UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: ZELIS REPRICING ANTITRUST LITIGATION This Document Relates To: All Associated Cases	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*

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT UNITEDHEALTH GROUP, INC.'S MOTION TO COMPEL ARBITRATION

TABLE OF CONTENTS

TABLE OF CONTENTS i
TABLE OF AUTHORITIES ii
I. INTRODUCTION 1
II. RELEVANT BACKGROUND 1
A. Plaintiffs' Claims in This Litigation 1
B. Plaintiffs' Network Participation Agreements with United 2
C. United's "Any and All Disputes" Arbitration Clauses 4
D. United's Arbitration Clauses Are "Infinite" Arbitration Clauses. 5
III. LEGAL STANDARD 6
IV. ARGUMENT 7
A. United's Arbitration Clauses Are Unenforceable Because They Are Beyond the Scope of the FAA and Supreme Court Precedent Interpreting the FAA. 7
B. The Arbitration Clauses Are Also Unenforceable Under State Contract Law. 10
1. The Parties Did Not Form an Agreement to Arbitrate the Antitrust Claims. 11
2. United's Infinite Arbitration Clauses Are Unconscionable. 13
3. PIMG's Arbitration Clause Is Unconscionable Under *Discover Bank*, Which Is Not Preempted in This Case. 15
C. Scaccia's Arbitration Clause Is Also Unenforceable Because Perpetual Contracts Are Terminable At-Will. 17
D. The Purported "Delegation Clauses" Are Unenforceable. 17
E. In the Alternative, Any Stay Should Be Limited to Claims Against United. 20
V. CONCLUSION 20

TABLE OF AUTHORITIES

Cases

Abbas v. Truist Bank,
774 F. Supp. 3d 929 (M.D. Tenn. 2025) 18

Adams v. John Deere Co.,
13 Kan. App. 2d 489 (Kan. 1989).. 14

Ajamian v. CantorCO2e, L.P.,
203 Cal. App. 4th 771 (Cal. Ct. App. 2012) 19

Ames v. Premier Surgical Ctr., L.L.C.,
2016 WL 3525246 (N.J. Super. Ct. App. Div. June 29, 2016) 19

Calderon v. Sixt Rent a Car, LLC,
5 F.4th 1204 (11th Cir. 2021).. 7, 9

Davitashvili v. Grubhub Inc.,
131 F.4th 109 (2d Cir. 2025)..Passim

Deerhurst Ests. v. Meadow Homes, Inc.,
165 A.2d 543 (N.J. App. Div. 1960) 12

Discover Bank v. Superior Ct.,
113 P.3d 1100 (Cal. 2005).. 16

Dougan v. Rossville Drainage Dist.,
15 P.3d 338 (Kan. 2000) 12

Ed Bozarth Chevrolet, Inc. v. Black,
96 P.3d 272 (Kan. 2003) 15

First Nat. Bank of Lawrence v. Methodist Home for the Aged,
309 P.2d 389 (Kan. 1957) 12

First Options of Chicago, Inc. v. Kaplan,
514 U.S. 938 (1995) 19

Henry Schein, Inc. v. Archer & White Sales, Inc.,
586 U.S. 63 (2019) 17

In re Jiffy Lube International, Inc., Text Spam Litigation,
847 F. Supp. 2d 1253 (S.D. Cal. 2012).. 13, 14

In re Miller's Est.,
447 A.2d 549 (N.J. 1982) 17

In re Yahoo! Litig.,
251 F.R.D. 459 (C.D. Cal. 2008) 16

Johnson & Johnson v. Charmley Drug Co.,
95 A.2d 391 (N.J. 1953) 12

Kashmiri v. Regents of Univ. of California,
67 Cal. Rptr. 3d 635 (2007) 12

McFarlane v. Altice USA, Inc.,
524 F. Supp. 3d 264 (S.D.N.Y. 2021) ..... Passim

Morgan v. Sanford Brown Inst.,
137 A.3d 1168 (N.J. 2016) 19, 20

Muhammad v. Cnty. Bank of Rehoboth Beach, Delaware,
912 A.2d 88 (N.J. 2006) 15

Nat'l Fed'n of the Blind v. The Container Store, Inc.,
904 F.3d 70 (1st Cir. 2018) 7

New Prime Inc. v. Oliveira,
586 U.S. 105 (2019) 17

OTO, L.L.C. v. Kho,
447 P.3d 680 (Cal. 2019) 14, 15

Rent-A-Center, West v. Jackson,
561 U.S. 63 (2010) 20

Revitch v. DIRECTV, LLC,
977 F.3d 713 (9th Cir. 2020) 12

Ridge at Back Brook, *LLC v. Klenert*,
437 N.J. Super. 90 (N.J. Super. App. Div. 2014) 14

Singh v. Uber Techs. Inc.,
939 F.3d 210 (3d Cir. 2019) 17, 18

Smith v. Steinkamp,
318 F.3d 775 (7th Cir. 2003) 13

Soto-Fonalledas v. Ritz-Carlton San Juan Hotel Spa & Casino,
640 F.3d 471 (1st Cir. 2011) 6

Viking River Cruises, Inc. v. Moriana,
596 U.S. 639 (2022) 8

Wexler v. AT & T Corp.,
211 F. Supp. 3d 500 (E.D.N.Y. 2016) 11, 12, 13

Wilson-Davis v. SSP Am., Inc.,
62 Cal. App. 5th 1080 (2021) 19

Statutes

9 U.S.C. § 1 10
9 U.S.C. § 2 6
Cal. Civ. Code § 1636 12

Other Authorities

Infinite Arbitration Clauses,
168 U. Pa. L. Rev. 633 (2020) 5

I. INTRODUCTION

Defendant UnitedHealth Group, Inc. ("United") bases its motion to compel on "infinite" arbitration clauses in its network participation agreements that purport to require arbitration of any dispute with United without regard to whether the dispute arises from or relates in any way to those agreements. Because the present dispute is wholly unrelated to the narrow and, in Plaintiff Scaccia's case, long-terminated agreement, the arbitration clauses are without effect.

United's motion is, by definition, beyond the scope of the Federal Arbitration Act, which only makes arbitration agreements enforceable to the extent that they mandate arbitration of disputes "arising out of" the contract containing the arbitration agreement. Courts have regularly declined to grant similar motions because (1) courts have no authority to compel arbitration where the Federal Arbitration Act does not apply, and the motion was made pursuant to the Act; and (2) infinite arbitration clauses are unenforceable under principles of state contract law. Accordingly, Plaintiffs respectfully request that the Court deny United's motion.

II. RELEVANT BACKGROUND

A. Plaintiffs' Claims in This Litigation

Plaintiffs Dennis C. Ayer, DDS, LLC ("Ayer"), Pacific Inpatient Medical Group, Inc. ("PIMG"), and Frank J. Scaccia, L.L.C. ("Scaccia") allege that the Commercial Payer Defendants[1] conspired with Zelis[2] and other co-conspirators to suppress out-of-network ("OON") payments to healthcare service providers ("Providers") in violation of Section 1 of the Sherman Act. ECF No. 39, ¶ 1 ("CAC"). Relevant here, the conspiracy does not concern in-network services. Unlike

[1] The Commercial Payer Defendants are Aetna, Inc., the Cigna Group, The Elevance Health Companies, Inc., Humana, Inc., and UnitedHealth Group, Inc ("United"). CAC ¶¶ 34-39.

[2] "Zelis" or the "Zelis Defendants" refers to Zelis Healthcare, LLC, Zelis Claims Integrity, LLC, and Zelis Network Solutions, LLC. *Id.* ¶¶ 30-33.

Plaintiffs' OON claims, in-network services are governed by contract and heavily-discounted fee schedules that the healthcare provider agrees to accept to gain access to a network's members. *Id.* ¶¶ 3-4.[3] Indeed, a driving force behind performing medical and dental services on an OON basis is to be unbound by such network contracts. *Id.* at ¶¶ 4, 166, 339. All Defendants concur.[4]

B. Plaintiffs' Network Participation Agreements with United

Ayer, PIMG and Scaccia each entered into a contract with one of United's corporate subsidiaries, which United refers to as a [REDACTED]" for its [REDACTED] (the "Network Participation Agreements").[5] Ayer's and PIMG's Network Participation Agreements are still in effect. Scaccia's Network Participation Agreement, however, was in effect for less than a year and was terminated by Scaccia effective May 6, 2021—more than four years ago. Scaccia Decl., Ex. A; Zappola Decl., Ex. B.

The Network Participation Agreements pertain (or, in the case of Scaccia, pertained) to claims submission and payment of in-network claims only. PIMG's and Scaccia's Network Participation Agreements state that United's affiliates "are entering this agreement with you … for *certain products and services*," which the Network Participation Agreements define as [REDACTED] [REDACTED]:

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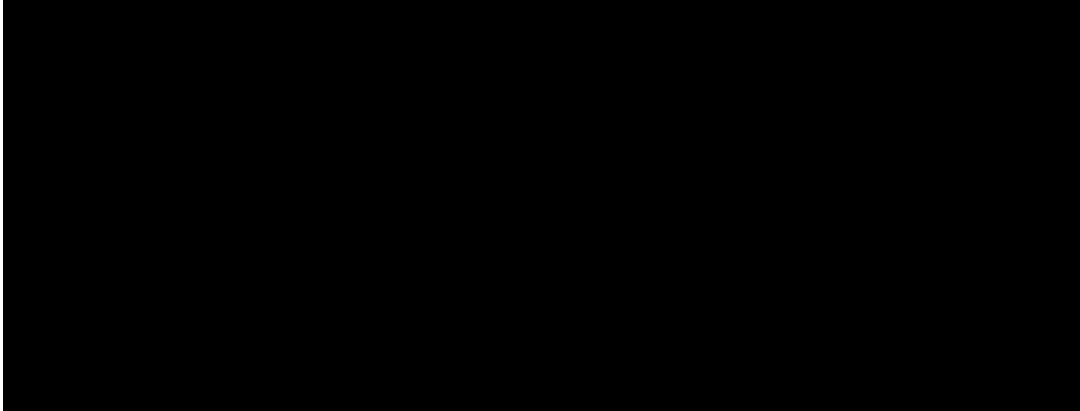
[3] United has admitted in other litigation that out-of-network claims are not governed by contract: *See In Re MultiPlan Health Ins. Provider Litig.*, 1:24-cv-06795, MDL No. 3121, ECF No. 474, ¶ 2 (N.D. Ill., Aug. 12, 2025).

[4] "To the extent Plaintiffs have chosen to be OON, they have no contractual relationship with the MCOs." Omnibus Motion to Dismiss, ECF 97 at 3 "[T]he MCO's offer to cover a portion of a provider's charge does not create a contract between the MCO and the provider." *Id.*

[5] *See, e.g.*, Zappola Decl., Ex. A at 2 ("[REDACTED] [REDACTED] [REDACTED]"); Ayer Decl., Ex. A at 4 (with "Dental Benefit Providers, Inc., its subsidiaries and affiliated companies"); PIMG Decl., Ex. A at 7 (with "UnitedHealthcare Insurance Company and UHC of California … on behalf of themselves and their other affiliates"); Zappola Decl., Ex. A at 5 (with "UnitedHealthcare Insurance Company … on behalf of itself, Oxford Health Plans (NJ), Inc., and its other affiliates").



See PIMG Decl., Ex. A at 7, 16; Zappola Decl., Ex. A at 5, 14. Similarly, Ayer's contract with United contains an article titled, ," which provides that .[6]

The Network Participation Agreements provide that the only material obligation of United and its affiliates is to "[7] And referenced throughout each Plaintiffs' Network Participation Agreement is a "[8] Accordingly, by their own terms, the scope of the Network Participation Agreements is and was limited to in-network claims and payment.

The Network Participation Agreements, however, each contain a dispute resolution provision that United now argues should reach far beyond that limited scope.

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[6] Ayer Decl., Ex. A at 3, 4.

[7] *See* PIMG Decl., Ex. A at 8 ; Zappola Decl., Ex. A at 6 (same); *see also* Ayer Decl., Ex. A at 7 .

[8] Ayer Decl., Ex. A at 7, ¶ 5.2; *id.*, Ex. B; PIMG Decl., Ex. A at 8, 26-32; Zappola Decl., Ex. A at 6, 20-55.

C. United's "Any and All Disputes" Arbitration Clauses

Plaintiffs' Network Participation Agreements each contain a dispute resolution process for "***any disputes***," "***all disputes***," or "***any and all disputes***"[9] between Plaintiffs and United's affiliates. In Ayer's and Scaccia's Arbitration Clauses, "Disputes" is defined broadly as "any disputes about [the parties'] business relationship, including but not limited to, all questions of arbitrability, the validity, scope or termination of this Agreement or any term hereof." Ayer Decl., Ex. A, Art. 7.[10] Unlike Ayer's and Scaccia's Arbitration Clauses, "disputes" is not defined in PIMG's Arbitration Clause. *See* PIMG Decl., Ex. A at 11. However, regardless of whether a dispute arises from the Network Participation Agreement, each Plaintiffs' Arbitration Clause purports to require the Plaintiff to "submit [the dispute] to binding arbitration." Ayer Decl., Ex. A, Art. 7; PIMG Decl., Ex. A at 11; Zappola Decl., Ex. A at 8-9.

The Arbitration Clauses also purport to limit Plaintiffs' procedural rights by 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." Ayer Decl., Ex. A, Art. 7; PIMG Decl., Ex. A at 11; Zappola Decl., Ex. A at 9. The Arbitration Clauses all state that the Federal Arbitration Act applies because the Network Participation Agreement affects interstate commerce. Ayer Decl., Ex. A, Art. 7; PIMG Decl., Ex. A at 11; Zappola Decl., Ex. A at 9. Finally, each Arbitration Clause states that "[t]his provision will survive any termination of this Agreement." *See, e.g.*, Zappola Decl., Ex. A at 9.

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[9] Respectively, Ayer Decl., Ex. A, Art. 7 (emphasis added) (Ayer's "Arbitration Clause"); PIMG Decl., Ex. A at 11 (emphasis added) (PIMG"s "Arbitration Clause"); Zappola Decl., Ex. A at 8 (emphasis added) (Scaccia's "Arbitration Clause").

[10] *See also* Zappola Decl., Ex. A at 8 (defining "disputes" as "the existence, validity, scope or termination of this Agreement or any term thereof, and all questions of arbitrability.").

D. United's Arbitration Clauses Are "Infinite" Arbitration Clauses.

United's Arbitration Clauses bear the hallmarks of what courts and legal scholars alike have recognized as a new species of arbitration clause—dubbed "infinite arbitration clauses" for their striking breadth. *See, e.g.*, *McFarlane v. Altice USA, Inc.*, 524 F. Supp. 3d 264, 269 (S.D.N.Y. 2021); David Horton, *Infinite Arbitration Clauses*, 168 U. Pa. L. Rev. 633, 639-40 (2020).

- "First, they are 'not limited to disputes arising from or related to the transaction or contract at issue.' …Thus, infinite provisions attempt to govern conduct that has nothing to do with the original transaction, such as sexual harassment after the purchase of household goods or 'a punch in the nose during a dispute over medical billing'"[11]—or, in this case, price fixing in a separate market, which is not governed by the Network Participation Agreements containing the Arbitration Clauses.
- "Second, infinite clauses extend beyond the original contractual partners." *Id.* at 640. Like United's Arbitration Clauses, which apply to all of "affiliates" of the signatory, "infinite clauses govern all persons or entities with a connection to the container contract." *Id.*
- "Third, infinite provisions have no sunset date. Although the common law condemns perpetual contracts, infinite clauses 'survive the … termination of any service.'" *Id.*
- "Finally, infinite clauses often appear alongside what the Supreme Court has dubbed 'delegation clauses': terms that give the arbitrator the exclusive right to decide gateway questions of 'arbitrability' (whether a claim must be submitted to arbitration)." *Id.*

With these four interlocking components, United seeks to impose Arbitration Clauses that "stretch to the horizon and last forever." *Id.* As one court observed: "It effectively requires arbitration of *any* dispute between [plaintiff] and [defendant], as well [as defendant's] parents, subsidiaries, affiliates … and the like, whether arising now or in the future, and without regard for whether it arises from or relates to the [underlying agreement]." *McFarlane*, 524 F. Supp. 3d at 269. United's Arbitration Clauses, therefore, "are less a contractual provision and more a kind of arbitration servitude." Horton, 168 U. Pa. L. Rev. at 639-40.

But by drafting infinite arbitration clauses, United has made its Arbitration Clauses unenforceable on their own terms. As set forth below, United has taken its Arbitration Clauses

[11] Horton, 168 U. Pa. L. Rev. at 639-40.

beyond the scope of the Federal Arbitration Act—and consequently, beyond the reach of the body of any pro-arbitration Supreme Court precedent interpreting the Act. As a result, courts confronted with such arbitration clauses regularly decline to enforce them because (1) courts have no authority to compel arbitration where the Federal Arbitration Act does not apply, and the motion was made pursuant to the Act; and (2) they are unenforceable under principles of state contract law.

III. LEGAL STANDARD

The Federal Arbitration Act provides, in relevant part: "A written provision in any … contract … to settle by arbitration a controversy thereafter *arising out of* such contract or transaction … shall be 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 (emphasis added) (the "FAA").

When a party moves to compel arbitration under the FAA, a prerequisite is that the FAA must apply to the arbitration clause at issue. *Davitashvili v. Grubhub Inc.*, 131 F.4th 109, 119-20 (2d Cir. 2025). The FAA, however, "applies only to contracting parties' agreements to arbitrate claims 'arising out of such contract or transaction.'" *Id.* at 121 (Pérez, J. concurring) (explaining that the panel unanimously agreed on this principle). "[O]ne consequence of that principle is that the FAA does not countenance motions to compel arbitration of claims that lack a requisite 'nexus' to the contract containing the arbitration clause." *Id.* (same).

If that prerequisite is satisfied, the party seeking to compel arbitration must then "demonstrate that a valid agreement to arbitrate exists, that the movant is entitled to invoke the arbitration clause, that the other party is bound by that clause, and that the claim asserted comes within the clause's scope." *Soto-Fonalledas v. Ritz-Carlton San Juan Hotel Spa & Casino*, 640 F.3d 471, 474 (1st Cir. 2011) (internal quotation marks and citation omitted). Therefore, "a court should not compel arbitration unless and until it determines that the parties entered into a validly

formed and legally enforceable agreement covering the underlying claims(s)." *Nat'l Fed'n of the Blind v. The Container Store, Inc*., 904 F.3d 70, 80 (1st Cir. 2018) (citation omitted).

IV. ARGUMENT

A. United's Arbitration Clauses Are Unenforceable Because They Are Beyond the Scope of the FAA and Supreme Court Precedent Interpreting the FAA.

United's motion fails out of the gate because its infinite Arbitration Clauses—and the dispute it asks the Court to compel to arbitration—are beyond the scope of the FAA.

