreement exists between Ayer and United.

First, the agreement is a written offer to arbitrate “any dispute about [the parties’] business relationship.” Brass Decl., Ex. A, Art. 7. Second, Ayer accepted the offer and acknowledged his intent to be bound by the Agreement, including the arbitration provision, with a signature by Ayer and by Ayer continuing to participate as an in-network provider for United’s subsidiary Dental Benefit Providers, Inc. *See id.* at 4.⁵ Third, the arbitration provision is supported by valid consideration in the form of a mutual promise to arbitrate “any disputes.” *See Bolden v. AT&T Servs., Inc.*, 350 F.Supp.3d 1029, 1032-1033 (D. Kan. 2018) (“[M]utual promises to arbitrate contained in an arbitration agreement constitute sufficient consideration for that agreement.”) . There can be no reasonable dispute that Ayer and Dental Benefit Providers, Inc. executed a valid and enforceable Arbitration Agreement and as discussed below, that Arbitration Agreement extends to claims against UnitedHealth Group, Inc.

b) PIMG’s Agreement is Valid Under California Law

Because PIMG and UnitedHealthcare Insurance Company (a subsidiary of UnitedHealth Group Inc.) executed their Agreement in California and agreed to arbitration in San Francisco County (*see* Brass Decl., Ex. B at 4), California contract principles apply. Under California law, a valid contract exists when (1) the parties are capable of contracting, and there is (2) mutual consent, (3) a lawful object, and (4) sufficient cause or consideration. *See* Cal. Civ. Code, § 1550; *Toal v. Tardif*, 178 Cal.App.4th 1208, 1221 (Cal. Ct. App. 2009); *Lopez v. Charles Schwab & Co.*,

⁵ The FAA “does not require the writing [Arbitration Agreement] to be signed.” *Williams v. Allstate Claims Office*, 2022 WL 138409, at *3 (D. Kan. 2022); *see also Med. Dev. Corp. v. Indus. Molding Corp.*, 479 F.2d 345, 348 (10th Cir. 1973) (holding it is “not necessary . . . that a party sign the writing containing the arbitration clause”); *Durkin v. CIGNA Prop. & Cas. Corp.*, 942 F.Supp. 481, 488 (D. Kan. 1996) (finding manifestation of mutual assent existed where arbitration policy language indicated that the employer was also bound to submit disputes to arbitration). “Instead, what matters is whether the parties intended to be bound.” *Williams*, 2022 WL 138409, at *3 (internal citations omitted).

118 Cal.App.4th 1224, 1229–30 (Cal. Ct. App. 2004). PIMG’s Agreement with UnitedHealthcare Insurance Company satisfies all of California’s contract requirements.

First, “[a]ll persons are capable of contracting” under California law, except in limited circumstances, none of which are applicable here. Cal. Civ. Code, § 1556. Second, consent is mutual: PIMG acknowledged its intent to be bound by the Agreement, including its arbitration provisions, with a signature by PIMG and by continuing to participate as an in-network provider for United’s subsidiary UnitedHealthcare Insurance Company. Brass Decl., Ex. B at 4. Third, the parties’ agreement to arbitrate serves the lawful purpose of prompt, efficient dispute resolution. *See Cisneros Alvarez v. Altamed Health Servs. Corp. et al.*, 60 Cal.App.5th 572, 580 (Cal. Ct. App. 2021). Fourth, the arbitration provision is supported by valid consideration in the form of a mutual promise by PIMG and UnitedHealthcare Insurance Company to arbitrate “all disputes.” Brass Decl., Ex. B at 3; *see Armendariz v. Foundation Health Psychcare Services, Inc.*, 24 Cal.4th 83, 117–18 (2000). Therefore, this Arbitration Agreement is valid and enforceable.

c) Scaccia’s Contract is Valid Under New Jersey Law

Plaintiff Scaccia and UnitedHealthcare Insurance Company executed their Agreement in New Jersey and agreed to conduct arbitration proceedings in Essex County, New Jersey (*see* Brass Decl., Ex. C at 4); as a result, New Jersey contract principles apply. Under New Jersey law, a contract between commercial entities where the parties are sophisticated and have relatively equal bargaining power is enforceable if there is mutual assent and a meeting of the minds. *Antonucci v. Curvature Newco, Inc.*, 270 A.3d 1088, 1093 (N.J. Super. Ct. App. Div. 2022); *see RD Foods Americas, Inc. v. DycoTrade HGH B.V.*, 2022 WL 3347610, at *5 (Aug. 15, 2022).

Here, there is mutual consent and a meeting of the minds between Scaccia and UnitedHealthcare Insurance Company, as evidenced by their executed written Agreement. *See* Brass Decl., Ex. C at 4; *see Rudbart v. N. Jersey Dist. Water Supply Comm’n*, 127 N.J. 344, 353

(1992) (“A party who enters into a contract in writing, without any fraud or imposition being practiced upon him, is conclusively presumed to understand and assent to its terms and legal effect.”). Further, because the Agreement was executed between two sophisticated parties—United and Frank J. Scaccia, M.D., F.A.C.S., L.L.C. (a New Jersey limited liability company)—the analysis ends here in determining the validity of the Agreement.⁶

Even if the Court determines that the Agreement requires an express waiver of access to the courts (it does not), Scaccia’s contract easily meets this test. Scaccia’s Arbitration Agreement explicitly waives the parties’ right to seek relief in a court of law by stating: “If arbitration is not initiated [within a 60-day] time frame, the right to pursue the Dispute *in any forum* is waived.” Brass Decl., Ex. C at 2-3 (emphasis added). The Arbitration Agreement also states that “[w]ith your signature, you confirm you understand the contract, including the dispute resolution procedures described in the [Agreement].” *Id.* at 4; *see Griffin v. Burlington Volkswagen, Inc.*, 988 A.2d 101, 102 (N.J. Super. App. Div. 2010) (enforcing arbitration clause stating that parties, by agreeing to arbitration, waived “their rights to maintain other available resolution processes, such as a court action or administrative proceeding, to settle their disputes”).

c. These Arbitration Agreements Also Apply To Disputes With UnitedHealth Group, Inc. Because It Is An “Affiliate” Of The United Entities That Are Parties To The Contract.

These Arbitration Agreements properly extend to United as an affiliate to its subsidiary entities that are parties here. *See* Brass Decl., Ex. A at 1 (Ayer’s Arbitration Agreement was entered into by “Dental Benefit Providers, Inc.[,] its subsidiaries, and its affiliated companies . . .

⁶ Explicit waiver of access to the courts are required for contracts where “an employee or consumer lack[s] sufficient bargaining power to resist the extraction of an agreement to arbitrate.” *Cnty of Passaic v. Horizon Healthcare Servc, Inc.*, 289 A.3d 495, 497 (N.J. Super. App. Div. 2023). However, this requirement does not apply to “commercial contract[s] between commercial entities,” as is the case between Scaccia (a New Jersey limited liability company) and United. *See RD Foods Americas, Inc.*, 2022 WL 3347610, at *5.

and [Plaintiff] Dennis C. Ayer DDS, LLC.”); *id.*, Ex. B at 1 (PIMG’s Agreement was entered into by and between “UnitedHealthcare Insurance Company, on behalf of itself and its affiliates” and PIMG.”); *id.*, Ex. C at 1 (Scaccia’s Agreement was entered into by and between “UnitedHealthcare Insurance Company . . . on behalf of itself [] and its other affiliates” and Scaccia.)

United is the ultimate parent company of both Dental Benefit Providers, Inc. and UnitedHealthcare Insurance Company and thus qualifies as an “affiliate.” *See* Brass Decl., ¶¶ 6, 7, 8. In interpreting undefined terms in a contract, courts will look to “their plain and ordinary meaning.” *Watkins v. Musk*, 2025 WL 1661950 at *7 (D. Mass. 2025) (citing *Easthampton Congregational Church v. Church Mut. Ins. Co.*, 916 F.3d 86, 93 n.4 (1st Cir. 2019)). As such, “affiliate” is broadly defined under Massachusetts law. *See Watkins*, 2025 WL 1661950 at *7; *see, e.g.* “Affiliate,” Black’s Law Dictionary (11th ed. 2019) (defining “affiliate” as “[a] corporation that is related to another corporation by shareholdings or other means of control; a subsidiary, parent, or sibling corporation”).

In *Watkins*, the court granted Musk’s motion to compel arbitration, holding that he unambiguously qualified as an affiliate of Tesla as its CEO. *Watkins*, 2025 WL 1661950 at *7. The agreement at issue in *Watkins* contained the same language as the agreements here, namely that the arbitration clause “appl[y] to any dispute between [the purchaser] [*sic*] and Tesla, Inc. and its affiliates.” *Id.* Applying the “plain and ordinary meaning” of the term “affiliate,” the court acknowledged definitions of the term “affiliate” including “any company that controls, is controlled by, or is under common control with another company,” “[a] corporation that is related to another corporation by shareholdings or other means of control; a subsidiary, parent, or sibling corporation,” and “a person or organization associated with another, often via a control-based relationship.” *Id.* As the parent organization of both UnitedHealthcare Insurance Company and

Dental Benefit Providers, United plainly qualifies as an “affiliate” under the unambiguous terms of the Arbitration Agreements and may properly move to compel arbitration.

d. Arbitrable Plaintiffs’ Claims are Covered by the Arbitration Agreement

Arbitrable Plaintiffs’ claims fall squarely within the scope of the broad arbitration provisions contained in their respective Agreements. The Arbitration Agreements make clear that “*any*” and/or “*all*” disputes between Arbitrable Plaintiffs and United affiliates will be submitted to binding arbitration. *See* Brass Decl., Ex. A, Art. 7 (the parties will “work together in good faith to resolve *any* disputes”) (emphasis added); *id.*, Ex. B at 3 (“[w]e will resolve *all disputes* between us”) (emphasis added); *id.*, Ex. C at 2-3 (“The parties will work together in good faith to resolve *any and all disputes* between them”) (emphasis added).