United begins by invoking the FAA and related substantive law as governing the enforceability of the Agreement. In making its argument, however, United has overlooked a fundamental limitation in the text of the FAA itself. As the Second Circuit recently explained, "[t]he FAA's scope is limited to "agreements to arbitrate controversies that '*arise out of*' the parties' contractual relationship." *Davitashvili*, 131 F.4th at 119 (emphasis added). Here, United has not even attempted to argue that it is seeking to compel arbitration of a controversy that arises out of the parties' contractual relationship. Indeed, United argues only that the Arbitration Clauses apply to "'any and all' disputes" between the parties and "[a]t issue in this lawsuit is a dispute between [Responding] Plaintiffs and United." United Br. at 12-13. This is plainly insufficient to satisfy the FAA's "arising out of" requirement.

While United points to language in the Arbitration Clauses stating that the FAA applies, that bootstrapping clause gets United nowhere. Faced with similar contractual language, the Eleventh Circuit explained, "We don't disagree that the Terms of Use are governed by the FAA. But the FAA, in turn, applies only to written arbitration agreements concerning disputes that 'aris[e] out of' the underlying contract—which, for reasons we will explain, this one doesn't." *Calderon v. Sixt Rent a Car, LLC*, 5 F.4th 1204, 1212 n.5 (11th Cir. 2021). In other words, United's

argument hinges on contractual language that merely points back to the FAA's "arising out of" requirement.

United has not argued that it can satisfy the "arising out of" requirement, but even if it had, its argument would be doomed to fail. Although the Supreme Court has devoted relatively little attention to the FAA's "arising out of" limitation, in *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022), the Court explained that it "normally refers to a causal relationship." *Id.* at 652 n.4; *see also Davitashvili*, 131 F.4th at 119 ("The FAA's scope is limited to 'agreements to arbitrate controversies that 'arise out of' the parties' contractual relationship'—that is, controversies that were 'cause[d]' by the relationship."). There is no such causal relationship here.

The Second Circuit's recent opinion in *Davitashvili* is instructive. There, the plaintiffs alleged that Grubhub and other online ordering platform defendants conspired to violate the antitrust laws by inducing restaurants to set artificially high prices. *Davitashvili*, 131 F.4th at 113. Grubhub moved to compel arbitration, arguing that the plaintiffs' claims were "related to Plaintiffs' 'access and use of Grubhub' and thus … within the scope [its] arbitration provision." *Id.* at 119. The Second Circuit disagreed, reasoning:

> Plaintiffs' claims—that Defendants violated federal and state antitrust law by inducing restaurants to agree to NPCCs—have nothing to do with Plaintiffs' individualized use of Grubhub's website or mobile application. Rather, their claims concern their access and use of *other* platforms and restaurants; they allege that they pay higher prices when ordering from these entities because of Grubhub's anticompetitive practices.

Id. That rationale applies even more forcefully here. Plaintiffs' antitrust claims—that United conspired with Defendants to suppress *out-of-network* payments to healthcare service providers—have nothing to do with their Network Participation Agreements, which govern or governed

Plaintiffs' *in-network* relationship with United.[12] Rather, Plaintiffs' antitrust claims primarily relate to suppressed OON payments received from *other* Commercial Payer Defendants as a result of United's and the Commercial Payer Defendants' anticompetitive practices. Any in-network payments Plaintiffs received from United during the pendency of their Network Participation Agreements are, by definition, outside the scope of this dispute.

To illustrate this point, the Second Circuit observed that "Plaintiffs who never used Grubhub are just as much class members as those who have. Indeed, Grubhub does not dispute that at least some plaintiffs have 'well-plead[ed] claims despite never having used any of the [D]efendants' platforms.'" *Davitashvili*, 131 F.4th at 120. The same is true here. Consider a hypothetical plaintiff who never had a network participation agreement with *any* Commercial Payer Defendant. *All* of the payments that plaintiff received from the Commercial Payer Defendants would be at issue in this lawsuit because they would all be out-of-network. Accordingly, the fact that Plaintiffs have (or, at one point, had) Network Participation Agreements with United "is purely coincidental." *Id.*

As a result, a series of dominos fall. Plaintiffs' lawsuit does not "aris[e] out of" their Network Participation Agreements. The Arbitration Clauses are therefore outside the scope of the FAA with respect to this dispute. And because the FAA is inapplicable, so too is the body of Supreme Court case law interpreting the FAA. *See Calderon*, 5 F.4th at 1214 (concluding that *Moses H. Cone* does not apply where lawsuit does not arise out of the agreement containing the arbitration clause); *McFarlane*, 524 F. Supp. 3d at 277-78 (declining to apply *Concepcion* and the

[12] *See supra* Sec. II.B; CAC ¶¶ 3-4; *see also* ¶ 157 ("The OON Commercial Payer market is also distinguishable from the in-network Commercial Payer market, where the services at issue are performed based on agreements entered into between the Commercial Payer and the healthcare service Provider.").

FAA policy favoring arbitration where arbitration clause purported to require arbitration of disputes "wholly unrelated to the contract in which it is contained"); *Davitashvili*, 131 F.4th at 124 (Pérez, J. concurring) ("Where claims do not 'arise out of' the contract at issue, that means no [*Moses H. Cone*] federal presumption of arbitrability … and no [*Concepcion*] preemption of state law perceived as hostile to arbitration.").

In *Davitashvili*, the Second Circuit went on to hold that, because the plaintiffs' antitrust claims did not arise out of the agreement containing the arbitration clause within the meaning of the FAA, it could not compel arbitration of their antitrust claims. *Id.* at 120.[13] As Judge Pérez elaborated in her concurrence:

> [I]mportant consequences follow where the FAA does not apply due to a lack of nexus. First, the FAA gives federal courts "no power to compel arbitration" in such cases…. Because Grubhub moved to compel only under the FAA, that is sufficient to resolve the issue for now.

Id. at 124. Because United has only moved to compel arbitration under the FAA,[14] the Court should reach the same conclusion here and deny United's motion.

B. The Arbitration Clauses Are Also Unenforceable Under State Contract Law.

Davitashvili is the most recent statement from a federal court of appeals on infinite arbitration clauses. Earlier cases, however, evaluated whether arbitration clauses containing infinite language are enforceable under state contract law. Almost universally, those courts concluded they are not. *Davitashvili*, 131 F.4th at 124 n.6 (Pérez, J. concurring) ("Many courts have already declined to enforce exceptionally broad arbitration clauses or to interpret them to reach absurd results." (collecting cases)); *McFarlane*, 524 F. Supp. 3d at 275 ("Underscoring the

[13] Before reaching this issue, the Second Circuit had considered whether the arbitration agreements contained a delegation clause, an issue Plaintiffs address *infra* in Sec. IV.C.

[14] *See* United's Mot. Compel. Arb., ECF No. 105 (moving to compel "pursuant to the Federal Arbitration Act ("FAA") (9 U.S.C. § 1 et seq.)"); United's Br. at 1, 5-6 (same).

relative novelty of 'infinite arbitration clauses,' there is relatively little case law addressing them. Most of what there is, however, has taken a jaundiced view of the argument that they should be enforced according to their terms."). These courts have taken two different paths—contract formation and unconscionability—that end at the same result. *McFarlane*, 524 F. Supp. 3d at 276-79. Either way, state contract law provides two additional bases to deny United's motion.

1. The Parties Did Not Form an Agreement to Arbitrate the Antitrust Claims.

An example of the first path is *Wexler v. AT & T Corp.*, 211 F. Supp. 3d 500, 504 (E.D.N.Y. 2016). There, the court explained that "an arbitration clause that is unlimited in scope presents a question of contract *formation*." *Id.* at 504. At issue was an arbitration clause that was "strikingly broad in two respects." *Id.* at 502. First, it "purport[ed] to require arbitration of claims against third part[y] affiliate[s]." *Id.* And like the Arbitration Clauses here, it was "unusually broad as to the subject matter it purport[ed] to cover" because it was "not limited to disputes concerning [the] service agreement [containing the arbitration clause]." *Id.*

The court began its analysis by recognizing that "a court can order a dispute to arbitration only if, under the principles of contract law, 'the court is satisfied that the parties agreed to arbitrate *that dispute*.'" *Id.* And "[w]hen deciding whether the parties agreed to arbitrate a certain matter..., courts generally ... should apply ordinary state-law principles that govern the formation of contracts." *Id.* at 504. The court further explained that "[i]t is black-letter law that 'an essential element of any contract is a mutual intent to be bound'" and "the words expressed must be judged according to 'what an objective, reasonable person would have understood [them] to convey.'" *Id.* Applying those principles, the court concluded:

> Notwithstanding the literal meaning of the clause's language, no reasonable person would think that checking a box accepting the "terms and conditions" … would obligate them to arbitrate literally every possible dispute he or she might have with the service provider, let alone all of the affiliates under [its] corporate umbrella….

> Rather, a reasonable person would be expressing, at most, an intent to agree to arbitrate disputes connected in some way to the service agreement….

Id. Accordingly, the court refused to compel arbitration. *Id.* at 504-05. *Wexler* is the leading case on the contract formation rationale for declining to enforce infinite arbitration agreements, and its reasoning has been adopted by the Ninth Circuit and the Southern District of New York. *See Revitch v. DIRECTV, LLC*, 977 F.3d 713, 717 (9th Cir. 2020); *McFarlane*, 524 F. Supp. 3d at 276.

Wexler's rationale is equally applicable here. Kansas, California, and New Jersey all require a meeting of the minds and mutual intent to be bound,[15] and each interprets contractual language according to what a reasonable person would have understood it to convey under the circumstances.[16] As in *Wexler*, no reasonable person would think that signing United's Network Participation Agreement would obligate them to arbitrate literally every possible dispute they may ever have with United—rather, a reasonable person would be expressing, at most, an intent to agree to arbitrate disputes connected to the Network Participation Agreement. But as previously demonstrated,[17] there is no connection whatsoever between the Network Participation Agreements and Plaintiffs' antitrust claims. Accordingly, should the Court reach this issue, it should reach the

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[15] *Dougan v. Rossville Drainage Dist.*, 15 P.3d 338, 352 (Kan. 2000) (requiring meeting of the minds and intent to be bound); Cal. Civ. Code § 1636 ("A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting."); *Johnson & Johnson v. Charmley Drug Co.*, 95 A.2d 391, 397 (N.J. 1953) ("[A] contract does not come into being unless there be a manifestation of mutual assent by the parties to the same terms….There must needs be an agreement—a 'meeting of the minds' on the subject matter, to use a classic time-honored term, or there is no legally enforceable obligation.").

[16] *First Nat. Bank of Lawrence v. Methodist Home for the Aged*, 309 P.2d 389, 392 (Kan. 1957) (looking to "what a reasonable person, in the position of the other party to the agreement, would have understood them to mean under the existing conditions and circumstances"); *Kashmiri v. Regents of Univ. of California*, 67 Cal. Rptr. 3d 635, 652 (2007) ("[W]e look to the reasonable expectation of the parties at the time of contract."); *Deerhurst Ests. v. Meadow Homes, Inc.*, 165 A.2d 543, 551 (N.J. App. Div. 1960) (looking to "the meaning that would be ascribed to it by a reasonably intelligent person who was acquainted with all of the operative usages and circumstances surrounding the making of the writing").

[17] *See supra* Sec. II.B, IV.A.

same conclusion as *Wexler*, *Revitch*, and *McFarlane*, and hold that the Arbitration Clauses are unenforceable with respect to Plaintiffs' antitrust claims as a matter of contract formation.

2. United's Infinite Arbitration Clauses Are Unconscionable.

The unconscionability path traces back to *Smith v. Steinkamp*, 318 F.3d 775 (7th Cir. 2003), in which Judge Posner described the "absurd results" that would ensue if a payday lender's arbitration agreement purporting to cover "all claims asserted by you ... against us" were "read as standing free from any loan agreement." *Id.* at 776-77; *see also McFarlane*, 524 F. Supp. 3d at 275 (tracing the unconscionability path back to *Smith*); *Wexler*, 211 F. Supp. 3d at 503 (same). For example,

> If Instant Cash murdered Smith in order to discourage defaults and her survivors brought a wrongful death suit against Instant Cash ..., Instant Cash could insist that the wrongful death claim be submitted to arbitration. For that matter, if an employee of Instant Cash picked Smith's pocket when she came in to pay back the loan, and Smith sued the employee for conversion, he would be entitled to arbitration of her claim. It would make no difference that the conversion had occurred in Smith's home 20 years after her last transaction with Instant Cash.

Id. at 777. Judge Posner opined that such results "might be thought unconscionable," *id.* at 778, but did not have to address that issue because the agreement was susceptible of a construction limiting "the duty to arbitrate to disputes arising under 'this Agreement.'" *Id.* at 777.

A decade later, in *In re Jiffy Lube International, Inc., Text Spam Litigation*, 847 F. Supp. 2d 1253 (S.D. Cal. 2012), the Southern District of California relied on Judge Posner's opinion to hold that an arbitration clause containing infinite language was unconscionable. *Jiffy Lube* involved a class action alleging that a Jiffy Lube franchisee had sent unauthorized text messages in violation of the TCPA. The franchisee moved to compel arbitration because a plaintiff had signed an agreement at one of its service stations, which provided that "any and all disputes, controversies or claims between Jiffy Lube® and you ... will be resolved by mandatory arbitration." *Id.* at 1262. The district court held that the agreement could not "truly encompass 'any

and all disputes' between the parties" because such a "clause would clearly be unconscionable" if applied, for example, to "a tort action arising from a completely separate incident." *Id.* at 1262-63.

Most recently, in *McFarlane*, the Southern District of New York relied on those opinions to hold that it would be unconscionable to enforce an infinite arbitration clause in plaintiffs' cable services agreement with Altice, to the extent their data breach claims arose from their employment at Altice. *McFarlane*, 524 F. Supp. 3d at 275-78, 280. The court began by noting that "Under New York law, '[a]n unconscionable contract has been defined as one which is so grossly unreasonable or unconscionable in the light of the mores and business practices of the time and place as to be unenforceable according to its literal terms.'" *Id.* at 277. The court then reasoned that:

> To enforce the Arbitration Provision "according to its literal terms" would cross this line. Indeed, it takes little imagination to come up with hypotheticals that make plain the outrageous results that would follow were that not the case. For example, if a subscriber purchased the stock of Altice's affiliate and the price of that stock dropped due to corporate malfeasance, her securities fraud claim would be forced into arbitration. Or to borrow from Judge Posner: If an Altice employee murdered someone who happened to have subscribed to Altice's cable service, it would mandate arbitration of a wrongful death claim brought by the subscriber's survivors (even if the murder occurred years after the cable service had been canceled).

Id. at 277-78. Accordingly, "[t]he list compel[led] the Court to conclude that, as a matter of general unconscionability doctrine, the Arbitration Provision must be construed to apply only to claims that have some nexus to the contract of which it is part." *Id.* at 278.

As United recognizes, "[t]he ultimate issue in every [unconscionability] case is whether the terms of the contract are sufficiently unfair, in view of all relevant circumstances, that a court should withhold enforcement." United Br. at 16 (citing *OTO, L.L.C. v. Kho*, 447 P.3d 680, 690 (Cal. 2019); *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)). This is essentially the same legal standard the court applied in *McFarlane*, so its rationale applies with equal force

here.[18] Notably, in its catalogue of outrageous results that would follow from enforcing the infinite arbitration clause according to its literal terms, *McFarlane* observed that "if a subscriber purchased the stock of Altice's affiliate and the price of that stock dropped due to corporate malfeasance, her securities fraud claim would be forced into arbitration." *McFarlane*, 524 F. Supp. 3d at 277-78. This example bears a remarkable resemblance to the case at bar, where United seeks to funnel Plaintiffs' OON antitrust claims into arbitration on the basis of unrelated Network Participation Agreements. Accordingly, the Court should conclude, as a matter of the unconscionability doctrine, that the Arbitration Clauses cannot be applied to Plaintiffs' antitrust claims.

3. PIMG's Arbitration Clause Is Unconscionable Under *Discover Bank*, Which Is Not Preempted in This Case.

McFarlane observed that "[a]pplying the unconscionability doctrine to limit a clause that purports to apply in any case between [the parties], without limitation, does not 'single[ ] out" arbitration for "disfavored treatment'" in contravention of *Concepcion*. *McFarlane*, 524 F. Supp. 3d at 278. "To the contrary, it would apply equally to an 'infinite forum selection clause' or an 'infinite liability limitation clause.'" *Id.* This is undoubtedly true, but more importantly, *McFarlane* went on to note that "to the extent that the Arbitration Provision purports to require arbitration of claims wholly unrelated to the contract in which it is contained, it is arguably not even subject to the FAA and its policy favoring arbitration." This is the correct conclusion, and it is inescapable

[18] Although *McFarlane* did not address procedural unconscionability, there is sufficient procedural unconscionability here because the Network Participation Agreements, and the Arbitration Clauses they contain, are contracts of adhesion, which were presented by United on a take-it-or-leave-it basis—a fact which is demonstrated by the striking similarity of the material provisions across Plaintiffs' agreements. *See, e.g.*, *Muhammad v. Cnty. Bank of Rehoboth Beach, Delaware*, 912 A.2d 88, 96 (N.J. 2006) ("[T]he essential nature of a contract of adhesion is that it is presented on a take-it-or-leave-it basis, commonly in a standardized printed form, without opportunity for the 'adhering' party to negotiate except perhaps on a few particulars" and "adhesion contracts invariably evidence some characteristics of procedural unconscionability"); *Kho*, 447 P.3d at 690 (same); *Ed Bozarth Chevrolet, Inc. v. Black*, 96 P.3d 272, 279 (Kan. 2003) (explaining that contracts of adhesion become unconscionable if they contravene "reasonable expectations").

when an arbitration clause is not subject to the FAA. Accordingly, "[w]here claims do not 'arise out of' the contract at issue, that means no [*Moses H. Cone*] federal presumption of arbitrability … and no [*Concepcion*] preemption of state law perceived as hostile to arbitration." *Davitashvili*, 131 F.4th at 124 (Pérez, J. concurring).

As previously demonstrated, Plaintiffs' antitrust claims do not arise out of their Network Participation Agreements, so they are not subject to the FAA. *See supra* Sec. IV.A. As a result, United's motion is beyond the reach of *Concepcion*, and California's *Discover Bank* rule springs back to life. In *Discover Bank*, the California Supreme Court held that class action waivers are unconscionable and therefore unenforceable (1) "when the waiver is found in a consumer contract of adhesion in a setting in which disputes between the contracting parties predictably involve small amounts of damages," and (2) "when it is alleged that the party with the superior bargaining power has carried out a scheme to deliberately cheat large numbers of consumers out of individually small sums of money." *Discover Bank v. Superior Ct.*, 113 P.3d 1100 (Cal. 2005).[19] Here, the class action waiver is easily unconscionable under the *Discover Bank* rule. First, the waiver is found in a contract of adhesion, and the lawsuit involves relatively small amounts of individual damages—one of the factors that make this case appropriate for class treatment. *See supra* Sec. IV.B.2 at 17 n.22; CAC ¶ 382. And second, Plaintiffs have alleged that United and its Co-Commercial Payer Defendants have carried out a scheme to deprive a large number of healthcare providers out of relatively small sums of money by conspiring to suppress payments for OON healthcare services. CAC ¶ 1. Accordingly, PIMG's Arbitration Clause is also unconscionable pursuant to *Discover Bank*, because the Arbitration Clause is beyond the reach of *Concepion* with respect to this dispute.

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[19] The *Discover Bank* Rule is also applicable to commercial contracts. *See In re Yahoo! Litig.*, 251 F.R.D. 459, 467 (C.D. Cal. 2008).

C. Scaccia's Arbitration Clause Is Also Unenforceable Because Perpetual Contracts Are Terminable At-Will.

Scaccia's Arbitration Clause is also unenforceable because he terminated his Network Participation Agreement. *See* Scaccia Decl., Ex. A; Zappola Decl., Ex. B. United suggests the opposite because his Arbitration Clause provides that "[t]his provision will survive any termination of this Agreement." *See* United Br. at 5. That language, however, says nothing about the duration of the survival, and perpetual contracts are disfavored in New Jersey, where the contract was formed. *In re Miller's Est.*, 447 A.2d 549, 553 (N.J. 1982). "Ordinarily, if a contract contains no express terms as to its duration, it is terminable at will or after a reasonable time." *Id.* at 554. Here, more than four years have passed since Scaccia terminated his Network Participation Agreement. Scaccia Decl., Ex. A; Zappola Decl., Ex. B. Accordingly, Scaccia was entitled to terminate his Arbitration Clause's survival provision, which he effectuated by filing this lawsuit.

D. The Purported "Delegation Clauses" Are Unenforceable.

Finally, the purported "delegation clauses" on which United seeks to compel arbitration are also unenforceable. United argues that "[p]arties to an arbitration agreement may agree that an 'arbitrator, rather than a court will resolve threshold arbitrability questions,'" and "where there is 'clear and unmistakable' evidence to delegate gateway 'questions of arbitrability' to the arbitrator—a court … must compel arbitration." United Br. at 14 (quoting *Henry Schein, Inc. v. Archer & White Sales, Inc.* 586 U.S. 63, 65 (2019)).

However, "[a]ll of this, of course, assumes that the FAA controls." *Singh v. Uber Techs. Inc.*, 939 F.3d 210, 215 (3d Cir. 2019). "But what if it does not? Or, more precisely, who gets to decide the question of whether the FAA applies where there is a delegation clause?" *Id.* The Supreme Court answered this question in *New Prime Inc. v. Oliveira*, 586 U.S. 105, 111-12 (2019), "holding that courts must be the ones to determine whether an agreement is excluded from FAA

coverage even where there is a delegation clause." *Singh*, 939 F.3d at 215. Accordingly, even if there is a delegation clause, a court will nonetheless lack the power to stay the litigation and compel arbitration where the FAA does not apply to the arbitration clause. As the Supreme Court explained in *Oliveira*, "[a]fter all, to invoke its statutory powers under §§ 3 and 4 to stay litigation and compel arbitration according to a contract's terms, a court must first know whether the contract itself falls within or beyond the boundaries of §§ 1 and 2."[20] *Oliveira*, 586 U.S. at 111; *see also Davitashvili*, 131 F.4th at 124 (Pérez, J. concurring) ("[I]mportant consequences follow where the FAA does not apply due to a lack of nexus. First, the FAA gives federal courts "no power to compel arbitration" in such cases….").[21] The presence of a delegation clause does not alter this analysis because "[a] delegation clause is merely a specialized type of arbitration agreement, and the Act 'operates on this additional arbitration agreement just as it does on any other.'" *Oliveira*, 586 U.S. at 112.

Pursuant to *Oliveira*, therefore, the Court must first determine whether the FAA applies before it can consider the purported delegation clauses. As previously demonstrated, Plaintiffs' antitrust claims do not arise out of their Network Participation Agreements, so the FAA does not apply. *See supra* Sec. IV.A. Accordingly, the FAA does not authorize the Court to stay the litigation and send the parties to arbitration, and the Court need not reach the delegation clauses.

But even if the Court reaches the purported delegation clauses, they do not provide "clear and unmistakable" evidence that the parties agreed to delegate gateway issues to an arbitrator. In Ayer and Scaccia's Arbitration Clauses, there is no clearly identifiable delegation clause—rather

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[20] Although *Oliveira* and *Singh* dealt with the residual clause in Section 1 of the FAA, this rationale applies equally where the FAA does not apply due to lack of nexus because the FAA's "arising out of" limitation appears in Section 2, which of course, is also antecedent to Sections 3 and 4. *See Abbas v. Truist Bank*, 774 F. Supp. 3d 929, 943-44 (M.D. Tenn. 2025).

[21] Although certain parties' delegation clauses were enforced in *Davitshali*, the plaintiffs did not make this argument—or even devote more than a footnote to the delegation clauses—so *Davitshali* should not be read as persuasive on this issue. *See Davitashvili*, 131 F.4th at 118.

"arbitrability" is merely defined as a form of "Dispute," and buried in the middle of the definition.[22] In *Morgan v. Sanford Brown Inst.*, 137 A.3d 1168, 1178 (N.J. 2016), New Jersey's Supreme Court held that similar language, which merely defined "objection[s] to arbitrability" as a form of dispute, did not amount to a "a clearly identifiable delegation clause." *Id.* The Court should reach the same conclusion here.

In PIMG's Arbitration Clause, there is no delegation clause at all—the word "arbitrability" does not even appear, and United has not suggested otherwise. *See* PIMG Decl., Ex. A at 11; United Br. at 14-15. It is black-letter law that "where an arbitration agreement is silent or ambiguous on the 'who should decide arbitrability' point, a *judge*, not an arbitrator, must resolve the question." *Wilson-Davis v. SSP Am., Inc.*, 62 Cal. App. 5th 1080, 1088 (2021) (cleaned up).[23]

But even if the Court concludes that the purported delegation clauses are clear and unmistakable, they are still unenforceable. "An agreement to delegate arbitrability to an arbitrator, like an arbitration agreement itself, must satisfy the elements necessary for the formation of a contract under state law." *Morgan v. Sanford Brown Inst.*, 137 A.3d 1168, 1172 (N.J. 2016) (citing *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995)). For that reason, the contract formation rationale for declining to enforce the Arbitration Clauses applies just as forcefully to the

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[22] Ayer Decl., Ex. A, Art. 7; Zappola Decl., Ex. A at 8.

[23] Contrary to United's argument, the Arbitration Clauses do not incorporate the CDR or AAA Rules, they merely state that the arbitration will be conducted "in accordance with" those rules or "the arbitrators will use" those rules. Ayer Decl., Ex. A, Art. 7; PIMG Decl., Ex. A at 11; Zappola Decl., Ex. A at 8. Courts in California and New Jersey have held that such references are insufficient to constitute a "clear and unmistakable" delegation. *See, e.g.*, *Ajamian v. CantorCO2e, L.P.*, 203 Cal. App. 4th 771, 790 (Cal. Ct. App. 2012) ("There are many reasons for stating that the arbitration will proceed by particular rules, and doing so does not indicate that the parties' motivation was to announce who would decide threshold issues of enforceability."); *Ames v. Premier Surgical Ctr., L.L.C.*, 2016 WL 3525246, at *3 (N.J. Super. Ct. App. Div. June 29, 2016) ("Although defendants assert that the language of the arbitration clause assigns the question to an arbitrator via reference to the AAA rules, such delegation is not 'clearly and unmistakably established' by the language in the agreement."). The Court should reach the same conclusion.

purported delegation clauses. *See supra* Sec. IV.B.1. In other words, no reasonable person would think that the oblique reference to "arbitrability" would delegate gateway issues to an arbitrator with respect to literally every possible dispute they may ever have with United. Rather, a reasonable person would be expressing, at most, an agreement to delegate gateway issues with respect to disputes connected to the Network Participation Agreement. Likewise, the unconscionability rationale is also applicable here clauses because outrageous results would follow from allowing an arbitrator to determine whether disputes with no connection to the Network Participation Agreements should be arbitrated.[24] *See supra* Sec. IV.B.2.

E. In the Alternative, Any Stay Should Be Limited to Claims Against United.

Should the Court grant United's motion, any stay should be limited to claims between Plaintiffs Ayer, PIMG and Scaccia, and Defendant United. While United does not appear to argue that any proceedings should be stayed as to Zelis and the remainder of the Commercial Payer Defendants, any such argument should be rejected as those parties are not signatories to the agreement, and a stay would be futile.

V. CONCLUSION

For the foregoing reasons, the Court should deny United's motion to compel arbitration.

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[24] Although Plaintiffs are specifically challenging the purported delegation clauses here, that is not required of them in this case. *Rent-A-Center, West v. Jackson*, 561 U.S. 63, 70, 73-74 (2010)—the Supreme Court case holding that delegation clauses are self-contained arbitration agreements requiring a specific challenge—is yet another opinion interpreting the FAA that is not applicable after it is determined that the FAA does not apply.

Dated: September 22, 2025

Respectfully submitted,

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: ZELIS REPRICING ANTITRUST LITIGATION This Document Relates To: All Associated Cases	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*

DECLATION OF DENNIS C. AYER IN SUPPORT OF PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT UNITEDHEALTH GROUP, INC.'S MOTION TO COMPEL ARBITRATION

DECLARATION OF DENNIS C. AYER

I, Dennis C. Ayer, hereby declare and state as follows:

1. I am the owner of Plaintiff Dennis C. Ayer, DDS, LLC. 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 Plaintiffs' Memorandum in Opposition to Defendant UnitedHealth Group, Inc.'s Motion to Compel Arbitration.

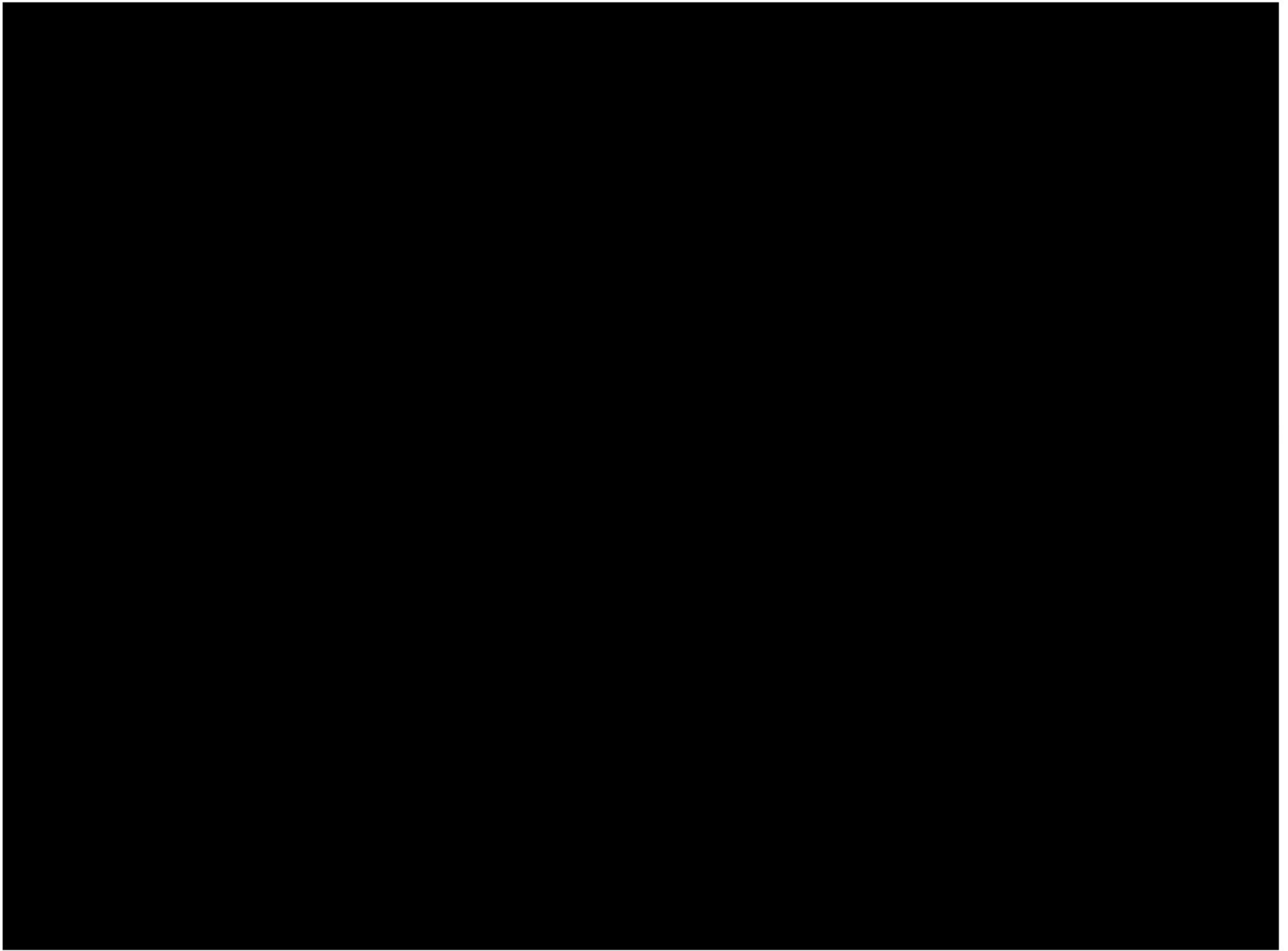
2. Attached hereto as **Exhibit A** is a true and correct copy of the Network Participation Agreement between Plaintiff Dennis C. Ayer, DDS, LLC, and Dental Benefit Providers, Inc.

3. Attached hereto as **Exhibit B** is a true and correct copy of the UnitedHealth DPPO Provider Fee Schedule applicable to Plaintiff Dennis C. Ayer, DDS, LLC's Network Participation Agreement attached as Exhibit A.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on this 17th Day of September, 2025.

Dennis C. Ayer

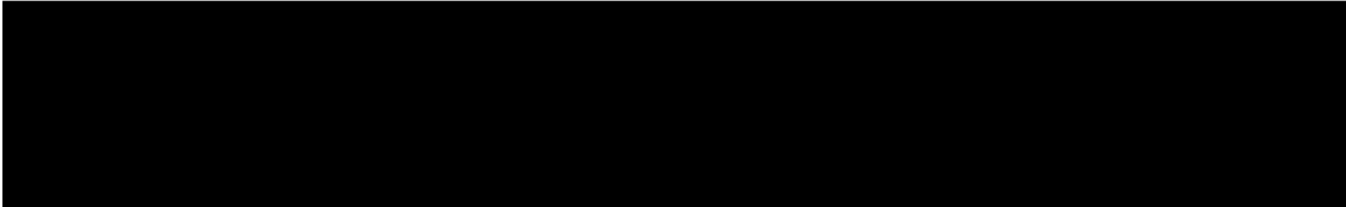
Exhibit A

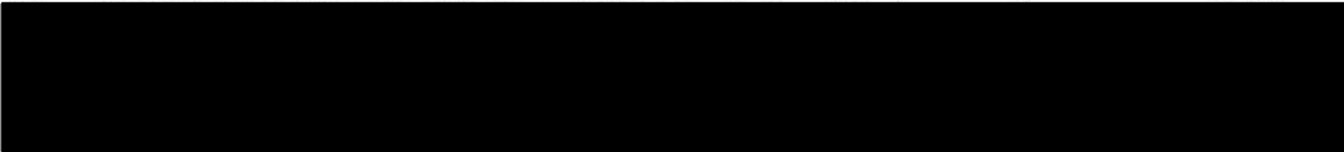


DENTAL BENEFIT PROVIDERS, INC.
DENTAL PROVIDER AGREEMENT

THIS AGREEMENT (this "Agreement") is made and entered into as of 29 NOV, 2018 ("Commencement Date"), by and between Dental Benefit Providers, Inc. its subsidiaries, and its affiliated companies (collectively "DBP"), and Dennis C Ayer DDS, LLC (the "Practice").

The parties hereby agree as follows:





ARTICLE 7. DISPUTE RESOLUTION

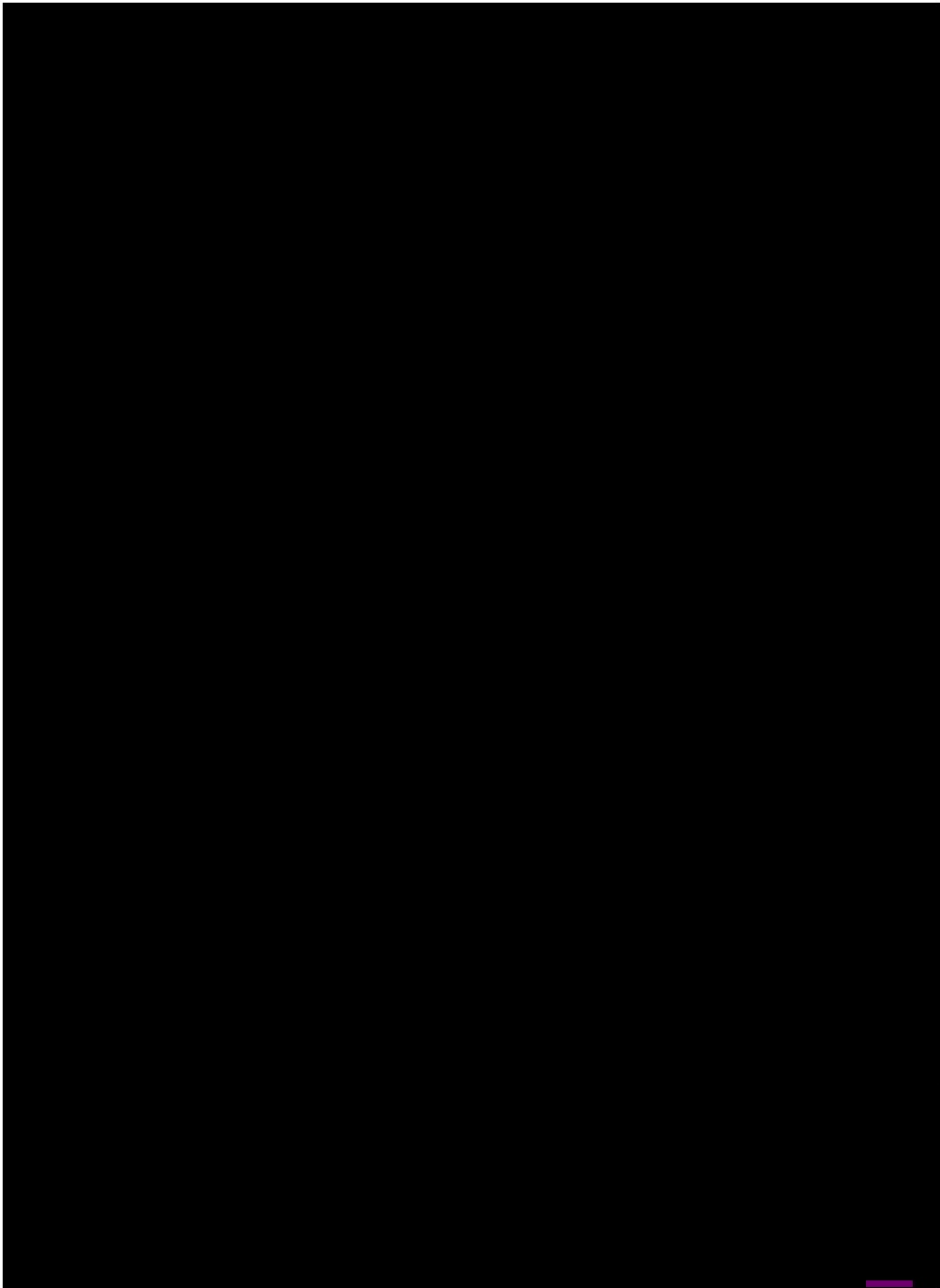
DBP and the Practice will work together in good faith to resolve any disputes about their business relationship, including, but not limited to, all questions of arbitrability, the validity, scope or termination of this Agreement or any term hereof. If the parties are unable to resolve any such dispute 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.