“Absent some ambiguity in the agreement, however, it is the language of the contract that defines the scope of disputes subject to arbitration.” *EEOC v. Waffle House, Inc.* 534 U.S. 279, 289 (2002). “[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.” *PaineWebber Inc. v. Elahi*, 87 F.3d 589, 595 (1st Cir. 1996) (citing *Moses H. Cone Mem’l Hosp.*, 460 U.S. at 24–25) (internal quotations omitted); *see also PowerShare, Inc. v. Syntel, Inc.*, 597 F.3d 10, 15 (1st Cir. 2010) (“[A]mbiguities as to the scope of the arbitration clause itself [must be] resolved in favor of arbitration”) (alteration in original) (internal quotations omitted). Indeed, “[a]n order compelling arbitration ‘should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute.’” *MedCam, Inc. v. MCNC*, 414 F.3d 972, 975 (8th Cir. 2005) (citing interpretation *United Steelworkers of Am. v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 582 (1960)).

At issue in this lawsuit is a dispute between Arbitrable Plaintiffs and United. *See supra* Section II.a. There is no ambiguity in the phrase “any” and/or “all” disputes” and thus no further analysis is required to confirm that this lawsuit falls within the scope of the Arbitration Agreement.

See, e.g., First Sealord Sur., Inc. v. TLT Const. Corp., 765 F. Supp. 2d 66, 73 (D. Mass. 2010) (holding that the arbitration provision’s reference to “any claim, controversy or dispute involving subcontractor” was “broad enough such that the presumption of ‘arbitrability’ is applicable”).

e. Any Dispute Over the Scope of Arbitrability is for the Arbitrator to Decide

To the extent that Arbitrable Plaintiffs attempt to argue that the scope of their respective Arbitration Agreements with United does not extend to their claim in this lawsuit, this question must be decided by an arbitrator. Parties to an arbitration agreement may agree that an “arbitrator, rather than a court will resolve threshold arbitrability questions,” including the validity and scope of the agreement itself. *Henry Schein, Inc. v. Archer & White Sales, Inc.* 586 U.S. 63, 65 (2019). In such instances—where there is “clear and unmistakable” evidence to delegate gateway “questions of arbitrability” to the arbitrator—a court “possesses no power to decide [these] arbitrability issue[s]” and must compel arbitration. *Id.* at 68.

Here, Arbitrable Plaintiffs clearly and unmistakably agreed to delegate the question of arbitrability to an arbitrator. The Court’s analysis should begin and end with this step. Each of Arbitrable Plaintiffs’ Arbitration Agreements with United provide that “*any*” and/or “*all*” disputes will be submitted to binding arbitration should the parties be unable to resolve the dispute through the Agreements’ dispute resolution procedures and in the event “either party wishes to pursue to dispute.” Brass Decl. Ex. A, Art. 7; *id.*, Ex. B at 3; *id.*, Ex. C at 2-3. A dispute about the applicability of the Arbitration Agreement is itself “a dispute” that Arbitrable Plaintiffs agreed must be arbitrated. *Henry Schein*, 586 U.S. at 63 (“when the parties’ contract delegates the arbitrability question to an arbitrator, a court may not override the contract, even if the court thinks that the arbitrability claim is wholly groundless”); *Exothermics, Inc. v. Ernst & Young U.S. LLP*, 765 F. Supp. 3d 97, 101 (D.N.H. 2025) (where an arbitration clause contains a valid delegation clause, “the arbitrator must decide any questions of arbitrability.”); *see also Bossé v. New York*

Life Ins. Co., 992 F.3d 20, 31 (1st Cir. 2021) (“there is a presumption that ‘any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.’”) (quoting *Moses H. Cone Mem'l Hosp.*, 460 U.S. 1, 24 (1983)). Ayer and Scaccia’s Arbitration Agreements explicitly state that “any” and/or “all” disputes include “*all questions of arbitrability.*” Brass Decl., Ex. A, Art. 7 (emphasis added); *id.*, Ex. C at 2-3 (emphasis added).

Second, the Arbitration Agreements incorporate either the Commercial Dispute Procedures or the Healthcare Payor Provider Arbitration Rules of the American Arbitration Association (“AAA Rules”), which state: “The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope or validity of the arbitration agreement.”⁷ It is well-established under federal law that incorporating the AAA Rules by reference into an arbitration agreement “provides clear and unmistakable evidence that the parties intended to delegate matters of arbitrability to the arbitrator.” *See Awuah v. Coverall North America, Inc.*, 554 F.3d 7, 11 (1st Cir. 1989) (“Rule 7(a) says plainly that the arbitrator may ‘rule on his or her own jurisdiction’ including any objection to the ‘existence, scope or validity of the arbitration agreement.’ This is about as ‘clear and unmistakable’ as language can get.”).

Because both the Arbitration Agreements and the AAA Rules incorporated into the Agreements clearly and unmistakably delegate questions concerning arbitrability to the arbitrator, this Court should order arbitration of Arbitrable Plaintiffs’ claims. To the extent Arbitrable Plaintiffs seek to dispute the validity or scope of the Arbitration Agreements, they must present those arguments to the arbitrator because this Court “possesses no power to decide” such questions.

⁷ Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association, R-7(a), www.adr.org/sites/default/files/2025_CommercialRules_Web.pdf (visited on July 21, 2025); AAA Healthcare Payor Provider Arbitration Rules, R-7(a), https://www.adr.org/media/ii5b3hfhq/2022_healthcare_payor_provider_rules_web.pdf (visited on July 21, 2025).

Henry Schein, 586 U.S. at 68.

f. There is No Basis to Avoid Arbitration

Finally, assuming *arguendo* this Court could consider such arguments, there are no grounds that the Arbitration Agreements are invalid or otherwise unenforceable. Arbitration agreements are “valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.” 9 U.S.C. § 2. In determining the validity of a contract, state contract law controls. *See Soto-Fonalledas*, 640 F.3d at 475. Should Arbitrable Plaintiffs oppose this petition in the proper fora, it will bear the burden of establishing that the Arbitration Agreements are unenforceable. Arbitrable Plaintiffs will not be able to make such a showing.

There are no grounds under California, New Jersey, or Kansas law upon which the Arbitration Agreements at issue are unconscionable. A party seeking to establish unconscionability has the burden of proving that the agreement is both procedurally and substantively unconscionable. *See, e.g., Peng v. First Republic Bank*, 219 Cal. App. 4th 1462, 1468 (Cal. Ct. App. 2013); *Adams v. John Deere Co.*, 13 Kan. App. 2d 489, 492 (Kan. 1989); *Ridge at Back Brook, LLC v. Klenert*, 437 N.J.Super. 90, 101 (N.J. Super. App. Div. 2014). “The ultimate issue in every case is whether the terms of the contract are sufficiently unfair, in view of all relevant circumstances, that a court should withhold enforcement.” *OTO, L.L.C. v. Kho*, 447 P.3d 680, 690, 126 (Cal. 2019); *see Adams*, 13 Kan. App. 2d at 492; *Ridge at Back Brook, LLC*, 437 N.J.Super. at 101. The Arbitration Agreements are not unconscionable.

i. The Agreements Are Not Procedurally Unconscionable

The inquiry into procedural unconscionability involves analysis of contract negotiation and formation. *See Magno v. The Coll. Network, Inc.*, 1 Cal. App. 5th 277, 285 (Cal. Ct. App. 2016); *Adams*, 13 Kan. App. 2d at 492; *Ridge at Back Brook, LLC*, 437 N.J. Super. at 101.

There can be no arguments that the circumstances of the negotiation of the Arbitration Agreements were procedurally unconscionable. First, United’s negotiations with each Arbitrable Plaintiff were arms-length transactions, with sophisticated negotiators on both sides. Arbitrable Plaintiffs had significant bargaining power because United wanted Arbitrable Plaintiffs to participate as network providers, and Arbitrable Plaintiffs could use bargaining power in negotiating their respective Agreements with United. *Id.* ¶ 8. Nor can the Arbitration Agreements be considered a surprise. The Arbitration Agreements are clearly labeled, separate section titled “Dispute Resolution” or “What if we do not agree.” Brass Decl., Ex. A, Art. 7; *id.*, Ex. B at 3; *id.*, Ex. C at 2-3. These sections outline a full dispute resolution process that begins with good faith negotiations and ends with binding arbitration. *Id.* Finally, and most significantly, the signature page for each of the Provider Agreements states in bold, capitalized letters: “THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION THAT MAY BE ENFORCED BY THE PARTIES.” Brass Decl., Ex. A at 4; *id.*, Ex. B at 4; *id.*, Ex. C at 4. Such agreements are commonplace in these types of contracts.