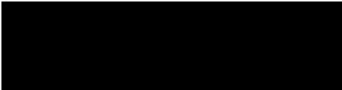
Any arbitration proceeding under this Agreement shall be conducted in such location as the parties may mutually agree. The arbitrator(s) may construe or interpret but shall not vary or ignore the terms of this Agreement and shall be bound by controlling law. The arbitrator(s) shall have no authority 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.





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

[signatures on following page]

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

Print Name: Dennis Ayer

Print Title: Dentist/Owner

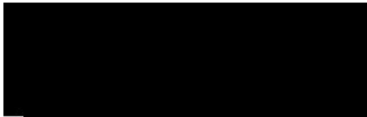
Date: 11/29/2018

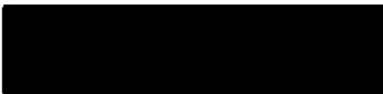
Address: 2301 West 143rd St.

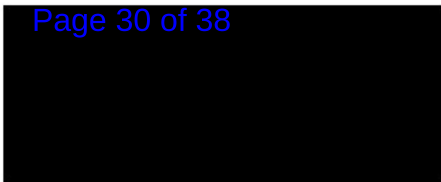
City: Leawood

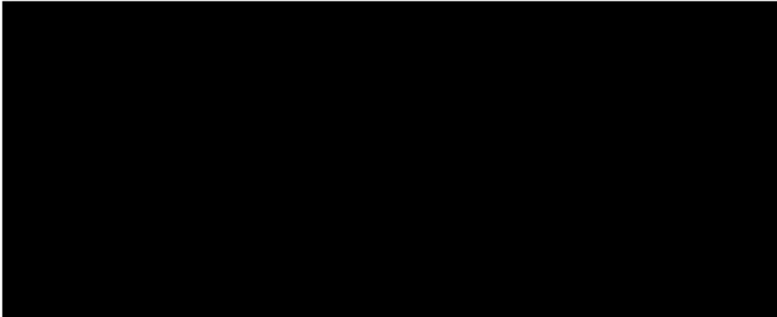
State: KS Zip: 66224

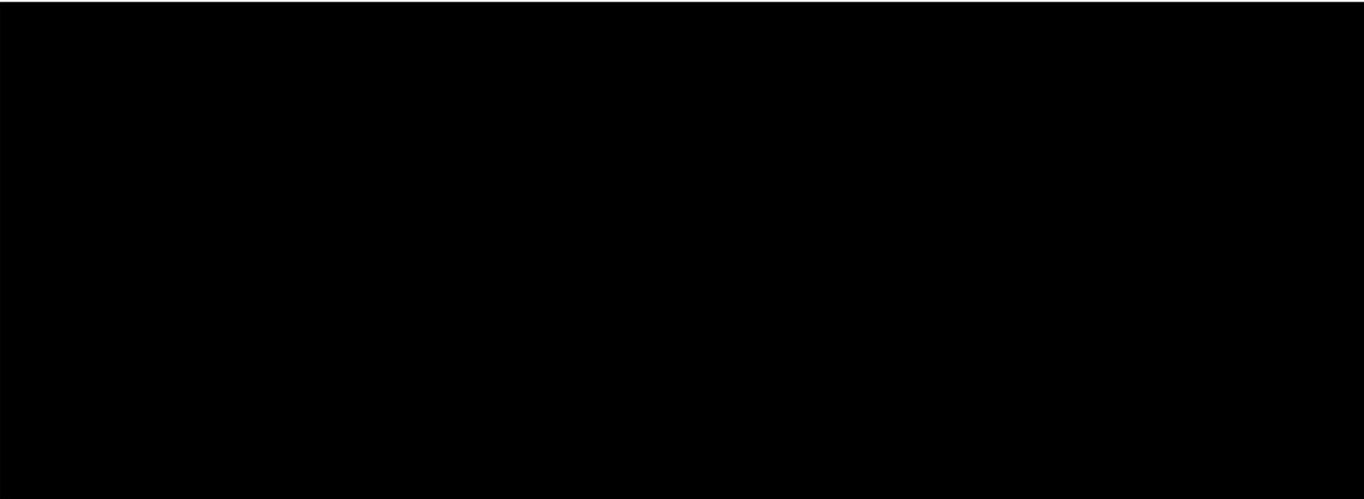
SS# and/or Fed Tax ID#: 66224

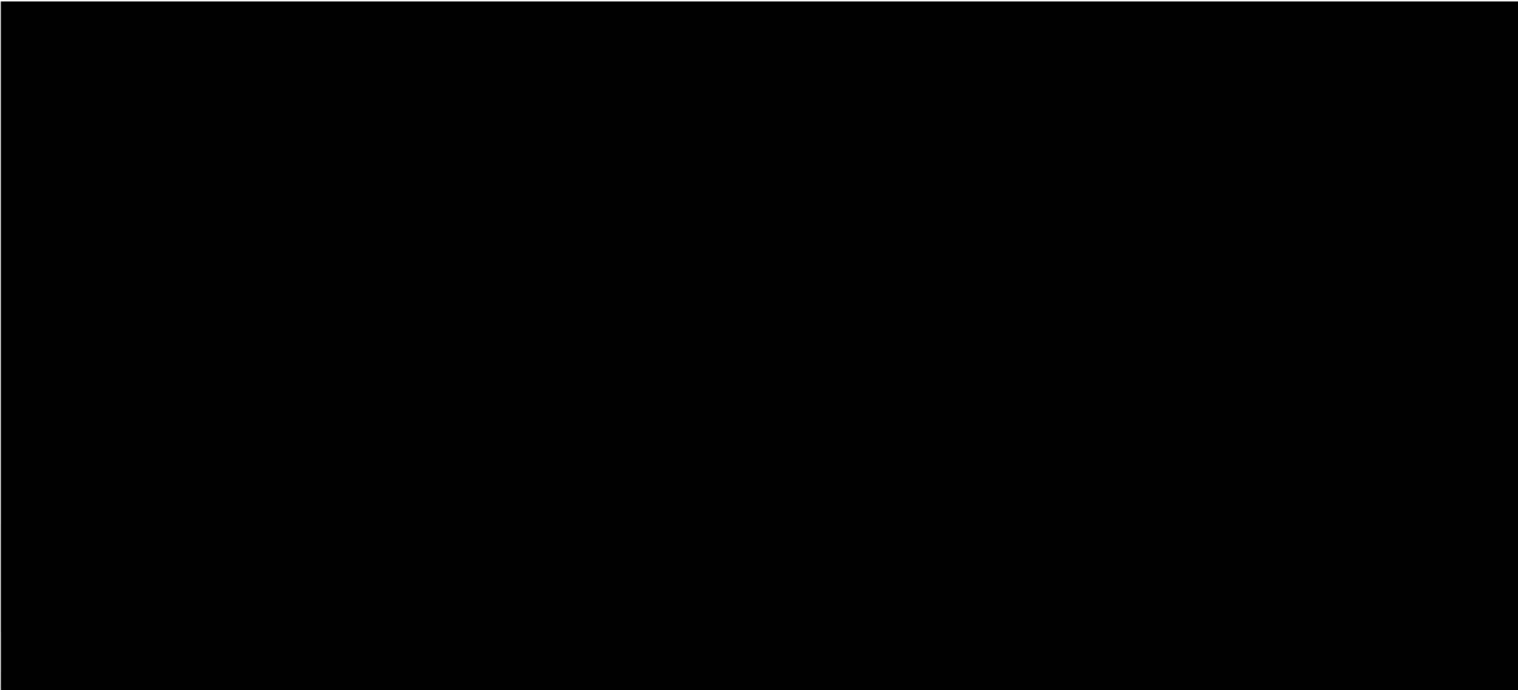


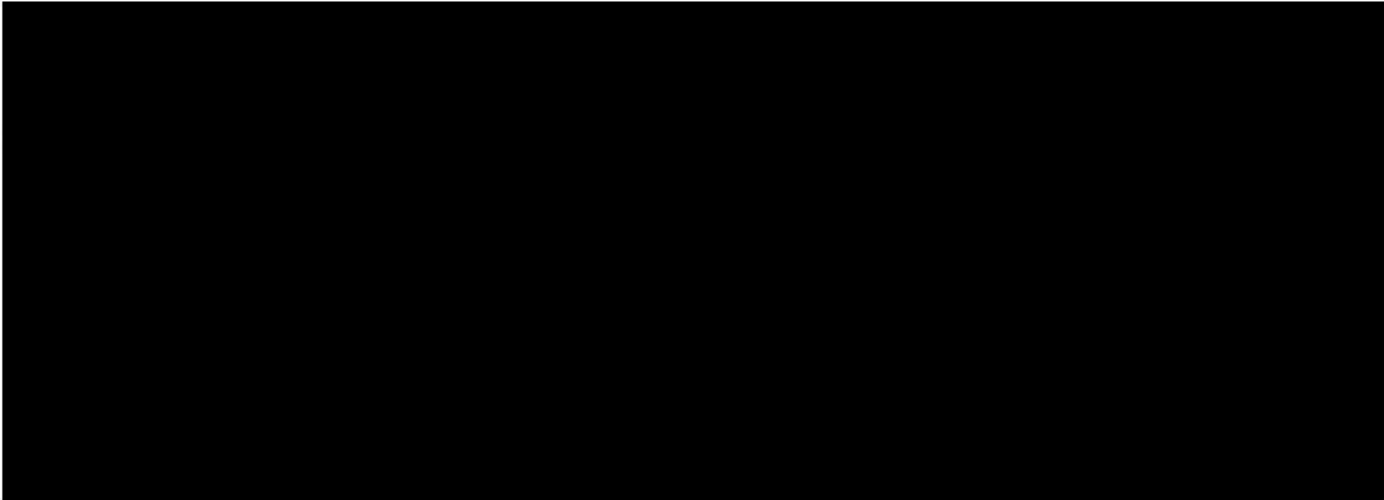


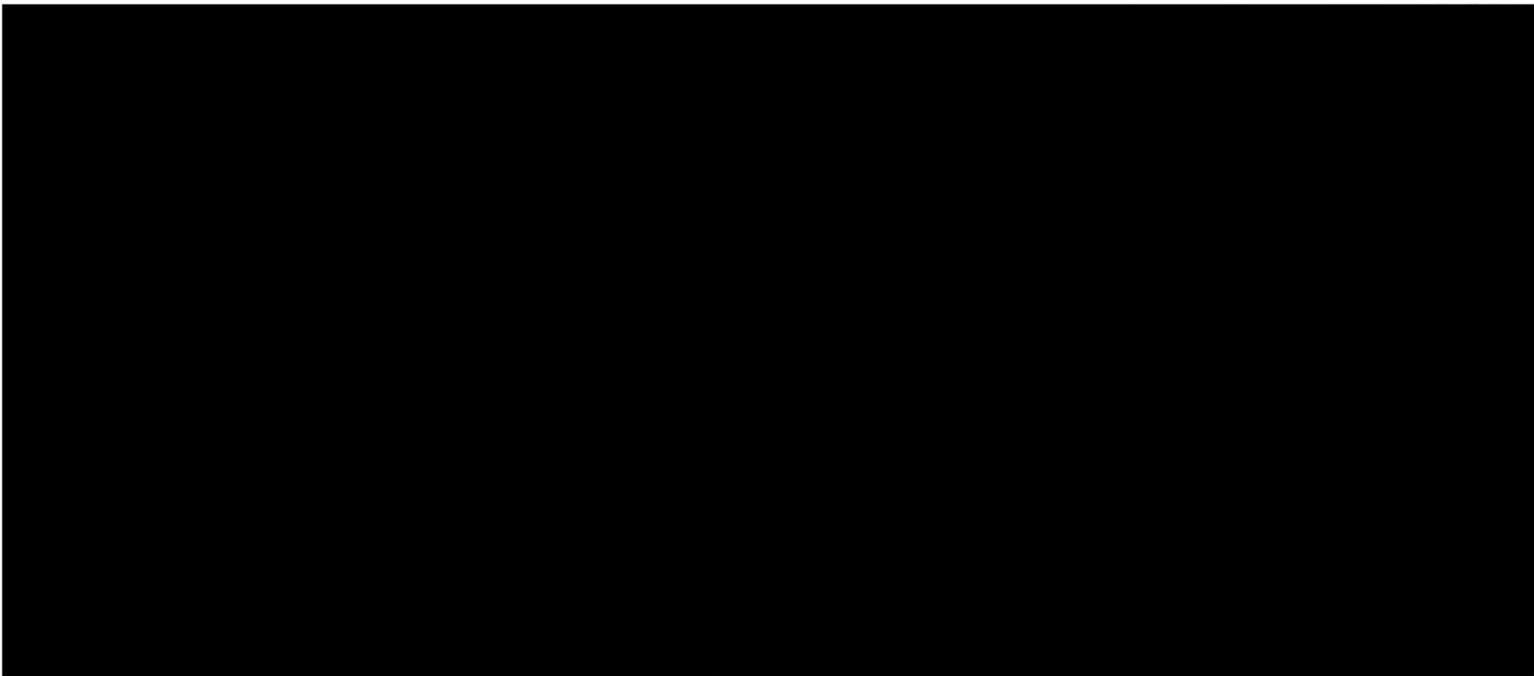


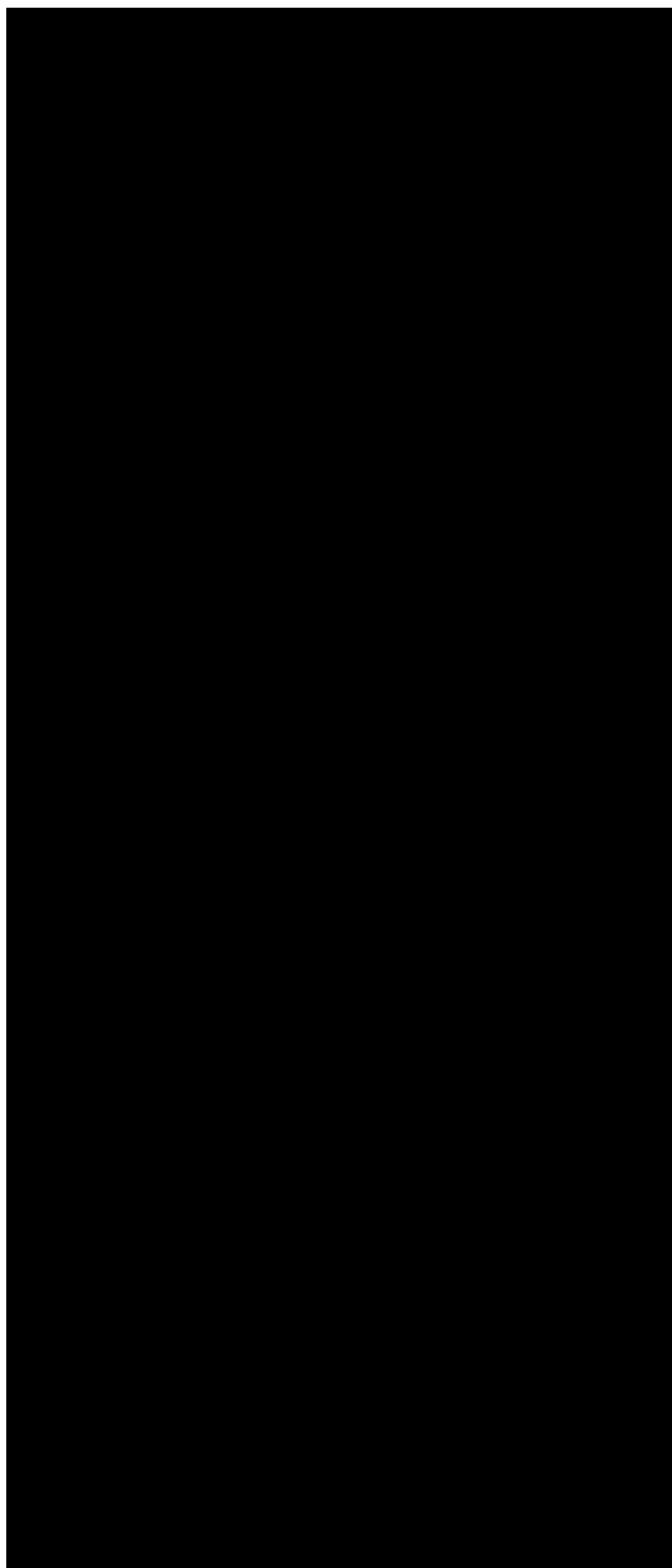












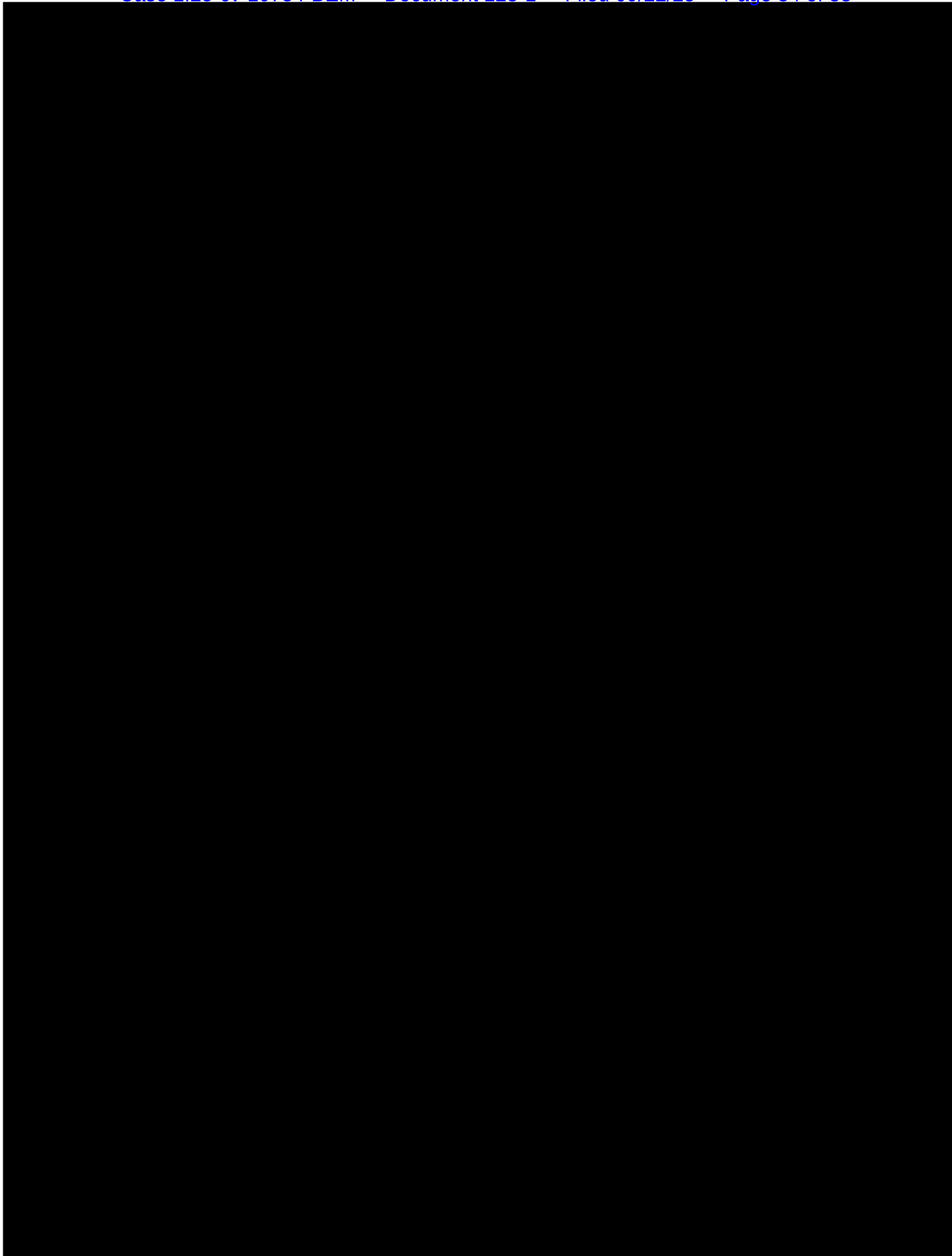


Exhibit B

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: ZELIS REPRICING ANTITRUST LITIGATION This Document Relates To: All Associated Cases	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 FRANK J. SCACCIA IN SUPPORT OF PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT UNITEDHEALTH GROUP, INC.'S MOTION TO COMPEL ARBITRATION

DECLARATION OF FRANK J. SCACCIA

I, Frank J. Scaccia, hereby declare and state as follows:

1. I am the owner of Plaintiff Frank J. Scaccia, M.D., F.A.C.S., L.L.C. 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 Plaintiffs' Memorandum in Opposition to Defendant UnitedHealth Group, Inc.'s Motion to Compel Arbitration.

2. Attached hereto as **Exhibit A** is a true and correct copy of a letter to United Healthcare, dated January 4, 2021, terminating Plaintiff Frank J. Scaccia, M.D., F.A.C.S., L.L.C.'s Network Participation Agreement with United Healthcare.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on this 17 of September, 2025.

Frank J. Scaccia

Exhibit A

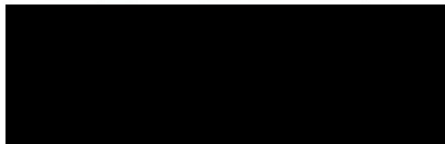
Frank J. Scaccia MD FACS

American Board of Facial Plastic & Reconstructive Surgery
American Board of Otolaryngology
Fellow American College of Surgeons

January 4, 2021

United Healthcare
Network Contract Support Relations
780 Shiloh Road, MS-1.700
Plano, TX 75074

RE: TERMINATION OF CONTRACT
FRANK J. SCACCIA MD



70 East Front Street, Floor 3
Red Bank, NJ 07701
scaccia@riversideface.com
Phone: 732-747-5300
Fax: 732-747-9922

To Whom It May Concern:

Please accept this letter of termination from my United Healthcare contract effective 90 days from receiving this letter.

Sincerely,

Frank J. Scaccia M.D.

May 10, 2021

Dear Customer,

The following is the proof-of-delivery for tracking number: 815796774446

Delivery Information:

Status:	Delivered	**Delivered To:**	
Signed for by:	A.RODRIGUEZ	**Delivery Location:**	
Service type:	FedEx Standard Overnight		
Special Handling:	Deliver Weekday; Indirect Signature Required		PLANO, TX,
		Delivery date:	Jan 6, 2021 09:46

Shipping Information:

Tracking number:	815796774446	**Ship Date:**	Jan 5, 2021
		Weight:	

Recipient:

PLANO, TX, US,

Shipper:

RED BANK, NJ, US,

Signature image is available. In order to view image and detailed information, the shipper or payor account number of the shipment must be provided.

TRACK ANOTHER SHIPMENT

815796774446

ADD NICKNAME

Delivered

Wednesday, January 6, 2021 at 9:46 am

DELIVERED

Signed for by: A.RODRIGUEZ

GET STATUS UPDATES

OBTAIN PROOF OF DELIVERY

Indirect signature required ⓘ

FROM	TO
RED BANK, NJ US	PLANO, TX US

Travel History

TIME ZONE
Local Scan Time

Wednesday, January 6, 2021

9:46 AM	PLANO, TX	Delivered

Shipment Facts

TRACKING NUMBER	SERVICE	SPECIAL HANDLING SECTION
815796774446	FedEx Standard Overnight	Deliver Weekday, Indirect Signature Required
SHIP DATE	**SIGNATURE SERVICES**	**ACTUAL DELIVERY**
1/5/21 ⓘ	Indirect signature required ⓘ	1/6/21 at 9:46 am

FedEx® Express *Package US Airbill*

FedEx Tracking Number **8157 9677 4446**

Form ID No. **0215** BLMA 145 MUR3

Sender's Copy

1 From *Please print and press hard.*

Date 1/4/2021 Sender's FedEx Account Number [illegible]

Sender's Name Louise Kindya Phone (732) 747-5300

Company RIVERSIDE PLASTIC SURGERY & GI

Address 70 E FRONT ST FL 3 Dept./Floor/Suite/Room

City RED BANK State NJ ZIP 07701-1851

2 Your Internal Billing Reference First 24 characters will appear on invoice. OPTIONAL

3 To Recipient's Name United HealthCare Phone (763) 623-1144

Company Network Contract Support Relations

Address 780 Shiloh Rd Dept./Floor/Suite/Room

We cannot deliver to P.O. boxes or P.O. ZIP codes.

Address MS-1700

Use this line for the HOLD location address or for continuation of your shipping address.

City Plano State TX ZIP 75074

☐ Hold Weekday — FedEx location address REQUIRED. NOT available for FedEx First Overnight.

☐ Hold Saturday — FedEx location address REQUIRED. Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

0133338294

Deliveries when and where you want. Learn about FedEx Delivery Manager™ at fedex.com/delivery

4 Express Package Service * To most locations. **Packages up to 150 lbs.** *For packages over 150 lbs., use the FedEx Express Freight US Airbill.*

Next Business Day

- ☐ FedEx First Overnight — Earliest next business morning delivery to select locations. Friday shipments will be delivered on Monday unless Saturday Delivery is selected.
- ☐ FedEx Priority Overnight — Next business morning.* Friday shipments will be delivered on Monday unless Saturday Delivery is selected.
- ☒ FedEx Standard Overnight — Next business afternoon.* Saturday Delivery NOT available.

2 or 3 Business Days

- ☐ FedEx 2Day A.M. — Second business morning.* Saturday Delivery NOT available.
- ☐ FedEx 2Day — Second business afternoon.* Thursday shipments will be delivered on Monday unless Saturday Delivery is selected.
- ☐ FedEx Express Saver — Third business day.* Saturday Delivery NOT available.

5 Packaging * Declared value limit $500.

☒ FedEx Envelope* ☐ FedEx Pak* ☐ FedEx Box ☐ FedEx Tube ☐ Other

6 Special Handling and Delivery Signature Options Fees may apply. See the FedEx Service Guide.

☐ Saturday Delivery — NOT available for FedEx Standard Overnight, FedEx 2Day A.M., or FedEx Express Saver.

☐ No Signature Required — Package may be left without obtaining a signature for delivery.

☒ Direct Signature — Someone at recipient's address may sign for delivery.

☒ Indirect Signature — If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only.

Does this shipment contain dangerous goods? One box must be checked.

☐ No ☐ Yes As per attached Shipper's Declaration. ☐ Yes Shipper's Declaration not required. ☐ Dry Ice Dry Ice, 9, UN 1845 ____ x ____ kg

☐ Cargo Aircraft Only

Restrictions apply for dangerous goods — see the current FedEx Service Guide.

7 Payment *Bill to:*

☒ Sender Acct. No. in Section 1 will be billed. ☐ Recipient ☐ Third Party — Enter FedEx Acct. No. below

This airbill can be used only when billing to a FedEx account number. For cash, check, or credit card transactions, please go to a staffed shipping location.

FedEx Acct. No.

Total Packages ____ Total Weight ____ lbs. Total Declared Value† $ ____ .00

†Our liability is limited to US$100 unless you declare a higher value. See back for details. By using this airbill you agree to the service conditions on the back of this airbill and in the current FedEx Service Guide, including terms that limit our liability.

611

Rev. Date 3/18 • Part #163134 • ©1994–2018 FedEx • PRINTED IN U.S.A.

PULL AND RETAIN THIS COPY BEFORE AFFIXING TO THE PACKAGE. NO POUCH NEEDED.

Exhibit B

Secure Email Encryption Service

Secure Message from [redacted]

N

NMRT <networkhelp@uhc.com>
06/16/2021 08:36:51 PM GMT
To: Louise Zappola <lzappola@riversideface.com>

Hello Louise,
Thank you for reaching out to United Healthcare. Per a certified letter the provider was requested to b e termed on 5/6/21. The providers term date in the database for all lines of business is 5/6/21. There is no term date for the provider of 1/6/21. I tried to call the office, but you had left for the day. If you need to sp eak to someone or need further clarification please reach out.

Thank you

[redacted]
UnitedHealthcare
Network Management Resource Team (NMRT)

***Our* United Culture. The way forward.**
▪ Integrity ▪ Compassion ▪ Relationships ▪ Innovation ▪ Performance

If you have any questions or concerns about the content of this email, please do not reply to this email but rather email directly to: networkhelp@uhc.com for further assistance.
Please Note: *Credentialing approval does not imply or guarantee participation with the health plans. Approved and signed physi cian contracts are required for participation.*

--SecureDelivery--

From: Louise Zappola <lzappola@riversideface.com>
Sent: Tuesday, June 15, 2021 11:23 AM
To: NMRT <networkhelp@uhc.com>
Cc: Northeast Provider Relations <northeastprteam@uhc.com>
Subject: FW: Termination date January 6, 2021

From: Louise Zappola
Sent: Tuesday, June 15, 2021 10:04 AM
To: Northeast Provider Relations <northeastprteam@uhc.com>
Subject: Termination date January 6, 2021

Please contact me regarding Termination from January 6, 2021.
I will be contacting DOBI if I do not receive a response.

Practice Contract for:
Frank J. Scaccia MD
70 East Front St. Suote 3
Red Bank, NJ 07701
732-747-5300

Thank you.
Louise Kindya
Practice Manager

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Louise Zappola

From: [redacted] on behalf of NMRT <networkhelp@uhc.com>
Sent: Wednesday, June 16, 2021 3:55 PM
To: Louise Zappola
Subject: RE: Termination

Hello,

I wanted to let you know that we've responded to your inquiry in a separate secure email. If you do not see the email in your inbox I'd recommend to check your spam/junk folder. Many times our secured/confidential emails go directly there. If you do not receive the email after a few hours from receiving this one, please reach back out to our team so that we can further assist you.

Thank you,

[redacted]
UnitedHealthcare
Network Management Resource Team (NMRT)

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▪ Integrity ▪ Compassion ▪ Relationships ▪ Innovation ▪ Performance

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Please Note: *Credentialing approval does not imply or guarantee participation with the health plans. Approved and signed physician contracts are required for participation.*

From: Louise Zappola <lzappola@riversideface.com>
Sent: Tuesday, June 15, 2021 10:38 AM
To: NMRT <networkhelp@uhc.com>
Cc: Northeast Provider Relations <northeastprteam@uhc.com>
Subject: FW: Termination

This e-mail, including attachments, may include confidential and/or proprietary information, and may be used only by the person or entity to which it is addressed. If the reader of this e-mail is not the intended recipient or his or her authorized agent, the reader is hereby notified that any dissemination, distribution or copying of this e-mail is prohibited. If you have received this e-mail in error, please notify the sender by replying to this message and delete this e-mail immediately.

Secure Email Encryption Service

Secure Message from gabriel_olvera@uhc.com

N

NMRT <networkhelp@uhc.com>
06/16/2021 07:54:59 PM GMT
To: Louise Zappola <lzappola@riversideface.com>

Hello Louise,

Thank you for contacting the Network Management Resource Team with your inquiry regarding the provid er contract termination. While our team does not assist with the contract termination process, we can con firm that the provider's contract agreement has been terminated with a termination date of 5/6/2021.

Please let us know if we can assist further via email.

Thank you!

[REDACTED]
UnitedHealthcare
Network Management Resource Team (NMRT)

■ Integrity ■ Compassion ■ Relationships ■ Innovation ■ Performance

If you have any questions or concerns about the content of this email, please do not reply to this email but rather email directly to: networkhelp@uhc.com for further assistance.
Please Note: *Credentialing approval does not imply or guarantee participation with the health plans. Approved and signed physi cian contracts are required for participation.*

--SecureDelivery--

From: Louise Zappola <lzappola@riversideface.com>
Sent: Tuesday, June 15, 2021 10:38 AM
To: NMRT <networkhelp@uhc.com>
Cc: Northeast Provider Relations <northeastprteam@uhc.com>
Subject: FW: Termination

Please see attached.

From: Louise Zappola
Sent: Tuesday, June 15, 2021 11:31 AM
To: networkhelp@uhc.com
Cc: Northeast Provider Relations <northeastprteam@uhc.com>
Subject: Termination

Please see attached. I have been getting the run around since January 2021 when I sent t he letter of termination to United healthcare.
I will be contacting the DOBI and have them investigate your policies for termination.

I can be reached at 732-747-5300

Thank you.

Louise Kindya
Practice Manager

Frank J. Scaccia MD
70 East Front St. 3rd Floor
Red Bank, NJ 07701
Tax ID# 22--3627-371
NPI# 1891793204

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Secure Email Encryption Service

Logout

Secure Message from [redacted]

NR

Northeast Provider Relations <northeastprteam@uhc.com>
06/15/2021 03:11:08 PM GMT
To: Louise Zappola <lzappola@riversideface.com>

Thank you for contacting the Northeast Provider Relations Team!

We have reviewed your request, however will require some additional information to better s erve you and have your request dealt with as quickly as possible.
Please provide the following:

- Provider Name Frank J Scaccia
- [redacted]
- [redacted]
- Contact Name
- Contact Number 732-747-5300
- Additional details concerning your specific questions or feedback you are looking fo r. If you have submitted a request for reconsideration previously and the issue rem ains unresolved, complete this template including reference numbers and return t o this box for escalation.

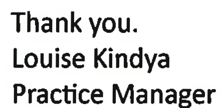
LMJ
Northeast PR Team
northeastprteam@uhc.com
Secure Delivery
Please send all your inquiries and responses to: northeastprteam@uhc.com only

---

From: Louise Zappola <lzappola@riversideface.com>
Sent: Tuesday, June 15, 2021 10:04 AM
To: Northeast Provider Relations <northeastprteam@uhc.com>
Subject: Termination date January 6, 2021

Please contact me regarding Termination from January 6, 2021.
I will be contacting DOBI if I do not receive a response.

Practice Contract for:
Frank J. Scaccia MD
70 East Front St. Suote 3
Red Bank, NJ 07701
732-747-5300



Thank you.
Louise Kindya
Practice Manager

--SecureDelivery--

--SecureDelivery--

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: ZELIS REPRICING ANTITRUST LITIGATION This Document Relates To: All Associated Cases	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 LOUISE ZAPPOLA IN SUPPORT OF PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT UNITEDHEALTH GROUP, INC.'S MOTION TO COMPEL ARBITRATION

DECLARATION OF LOUISE ZAPPOLA

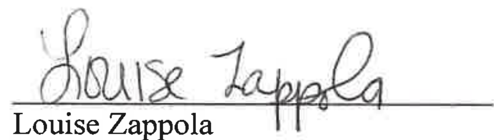
I, Louise Zappola, hereby declare and state as follows:

1. I am a practice manager for Plaintiff Frank J. Scaccia, M.D., F.A.C.S., L.L.C. 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 Plaintiffs' Memorandum in Opposition to Defendant UnitedHealth Group, Inc.'s Motion to Compel Arbitration.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Network Participation Agreement between Plaintiff Frank J. Scaccia, M.D., F.A.C.S., L.L.C., and UnitedHealthcare Insurance Company and Oxford Health Plans (NJ), Inc.

3. Attached hereto as **Exhibit B** is a true and correct copy of email correspondence with UnitedHealthcare, dated June 15-16, 2021, memorializing the termination of Plaintiff Frank J. Scaccia, M.D., F.A.C.S., L.L.C.'s Network Participation Agreement.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on this 17 of September, 2025.



Louise Zappola

Exhibit A

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.

UnitedHealthcare
Confidential and Proprietary

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

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.

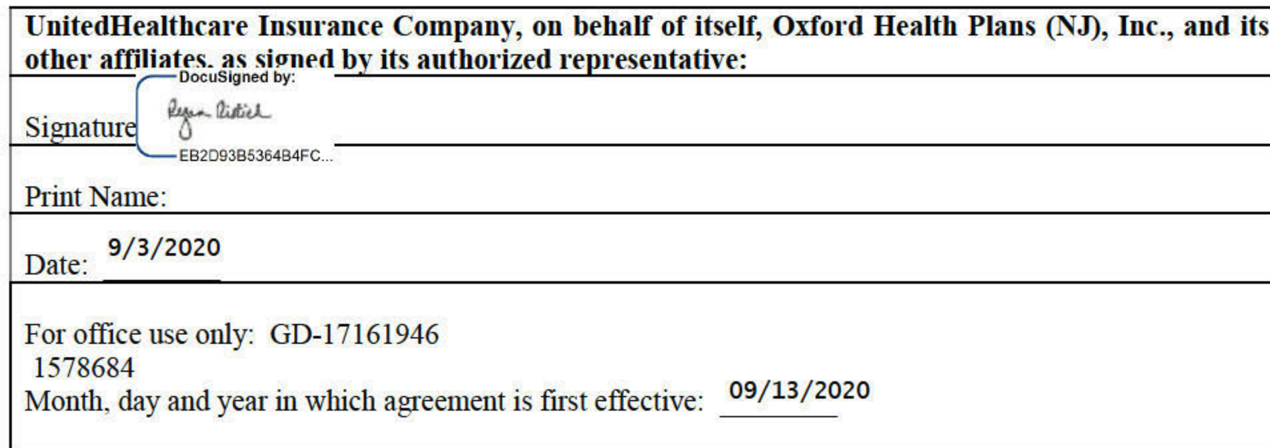
This provision will survive any termination of this Agreement.