Given the clear, unmistakable section on dispute resolution procedures, which was the product of arm’s-length negotiations, the Arbitration Agreements are not procedurally unconscionable under California, New Jersey, or Kansas law.

ii. The Agreements Are Not Substantively Unconscionable

There is also no basis upon which Arbitrable Plaintiffs can show that the Agreements are substantively unconscionable. An agreement is substantively unconscionable when its terms are so unduly harsh or unfairly one-sided as to “shock the conscience.” *Bigler v. Harker Sch.*, 213 Cal. App. 4th 727, 736 (Cal. Ct. App. 2013); *Adams*, 13 Kan. App. 2d at 489; *Dvorak v. AW Development, LLC*, 2016 WL 595844, at *4 (N.J. Super. Ct. App. Div. Feb. 16, 2026). Here, the Arbitration Agreements’ terms and burdens applied equally to both parties. “[A]ny” and/or “all”

disputes between the Arbitrable Plaintiffs and United and its subsidiaries are covered by Arbitrable Plaintiffs' respective arbitration provisions, regardless of whether Arbitrable Plaintiffs or United initiates the dispute. Brass Decl., Ex. A, Art. 7; *id.*, Ex. B at 3; *id.*, Ex. C at 2-3. The Agreements also identify the neutral AAA Rules as governing the arbitration. *Id.* The Agreements do not shock the conscience; to the contrary, they enable both parties to benefit from the speed and economy of arbitration, in contrast to the expense and delay of litigation. This is particularly true in a circumstance such as this where there are 12 parties to the court action and both Arbitrable Plaintiffs and United would be facing a costly, time-intensive litigation but for the opportunity to arbitrate. Arbitrable Plaintiffs accordingly cannot prove unconscionability.

In sum there are no grounds on which the Arbitrable Plaintiffs' Arbitration Agreements could be found unconscionable or otherwise enforceable. These Arbitration Agreements were executed in writing between sophisticated Arbitrable Plaintiffs and United. Accordingly, this Court should compel Arbitrable Plaintiffs to individually arbitrate their claims against United.

g. Arbitrable Plaintiffs Should be Required to Comply with the Pre-Arbitration Dispute Resolution Procedures

Arbitrable Plaintiffs' Arbitration Agreements set forth pre-arbitration dispute resolution procedures that the parties must complete before initiating an arbitration. For instance, Ayer and Scaccia's Agreements require that the parties initially "work together in good faith to resolve *any disputes*" or "*any and all disputes*" they have with United. Brass Decl., Ex. A, Art. 7; *id.*, Ex. C at 2-3 (emphasis added). If the parties are unable to resolve the dispute, they must provide formal written notice of the dispute to the other party. *Id.* If the parties remain unable to resolve the dispute within 30 or 60 days of written notice, either party may initiate an arbitration. *Id.* PIMG's Agreement also outlines pre-arbitration dispute resolution procedures, stating that the parties "will resolve all disputes between us by following the dispute procedures set out in our Administrative

Guide.” Brass Decl., Ex. B at 3. Pre-arbitration procedures and non-binding dispute resolution processes are routinely evaluated alongside arbitration provisions when courts consider motions to compel arbitration. *See Pokorny v. Quixtar, Inc.*, 601 F.3d 987, 1000 (9th Cir. 2010) (noting the general proposition that “when parties enter into a valid and enforceable agreement to engage in a non-binding dispute resolution process before submitting their claims to binding arbitration or litigation, courts should require compliance with that agreement.”). Courts enforce these types of pre-arbitration dispute procedures in motions to compel arbitration, and this Court should also do so here.

h. Arbitration May Not Proceed on a Class or Collective Basis

In interpreting arbitration agreements, “courts and arbitrators must give effect to the contractual rights and expectations of the parties.” *Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 559 U.S. 662, 682 (2010) (internal quotations and citations omitted). Here, the Arbitration Agreements reflect the parties’ express intent to preclude class arbitrations.

In *Stolt-Nielsen*, the Supreme Court held that “a party may not be compelled under the FAA to submit to class arbitration unless there is a contractual basis for concluding that the party *agreed* to do so.” 559 U.S. at 684. The Supreme Court has consistently re-enforced this precedent by upholding class waivers in arbitration agreements. *See, e.g., Epic Sys. Corp.*, 584 U.S. at 509 (“[C]ourts may not allow a contract defense to reshape traditional individualized arbitration by mandating classwide arbitration procedures without the parties’ consent.”); *Lamps Plus, Inc.*, 587 U.S. at 189 (“Courts may not infer from an ambiguous agreement that parties have consented to arbitrate on a classwide basis”). The same result is compelled here where Arbitrable Plaintiffs’ Arbitration Agreements with United expressly preclude class arbitrations.

i. The Court Must Stay Arbitrable Plaintiffs’ Claims Against United Pending Arbitration

“When a district court finds that a lawsuit involves an arbitrable dispute, and a party requests a stay pending arbitration, § 3 of the FAA compels the court to stay the proceeding.” *Smith v. Spizzirri*, 601 U.S. 472, 478 (2024); *see also* 9 U.S.C. § 3 (requiring that courts stay action until arbitration is completed). Thus, in the event this Court finds that this lawsuit involves an arbitrable dispute, it must stay this action until this motion is resolved and any subsequent arbitration is completed. *See Spizzirri*, 601 U.S. at 478; *see also* 9 U.S.C. § 3.

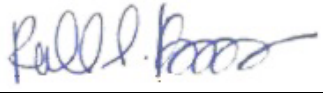
IV. CONCLUSION

For the foregoing reasons, United respectfully requests that this Court compel individual arbitration of Arbitrable Plaintiffs’ claims as to United, order Arbitrable Plaintiffs to engage in the contractual pre-arbitration dispute resolution process to the extent required by the Agreements, stay Arbitrable Plaintiffs’ claims as to United, and award any other relief deemed just and proper.

Dated: August 11, 2025

Respectfully submitted,

GIBSON, DUNN & CRUTCHER LLP

By: 
Rachel S. Brass (admitted *pro hac vice*)

One Embarcadero Center
Suite 2600
San Francisco, CA 94111-3715
Telephone: 415.393.8200
Facsimile: 415.393.8306
Email: rbrass@gibsondunn.com

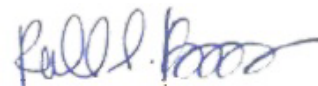
Heather L. Richardson (*pro hac vice*)
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Ave., 54th Floor
Los Angeles, CA 90071
Telephone: 213-229-7409
hrichardson@gibsondunn.com

Allison O'Neil (BBO #641330)
Kara Kelleher (BBO #713274)
TROUTMAN PEPPER LOCKE LLP
111 Huntington Ave., 9th Floor
Boston, MA 02199
Telephone: 617-239-0100
Allison.oneil@troutman.com
Kara.kelleher@troutman.com

*Attorneys for Defendant UnitedHealth Group,
Inc.*

LOCAL RULE 7.1 CERTIFICATE


Pursuant to Local Rule 7.1(a)(2), the undersigned counsel certifies that counsel for Defendants have conferred with counsel for Plaintiffs and have attempted in good faith to resolve or narrow the issues in this Motion but have been unable to do so.



Rachel S. Brass

CERTIFICATE OF SERVICE

I hereby certify that, on this 11th day of August, 2025, the foregoing was filed with the Court's electronic filing system, which will send electronic notice of this filing to all counsel of record.

A handwritten signature in blue ink, appearing to read "Rachel S. Brass", is written above a horizontal line.

Rachel S. Brass

1 RACHEL S. BRASS, SBN 219301
rbrass@gibsondunn.com
2 GIBSON, DUNN & CRUTCHER LL
One Embarcadero Center Suite 2600
3 San Francisco, California 94111
Telephone: 415.393.8200
4 Facsimile: 415.393.8306

5 HEATHER L. RICHARDSON, SBN 246517
hrichardson@gibsondunn.com
6 GIBSON, DUNN & CRUTCHER LL
333 South Grand Avenue
7 Los Angeles, California 90071
Telephone: 213.229.7000
8 Facsimile: 213.229.7520

9 *Attorneys for UnitedHealth Group, Inc.*

10
11
12 **UNITED STATES DISTRICT COURT**
13 **FOR THE DISTRICT OF MASSACHUSETTS**

14 IN RE: ZELIS REPRICING ANTITRUST
LITIGATION

15 This Document Relates To:
16 All Associated Cases
17

Lead Action Case No.: 1:25-cv-10734-BEM

Consolidated with Case Nos.:
1:25-CV-11092-BEM
1:25-CV-11167-BEM
1:25-cv-11537-BEM

**DECLARATION OF RACHEL S. BRASS IN
SUPPORT OF UNITEDHEALTH GROUP
INC.'S MEMORANDUM IN SUPPORT OF
ITS MOTION TO COMPEL ARBITRATION**

DECLARATION OF RACHEL S. BRASS

I, Rachel S. Brass hereby declare and state as follows:

1. I am an attorney licensed to practice in the State of California, and a member of the Bar of this Court. I am a partner at the law firm of Gibson, Dunn & Crutcher LLP, and am counsel of record for UnitedHealth Group, Inc., (“United”) in this case. I have personal knowledge of the matters stated herein, and if asked to testify thereto, I would do so competently. I submit this declaration in support of United’s Memorandum in Support of its Motion to Compel Arbitration.

2. Plaintiffs Dennis C. Ayer DDS, LLC, Pacific Inpatient Medical Group, Inc., and Frank J. Scaccia, M.D., F.A.C.S., L.L.C. (collectively “Arbitrable Plaintiffs”) entered into provider agreements with United to provide out-of-network dental, chiropractic, and medical services to members of United health plans during the time period at issue in this case.

3. Although required under their respective Agreements, Arbitrable Plaintiffs did not seek to discuss their claims with United, serve a notice of dispute, or submit any issue to arbitration.

4. Despite meet-and-confer attempts by United, Arbitrable Plaintiffs continue to pursue this litigation rather than voluntarily submit this dispute to the agreed arbitration.