UnitedHealthcare
Confidential and Proprietary

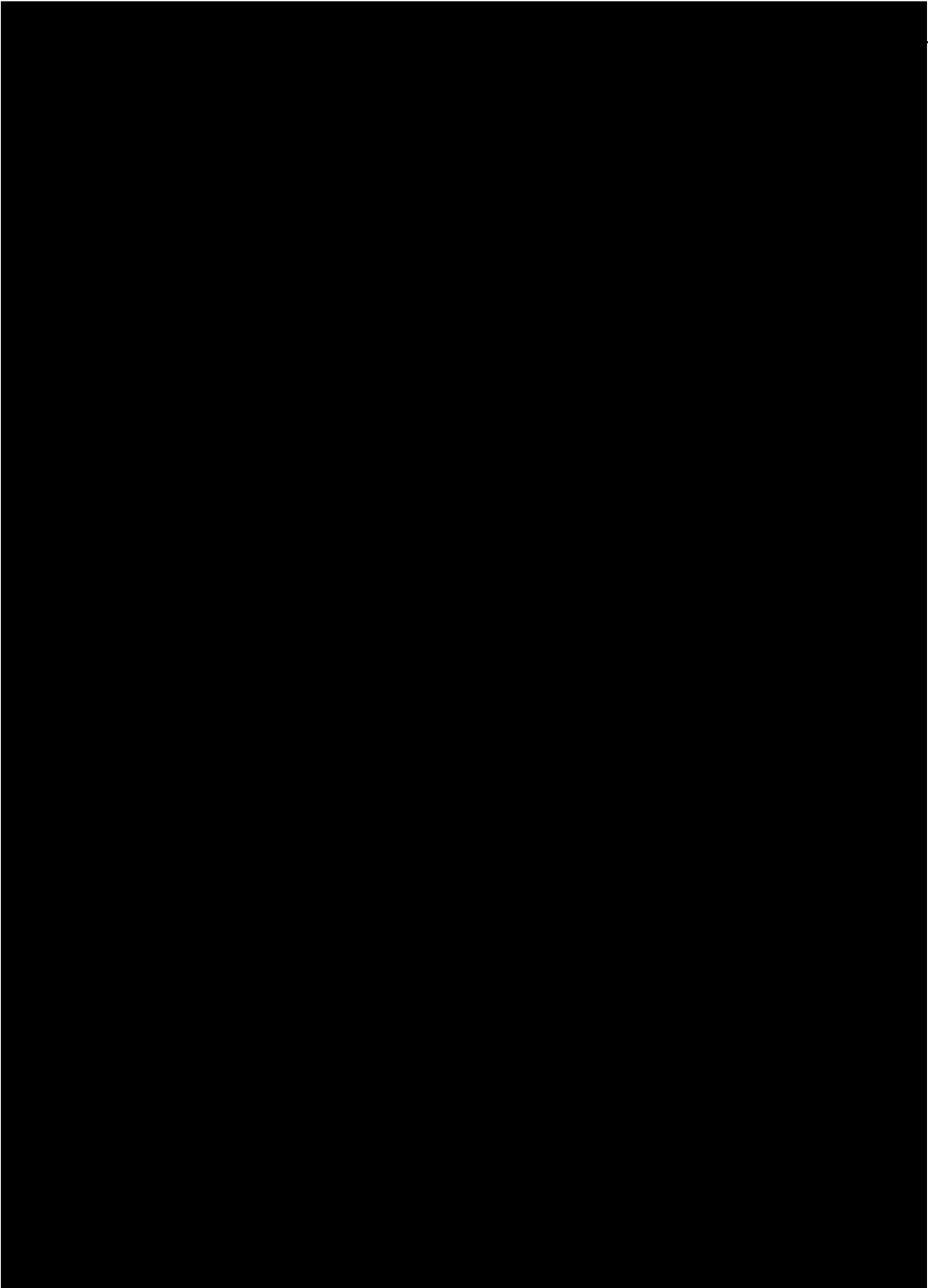
THIS AGREEMENT CONTAINS A BINDING ARBITRATION PROVISION THAT MAY BE ENFORCED BY THE PARTIES.

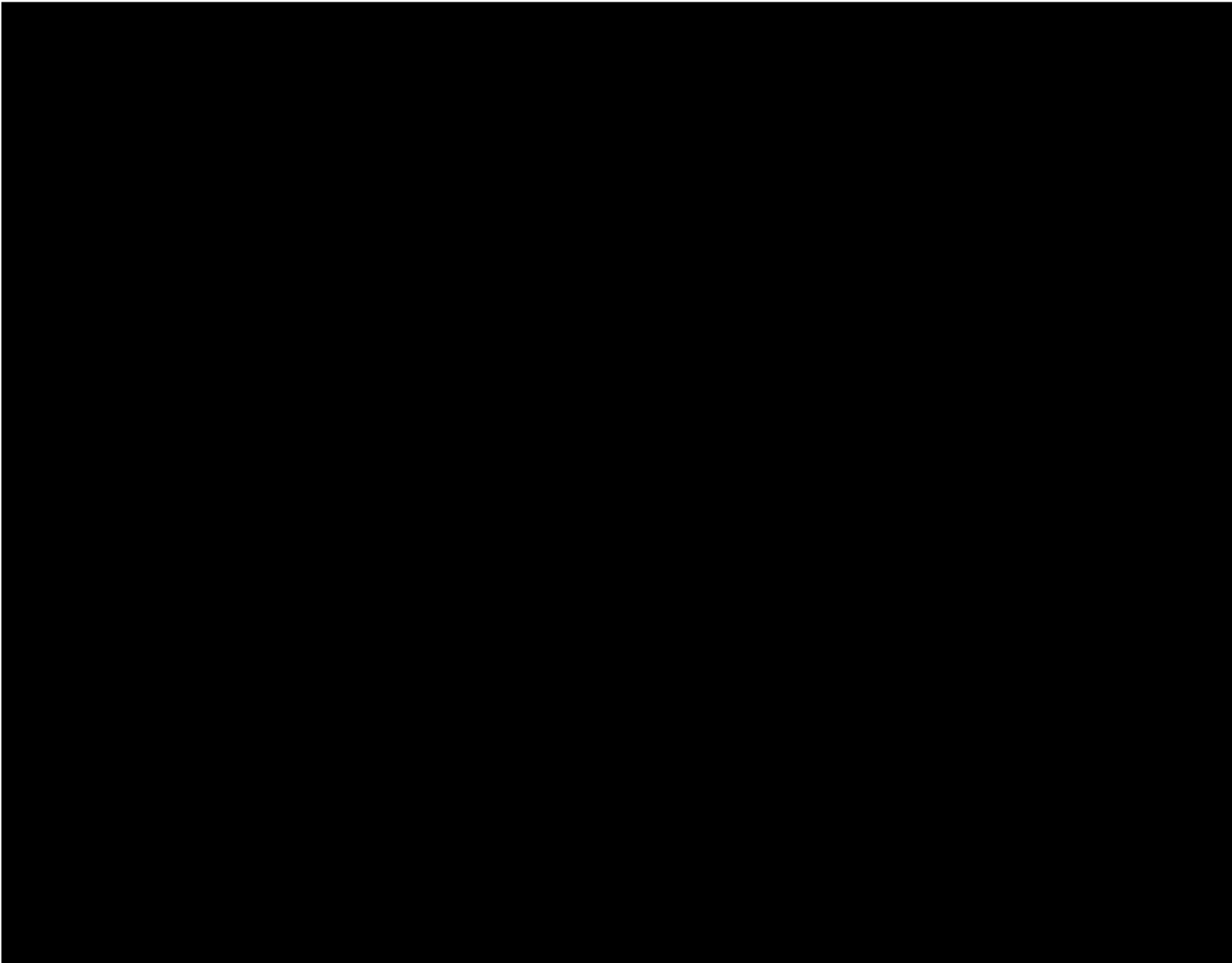
AGREED BY:

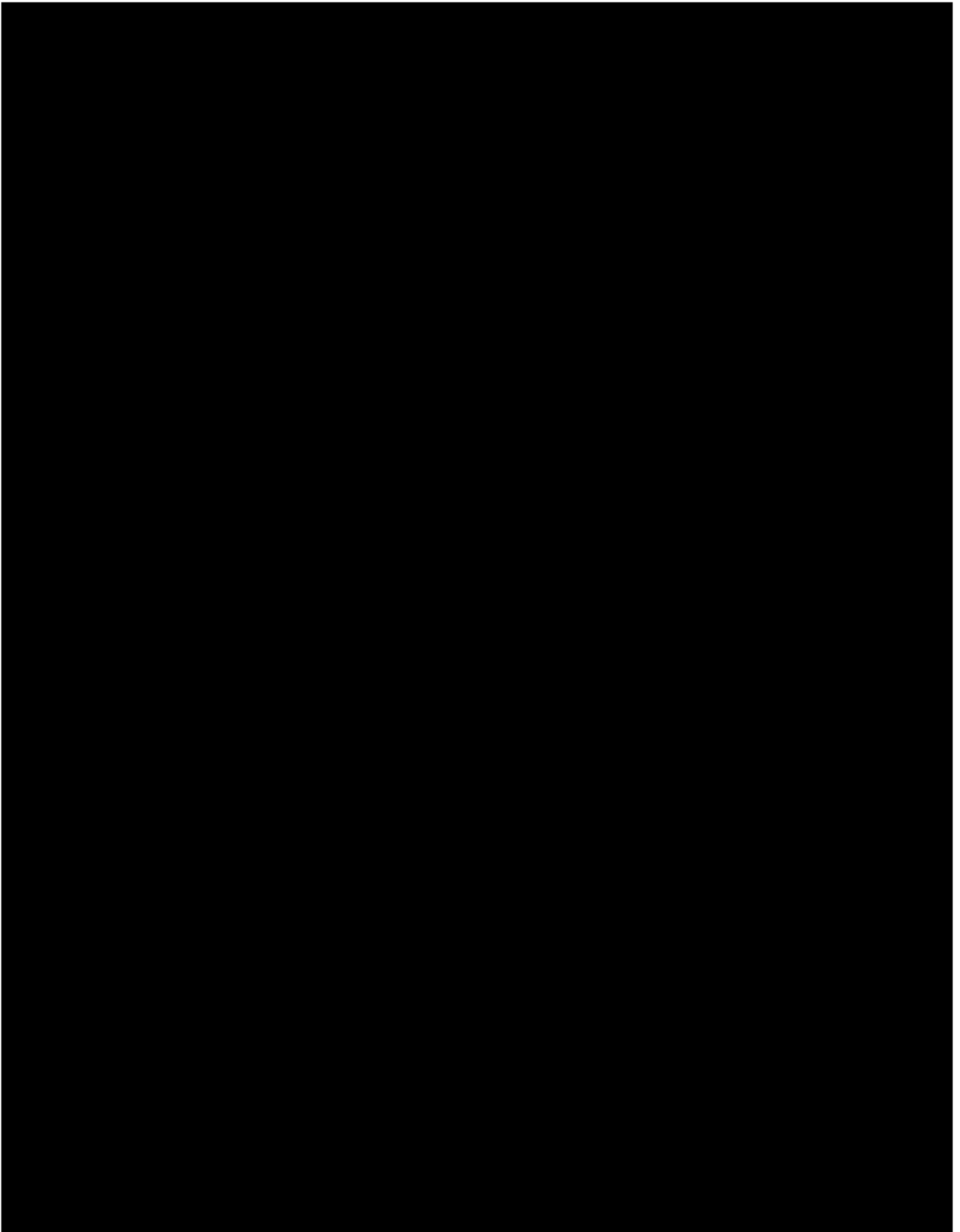
Physician	Address to be used for giving notice under the agreement:
Signature: DocuSigned by: Louise Zappola 5F3B3DBDBA21498...	Street: 70 E FRONT ST FL 3
Print Name: FRANK J SCACCIA MD	City: RED BANK
DBA (if applicable): ________	State: NJ
Date: 6/22/2020	Zip Code: 07701-1851
E-Mail: ________	TIN: 223627371
National Provider Identification (NPI) Number:	1891793204

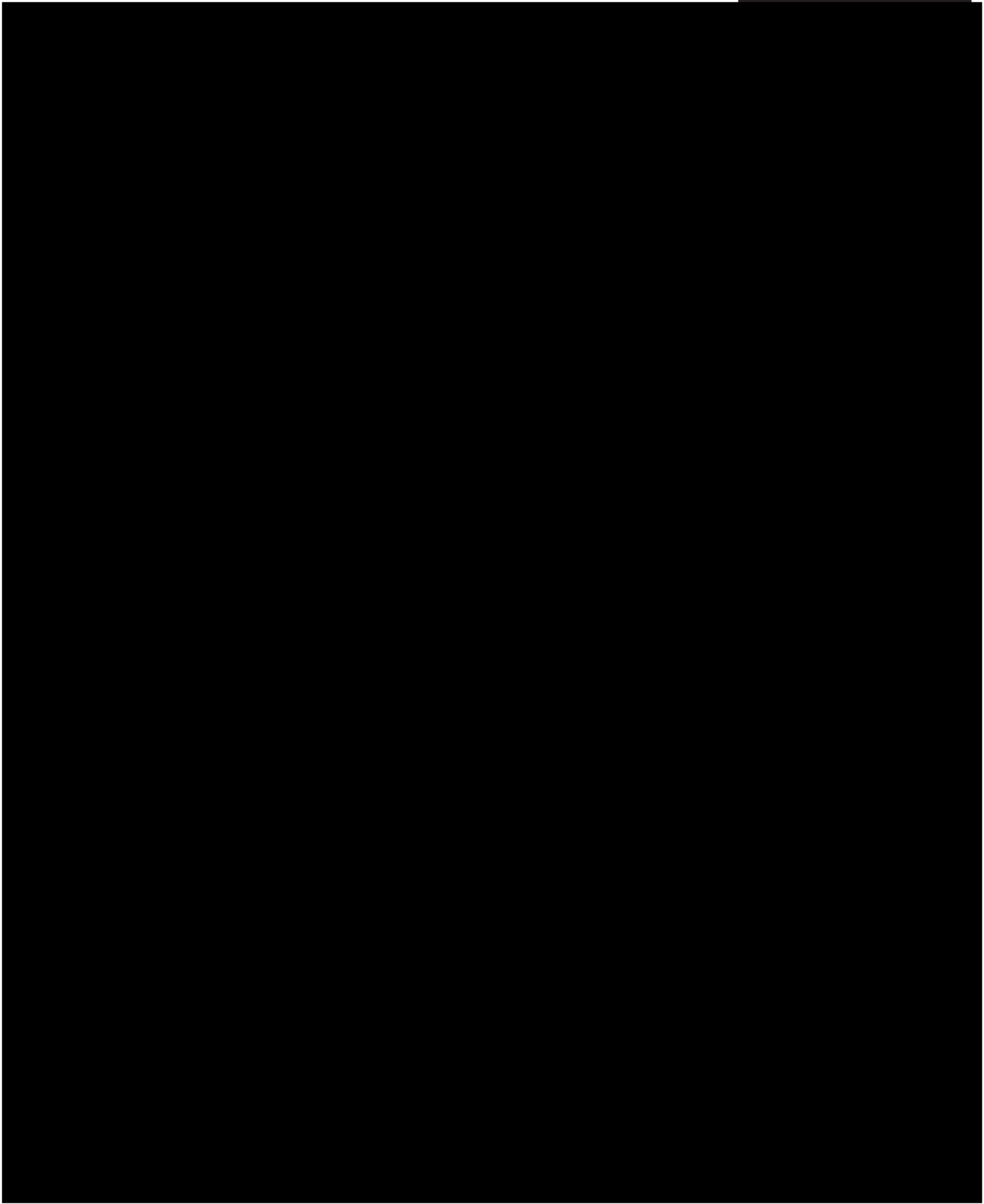


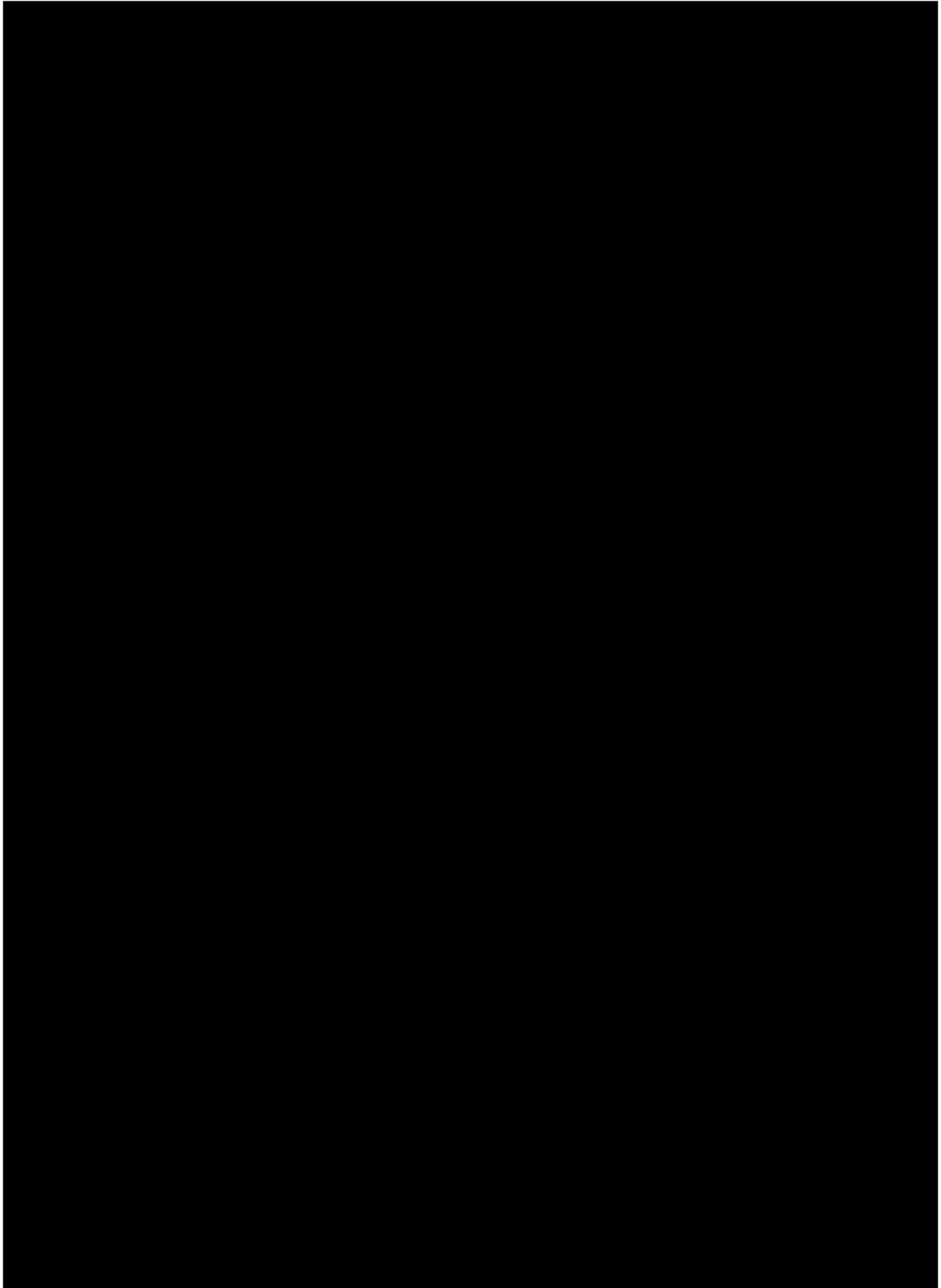
UnitedHealthcare Insurance Company, on behalf of itself, Oxford Health Plans (NJ), Inc., and its other affiliates, as signed by its authorized representative:
Signature DocuSigned by: EB2D93B5364B4FC...
Print Name:
Date: 9/3/2020
For office use only: GD-17161946 1578684 Month, day and year in which agreement is first effective: 09/13/2020

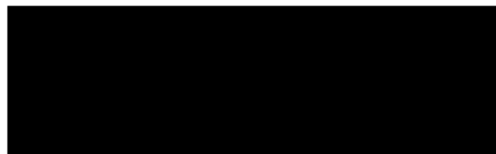












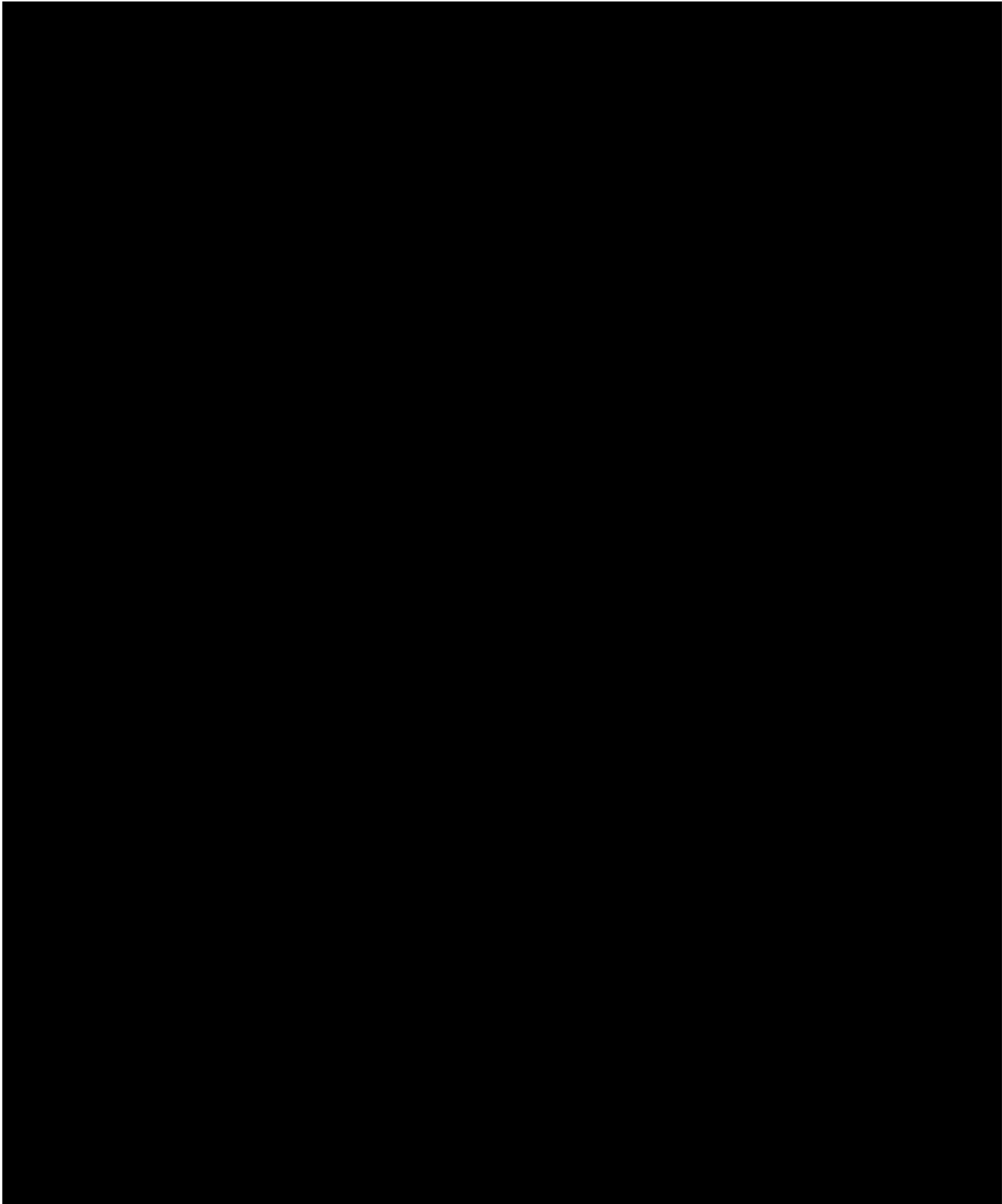


Exhibit B

Secure Email Encryption Service

Secure Message from [REDACTED]

N

NMRT <networkhelp@uhc.com>
06/16/2021 08:36:51 PM GMT
To: Louise Zappola <lzappola@riversideface.com>

Hello Louise,

Thank you for reaching out to United Healthcare. Per a certified letter the provider was requested to b e termed on 5/6/21. The providers term date in the database for all lines of business is 5/6/21. There is no term date for the provider of 1/6/21. I tried to call the office, but you had left for the day. If you need to sp eak to someone or need further clarification please reach out.

Thank you

[REDACTED]
UnitedHealthcare
Network Management Resource Team (NMRT)

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▪ Integrity ▪ Compassion ▪ Relationships ▪ Innovation ▪ Performance

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--SecureDelivery--

From: Louise Zappola <lzappola@riversideface.com>
Sent: Tuesday, June 15, 2021 11:23 AM
To: NMRT <networkhelp@uhc.com>
Cc: Northeast Provider Relations <northeastprteam@uhc.com>
Subject: FW: Termination date January 6, 2021

From: Louise Zappola
Sent: Tuesday, June 15, 2021 10:04 AM
To: Northeast Provider Relations <northeastprteam@uhc.com>
Subject: Termination date January 6, 2021

Please contact me regarding Termination from January 6, 2021.
I will be contacting DOBI if I do not receive a response.

Practice Contract for:
Frank J. Scaccia MD
70 East Front St. Suote 3
Red Bank, NJ 07701
732-747-5300

Thank you.
Louise Kindya
Practice Manager

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Louise Zappola

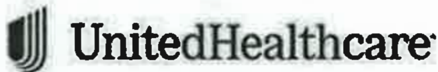
From: [redacted] on behalf of NMRT <networkhelp@uhc.com>
Sent: Wednesday, June 16, 2021 3:55 PM
To: Louise Zappola
Subject: RE: Termination

Hello,

I wanted to let you know that we've responded to your inquiry in a separate secure email. If you do not see the email in your inbox I'd recommend to check your spam/junk folder. Many times our secured/confidential emails go directly there. If you do not receive the email after a few hours from receiving this one, please reach back out to our team so that we can further assist you.

Thank you,

[redacted]
UnitedHealthcare
Network Management Resource Team (NMRT)



***Our* United Culture. The way forward.**
▪ Integrity ▪ Compassion ▪ Relationships ▪ Innovation ▪ Performance

If you have any questions or concerns about the content of this email, please *<u>do not reply</u>* *to this email but rather email directly to: networkhelp@uhc.com for further assistance.*
Please Note: *Credentialing approval does not imply or guarantee participation with the health plans. Approved and signed physician contracts are required for participation.*

From: Louise Zappola <lzappola@riversideface.com>
Sent: Tuesday, June 15, 2021 10:38 AM
To: NMRT <networkhelp@uhc.com>
Cc: Northeast Provider Relations <northeastprteam@uhc.com>
Subject: FW: Termination

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Secure Email Encryption Service

Secure Message from gabriel_olvera@uhc.com

N

NMRT <networkhelp@uhc.com>
06/16/2021 07:54:59 PM GMT
To: Louise Zappola <lzappola@riversideface.com>

Hello Louise,

Thank you for contacting the Network Management Resource Team with your inquiry regarding the provid er contract termination. While our team does not assist with the contract termination process, we can con firm that the provider's contract agreement has been terminated with a termination date of 5/6/2021.

Please let us know if we can assist further via email.

Thank you!

UnitedHealthcare
Network Management Resource Team (NMRT)

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--SecureDelivery--

From: Louise Zappola <lzappola@riversideface.com>
Sent: Tuesday, June 15, 2021 10:38 AM
To: NMRT <networkhelp@uhc.com>
Cc: Northeast Provider Relations <northeastprteam@uhc.com>
Subject: FW: Termination

Please see attached.

From: Louise Zappola
Sent: Tuesday, June 15, 2021 11:31 AM
To: networkhelp@uhc.com
Cc: Northeast Provider Relations <northeastprteam@uhc.com>
Subject: Termination

Please see attached. I have been getting the run around since January 2021 when I sent t he letter of termination to United healthcare.
I will be contacting the DOBI and have them investigate your policies for termination.

I can be reached at 732-747-5300

Thank you.

Louise Kindya
Practice Manager

Frank J. Scaccia MD
70 East Front St. 3rd Floor
Red Bank, NJ 07701
Tax ID# 22--3627-371
NPI# 1891793204

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Secure Email Encryption Service

Logout

Secure Message from [redacted]

NR

Northeast Provider Relations <northeastprteam@uhc.com>
06/15/2021 03:11:08 PM GMT
To: Louise Zappola <lzappola@riversideface.com>

Thank you for contacting the Northeast Provider Relations Team!

We have reviewed your request, however will require some additional information to better s erve you and have your request dealt with as quickly as possible.
Please provide the following:

- Provider Name Frank J Scaccia
- [redacted]
- [redacted]
- Contact Name
- Contact Number 732-747-5300
- Additional details concerning your specific questions or feedback you are looking fo r. If you have submitted a request for reconsideration previously and the issue rem ains unresolved, complete this template including reference numbers and return t o this box for escalation.

LMJ
Northeast PR Team
northeastprteam@uhc.com
Secure Delivery
Please send all your inquiries and responses to: northeastprteam@uhc.com only

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From: Louise Zappola <lzappola@riversideface.com>
Sent: Tuesday, June 15, 2021 10:04 AM
To: Northeast Provider Relations <northeastprteam@uhc.com>
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Practice Contract for:
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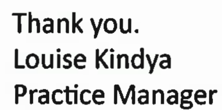

Thank you.
Louise Kindya
Practice Manager

--SecureDelivery--

--SecureDelivery--

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: ZELIS REPRICING ANTITRUST LITIGATION This Document Relates To: All Associated Cases	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 PACIFIC INPATIENT MEDICAL GROUP IN SUPPORT OF PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANT UNITEDHEALTH GROUP, INC.'S MOTION TO COMPEL ARBITRATION

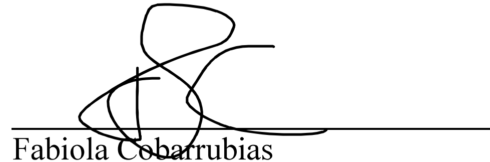
DECLARATION OF PACIFIC INPATIENT MEDICAL GROUP

I, Fabiola Cobarrubias, hereby declare and state as follows:

1. I am the Chief Executive Officer of Plaintiff Pacific Inpatient Medical Group, Inc. 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 Plaintiffs' Memorandum in Opposition to Defendant UnitedHealth Group, Inc.'s Motion to Compel Arbitration.

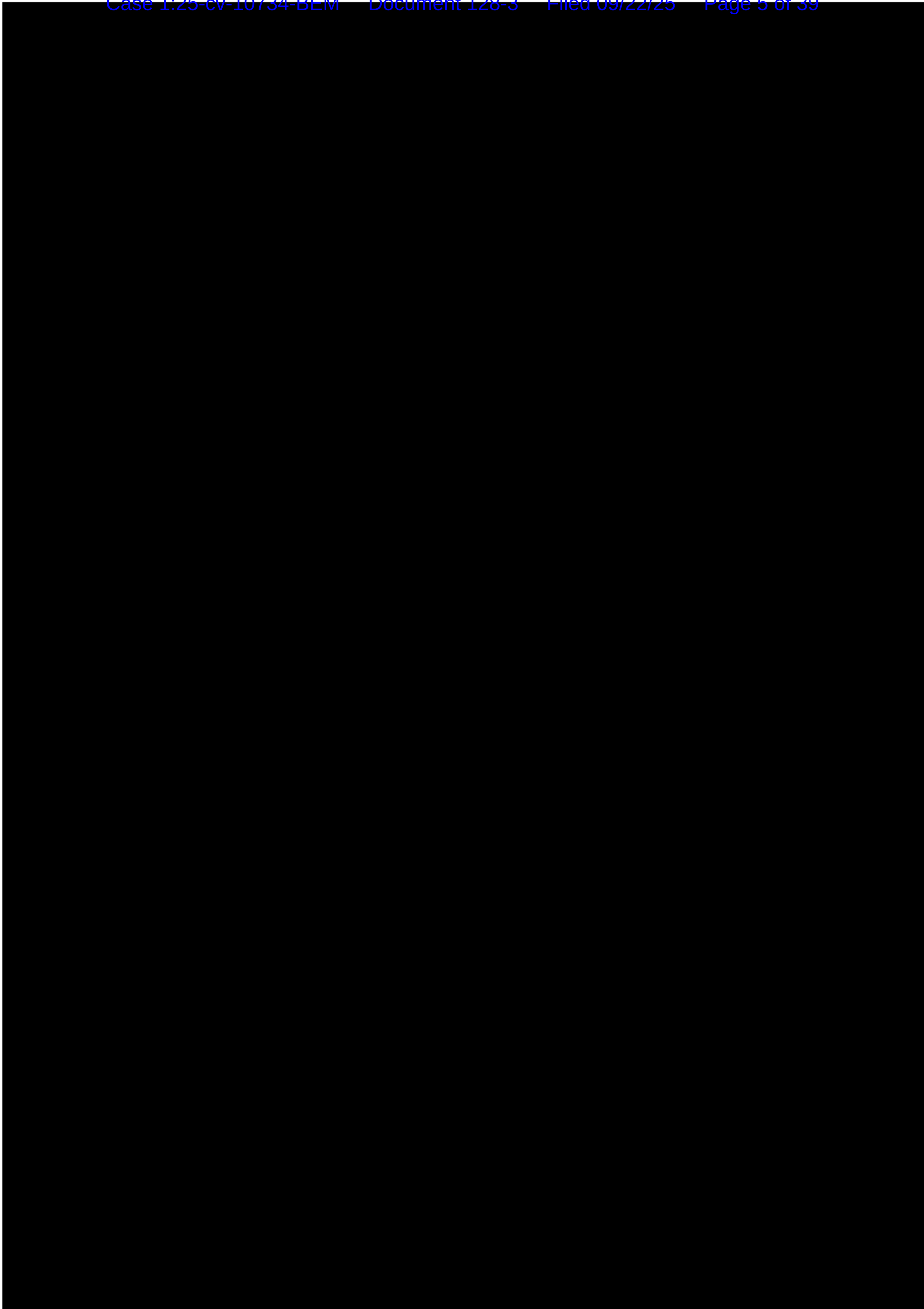
2. Attached hereto as **Exhibit A** is a true and correct copy of the Network Participation Agreement between Plaintiff Pacific Inpatient Medical Group, Inc., and UnitedHealthcare Insurance Company and UHC of California.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on this 18 of September 2025 in San Francisco, California.