5. Arbitrable Plaintiff, Pacific Inpatient Medical Group, Inc., acknowledged its intent to be bound by its agreement, including its arbitration provisions, by continuing to participate as an out-of-network provider for United.

6. Attached here as **Exhibit A** is a true and correct of the cover page, arbitration provision, and signature page of the Provider Agreement between Plaintiff Dennis C. Ayer DDS, LLC and Dental Benefit Providers, Inc., an affiliate of parent organization United.

7. Attached here as **Exhibit B** is a true and correct copy of the cover page, arbitration provision, and signature page of the Provider Agreement between Plaintiff Pacific Inpatient Medical Group, Inc. and UnitedHealthcare Insurance Company, an affiliate of parent organization United.

8. Attached here as **Exhibit C** is a true and correct copy of the cover page, arbitration provision, and signature page of the Provider Agreement between Plaintiff Frank J. Scaccia, M.D., F.A.C.S., L.L.C. and UnitedHealthcare Insurance Company, an affiliate of parent organization United.

1 9. Dental Benefit Providers, Inc. and UnitedHealthcare Insurance Company are
2 subsidiaries of UnitedHealth Group, Inc., the defendant in this case.

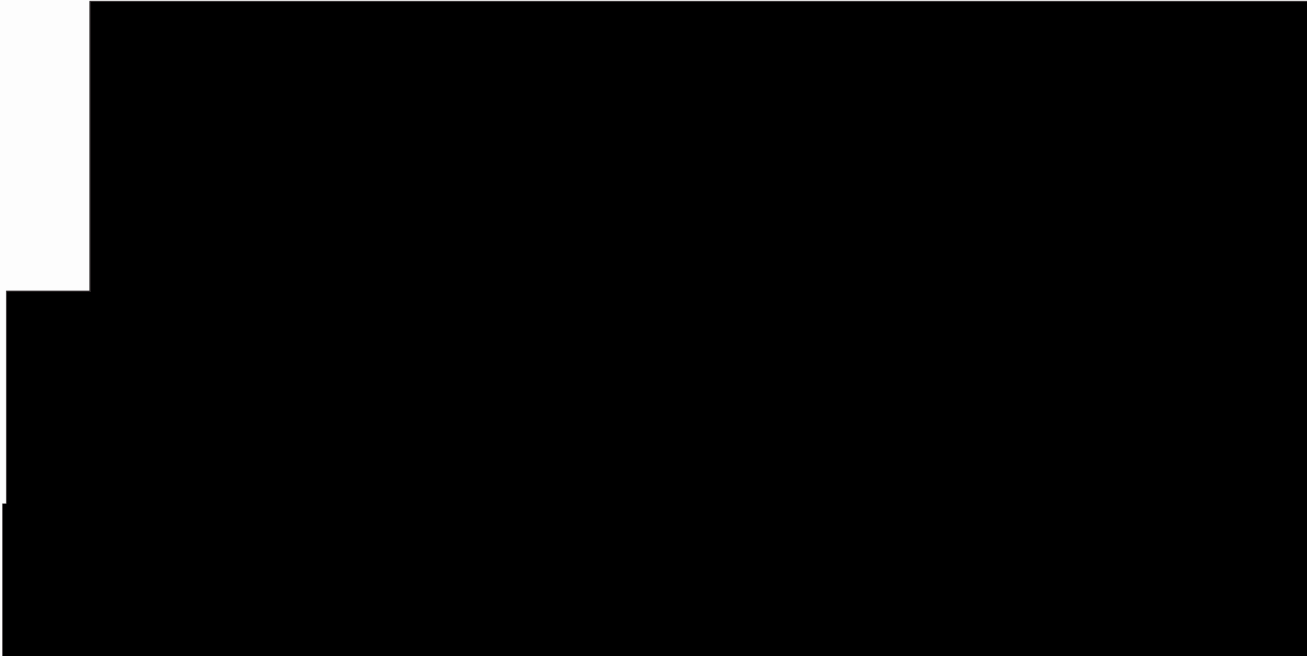
3 10. Attached here as **Exhibit D** is a true and correct copy of the Order Granting United
4 Health Group, Inc.'s Petition to Compel Arbitration in Case No. CGC-21-594966.

5 I declare under penalty of perjury under the laws of the United States of America and the State
6 of California that the foregoing is true and correct. Executed on this 11 of August, 2025, in San Fran-
7 cisco, California.

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10 _____
11 Rachel S. Brass
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EXHIBIT A



ARTICLE 7. DISPUTE RESOLUTION

DBP and the Practice will work together in good faith to resolve any disputes about their business relationship, including, but not limited to, all questions of arbitrability, the validity, scope or termination of this Agreement or any term hereof. If the parties are unable to resolve any such dispute within 60 days following the date one party sent written notice of the dispute to the other party, and if either party wishes to pursue the dispute it shall submit it to binding arbitration in accordance with the Commercial Dispute Procedures of the American Arbitration Association, as they may be amended from time to time. In no event may arbitration be initiated (or the dispute pursued in any other forum) more than one year following the sending of written notice of the dispute.

Any arbitration proceeding under this Agreement shall be conducted in such location as the parties may mutually agree. The arbitrator(s) may construe or interpret but shall not vary or ignore the terms of this Agreement and shall be bound by controlling law. The arbitrator(s) shall have no authority to award any punitive, indirect, special or exemplary damages, except in connection with a statutory claim that explicitly provides for such relief. The parties expressly intend that any dispute between the parties be resolved on an individual basis so that no other dispute with any third party(ies) may be consolidated or joined with the dispute between the parties. The parties agree that any arbitration ruling allowing class arbitration or requiring consolidated arbitration would be contrary to the intent of this Agreement and would require immediate judicial review of such ruling.

If the dispute pertains to a matter that is generally administered by certain DBP Protocols, such as claims payment, credentialing or quality improvement plan, the applicable procedures must be fully exhausted by the Practice before the Practice may invoke the right to arbitration under this Article.

The decision of the arbitrator(s) on the points in dispute will be binding, and judgment on the award may be entered in any court having jurisdiction thereof. The parties acknowledge that because this Agreement affects interstate commerce, the Federal Arbitration Act applies. In the event that any court determines this arbitration procedure is not binding or otherwise allows any litigation of a dispute to go forward notwithstanding the terms of this Agreement, the parties hereby waive any and all rights to a trial by jury, and such litigation would proceed with the judge as the finder of fact.

This Article is intended to govern any dispute between DBP and the Practice regardless of whether the dispute arose before or after execution of this Agreement, and shall survive and govern any termination of this Agreement.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION THAT MAY BE ENFORCED BY THE PARTIES.

[signatures on following page]

[REDACTED]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Commencement Date.

DENTAL BENEFIT PROVIDERS, INC.

Liberty 6, Suite 200
6220 Old Dobbin Lane
Columbia, Maryland 21045

Signed: _____

Print Name: _____

Print Title: _____

Date: _____

THE PRACTICE


Signed: _____

Print Name: Dennis Ayer

Print Title: Dentist/Owner

Date: 11/29/2018

Address: 2301 West 143rd St.

City: Leawood

State: KS Zip: 66224

SS# and/or Fed Tax ID#: 66224

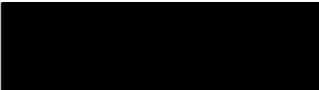


EXHIBIT B

COVER PAGE TO MEDICAL GROUP CONTRACT

Please note regarding California:

The attached Medical Group Contract is a contract by and between UnitedHealthcare Insurance Company, on behalf of itself and its affiliates, and you and your professional staff. UHC of California doing business as "UnitedHealthcare of California" (a United Affiliate and a California licensed healthcare service plan) is also a party to this agreement. [REDACTED]

[REDACTED]

[REDACTED]

MEDICAL GROUP CONTRACT

UnitedHealthcare Insurance Company and UHC of California doing business as UnitedHealthcare of California are entering into this agreement with you. They are doing so on behalf of themselves and their other affiliates for certain products and services we offer our customers, all of which we describe in the attached Appendix 2.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

What if we do not agree

We will resolve all disputes between us by following the dispute procedures set out in our Administrative Guide. If either of us wishes to pursue the dispute beyond those procedures, they will submit the dispute to binding arbitration in accordance with the Commercial Dispute Procedures of the American Arbitration Association (see <http://www.adr.org>) within one year.

We both expressly intend that any dispute between us be resolved on an individual basis so that no other dispute with any third party(ies) may be consolidated or joined with our dispute. We both agree that any arbitration ruling by an arbitrator allowing class action arbitration or requiring consolidated arbitration involving any third party(ies) would be contrary to our intent and would require immediate judicial review of such ruling. The arbitrator will not vary the terms of this agreement and will be bound by governing law. We both acknowledge that this agreement involves interstate commerce, and is governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq. The arbitrator will not have the authority to award punitive or exemplary damages against either of us, except in connection with a statutory claim that explicitly provides for such relief. Arbitration will be conducted in San Francisco County, CA.

If a court allows any litigation of a dispute to go forward, we both waive rights to a trial by jury with respect to that litigation, and the judge will be the finder of fact. Any provision of this agreement that is invalid or unenforceable shall not affect the validity or enforceability of the remaining provisions of this agreement or the validity or enforceability of the offending provision in any other situation or in any other jurisdiction. This section of the agreement shall survive and govern any termination of this agreement.

[REDACTED]

THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION THAT MAY BE ENFORCED BY THE PARTIES.

AGREED BY:

Medical Group :PACIFIC INPATIENT MEDICAL GROUP	Address to be used for giving notice under the agreement:
DBA (if applicable):	Street: 3700 CALIFORNIA ST
Signature: <i>[Handwritten Signature]</i>	City: SAN FRANCISCO
Print Name: <i>VERNON L. GIANG</i>	State: CA
Title: <i>PRESIDENT</i>	Zip Code: 94118-1618
Date: <i>6/30/11</i>	TIN: 261129616
E-Mail: <i>giangv@sutterhealth.org</i>	National Provider Identification (NPI) Number: 261129616

UnitedHealthcare Insurance Company, on behalf of itself, UHC of California doing business as UnitedHealthcare of California, and its other affiliates, as signed by its authorized representative:
Signature:
Print Name:
Date:
For office use only: NCST_0004422_002021678 682776
Month, day and year in which agreement is first effective:

Received by CPC office:	<u>7/7/11</u> <i>JH</i>
Received by CPC Contracting:	_____
Incomplete and pended.	_____
Approved for processing:	_____

Received by CA office:	<u>7-5-2011</u> <i>CP</i>
Received by CA Contracting:	_____
Incomplete and pended:	_____
Approved for processing:	_____

EXHIBIT C

PHYSICIAN CONTRACT

UnitedHealthcare Insurance Company is entering into this agreement with you. It is doing so on behalf of itself, Oxford Health Plans (NJ), Inc., and its other affiliates for certain products and services we offer our customers, all of which we describe in the attached Appendix 2.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

What if we do not agree

The parties will work together in good faith to resolve any and all disputes between them (“Disputes”) following the dispute procedures set out in our Administrative Guide. Disputes may include, but not be limited to the existence, validity, scope or termination of this Agreement or any term thereof, and all questions of arbitrability, with the exception of any question regarding the availability of class arbitration or consolidated arbitration, which is expressly waived below. Disputes also include any dispute in which you are acting as the assignee of one or more customer. In such cases, these procedures will apply, including without limitation the requirement for arbitration.

If the Dispute pertains to a matter which is generally administered by certain United procedures, such as a credentialing or quality improvement plan, the policies and procedures set forth in that plan must be fully exhausted by you before you may invoke any right to arbitration under this section.

For Disputes regarding payment of claims, a party must have timely initiated and completed the claim reconsideration and appeal process as set forth in the Administrative Guide in order to initiate the Dispute process.

If the parties are unable to resolve any Dispute within 60 days after notice, either party may submit the Dispute to binding arbitration conducted by the American Arbitration Association (“AAA”). The arbitrators will use the AAA Healthcare Payor Provider Arbitration Rules, as amended. However, if a case involves a Dispute in which a party seeks an award of \$1,000,000 or greater or seeks termination of this Agreement, a panel of three arbitrators will be used. The arbitrator(s) will be selected from the AAA National Healthcare Roster or the AAA’s National Roster of Arbitrators. Unless otherwise agreed in

[REDACTED]

writing, arbitration must be initiated within one year after the date on which written notice of the Dispute was given, or any appeal process described in the Administrative Guide, whichever is later. If arbitration is not initiated in that time frame, the right to pursue the Dispute in any forum is waived.

Any arbitration proceeding under this Agreement will be conducted in Essex County, NJ. The arbitrator(s) may construe or interpret but must not vary or ignore the terms of this Agreement and will be bound by controlling law. The arbitrator(s) have no authority to award punitive, exemplary, indirect or special damages, except in connection with a statutory claim that explicitly provides for that relief.

Except as may be required by law, neither a party, including without limitation, the parties' representatives, consultants and counsel of record in the arbitration, nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder, or any Confidential Arbitration Information without the prior written consent of all parties. "Confidential Arbitration Information" means any written submissions in an arbitration by either party, discovery exchanged, evidence submitted, transcriptions or other records of hearings in the matter and any orders and awards issued, and any reference to whether either party won, lost, prevailed, or did not prevail against the other party in any arbitration proceeding, as well as any settlement agreement related to an arbitration. However, judgment on the award may be entered under seal in any court having jurisdiction thereof, by either party.

The parties expressly intend that any arbitration be conducted on an individual basis, so that no third parties may be consolidated or joined or allowed to proceed with class arbitration. The parties agree that any arbitration ruling allowing class arbitration, or requiring consolidated arbitration involving any third party(ies), would be contrary to the terms of this Agreement and require immediate judicial review. Notwithstanding anything in this Agreement to the contrary, this paragraph may not be severed from this provision of the Agreement under any circumstances, including but not limited to unlawfulness, invalidity or unenforceability.

The decision of the arbitrator(s) on the points in dispute will be binding. The parties acknowledge that because this Agreement affects interstate commerce, the Federal Arbitration Act applies. In the event any court determines that this arbitration procedure is not binding or otherwise allows litigation involving a Dispute to proceed, the parties hereby waive any and all right to trial by jury in, or with respect to, the litigation. The litigation would instead proceed with the judge as the finder of fact.

In the event a party wishes to terminate this Agreement based on an assertion of uncured material breach, and the other party disputes whether grounds for the termination exist, the matter will be resolved through arbitration under this provision. While the arbitration remains pending, the termination for breach will not take effect.

This provision will survive any termination of this Agreement.

[Redacted]

[Redacted]

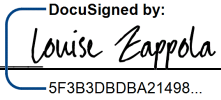
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THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION THAT MAY BE ENFORCED BY THE PARTIES.

AGREED BY:

Physician	Address to be used for giving notice under the agreement:
Signature: 	Street: 70 E FRONT ST FL 3
Print Name: FRANK J SCACCIA MD	City: RED BANK
DBA (if applicable): _____	State: NJ
Date: 6/22/2020	Zip Code: 07701-1851
E-Mail: _____	TIN: 223627371
National Provider Identification (NPI) Number:	1891793204

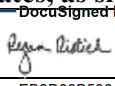
UnitedHealthcare Insurance Company, on behalf of itself, Oxford Health Plans (NJ), Inc., and its other affiliates, as signed by its authorized representative:	
Signature: 	
Print Name: _____	
Date: 9/3/2020	
For office use only: GD-17161946 1578684 Month, day and year in which agreement is first effective: 09/13/2020	



EXHIBIT D

FILED

San Francisco County Superior Court

AUG 10 2022

CLERK OF THE COURT

BY: R. Michael Dils
Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO
DEPARTMENT 306

VHS LIQUIDATING TRUST, liquidating trust
for Verity Health System of California, Inc.,

Plaintiff,

v.

MULTIPLAN CORPORATION, et al.,

Defendants.

Case No. CGC-21-594966

ORDER GRANTING DEFENDANTS
UNITED HEALTHCARE SERVICES, INC.,
UNITED HEALTH GROUP, INC., AND
UNITED HEALTHCARE'S PETITION TO
COMPEL ARBITRATION AND TO STAY
PROCEEDINGS

The above-entitled matter came on regularly for hearing on May 31, 2022. Counsel for the parties were present. The appearances are as stated in the record. The matter was reported. Following the May 31, 2022 hearing, the Court continued Defendants United Healthcare Services, Inc., United Health Group, Inc., and United Healthcare's (collectively, "United Healthcare") Petition to Compel Arbitration and to Stay Proceedings to July 13, 2022 for limited supplemental briefing from Defendants regarding cases raised by Plaintiff just before the May 31, 2022 hearing.

The above-entitled matter came on for a continued hearing on July 13, 2022. Counsel for the parties were present. The appearances are as stated in the record. The matter was reported. The Court issued a tentative ruling prior to oral argument. Having considered the argument and written submissions of the parties and being fully advised, United Healthcare's Petition to Compel Arbitration and to Stay

1 Proceedings is granted. This action is stayed pending arbitration.

2 **BACKGROUND**

3 On September 8, 2021, Plaintiff VHS Liquidating Trust (“Plaintiff”) brought this action against
4 Defendants Multiplan Corporation, Multiplan, Inc., Viant, Inc., Churchill Capital Corp., Churchill Capital
5 III, Cigna Corp., Centene Corp., Humana, Inc., United Health Group, Inc., United Healthcare, Wells
6 Fargo & Company, Esurance Holdings, Inc., Esurance Insurance Services, Inc., Inphi Corporation, Viant
7 Payment Systems, Inc., Data Isight National Care Network, LP, National Care Network, LLC, Blue Cross
8 and Blue Shield Association, Anthem, Inc., United Healthcare Services, Inc., Aetna, Inc., Aetna Health of
9 California, Inc., Anthem Blue Cross of California, Blue Shield of California/California Physicians’
10 Service, Blue Shield of California Life and Health Insurance Company, Cigna Healthcare of California,
11 Inc., Health Net of California, Humana Health Plan of California, Inc., and Warner Brothers Theatre
12 Ventures (collectively, “Defendants”). Plaintiff is the bankruptcy liquidator for Verity Health System of
13 California, Inc. (“Verity”), a not-for-profit health care system. (Compl. ¶ 78.) Verity operated six
14 hospitals: “Seton Medical Center in Daly City, Seton Coastside in Moss Beach, St. Vincent Medical
15 Center in Los Angeles, O’Connor Hospital in San Jose, St. Louise Regional Hospital in Gilroy, and St.
16 Francis Medical Center in Lynwood.” (*Id.* ¶ 80.) Plaintiff alleges as follows.

17 Defendants “unlawfully agreed with each other and their corporate hub, MultiPlan, to fix and
18 reduce the amounts of out-of-network reimbursement payments they paid to U.S. health care providers
19 including Verity’s non-profit hospitals.” (*Id.* ¶ 1.) The agreement was a “‘hub, spoke, and rim’
20 agreement to follow and adhere to MultiPlan’s pricing.” (*Id.* ¶ 2(c).) The price fixing “is ‘horizontal’ in
21 nature, with the conduct occurring between health insurance competitors, *i.e.*, Defendant Insurers; and this
22 conduct occurred in markets for commercial out-of-network reimbursements for Services from insurers
23 and SFPs to hospitals and other providers.” (*Id.* ¶ 21.) “Defendants’ common purpose was to reduce the
24 amount they paid to Verity and other health care providers for out-of-network general acute care hospital
25 inpatient and outpatient hospital services.” (*Id.* ¶ 7.) “Defendants’ unlawful conduct dramatically
26 diminished the capacity of Verity and other providers to, among other things: improve their facilities;
27 comply with legally required seismic and building safety standards; upgrade their equipment and
28

1 technology to keep pace with medical standards of care; and provide the same level of health care to their
2 patients that they would have but for Defendants’ unlawful conduct. As a result, Verity went bankrupt as
3 did other hospitals.” (*Id.*) Plaintiff asserts causes of action for violation of the Cartwright Act and Unfair
4 Competition Law. (*Id.* ¶¶ 536-656.)

5 United Healthcare now moves to compel arbitration and stay the proceedings pending arbitration.
6 (Motion, 2.) Plaintiff opposes.

7 **LEGAL STANDARD**

8 California courts recognize a strong public policy in favor of arbitration and any doubts are
9 resolved in favor of arbitration. (*Smythe v. Uber Technologies, Inc.* (2018) 24 Cal.App.5th 327, 331.)
10 “On petition of a party to an arbitration agreement alleging the existence of a written agreement to
11 arbitrate a controversy and that a party to the agreement refuses to arbitrate that controversy, the court
12 shall order the petitioner and the respondent to arbitrate the controversy if it determines that an agreement
13 to arbitrate the controversy exists, unless it determines that: (a) The right to compel arbitration has been
14 waived by the petitioner; or (b) grounds exist for rescission of the agreement.” (Code Civ. Proc., §
15 1281.2.) The moving party “bears the burden of proving the existence of an arbitration agreement by a
16 preponderance of the evidence, and the party opposing arbitration bears the burden of proving by a
17 preponderance of the evidence any defense, such as unconscionability.” (*Serafin v. Balco Properties Ltd.,*
18 *LLC* (2015) 235 Cal.App.4th 165, 172-173, quoting *Peng v. First Republic Bank* (2013) 219 Cal.App.4th
19 1462, 1468; *Engalla v. Permanente Medical Group, Inc.* (1997) 15 Cal.4th 951, 972 [internal quotations
20 omitted].) General principles of contract law govern arbitration agreements. (*Serafin*, 235 Cal.App.4th at
21 173.)

22 **DISCUSSION**

23 **I. Existence of an Arbitration Agreement**

24 “[T]he moving party bears the burden of producing ‘prima facie evidence of a written agreement
25 to arbitrate the controversy.’” (*Gamboa v. Northeast Community Clinic* (2021) 72 Cal.App.5th 158, 165,
26 quoting *Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413.) “The moving
27 party ‘can meet its initial burden by attaching to the [motion or] petition a copy of the arbitration
28

1 agreement purporting to bear the [opposing party's] signature.” (*Gamboa*, 72 Cal.App.5th at 165,
2 quoting *Bannister v. Marinidence Opco, LLC* (2021) 64 Cal.App.5th 541.) “If the moving party meets its
3 initial prima facie burden and the opposing party does not dispute the existence of the arbitration
4 agreement, then nothing more is required for the moving party to meet its burden of persuasion.”
5 (*Gamboa*, 72 Cal.App.5th at 165.)

6 Here, United Healthcare’s petition includes excerpts from Facility Participation Agreements
7 (“FPAs”) for Seton Medical Center, St. Vincent Medical Center, O’Connor Hospital, Saint Louise
8 Regional Hospital, and St. Francis Medical Center. (Honea Decl., Exs. 1-5.) Each FPA contains an
9 arbitration provision. (*Id.*) In addition, each FPA is signed by the opposing party. (*Id.*) Plaintiff does not
10 dispute the existence of an arbitration agreement. Rather, Plaintiff disputes the scope of the arbitration
11 agreement. (Opposition, 19-24.)

12 The arbitration provision is the same in each FPA. (Honea Decl., Exs. 1-5, § 7.3.) The relevant
13 part of the arbitration provision states: “after the Special Meeting or within 60 days following the date
14 one party sent written notice of the Dispute to the other party, and if either party wishes to pursue the
15 Dispute, it shall thereafter be submitted to binding arbitration . . . in accordance with the Commercial
16 Dispute Procedures of the American Arbitration Association, as they may be amended from time to time
17 (see <http://www.adr.org>).” (*Id.*) A dispute is defined as “any and all disputes between” the parties. (*Id.* at
18 Exs. 1-5, § 7.1.)

19 Accordingly, United Healthcare meets its burden of establishing the existence of an arbitration
20 agreement.

21 II. FAA

22 “When an agreement provides that its ‘enforcement’ shall be governed by the FAA, the FAA
23 governs a party’s motion to compel.” (*Victrola 89, LLC v. Jaman Properties 8 LLC* (2020) 46
24 Cal.App.5th 337, 346; see *Cronus Investments, Inc. v. Concierge Services* (2005) 35 Cal.4th 376, 383
25 [parties may agree to the application of FAA].)

26 The FPAs expressly provide that the FAA applies. (Honea Decl., Exs. 1-5, § 7.3 [“The parties
27 acknowledge that because this Agreement affects interstate commerce the Federal Arbitration Act
28

1 applies.”.) Plaintiff opposes application of the FAA on the ground that the FAA does not preempt the
2 CAA, therefore, the Court must determine arbitrability. (Opposition, 12-13.) However, the FAA does not
3 preempt or override the Court’s authority to determine whether the Court or the arbitrator should
4 determine arbitrability. (See *Rent-A-Center, West, Inc. v. Jackson* (2010) 561 U.S. 63, 70 [Unless the
5 delegation provision is specifically challenged, courts must treat the arbitration agreement as valid under
6 section 2 of the FAA]; *Brice v. Haynes Investments, LLC* (9th Cir. 2021) 13 F.4th 823, 827 [“In
7 considering a motion to compel arbitration, we generally decide two gateway issues: (1) whether the
8 parties agreed to arbitrate and (2) ‘whether the agreement covers the dispute’ at issue. [Citation] But the
9 Supreme Court’s decision in *Rent-A-Center* established that parties can agree to arbitrate even these
10 preliminary gateway questions—provided any such agreement is ‘clear and unmistakable.’ [Citation] This
11 is known as a delegation provision.”] (internal citations omitted).) “It is well-settled under both state and
12 federal law ‘that absent the parties’ commitment of the arbitrability decision to an arbitrator,
13 disagreements over whether a particular dispute is within the scope of an arbitration provision are
14 ordinarily the responsibility of a court.’” (*Mendoza v. Trans Valley Transport* (2022) 75 Cal.App.5th
15 748, 765, quoting *Sandquist v. Lebo Automotive, Inc.*(2016) 1 Cal.5th 233, 249.)

16 During oral argument, Plaintiff’s counsel argued “the arbitration provisions in these contracts do
17 not preempt California law because the parties expressly incorporated the California choice-of-law
18 provision in each agreement. None of the agreements expressly designate that the FAA’s procedur[al]
19 rules apply.” (Hearing Transcript (“HT”), 23.) Plaintiff correctly identifies that each FPA contains a
20 “Governing Law” provision, which states, “This Agreement will be governed by and construed in
21 accordance with the laws of the state in which Facility renders Covered Services, and any other applicable
22 law.” (McLean Dec. Exs. 21-25, § 9.10.) Each facility is located in California. (Compl. ¶ 80.) However,
23 the FPAs reflect the parties’ intent for the FAA to apply to the arbitration provision. “[W]hen a general
24 and a particular provision are inconsistent, the particular and specific provision is paramount to the
25 general provision.” (*Kashmiri v. Regents of University of California* (2007) 156 Cal.App.4th 809, 834.)
26 Therefore, the FAA applies. (See *Brinkley v. Monterey Financial Services, Inc.* (2015) 242 Cal.App.4th
27 314, 327 [finding the FAA applies despite “Governing Law” provision stating that the agreement “shall
28

1 be governed by and interpreted and constructed in accordance with the law of your state of residence as
2 indicated on the address section hereof completed by you, as applied to contracts between residents of
3 such state entered into and to be performed wholly within such state.”].) However, the FAA does not
4 preempt Code of Civil Procedure section 1281.2(c). (See *Volt Information Services, Inc. v. Board of*
5 *Trustees of Leland Stanford Junior University* (1989) 489 U.S. 468, 477-479; *Cronus Investments, Inc.*,
6 35 Cal.4th at 393; *Best Interiors, Inc. v. Millie & Severson, Inc.* (2008) 161 Cal.App.4th 1320, 1326-
7 1329.)

8 **III. Delegation Clause**

9 United Healthcare asserts the arbitration provision contains a delegation clause because the
10 arbitration provision incorporates the AAA Rules, which provide that the arbitrator should determine
11 arbitrability. (Opening Brief, 10, 16-17.) In opposition, Plaintiff argues United Healthcare’s delegation
12 clause does not clearly and unmistakably delegate questions of arbitrability to the arbitrator as the clause
13 does not delegate exclusive authority to the arbitrator. (Opposition, 15-18.)

14 “To be sure, before referring a dispute to an arbitrator, the court determines whether a valid
15 arbitration agreement exists. See 9 U.S.C. § 2. But if a valid agreement exists, and if the agreement
16 delegates the arbitrability issue to an arbitrator, a court may not decide the arbitrability issue.” (*Henry*
17 *Schein, Inc. v. Archer and White Sales, Inc.* (2019) 139 S.Ct 524, 530.) Generally, it is presumed “parties
18 intend courts, not arbitrators, to decide . . . disputes about arbitrability, such as whether the parties are
19 bound by a given arbitration clause, or whether an arbitration clause in a concededly binding contract
20 applies to a particular type of controversy.” (*Aanderud v. Superior Court* (2017) 13 Cal.App.5th 880,
21 891, quoting *BC Group, PLC v. Republic of Argentina* (2014) 572 U.S. 25 [internal quotations omitted].)
22 “However, parties can agree to arbitrate gateway questions of arbitrability, such as whether the parties
23 have agreed to arbitrate or whether their agreement covers a particular controversy.” (*Aanderud*, 13
24 Cal.App.5th at 891, quoting *Rent-A-Center, West, Inc.*, 561 U.S. at 68-69; see *Najarro v. Superior Court*
25 (2021) 70 Cal.App.5th 871, 879 [same]; *Sandoval-Ryan v. Oleander Holdings LLC* (2020) 58
26 Cal.App.5th 217, 223 [same].)

27 To be effective, a delegation clause must include “clear and unmistakable” language. (*Aanderud*,

1 13 Cal.App.5th at 892; see *First Options of Chicago, Inc. v. Kaplan* (1995) 514 U.S. 938, 944-945; *Tiri v.*
2 *Lucky Chances, Inc.* (2014) 226 Cal.App.4th 231, 242.) In addition, the delegation clause cannot be
3 revocable under any state contract defenses. (*Aanderud*, 13 Cal.App.5th at 892; see *Tiri*, 226 Cal.App.4th
4 at 243.) “An arbitration provision’s reference to, or incorporation of, arbitration rules that give the
5 arbitrator the power or responsibility to decide issues of arbitrability may constitute clear and
6 unmistakable evidence the parties intended the arbitrator to decide those issues.” (*Aanderud*, 13
7 Cal.App.5th at 892 [citing cases involving incorporation of AAA rules].) “[W]hat is being incorporated
8 must *actually exist at the time of the incorporation*, so the parties can know exactly what they are
9 incorporating” (i.e., known or easily available). (*Gilbert Street Developers, LLC v. La Quinta Homes,*
10 *LLC* (2009) 174 Cal.App.4th 1185, 1194.) “Where the agreement is silent or ambiguous on the question
11 of who decides threshold arbitrability questions, the court and not the arbitrator should decide arbitrability
12 so as not to force unwilling parties to arbitrate a matter they reasonably thought a judge, not an arbitrator,
13 would decide.” (*Sandoval-Ryan*, 58 Cal.App.5th at 223.)

14 The arbitration provision incorporates the AAA Rules. (Honea Decl., Exs. 1-5, § 7.3.)
15 Specifically, the arbitration provision states that “after the Special Meeting or within 60 days following
16 the date one party sent written notice of the Dispute to the other party, and if either party wishes to pursue
17 the Dispute, it shall thereafter be submitted to binding arbitration . . . in accordance with the Commercial
18 Dispute Procedures of the American Arbitration Association.” (*Id.*) The arbitration provision also
19 includes a link to the AAA website. (*Id.*) Such incorporation reflects clear and unmistakable evidence
20 the parties intended incorporate the Commercial Dispute Procedures of the AAA by reference and allow
21 the arbitrator to decide the threshold issue of arbitrability. (See *Rodriguez v. American Technologies, Inc.*
22 (2006) 136 Cal.App.4th 1110, 1123 [parties designated arbitrator to determine scope of arbitration by
23 referring to AAA Construction Industry Rules]; *Dream Theater, Inc. v. Dream Theater* (2004) 124
24 Cal.App.4th 547, 557 [“The Contract provides that if a contested claim is not settled within the
25 contractual deadline, then it must be submitted to binding arbitration in accordance with the AAA
26 Commercial Arbitration Rules. These rules specify that the arbitrator will decide disputes over the scope
27 of the arbitration agreement. We conclude that the parties’ agreement to arbitrate according to this rule is
28

1 clear and unmistakable evidence of the intent that the arbitrator will decide whether a Contested Claim is
 2 arbitrable.”]; see e.g., *Gilbert Street Developers, LLC*, 174 Cal.App.4th at 1193 [In *Dream Theater* and
 3 *Rodriguez* “the parties could go *look up* the AAA rules to which they were agreeing beforehand, and see
 4 that, yes, they were conferring on arbitrators the power to decide if a dispute was arbitrable in the first
 5 place. To go beyond the incorporation of an *existent* rule and allow for the incorporation of a rule that
 6 might not even come into existence in the future, however, contravenes the clear and unmistakable rule.”]
 7 (emphasis in original); cf. *Ajamian v. CantorCO2e, L.P.* (2012) 203 Cal.App.4th 771, 789 [“while the
 8 incorporation of AAA rules into an agreement might be sufficient indication of the parties’ intent in other
 9 contexts, we seriously question how it provides *clear* and *unmistakable* evidence that an employer and an
 10 employee intended to submit the issue of unconscionability of the arbitration provision to the arbitrator, as
 11 opposed to the court.”] (emphasis in original); *Nelson v. Dual Diagnostics Treatment Center, Inc.* (2022)
 12 77 Cal.App.5th 643, 292 Cal.Rptr.3d 740, 751 [declining to find incorporation of AAA rules bound an
 13 unsophisticated party].)

14 Plaintiff does not contend that the AAA Rules do not apply to the FPAs. (Opposition, 15-18.)
 15 Plaintiff also does not assert that the AAA Rules do not delegate the issue of arbitrability to the arbitrator.
 16 (*Id.*) Plaintiff only argues the Court should decide the issue of arbitrability. However, as the arbitration
 17 provision delegates the issue to the arbitrator, the Court declines to engage in such an analysis. Verity
 18 was a sophisticated party. At the time of executing the FPAs, Verity had access to the AAA Rules. In
 19 fact, the arbitration provision includes a link to the AAA Rules. (Honea Decl., Exs. 1-5, § 7.3.)

20 Moreover, Plaintiff raises the issue of whether the claims at issue here are within the scope of the
 21 HSAs under the “wholly groundless” exception to delegating arbitrability to the arbitrator. (Opposition,
 22 19-20.) The Court rejects Plaintiff’s invocation of the “wholly groundless” exception to United
 23 Healthcare’s assertion Plaintiff’s dispute must be compelled to arbitration as the Supreme Court expressly
 24 rejected the “wholly groundless” exception as being inconsistent with the FAA. (*Henry Schein, Inc.* 139
 25 S.Ct. at 529.) In addition, engaging in such an analysis would infringe on the arbitrability analysis.

26 **IV. Inconsistent Rulings**

27 Plaintiff asks the Court to exercise its discretion by declining to enforce the arbitration provision
 28

1 here because there is a risk of conflicting rulings if the proceedings are held in different forums.
2 (Opposition, 24.) Plaintiff asserts that its claims against each defendant are based on a single injury
3 arising from the same alleged conspiracy, therefore, if the actions proceed separately with different
4 arbitrators under different rules, those separate proceedings would be inefficient and costly. (*Id.* at 26.)
5 In contrast, United Healthcare argues Plaintiff's claims do not arise out of the same transaction or series
6 of related transactions because Plaintiff's "dispute with United involves unique transactions with United
7 across six hospitals and five Agreements over several years." (Reply, 9.)

8 "Section 1281.2(c) addresses the peculiar situation that arises when a controversy also affects
9 claims by or against other parties not bound by the arbitration agreement. The California provision giving
10 the court discretion not to enforce the arbitration agreement under such circumstances—in order to avoid
11 potential inconsistency in outcome as well as duplication of effort—does not contravene the letter or spirit
12 of the FAA." (*Cromus Investments, Inc.*, 35 Cal.4th at 393.) A "third party" is "a party to the action that
13 is not bound by or entitled to enforce the arbitration agreement." (*Thomas v. Westlake* (2012) 204
14 Cal.App.4th 605, 612.) "If all three of these conditions are satisfied, then section 1281.2(c) grants a trial
15 court discretion to either deny or stay arbitration despite an agreement to arbitrate the dispute." (*Acquire*
16 *II, Ltd. v. Colton Real Estate Group* (2013) 213 Cal.App.4th 959, 968.)

17 "If the court determines that a party to the arbitration is also a party to litigation in a pending court
18 action or special proceeding with a third party as set forth under subdivision (c), the court (1) may refuse
19 to enforce the arbitration agreement and may order intervention or joinder of all parties in a single action
20 or special proceeding; (2) may order intervention or joinder as to all or only certain issues; (3) may order
21 arbitration among the parties who have agreed to arbitration and stay the pending court action or special
22 proceeding pending the outcome of the arbitration proceeding; or (4) may stay arbitration pending the
23 outcome of the court action or special proceeding." (Code Civ. Proc., § 1281.2(d).)

24 First, it is undisputed a party to the arbitration agreement, Plaintiff, is also a party to this action
25 with third parties, who are not parties to the arbitration agreement.

26 Second, Plaintiff asserts this action arises out of "a single injury arising from an alleged
27 conspiracy to unlawfully reduce the reimbursement rates providers receive for OON claims."
28

1 (Opposition, 26.) Although Verity may have suffered a single injury from the alleged conspiracy, each
2 hospital agreement is borne out of a separate transaction with each insurer. As each insurer has separate
3 contracts with each hospital, an arbitrator can determine whether a particular insurer, such as United
4 Healthcare here, was a spoke of the alleged hub-and-spoke conspiracy, if the claims are indeed arbitrable.
5 (See *In re Musical Instruments and Equipment Antitrust Litigation* (9th Cir. 2015) 798 F.3d 1186, 1192
6 [“A traditional hub-and-spoke conspiracy has three elements: (1) a hub, such as a dominant purchaser; (2)
7 spokes, such as competing manufacturers or distributors that enter into vertical agreements with the hub;
8 and (3) the rim of the wheel, which consists of horizontal agreements among the spokes.”].)

9 Moreover, “[t]here is nothing in the arbitration statutes or the Cartwright Act which indicates that
10 an antitrust claim is not arbitrable.” (*Crown Homes, Inc. v. Landes* (1994) 22 Cal.App.4th 1273, 1280.)
11 “Section 1281 does not exclude written agreements to submit controversies concerning potential
12 violations of the Cartwright Act from the scope of the arbitration statutes. Further, section 1281.2, sets
13 forth other statutory exceptions to the duty of a trial court to order arbitration of a controversy. A
14 Cartwright Act dispute is not listed in section 1281.2 . . . none of the provisions which relate to the
15 enforcement of arbitration agreements contain an exception for disputes premised upon the Cartwright
16 Act.” (*Id.* at 1281.) “Additionally, there is nothing in the Cartwright Act to suggest that resolution of
17 disputes arising from it must be resolved in a court of law rather than by means of arbitration.” (*Id.* at
18 1282.) With such a broad arbitration provision here, the Court is unpersuaded Verity did not agree to
19 submit Cartwright Act claims to arbitration. Verity and United Healthcare are highly sophisticated
20 parties. If the parties did not intend to arbitrate Cartwright Act claims, the parties should have expressly
21 excluded Cartwright Act claims in the arbitration provision.

22 Third, Plaintiff does not demonstrate that compelling arbitration will lead to inconsistent rulings.
23 The Court recognizes Plaintiff “does not bear an evidentiary burden to establish a likelihood of success or
24 make any other showing regarding the viability of claims and issues that create the possibility of
25 conflicting rulings.” (*Los Angeles Unified School Dist. v. Safety National Casualty Corp.* (2017) 13
26 Cal.App.5th 471, 484, quoting *Acquire II*, 23 Cal.App.4th at 972.) However, Plaintiff “must point to
27 specific allegations in [its] complaint or other evidence in the record showing . . . how the claims
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1 regarding those separate transactions present the possibility of conflicting rulings on legal or factual issues
2 common to the claims arising from those separate transactions.” (*Acquire II*, 213 Cal.App.4th at 974.)

3 The Court finds any arbitration ruling as to United Healthcare does not necessarily suggest that
4 there will be inconsistent rulings. Each contract is different irrespective of whether the case is in
5 arbitration or in this Court. Further, Plaintiff’s arguments are unpersuasive as there is a valid delegation
6 clause in each contract. Therefore, the issue of arbitrability must be delegated to the arbitrator in the first
7 instance. Plaintiff’s arguments presume its claims are arbitrable. However, that issue has yet to be
8 decided. Any ruling in arbitration may inform the Court as to the remaining claims in this action.
9 Additionally, some or all of United Healthcare’s defenses will be unique as they will invoke their unique
10 FPAs. Moreover, the parties are able to conduct discovery in arbitration.¹ That same discovery can be
11 used in this action. Therefore, counsel’s efforts will not be duplicative.

12 Accordingly, the Court finds compelling arbitration will not promote inconsistent rulings and
13 refrains from exercising its discretion to decline to enforce the arbitration provision.

14 V. Stay

15 United Healthcare seeks a stay of this action pending arbitration. (Motion, 2.) Plaintiff opposes.
16 (Opposition, 27-28.) Plaintiff argues that instead of staying this action, the Court should stay the
17 arbitrations due to a risk of conflicting rulings under Code of Civil Procedure section 1281.2(d). (*Id.* at
18 27.)

19 “If a court of competent jurisdiction, whether in this State or not, has ordered arbitration of a
20 controversy which is an issue involved in an action or proceeding pending before a court of this State, the
21 court in which such action or proceeding is pending shall, upon motion of a party to such action or
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23 ¹ At the second hearing on United Healthcare’s motion, Plaintiff raised an unconscionability argument for
24 the first time. Plaintiff argued there may be limited and expedited discovery in arbitration. In addition,
25 Plaintiff asserted that more likely than not, third-party discovery, if any, is extremely limited. Plaintiff
26 waived this argument by not asserting it in its opposition papers. However, even if Plaintiff did not waive
27 its argument, the Court of Appeal rejected the same argument in *Coast Plaza Doctors Hospital v. Blue*
28 *Cross of California* (2000) 83 Cal.App.4th 677, 687-690, stating that “[t]he fact that an arbitration may
limit a party’s discovery rights is not ‘substantive unconscionability.’ If it were, every arbitration clause
would be subject to an unconscionability challenge on that ground.” The same applies to Plaintiff’s
argument regarding the Court’s authority to vacate any arbitration award, which Plaintiff raised for the
first time at oral argument. The Court’s authority, if limited, to vacate any arbitration award is a risk the
parties took when agreeing to submit claims to arbitration.

1 proceeding, stay the action or proceeding until an arbitration is had in accordance with the order to
2 arbitrate or until such earlier time as the court specifies.” (Code Civ. Proc., § 1281.4.) “If the court
3 determines that there are other issues between the petitioner and the respondent which are not subject to
4 arbitration and which are the subject of a pending action or special proceeding between the petitioner and
5 the respondent and that a determination of such issues may make the arbitration unnecessary, the court
6 may delay its order to arbitrate until the determination of such other issues or until such earlier time as the
7 court specifies.” (Code Civ. Proc., § 1281.2(d).)

8 As the Court finds Plaintiff is unable to establish a risk of conflicting rulings, this action is stayed
9 pending arbitration.

10 **VI. The Court’s Prior Rulings in *Sutter* Are Inapplicable Here**

11 During oral argument, Plaintiff’s counsel urged the Court to review its prior orders on a motion to
12 compel arbitration as well as a motion for summary adjudication in *UFCW & Employers Benefit Trust v.*
13 *Sutter Health*, CGC-14-538451. (HT, 34-35.) Plaintiff’s counsel argued that if the Court granted United
14 Healthcare’s motion here, such a ruling would be inconsistent with this Court’s prior rulings in *Sutter*.
15 (*Id.* at 36 [“we find ourselves back in a situation where we’re being told that the provider now does have
16 to go to arbitration, although the last time around they were told they couldn’t compel it, and [were] being
17 told that the result of that arbitration is going to deal with the antitrust issues that we were previously told
18 may not.”].)

19 The issue raised in *Sutter*’s motion to compel arbitration was “whether a party which has not
20 signed an agreement, nor actually knows of its provisions, is nevertheless bound by the agreement’s
21 arbitration clause.” (Oct. 9, 2014 Statement of Decision, 3.) The same issue is not present here. United
22 Healthcare is seeking to compel a party to the arbitration agreement, Plaintiff, not a third party.
23 Moreover, Judge Karnow only discussed the scope of the arbitration clause because “the parties suggested
24 appellate review could be facilitated.” (*Id.* at 18.) The Court does not address the scope of the arbitration
25 provision here as it is an issue delegated to the arbitrator.

26 Additionally, the plaintiffs in *Sutter* sought summary adjudication of five of *Sutter*’s affirmative
27 defenses “on the ground that the settlement agreements identified by *Sutter* do not release any of the
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1 claims in this case.” (May 16, 2019 Order, 2.) The Court’s order made no mention of arbitration. (See
2 *id.*)

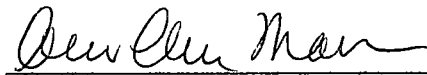
3 Therefore, the Court declines to consider its prior rulings in *Sutter*. Moreover, the Court notes that
4 it is not bound by a prior decision by a different judge in a different case within this Court.²

5 **CONCLUSION AND ORDER**

6 Accordingly, United Healthcare’s Petition to Compel Arbitration is granted. This action is stayed
7 pending arbitration.

8 IT IS SO ORDERED.

9
10 Dated: August 10, 2022



11 Anne-Christine Massullo
12 Judge of the Superior Court

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26 ² Plaintiff’s Request for Judicial Notice is granted in part and denied in part. Plaintiff’s Request for
27 Judicial Notice is granted as to Exhibits 1, 2, and 4 pursuant to Evidence Code § 452(d)(1). Plaintiff’s
28 Request for Judicial Notice is denied as to Exhibits 3 and 5. Judicial notice of trial court rulings is
improper, as such rulings have no precedential value. (*Bolanos v. Superior Court* (2008) 169 Cal.App.4th
744, 761.)

VHS Liquidating Trust v. Multiplan Corp., et al.

Case No: CGC-21-594966

CERTIFICATE OF ELECTRONIC SERVICE
(CCP §1010.6 & CRC §2.251)

I, K. Christal Colobong, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am over the age of 18 years, employed in the City and County of San Francisco, California and am not a party to the within action.

On August 10, 2022, I electronically served the attached **ORDER GRANTING DEFENDANTS UNITED HEALTHCARE SERVICES, INC., UNITED HEALTH GROUP, INC., AND UNITED HEALTHCARE'S PETITION TO COMPEL ARBITRATION AND TO STAY PROCEEDINGS** via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: August 10, 2022

T. Michael Yuen, Clerk

By: _____

K. Christal Colobong, Deputy Clerk