Fabiola Cobarrubias

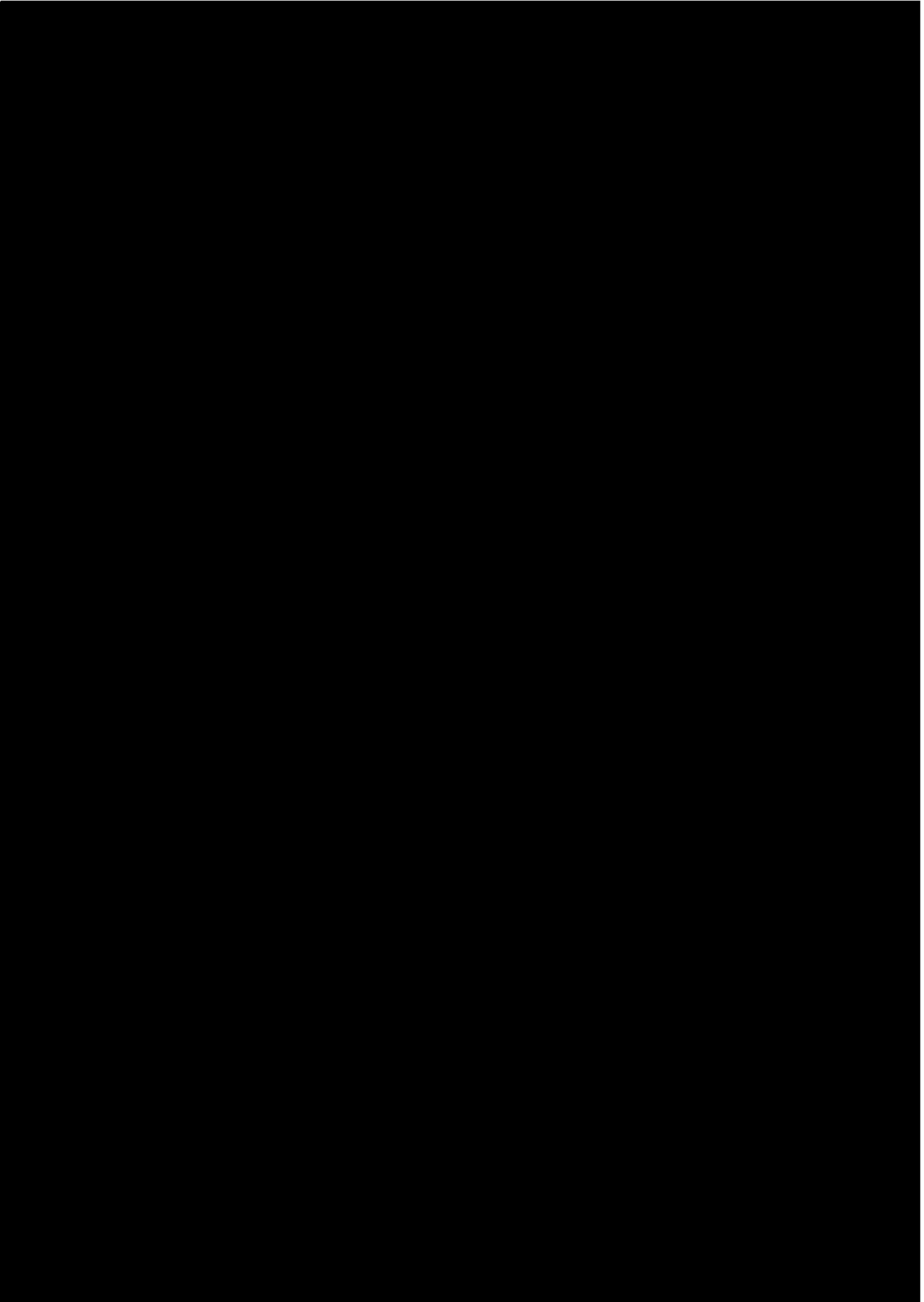
EXHIBIT A



COVER PAGE TO MEDICAL GROUP CONTRACT

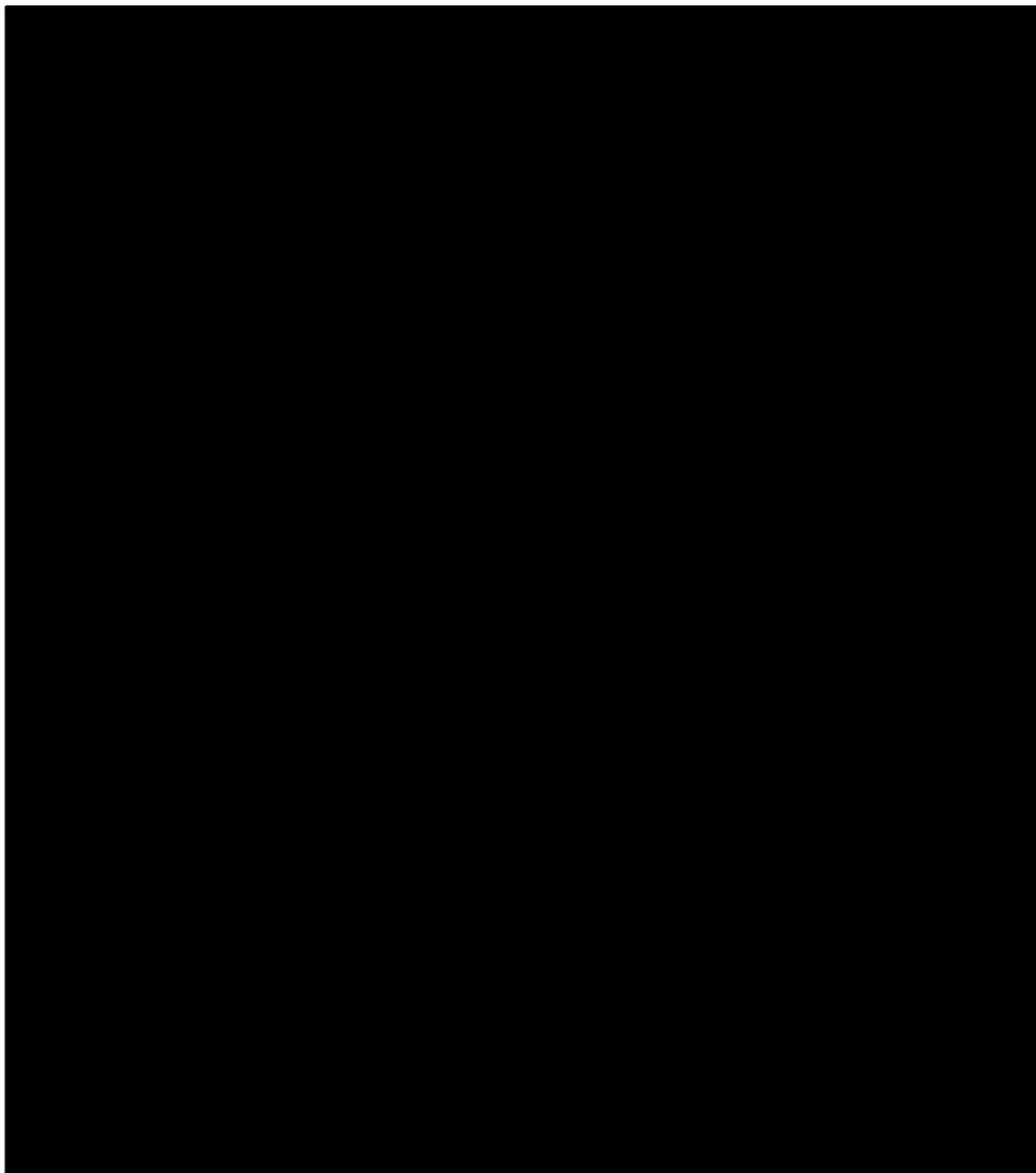
Please note regarding California:

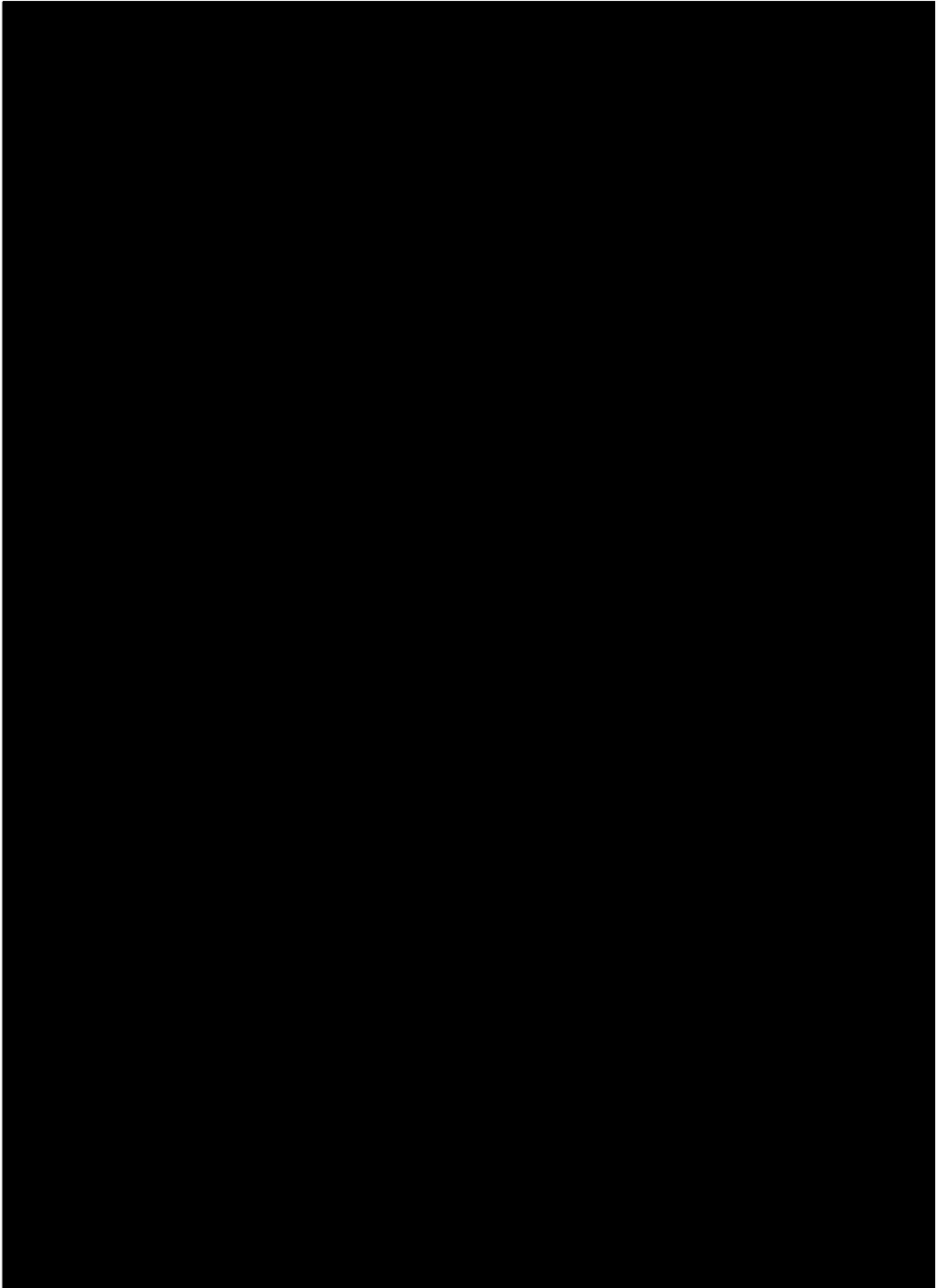
The attached Medical Group Contract is a contract by and between UnitedHealthcare Insurance Company, on behalf of itself and its affiliates, and you and your professional staff. UHC of California doing business as "UnitedHealthcare of California" (a United Affiliate and a California licensed healthcare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

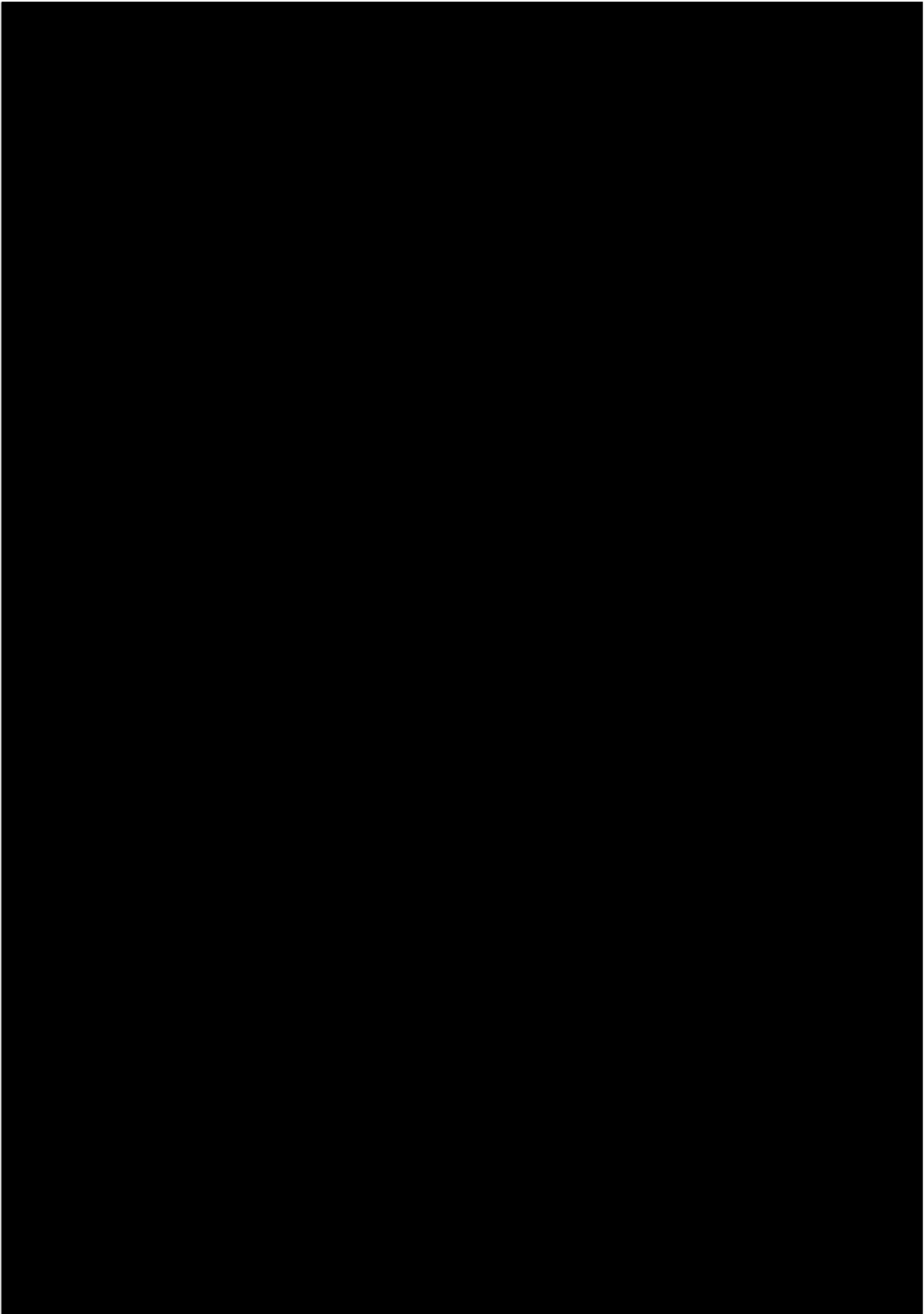


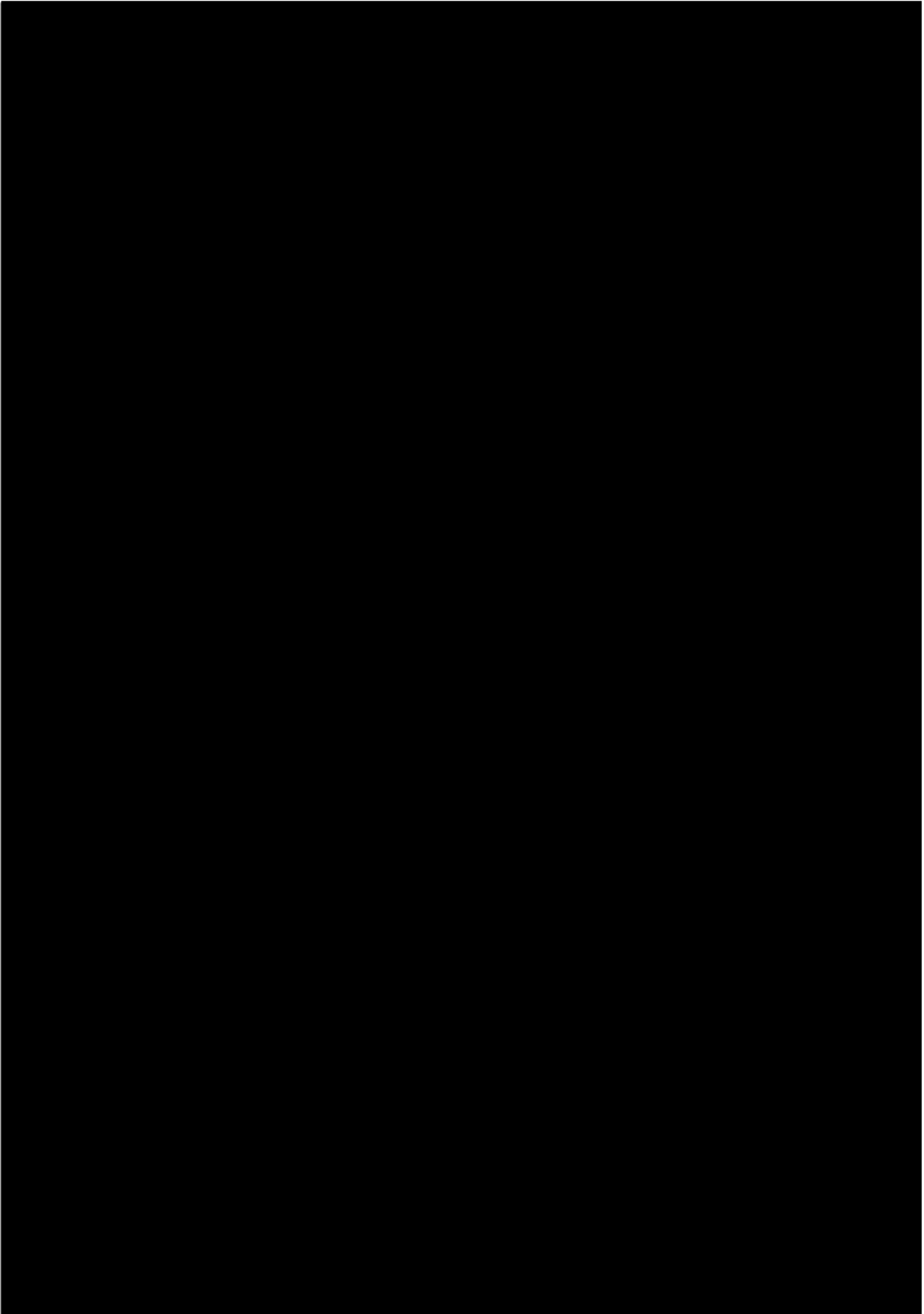
MEDICAL GROUP CONTRACT

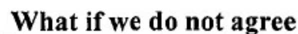
UnitedHealthcare Insurance Company and UHC of California doing business as UnitedHealthcare of California are entering into this agreement with you. They are doing so on behalf of themselves and their other affiliates for certain products and services we offer our customers, all of which we describe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







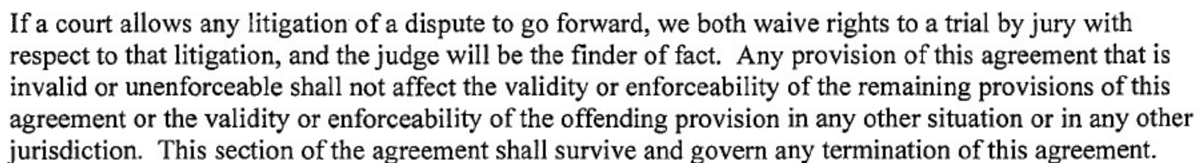




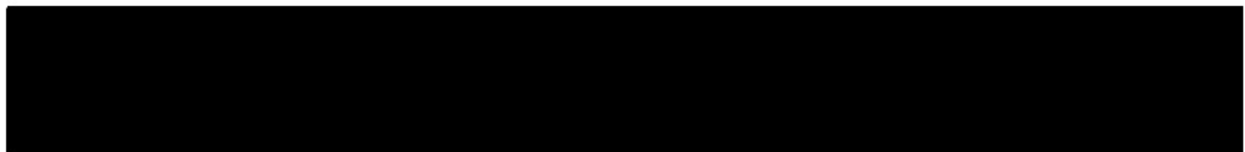
What if we do not agree

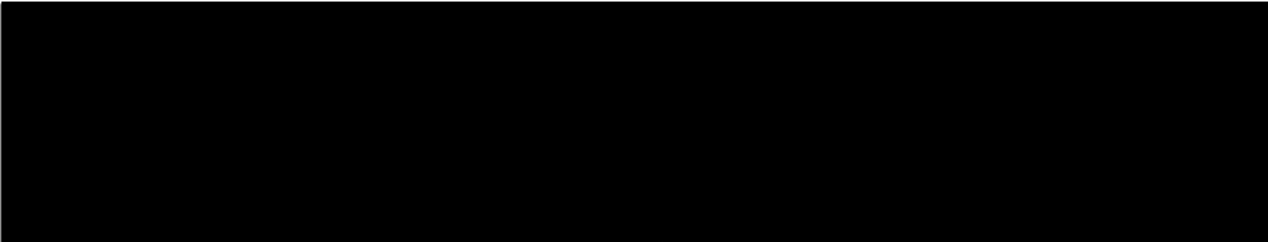
We will resolve all disputes between us by following the dispute procedures set out in our Administrative Guide. If either of us wishes to pursue the dispute beyond those procedures, they will submit the dispute to binding arbitration in accordance with the Commercial Dispute Procedures of the American 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.





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: [signature]	City: SAN FRANCISCO
Print Name: VERNON L. GIANG	State: CA
Title: PRESIDENT	Zip Code: 94118-1618
Date: 6/30/11	TIN: 261129616
E-Mail: giangv@sutterhealth.org	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:	7/7/11 JH
Received by CPC Contracting:	
Incomplete and pended.	
Approved for processing:	

Received by CA office:	7-5-2011 cp
Received by CA Contracting:	
Incomplete and pended:	
Approved for processing: