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15 Attorneys for Defendant  
16 UNITED BEHAVIORAL HEALTH

17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 SAN FRANCISCO DIVISION

20 DAVID AND NATASHA WIT, on behalf  
of themselves and all others similarly situated,  
21 BRIAN MUIR, on his own behalf and on  
behalf of all others similarly situated,  
22 BRANDT PFEIFER, on behalf of the Estate  
of his deceased wife, Lauralee Pfeifer, and all  
others similarly situated, LORI  
23 FLANZRAICH, on behalf of her daughter  
Casey Flanzraich and all others similarly  
24 situated, and CECILIA HOLDNAK, on  
behalf of herself, her daughter Emily Holdnak,  
25 and all others similarly situated,

26 Plaintiffs,

27 v.

28 UNITED BEHAVIORAL HEALTH  
(operating as OPTUMHEALTH)

Case No. 3:14-CV-02346-JCS

**UNITED BEHAVIORAL HEALTH'S  
ANSWER TO FIRST AMENDED CLASS  
ACTION COMPLAINT FILED ON  
SEPTEMBER 2, 2014**

1 BEHAVIORAL SOLUTIONS),  
2 Defendant.

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Defendant United Behavioral Health, hereinafter referred to as (“UBH” or “Defendant”) submits this Answer in response to Plaintiff’s First Amended Complaint (Corrected) (“FAC”) filed on September 2, 2014 and pleads as follows, with the numbered paragraphs corresponding to the paragraph numbers in the FAC. All allegations not expressly admitted are hereby denied. Any allegations that may be implied or inferred from the headings of the FAC are denied.

### **INTRODUCTION**

With respect to the first and second paragraphs of Plaintiffs’ Introduction, Plaintiffs purport to set forth in unnumbered paragraphs statistics and findings from various studies and reports by third parties without citations sufficient to identify the source. Defendant lacks knowledge or information sufficient to form a belief as to the truth of these assertions as characterized, and on that basis denies each and every one of the allegations made in these paragraphs.

With respect to the third paragraph of Plaintiffs’ Introduction, Defendant denies that it violates any legal duties to its members, participants or beneficiaries or that its practices and/or policies are inconsistent with plan terms or generally accepted standards of mental health care.

With respect to the last paragraph of Plaintiffs’ Introduction, Defendant admits that Plaintiffs purport to bring their claims on behalf of themselves and others similarly situated. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations as characterized, and on that basis denies each and every one of the allegations made in this paragraph.

### **SUMMARY OF PLAINTIFFS’ ALLEGATIONS**

1. Defendant admits that during the relevant period, Plaintiffs David Wit, Natasha Wit, Brian Muir, Brandt Pfeifer, Lori Flanzraich, and Cecilia Holdnak were members or beneficiaries of health insurance plans sponsored by an employer and governed by the Employee Retirement Income Security Act of 1974 (“ERISA”). The health plans for each of the plaintiffs, including all of the documents comprising them, will be collectively referred to as “Plaintiffs’ Plans” or the “Plans.”

2. Defendant admits that Plaintiffs' Plans cover treatment for sickness, injury, mental illness and substance use disorders where applicable, and subject to the terms and conditions set forth in Plaintiffs' Plans. Plaintiffs' Plans provide coverage for residential care where applicable, and subject to the terms and conditions set forth in Plaintiffs' Plans. Plaintiffs' Plans include residential treatment in the category of "intermediate care," with the exception of the plan for Lori Flanzraich (the "Flanzraich Plan). The totality of the documents speak for themselves, and Defendant denies Plaintiffs' characterization of the Plans.

3. Defendant admits that it is responsible for adjudicating mental health and substance use claims for Plaintiffs' Plans, and that it has developed "level of care" guidelines ("LOC's") or "coverage determination guidelines" ("CDG's") to use in adjudicating claims where applicable. Defendant admits that its LOC's and CDG's are available to its Care Advocates and Medical Directors to reference in adjudicating mental health care claims. Defendant denies each and every one of the remaining allegations set forth in this paragraph.

4. Defendant admits that Defendant's CDG's are intended to provide assistance in interpreting behavioral health plans that are administered by Defendant, and Defendant has created CDG's specific to particular conditions or diagnoses. Defendant's CDG's explicitly instruct that when deciding coverage, the enrollee's specific document be referenced and enrollee eligibility, any federal or state regulatory requirements and the plan benefit coverage must be identified. Defendant admits that its CDG's reflect its understanding of best practices in care, where applicable and its CDG's reference, where appropriate, "level of care" criteria. Defendant denies each and every one of the remaining allegations set forth in this paragraph.

5. Defendant admits that Plaintiffs accurately quote portions of Defendant's LOC's, and Defendant states that the totality of the documents speak for themselves. Defendant denies Plaintiffs' characterization of the documents. Defendant admits that its LOC's set forth criteria for making medical necessity determinations, when appropriate, to determine whether the benefit plan will pay for any portion of the cost of a health care service. Defendant admits that when making determinations of medical necessity, Defendant uses the information provided to it to

ascertain whether services are in accordance with standards of practice, are clinically appropriate, not mainly for convenience, and whether services are cost effective and provided in the least restrictive environment. Defendant denies that the LOC's do not instruct UBH employees to consult plan terms, and Defendant denies each and every one of the remaining allegations set forth in this paragraph.

6. Admitted.

7. Defendant denies that Plaintiffs' Plans have no role in the decision to approve or deny any particular claim submitted by a plan member. Defendant asserts that its CDG's and LOC's are shaped by input from a variety of persons and organizations outside of Defendant, and individual health plans have a role in determining which guidelines apply to their plans, and accordingly, Defendant denies each and every one of the remaining allegations set forth in this paragraph.

8. This paragraph contains legal argument and conclusion, which do not require a response. To the extent a response may be required, Defendant denies each and every one of the allegations set forth in this paragraph.

9. UBH admits that under the Wit Plan, behavioral health benefits are paid by UnitedHealthcare Insurance Company ("UHIC"). Defendant admits that under the Pfeifer Plan, behavioral health benefits are paid by United Healthcare Insurance Company of Illinois, Inc. ("UHIC-IL"). Defendant admits that under the Flanzraich Plan, behavioral health benefits are paid by Oxford Insurance Company, Inc. ("Oxford"). UnitedHealthcare Insurance Company, United Healthcare Insurance Company of Illinois, Inc. and Oxford Insurance Company, Inc. are affiliates of Defendant. Defendant admits that the Muir Plan and Holdnak Plan are self-funded behavioral health benefit plans and benefits are paid by the group plan sponsors, which are not affiliates of Defendant. Defendant denies each and every one of the remaining allegations set forth in this paragraph.

10. Defendant denies each and every one of the allegations set forth in this paragraph.

11. Defendant admits that the American Academy of Child and Adolescent Psychiatry,

1 the American Association of Community Psychiatrists and the American Society for Addiction  
 2 Medicine have guidelines for the treatment of certain behavioral health conditions and symptoms,  
 3 and that these guidelines generally identify criteria for determining whether residential treatment  
 4 is an appropriate level of care for a patient. The remaining allegations set forth in this paragraph  
 5 are incomplete and misleading summaries of third-party documents not attached to the FAC.  
 6 Defendant is without knowledge or information sufficient to form a belief about the truth of those  
 7 allegations set forth in this paragraph, and therefore denies those allegations.

8 12. Defendant denies each and every one of the allegations set forth in this paragraph.

9 13. Defendant admits that the terms of the health plans for plaintiffs Wit, Muir, Pfeifer  
 10 and Holdnak provide that coverage for mental health and substance abuse treatment is excluded  
 11 when the treatment is “inconsistent with generally accepted standards of care” and Defendant’s  
 12 LOC’s. Defendant admits that the terms of the health plan for plaintiff Flanzraich covers mental  
 13 health treatment “[a]ppropriate with regard to standards of good medical practice.” This  
 14 paragraph contains legal argument and conclusion with respect to the existence of an alleged  
 15 fiduciary duty and breach thereof, which do not require a response. To the extent a response may  
 16 be required, Defendant denies each and every one of the allegations relating to a fiduciary duty  
 17 and breach thereof set forth in this paragraph. Defendant denies each and every one of the  
 18 remaining allegations set forth in this paragraph.

19 14. This paragraph contains legal argument and conclusion with respect to the  
 20 existence of an alleged fiduciary duty and breach thereof and state laws, which do not require a  
 21 response. To the extent a response may be required, Defendant denies each and every one of the  
 22 allegations relating to a fiduciary duty and breach thereof set forth in this paragraph. Defendant  
 23 denies each and every one of the remaining allegations set forth in this paragraph.

24 15. Defendant denies each and every one of the allegations set forth in this paragraph.

25 16. Defendant admits that Plaintiffs purport to bring the claims and seek the remedies  
 26 described in this paragraph. Defendant denies that Plaintiffs have pled or can prove their claims,  
 27 or that they are entitled to the relief sought.  
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**DEFENDANT, JURISDICTION AND VENUE**

17. Defendant admits that it operates under the name OptumHealth Behavioral Solutions, and is a corporation organized under California law with a principal place of business in San Francisco, California. Defendant admits that it is responsible for drafting and approving its LOC's and CDG's and it is responsible for adjudicating the mental health and substance abuse claims for Plaintiffs' Plans. Defendant states that the term "promulgating" is vague and ambiguous, and on that basis denies that it is responsible for "promulgating" the LOC's or CDG's.

18. Defendant admits that UBH, UHIC, UHIC-IL and Oxford are affiliates of UnitedHealth Group Incorporated. Defendant denies each and every one of the remaining allegations set forth in this paragraph.

19. Defendant admits that this Court has subject matter jurisdiction over this matter.

20. Defendant admits that this Court has personal jurisdiction over Defendant and does not object to venue in this District based on the facts and circumstances alleged in this case. Defendant admits that it is headquartered in and conducts business in this District and regularly communicates with members who reside in this District. Defendant denies each and every one of the remaining allegations set forth in this paragraph.

**UBH'S GUIDELINES APPLICABLE TO WIT AND HOLDNAK'S CLAIMS**

21. Defendant admits that it has developed its LOC's which, when appropriate under a member's plan, Defendant's professionals use as a set of objective and evidence-based behavioral health criteria in determining whether a level of mental health treatment for a particular condition is covered under the member's health plan. Defendant admits that among the LOC's developed by Defendant during the relevant period are those for "Acute Inpatient" and "Residential Treatment Center." Defendant denies each and every one of the allegations set forth in this paragraph.

22. Defendant admits that Plaintiffs accurately quote portions of Defendant's LOC's (2013), and Defendant states that the totality of the documents speak for themselves. Defendant

1 denies Plaintiffs' characterization of the documents. Defendant denies each and every one of the  
2 remaining allegations set forth in this paragraph.

3 23. Defendant admits that under its LOC's, under certain circumstances, care in a  
4 residential treatment center may be appropriate for patients who do not require 24-hour nursing  
5 care and monitoring and who are not an imminent risk of serious harm to themselves or others.  
6 Defendant states that its LOC's speak for themselves, and Defendant denies Plaintiffs'  
7 characterization of its LOC's. This paragraph contains legal argument and conclusion with  
8 respect to "operation of laws throughout the country", which does not require a response. To the  
9 extent a response may be required, Defendant denies each and every one of the remaining  
10 allegations set forth in this paragraph.

11 24. Defendant admits that Plaintiffs accurately quote portions of Defendant's LOC's  
12 (2013), and Defendant states that the totality of the documents speak for themselves. Defendant  
13 denies Plaintiffs' characterization of the documents and Defendant denies each and every one of  
14 the remaining allegations set forth in this paragraph.

15 25. Defendant admits that Plaintiffs reference portions of Defendant's LOC's (2013),  
16 and Defendant states that the totality of the documents speak for themselves. Defendant denies  
17 Plaintiffs' characterization of the documents.

18 26. Defendant admits that its LOC's provide that one of the criteria for determining  
19 whether treatment at a particular level of care is covered under the member's health plan is  
20 whether the member's condition cannot be effectively and safely treated in a lower level of care,  
21 and Defendant admits that its LOC's, Continued Service Criteria (2013) provide that one of the  
22 criteria for continued service at a particular level of care is: "The member's current symptoms  
23 and/or history provide evidence that relapse or a significant deterioration in functioning would be  
24 imminent if the member was transitioned to a lower level of care or, in the case of outpatient care,  
25 was discharged." Defendant states that the totality of the documents speak for themselves.  
26 Defendant denies Plaintiffs' characterization of the documents, and Defendant denies each and  
27 every one of the remaining allegations set forth in this paragraph.  
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1           27. Defendant admits that Plaintiffs accurately quote portions of Defendant's LOC's  
 2 (2014). Defendant states that the term "promulgated" is vague and ambiguous, and on that basis  
 3 denies that it "promulgated" the LOC's. Defendant states that the totality of the documents speak  
 4 for themselves. Defendant denies Plaintiffs' characterization of the documents and Defendant  
 5 denies each and every one of the remaining allegations set forth in this paragraph.

6           28. Defendant admits that it has developed its CDG's which, when appropriate under a  
 7 member's plan, Defendant's professionals use in conjunction with the member's plan documents  
 8 in determining whether a particular service or procedure for a particular condition is covered  
 9 under the member's health plan. Defendant admits that its definition of "Residential Treatment  
 10 Center" is consistent in its LOC's and CDG's. Defendant states that the totality of the documents  
 11 speak for themselves. Defendant denies Plaintiffs' characterization of the documents, and  
 12 Defendant denies each and every one of the remaining allegations set forth in this paragraph.

13           29. Defendant admits that Plaintiffs accurately quote and reference portions of  
 14 Defendant's CDG's (2012 and 2013), and Defendant states that the totality of the documents  
 15 speak for themselves. Defendant denies Plaintiffs' characterization of the documents and  
 16 Defendant denies each and every one of the remaining allegations set forth in this paragraph.

17           30. Defendant admits that the American Academy of Child and Adolescent Psychiatry  
 18 ("AACAP") and American Association of Community Psychiatrists ("AACP") have created their  
 19 own guidelines for assessing the appropriate level of care of mental health for children and adults,  
 20 respectively, and these guidelines are available to the public. Defendant denies that these  
 21 guidelines, on their own and separate and apart from any other standards, constitute the generally  
 22 accepted standards of assessing the appropriate level of care or the generally recognized criteria  
 23 for mental health residential treatment. Defendant admits that, among other sources available, the  
 24 AACAP and AACP guidelines provide an evidence base for guidelines developed by Defendant.  
 25 Defendant denies each and every one of the remaining allegations set forth in this paragraph.

26           31. Defendant admits that Plaintiffs purport to quote portions of Defendant's  
 27 documents, but denies that the portions are quoted accurately. Defendant states that the totality of  
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1 the documents speak for themselves. Defendant denies Plaintiffs' characterization of the  
2 documents and Defendant specifically denies that the AACAP and AACP guidelines are the sole  
3 "evidence base" for Defendant's LOC's. Defendant denies each and every one of the allegations  
4 set forth in this paragraph.

5 32. Defendant admits that Plaintiffs purport to reference and quote portions of  
6 documents of a third party, AACAP, in this paragraph, without any reference to the date of the  
7 document, page or section. The documents speak for themselves. Accordingly, Defendant lacks  
8 knowledge or information sufficient to form a belief as to the truth of these allegations as  
9 characterized, and on that basis denies each and every one of the allegations set forth in this  
10 paragraph.

11 33. Defendant admits that Plaintiffs purport to reference and quote portions of  
12 documents of third parties, AACAP and AACP, in this paragraph, without any reference to the  
13 date of the document, page or section. The documents speak for themselves. Accordingly,  
14 Defendant lacks knowledge or information sufficient to form a belief as to the truth of these  
15 allegations as characterized, and on that basis denies each and every one of the allegations set  
16 forth in this paragraph.

17 34. Defendant admits that Plaintiffs purport to reference and quote portions of  
18 documents of a third party, AACP, in this paragraph, without any reference to the date of the  
19 document, page or section. The documents speak for themselves. Accordingly, Defendant lacks  
20 knowledge or information sufficient to form a belief as to the truth of these allegations as  
21 characterized, and on that basis denies each and every one of the allegations set forth in this  
22 paragraph.

23 35. Defendant admits that Plaintiffs purport to reference and quote portions of  
24 documents of third parties, AACAP and AACP, in this paragraph, without any reference to the  
25 date of the document, page or section. The documents speak for themselves. Accordingly,  
26 Defendant lacks knowledge or information sufficient to form a belief as to the truth of these  
27 allegations as characterized, and on that basis denies each and every one of the allegations set  
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1 forth in this paragraph.

2 36. Defendant denies that prolonged residential treatment is the “normal” prescribed  
3 course of treatment for children and adolescents suffering from mental illness. With respect to  
4 Plaintiffs’ purported reference to SAMHSA, a third party, Defendant is without knowledge or  
5 information sufficient to form a belief about the truth of the allegations set forth in this paragraph,  
6 and therefore denies those allegations.

7 37. Defendant denies each and every one of the allegations set forth in this paragraph.

8 **UBH’S DENIAL OF THE WITS’ CLAIMS**

9 38. Defendant lacks knowledge or information sufficient to form a belief as to the  
10 truth of the allegations in this paragraph as characterized, and on that basis denies each and every  
11 one of the allegations set forth in this paragraph.

12 39. Defendant admits that Plaintiff David Wit is a participant in “The Insperity Group  
13 Health Plan” (the “Wit Plan”) and Natasha Wit is a beneficiary of the Wit Plan. Defendant  
14 admits that the Wit Plan is a not a grandfathered plan and is fully-insured by UnitedHealthcare  
15 Insurance Company, and it is governed under ERISA and Texas law. The most recent Wit Plan  
16 has an effective date of January 1, 2014. Defendant denies each and every one of the remaining  
17 allegations set forth in this paragraph.

18 40. Defendant admits that Plaintiffs accurately quote portions of the Certificate of  
19 Coverage for the Wit Plan, and Defendant states that the totality of the document speaks for itself.  
20 Defendant denies Plaintiffs’ characterization of the document. Defendant admits that, with  
21 limited exceptions, UHIC delegates its discretion to UBH for purposes of mental health-related  
22 claims administration. Defendant denies each and every one of the remaining allegations set forth  
23 in this paragraph.

24 41. Defendant admits that the Wit Plan provides for coverage for network and out-of-  
25 network residential treatment pursuant to the plan terms. Defendant states that the totality of the  
26 documents speak for themselves, and services and supplies that are not consistent with generally  
27 accepted standards of medical practice for the treatment of such conditions are not covered.  
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1 Defendant denies Plaintiffs' characterization of the documents and denies each and every one of  
2 the remaining allegations set forth in this paragraph. Defendant denies each and every one of the  
3 remaining allegations set forth in this paragraph.

4 42. Defendant admits that the Wit Plan requires one internal appeal prior to filing suit,  
5 and Defendant states that the totality of the documents speak for themselves.

6 43. Defendant lacks knowledge or information sufficient to form a belief as to the  
7 truth of the allegations in this paragraph as characterized, and on that basis denies each and every  
8 one of the allegations set forth in this paragraph.

9 44. Defendant admits that Monte Nido Vista is an in-network provider for UBH.  
10 Defendant lacks knowledge or information sufficient to form a belief as to the truth of the  
11 remaining allegations in this paragraph as characterized, and on that basis denies each and every  
12 one of the remaining allegations set forth in this paragraph.

13 45. Defendant admits that Defendant sent a letter dated May 3, 2013 addressed to  
14 Plaintiff Wit by Defendant's Associate Medical Director, Theodore Allchin, M.D. Defendant  
15 admits that Plaintiffs accurately quotes portions of the letter (with certain emphasis added by  
16 Plaintiffs). Defendant states that the totality of the document speaks for itself. Defendant denies  
17 Plaintiffs' characterization of the document and denies each and every one of the remaining  
18 allegations set forth in this paragraph.

19 46. Defendant admits that its May 3, 2013 letter references its LOC's for Residential  
20 Mental Health Treatment and that some of the criteria identified are also listed as criteria in  
21 Defendant's LOC's for Acute Inpatient Mental Health Treatment. Defendant admits that among  
22 the criteria it considered in denying coverage of residential treatment for Plaintiff Wit was a "lack  
23 of serious risk of harm to herself or others," "no acute medical issues," no need for "24 hour  
24 monitoring," Plaintiff Wit could safely be treated in a less restrictive level of care, and Plaintiff  
25 Wit's appropriate weight. Defendant denies each and every one of the remaining allegations set  
26 forth in this paragraph.

27 47. Defendant admits that Defendant sent a letter dated May 3, 2013 addressed to  
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1 Plaintiff Wit and signed by Defendant's Medical Director, Roxanne Sanders, M.D., and Plaintiffs  
 2 accurately quote a portion of that letter (with certain emphasis added by Plaintiffs). Defendant  
 3 admits that Dr. Sanders inadvertently included a reference to Defendant's LOC's for Acute  
 4 Inpatient Mental Health Treatment in the letter, but otherwise applied the appropriate LOC's for  
 5 Residential Treatment. Defendant states that the totality of the document otherwise speaks for  
 6 itself. Defendant denies Plaintiffs' characterization of the document.

7 48. Defendant admits that Dr. Allchin relied on Defendant's LOC's for Residential  
 8 Treatment when evaluating Ms. Wit's claims for residential treatment, and that Dr. Sander's letter  
 9 inadvertently refers to Defendant's LOC's for Acute Inpatient Mental Health Treatment.  
 10 Defendant denies each and every one of the remaining allegations set forth in this paragraph.

11 49. Defendant admits that its LOC's clearly distinguish between "Acute Inpatient" and  
 12 "Residential Treatment," and that Ms. Wit sought residential treatment. Defendant denies each  
 13 and every one of the remaining allegations set forth in this paragraph.

14 50. This paragraph contains legal argument and conclusion with respect to the legality  
 15 of the benefit denials, which does not require a response. To the extent a response may be  
 16 required, Defendant denies each and every one of the allegations set forth in this paragraph. With  
 17 respect to the remaining allegation set forth in this paragraph, Defendant lacks knowledge or  
 18 information sufficient to form a belief as to the truth of these allegations as characterized, and on  
 19 that basis denies each and every one of the allegations made in this paragraph.

#### 20 **DENIAL OF HOLDNAK'S CLAIMS**

21 51. Defendant lacks knowledge or information sufficient to form a belief as to the  
 22 truth of these allegations as characterized, and on that basis denies each and every one of the  
 23 allegations set forth in this paragraph.

24 52. Defendant admits that Plaintiff Holdnak is a participant in a self-funded, non-  
 25 grandfathered, health plan sponsored by American Express Company (the "AMEX Plan") and the  
 26 AMEX Plan is governed by ERISA. Defendant admits that Emily Holdnak is listed as a  
 27 beneficiary under the AMEX Plan. With respect to the remaining allegations set forth in this  
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1 paragraph, Defendant lacks knowledge or information sufficient to form a belief as to the truth of  
 2 these allegations as characterized, and on that basis denies each and every one of the remaining  
 3 allegations set forth in this paragraph.

4 53. Defendant admits that Plaintiffs accurately quote portions of the Holdnak Plan,  
 5 and Defendant states that the totality of the documents speak for themselves.

6 54. Defendant admits that Plaintiffs accurately quote portions of the Holdnak Plan,  
 7 and Defendant states that the totality of the documents speak for themselves.

8 55. Defendant admits that Plaintiffs accurately quote portions of the Holdnak Plan,  
 9 and Defendant states that the totality of the documents speak for themselves. Defendant denies  
 10 Plaintiffs' characterization of the documents. Defendant admits that, with limited exceptions,  
 11 UHIC delegates its discretion to UBH for purposes of mental health-related claims  
 12 administration. Defendant denies each and every one of the remaining allegations set forth in this  
 13 paragraph.

14 56. Defendant admits that Plaintiffs accurately quote portions of the Holdnak Plan,  
 15 and Defendant states that the totality of the documents speak for themselves.

16 57. Defendant admits that the Holdnak Plan requires two levels of internal appeals  
 17 prior to filing suit and appeals may not be adjudicated by the person who made the decision to  
 18 deny the claim. Defendant states that the totality of the documents speak for themselves and  
 19 denies Plaintiffs' characterization of the documents.

20 58. Defendant admits that the Holdnak Plan provides for coverage for network and  
 21 out-of-network residential treatment pursuant to the plan terms, and the totality of the documents  
 22 speak for themselves. Defendant denies Plaintiffs' characterization of the documents.

23 59. Defendant admits that the Holdnak Plan provides for coverage for residential  
 24 treatment pursuant to the plan terms, and the totality of the documents speak for themselves.  
 25 Defendant denies Plaintiffs' characterization of the documents.

26 60. Defendant lacks knowledge or information sufficient to form a belief as to the  
 27 truth of these allegations as characterized, and on that basis denies each and every one of the  
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1 allegations set forth in this paragraph.

2 61. Defendant admits that it received writings recommending residential treatment for  
3 Emily Holdnak. Defendant lacks knowledge or information sufficient to form a belief as to the  
4 truth of the remaining allegations as characterized, and on that basis denies each and every one of  
5 the remaining allegations set forth in this paragraph.

6 62. Defendant lacks knowledge or information sufficient to form a belief as to the  
7 truth of these allegations as characterized, and on that basis denies each and every one of the  
8 allegations set forth in this paragraph.

9 63. Defendant lacks knowledge or information sufficient to form a belief as to the  
10 truth of these allegations as characterized, and on that basis denies each and every one of the  
11 allegations set forth in this paragraph.

12 64. Defendant admits that the Solacium New Haven Treatment Center (“New Haven”)  
13 in Spanish Fork, Utah is an out-of-network provider with Defendant. Defendant lacks knowledge  
14 or information sufficient to form a belief as to the truth of the remaining allegations as  
15 characterized, and on that basis denies each and every one of the remaining allegations set forth in  
16 this paragraph.

17 65. Defendant lacks knowledge or information sufficient to form a belief as to the  
18 truth of these allegations as characterized, and on that basis denies each and every one of the  
19 allegations set forth in this paragraph.

20 66. Defendant admits that Plaintiffs accurately quote portions of written  
21 communications between New Haven and Defendant, and Defendant states that the totality of the  
22 documents speak for themselves. Defendant denies Plaintiffs’ characterization of the documents.

23 67. Defendant denies each and every one of the allegations set forth in this paragraph.

24 68. Defendant admits that Plaintiffs accurately quote portions of written documents,  
25 and Defendant states that the totality of the documents speak for themselves. Defendant denies  
26 Plaintiffs’ characterization of the documents. UBH denies Plaintiffs’ allegation that Dr.  
27 Dicasimirro conditioned Emily Holdnak’s residential treatment coverage on the need for acute  
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1 psychiatric services, and Defendant denies each and every one of the remaining allegations set  
2 forth in this paragraph.

3 69. Defendant admits that Plaintiffs accurately quote portions of written records of  
4 Defendant, and Defendant states that the totality of the documents speak for themselves.  
5 Defendant denies Plaintiffs' characterization of the documents.

6 70. Defendant admits that Plaintiffs accurately quote portions of written records of  
7 Defendant, and Defendant states that the totality of the documents speak for themselves.  
8 Defendant denies Plaintiffs' characterization of the documents.

9 71. Defendant admits that Plaintiffs accurately quote portions of written records of  
10 Defendant, and Defendant states that the totality of the documents speak for themselves.  
11 Defendant denies Plaintiffs' characterization of the documents.

12 72. Defendant admits that Plaintiffs accurately quote portions of written records of  
13 Defendant, and Defendant states that the totality of the documents speak for themselves.  
14 Defendant denies Plaintiffs' characterization of the documents.

15 73. Defendant admits that Plaintiffs accurately quote portions of written records of  
16 Defendant, and Defendant states that the totality of the documents speak for themselves.  
17 Defendant denies Plaintiffs' characterization of the documents.

18 74. Defendant admits that Plaintiffs accurately quote portions of written records of  
19 Defendant, and Defendant states that the totality of the documents speak for themselves.  
20 Defendant denies Plaintiffs' characterization of the documents.

21 75. Defendant admits that Plaintiffs accurately quote portions of written records of  
22 Defendant, and Defendant states that the totality of the documents speak for themselves.  
23 Defendant denies Plaintiffs' characterization of the documents.

24 76. Defendant admits that Plaintiffs accurately quote portions of written records of  
25 Defendant, and Defendant states that the totality of the documents speak for themselves.  
26 Defendant denies Plaintiffs' characterization of the documents. Defendant denies Plaintiffs'  
27 allegation that Dr. Young twisted a need for residential care, so as to justify a denial of coverage,  
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1 and Defendant denies each and every one of the remaining allegations set forth in this paragraph.

2 77. Defendant admits that Plaintiffs accurately quote portions of written records of  
3 Defendant, and Defendant states that the totality of the documents speak for themselves.

4 78. Defendant admits that Plaintiffs accurately quote portions of written records of  
5 Defendant, and Defendant states that the totality of the documents speak for themselves.  
6 Defendant denies Plaintiffs' characterization of the documents. Defendant denies each and every  
7 one of the remaining allegations set forth in this paragraph.

8 79. Defendant admits that Defendant issued a denial on January 31, 2014, and  
9 Plaintiffs purport to quote portions of Defendant's documents, but Defendant denies that the  
10 portions are quoted accurately. Defendant states that the totality of the documents speak for  
11 themselves. Defendant denies Plaintiffs' characterization of the documents, and Defendant  
12 denies each and every one of the remaining allegations set forth in this paragraph.

13 80. Defendant admits that it denied coverage for residential treatment to Emily  
14 Holdnak based on the application of its CDG's to the specific facts of Ms. Holdnak's condition  
15 and treatment and other circumstances of Ms. Holdnak's claims. Defendant admits that Plaintiff  
16 purports to reference documents of a third party, SAMHSA, in this paragraph, without any  
17 reference to the date of the document, page or section. The totality of the documents speak for  
18 themselves. Accordingly, with respect to the remaining allegations set forth in this paragraph,  
19 Defendant lacks knowledge or information sufficient to form a belief as to the truth of these  
20 allegations as characterized, and on that basis denies each and every one of the remaining  
21 allegations set forth in this paragraph.

22 81. Defendant admits that Dr. Dicasimirro adjudicated the claims for Emily Holdnak's  
23 residential treatment on January 3, 2014, and Dr. James handled the urgent appeal of that decision  
24 on January 6, 2014. Defendant admits that Dr. James adjudicated the claims for Emily Holdnak's  
25 residential treatment on January 30, 2014, and Dr. Dicasimirro handled the urgent appeal of that  
26 decision. Defendant denies that this assignment of cases is forbidden by the Holdnak Plan and  
27 denies each and every one of the remaining allegations set forth in this paragraph.

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1           82. Defendant admits that Plaintiffs accurately quote portions of written records of  
2 Defendant, and Defendant states that the totality of the documents speak for themselves.

3           83. Defendant admits that Defendant denied the appeal, and Plaintiffs accurately quote  
4 portions of written records of Defendant, and Defendant states that the totality of the documents  
5 speak for themselves. Defendant denies Plaintiffs' characterization of the documents. Defendant  
6 admits that Dr. Discasimirro's notes dated January 31, 2014 reflect that he was told that Emily  
7 Holdnak's medications had been adjusted, that her family had made limited progress and that she  
8 was no longer on one-to-one supervision. Defendant denies each and every one of the remaining  
9 allegations set forth in this paragraph.

10           84. Defendant admits that Dr. Dicasimirro's letter dated February 1, 2014  
11 inadvertently refers to the "Railroad Employees" plan, when in fact, Dr. Dicasimirro's decision  
12 was based on the Holdnak Plan. Defendant denies each and every one of the remaining  
13 allegations set forth in this paragraph.

14           85. Defendant admits that Plaintiffs accurately quote portions of written records of  
15 Defendant, and Defendant states that the totality of the documents speak for themselves.  
16 Defendant denies Plaintiffs' characterization of the documents.

17           86. Defendant admits that Plaintiffs accurately quote portions of written records of  
18 Defendant, and Defendant states that the totality of the documents speak for themselves.  
19 Defendant denies Plaintiffs' characterization of the documents and denies each and every one of  
20 the remaining allegations set forth in this paragraph.

21           87. Defendant admits that after receiving a second level of appeal from Plaintiff  
22 Holdnak, it issued a denial dated April 7, 2014 by Dr. Neal R. Satten, M.D. Defendant admits  
23 that Plaintiffs accurately quote portions of the letter, and Defendant states that the totality of the  
24 document speaks for itself. Defendant denies Plaintiffs' characterization of the documents.  
25 Defendant denies each and every one of the remaining allegations set forth in this paragraph.

26           88. Defendant admits that Plaintiffs accurately quote portions of written records of  
27 Defendant, and Defendant states that the totality of the documents speak for themselves.  
28

1 Defendant denies Plaintiffs' characterization of the documents. Defendant denies each and every  
2 one of the remaining allegations set forth in this paragraph.

3 89. Defendant admits that Plaintiffs accurately quote portions of written records of  
4 Defendant, and Defendant states that the totality of the documents speak for themselves.  
5 Defendant denies Plaintiffs' characterization of the documents. Defendant denies each and every  
6 one of the remaining allegations set forth in this paragraph.

7 90. Defendant denies that it engaged in any improper practice. Defendant lacks  
8 knowledge or information sufficient to form a belief as to the truth of the remaining allegations as  
9 characterized, and on that basis denies each and every one of the remaining allegations set forth in  
10 this paragraph.

11 91. Defendant lacks knowledge or information sufficient to form a belief as to the  
12 truth of these allegations as characterized, and on that basis denies each and every one of the  
13 allegations set forth in this paragraph.

14 **UBH'S LEVEL OF CARE AND COVERAGE DETERMINATIONS GUIDELINES**  
15 **RELEVANT TO PFEIFER, MUIR, AND FLANZRAICH'S CLAIMS**

16 92. Defendant admits that it has developed CDG's and LOC's for application to the  
17 treatment of substance abuse where appropriate under a member's health plan. Defendant denies  
18 the characterization of Plaintiffs that such CDG's and LOC's are "in addition to" those applicable  
19 to mental health treatment.

20 93. Defendant admits that it has created CDG's for the treatment of substance abuse  
21 disorders, and the current version of such CDG's are dated 2014. Defendant states that the term  
22 "promulgated" is vague and ambiguous, and on that basis denies that it "promulgated" CDG's.  
23 Defendant admits that Plaintiffs accurately quote portions of these documents of Defendant, and  
24 Defendant states that the totality of the documents speak for themselves. Defendant denies  
25 Plaintiffs' characterization of the documents.

26 94. Defendant admits that Plaintiffs accurately quote portions of written records of  
27 Defendant, and Defendant states that the totality of the documents speak for themselves.  
28 Defendant denies Plaintiffs' characterization of the documents.

1           95. Defendant admits that Plaintiffs accurately quote portions of written records of  
 2 Defendant, and Defendant states that the totality of the documents speak for themselves.  
 3 Defendant denies Plaintiffs' characterization of the documents.

4           96. Defendant admits that Plaintiffs accurately quote portions of written records of  
 5 Defendant, and Defendant states that the totality of the documents speak for themselves.  
 6 Defendant denies Plaintiffs' characterization of the documents and denies each and every one of  
 7 the remaining allegations set forth in this paragraph.

8           97. Defendant admits that Plaintiffs accurately quote portions of written records of  
 9 Defendant, and Defendant states that the totality of the documents speak for themselves.  
 10 Defendant denies Plaintiffs' characterization of the documents.

11           98. Defendant admits that Plaintiffs accurately quote portions of written records of  
 12 Defendant, and Defendant states that the totality of the documents speak for themselves.  
 13 Defendant denies Plaintiffs' characterization of the documents.

14           99. Defendant admits that Plaintiffs accurately quote portions of written records of  
 15 Defendant, and Defendant states that the totality of the documents speak for themselves.  
 16 Defendant denies Plaintiffs' characterization of the documents and denies each and every one of  
 17 the remaining allegations set forth in this paragraph.

18           100. Defendant admits that Plaintiffs accurately quote portions of written records of  
 19 Defendant, and Defendant states that the totality of the documents speak for themselves.  
 20 Defendant denies Plaintiffs' characterization of the documents and denies each and every one of  
 21 the remaining allegations set forth in this paragraph.

22           101. Defendant denies each and every one of the allegations set forth in this paragraph.

23           102. Defendant admits that its LOC's, where applicable, call for denial of residential  
 24 treatment where such treatment is inconsistent with the applicable LOC's; and the CDG's, where  
 25 applicable, call for denial of residential treatment where such treatment is inconsistent with the  
 26 applicable CDG's. Defendant denies each and every one of the remaining allegations set forth in  
 27 this paragraph.  
 28

103. Defendant admits that consistent with its business practices, it updated its LOC's applicable to Residential Rehabilitation effective 2014. Defendant states that the term "promulgated" is vague and ambiguous, and on that basis denies that it "promulgated" LOC's. Defendant admits that Plaintiffs accurately quote portions of written records of Defendant, and Defendant states that the totality of the documents speak for themselves. Defendant denies Plaintiffs' characterization of the documents, and Defendant denies each and every one of the remaining allegations set forth in this paragraph.

104. Defendant admits that the American Society for Addiction Medicine ("ASAM") and AACP have created their own substance abuse treatment guidelines, which are available to the public, and Defendant denies that these guidelines are the sole or prevailing substance abuse treatment guidelines. Defendant admits that among other sources available to Defendant, the ASAM and AACP guidelines provide an evidence base for Defendant's LOC's. Defendant admits that Plaintiffs purport to quote portions of Defendant's records, but denies that the portions are quoted accurately. Defendant states that the totality of the documents speak for themselves. Defendant denies Plaintiffs' characterization of the documents, and Defendant denies each and every one of the remaining allegations set forth in this paragraph.

105. Defendant admits that Plaintiffs purport to reference and quote portions of documents of third parties, AACP and ASAM, in this paragraph, without any reference to the date of the document, page or section. The totality of the documents speak for themselves. Defendant admits that the entirety of its LOC's are not identical to the ASAM guidelines or AACP guidelines, and Defendant denies Plaintiff's characterization of them as "inconsistent." With respect to the remaining allegations set forth in this paragraph, Defendant lacks knowledge or information sufficient to form a belief as to the truth of these allegations as characterized, and on that basis denies each and every one of the remaining allegations set forth in this paragraph.

106. Defendant admits that Plaintiffs purport to reference and quote portions of documents of a third party, ASAM, in this paragraph, without any reference to the date of the document, page or section. The totality of the documents speak for themselves. Accordingly,

1 Defendant lacks knowledge or information sufficient to form a belief as to the truth of these  
 2 allegations as characterized, and on that basis denies each and every one of the allegations set  
 3 forth in this paragraph.

4 107. Defendant admits that Plaintiffs purport to reference and quote portions of  
 5 documents of a third party, ASAM, in this paragraph, without any reference to the date of the  
 6 document, page or section. The totality of the documents speak for themselves. Accordingly,  
 7 Defendant lacks knowledge or information sufficient to form a belief as to the truth of these  
 8 allegations as characterized, and on that basis denies each and every one of the allegations set  
 9 forth in this paragraph.

10 108. Defendant admits that Plaintiffs purport to reference and quote portions of  
 11 documents of third parties, ASAM and the American Psychiatric Association, in this paragraph,  
 12 without any reference to the date of the document, page or section. The totality of the documents  
 13 speak for themselves. Accordingly, Defendant lacks knowledge or information sufficient to form  
 14 a belief as to the truth of these allegations as characterized, and on that basis denies each and  
 15 every one of the allegations set forth in this paragraph..

16 109. Defendant admits that Plaintiffs purport to reference and quote portions of  
 17 documents of a third party, ASAM, in this paragraph, without any reference to the date of the  
 18 document, page or section. The totality of the documents speak for themselves. Accordingly,  
 19 Defendant lacks knowledge or information sufficient to form a belief as to the truth of these  
 20 allegations as characterized, and on that basis denies each and every one of the allegations set  
 21 forth in this paragraph.

22 110. Defendant denies that its CDG's and LOC's fail to include criteria applicable to  
 23 adolescent-specific substance abuse. Defendant admits that Plaintiff purports to reference and  
 24 quote portions of documents of third parties, ASAM and the AACP, in this paragraph, without  
 25 any reference to the date of the document, page or section. The totality of the documents speak  
 26 for themselves. Accordingly, with respect to the remaining allegations set forth in this paragraph,  
 27 Defendant lacks knowledge or information sufficient to form a belief as to the truth of these  
 28

1 allegations as characterized, and on that basis denies each and every one of the remaining  
2 allegations set forth in this paragraph.

3 111. Defendant admits that Plaintiffs purport to reference and quote portions of  
4 documents of a third party, ASAM, in this paragraph, without any reference to the date of the  
5 document, page or section. The totality of the documents speak for themselves. Accordingly,  
6 Defendant lacks knowledge or information sufficient to form a belief as to the truth of these  
7 allegations as characterized, and on that basis denies each and every one of the allegations set  
8 forth in this paragraph.

9 112. Defendant denies each and every one of the allegations set forth in this paragraph.

10 113. Defendant lacks knowledge or information sufficient to form a belief as to the  
11 truth of these allegations as characterized, and on that basis denies each and every one of the  
12 allegations set forth in this paragraph.

13 114. Defendant lacks knowledge or information sufficient to form a belief as to the  
14 truth of these allegations as characterized, and on that basis denies each and every one of the  
15 allegations set forth in this paragraph.

### 16 **DENIAL OF PFEIFER'S CLAIMS**

17 115. Defendant lacks knowledge or information sufficient to form a belief as to the  
18 truth of these allegations as characterized, and on that basis denies each and every one of the  
19 allegations set forth in this paragraph.

20 116. Defendant admits that Plaintiff Pfeifer is a participant in the Continental Group  
21 Health Plan (the "Pfeifer Plan"), and Lauralee Pfeifer was listed as a beneficiary of the Pfeifer  
22 Plan. Defendant admits that the Pfeifer Plan is a fully-insured, group plan insured by UHIC-IL  
23 and is not grandfathered under ERISA. Defendant denies that the Pfeifer Plan was originally  
24 effective October 1, 2013, and it admits that it is subject to ERISA and Illinois law.

25 117. Defendant admits that Plaintiffs accurately quote portions of the Certificate of  
26 Coverage for the Pfeifer Plan, and Defendant states that the totality of the document speaks for  
27 itself. Defendant denies Plaintiffs' characterization of the document. Defendant admits that, with  
28

1 limited exceptions, UHIC delegates its discretion to UBH for purposes of mental health-related  
2 claims administration. Defendant denies each and every one of the remaining allegations set forth  
3 in this paragraph.

4 118. Defendant admits that the Pfeifer Plan provides for coverage for network and out-  
5 of-network residential treatment pursuant to the plan terms. Defendant admits that Plaintiffs  
6 accurately quote portions of written records of Defendant, and Defendant states that the totality of  
7 the documents speak for themselves. Defendant denies Plaintiffs' characterization of the  
8 documents.

9 119. Defendant admits that Plaintiffs accurately quote portions of the Pfeifer Plan, and  
10 Defendant states that the totality of the documents speak for themselves. Defendant denies  
11 Plaintiffs' characterization of the documents. This paragraph contains legal argument and  
12 conclusion with respect to Illinois law, which does not require a response. To the extent a  
13 response may be required, Defendant denies each and every one of the remaining allegations set  
14 forth in this paragraph.

15 120. Defendant admits that the Pfeifer Plan requires one internal appeal prior to filing  
16 suit, and Defendant states that the totality of the documents speak for themselves.

17 121. Defendant admits that Passages Malibu is an out-of-network provider with  
18 Defendant. Defendant lacks knowledge or information sufficient to form a belief as to the truth  
19 of remaining allegations as characterized, and on that basis denies each and every one of the  
20 allegations set forth in this paragraph.

21 122. Defendant admits that Plaintiffs purport to quote portions of Defendant's  
22 documents, but denies that the portions are quoted accurately. Defendant states that the totality of  
23 the documents speak for themselves. Defendant denies Plaintiffs' characterization of the  
24 documents. Defendant denies each and every one of the remaining allegations set forth in this  
25 paragraph.

26 123. Defendant admits that Plaintiffs purport to quote portions of Defendant's  
27 documents, but denies that the portions are quoted accurately. Defendant states that the totality of  
28

1 the documents speak for themselves. Defendant denies Plaintiffs' characterization of the  
2 documents. Defendant denies each and every one of the remaining allegations set forth in this  
3 paragraph.

4 124. Defendant admits that Plaintiffs purport to quote portions of Defendant's  
5 documents, but denies that the portions are quoted accurately. Defendant states that the totality of  
6 the documents speak for themselves. Defendant denies Plaintiffs' characterization of the  
7 documents. Defendant denies each and every one of the remaining allegations set forth in this  
8 paragraph.

9 125. Defendant admits that Defendant denied coverage for residential treatment for Ms.  
10 Pfeifer in a letter dated November 1, 2013 by Dr. Malik Ahmed, M.D. Plaintiffs accurately quote  
11 portions of the letter (with emphasis added by Plaintiffs), and Defendant states that the totality of  
12 the document speaks for itself. Defendant denies Plaintiffs' characterization of the document.  
13 Defendant denies each and every one of the remaining allegations set forth in this paragraph.

14 126. Defendant admits that Plaintiffs accurately quote portions of written records of  
15 Defendant, and Defendant states that the totality of the documents speak for themselves.  
16 Defendant denies Plaintiffs' characterization of the documents. Defendant denies each and every  
17 one of the remaining allegations set forth in this paragraph.

18 127. Defendant admits that Defendant upheld the denial of residential treatment for Ms.  
19 Pfeifer in a letter dated November 1, 2013 by Dr. Saul Helfing, M.D. Defendant admits that  
20 Plaintiffs accurately quote portions of the letter (with emphasis added by Plaintiffs), and  
21 Defendant states that the document speaks for itself. Defendant denies Plaintiffs' characterization  
22 of the document.

23 128. Defendant admits that Plaintiffs accurately quote portions of written records of  
24 Defendant, and Defendant states that the totality of the documents speaks for themselves.  
25 Defendant denies Plaintiffs' characterization of the documents. Defendant denies each and every  
26 one of the remaining allegations set forth in this paragraph.

27 129. Defendant admits that Defendant's letters denying Ms. Pfeifer's request for  
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1 residential treatment do not explicitly reference “ASAM,” and Defendant denies that its letters do  
 2 not reference medical necessity criteria or other generally accepted standards of care. This  
 3 paragraph contains legal argument and conclusion with respect to Illinois law, which does not  
 4 require a response. To the extent a response may be required, Defendant denies each and every  
 5 one of the allegations set forth in this paragraph.

6 130. Defendant denies that its policies and practices are self-serving. Defendant lacks  
 7 knowledge or information sufficient to form a belief as to the truth of the remaining allegations as  
 8 characterized, and on that basis denies each and every one of the allegations set forth in this  
 9 paragraph.

10 131. Defendant lacks knowledge or information sufficient to form a belief as to the  
 11 truth of these allegations as characterized, and on that basis denies each and every one of the  
 12 allegations set forth in this paragraph.

13 132. Defendant lacks knowledge or information sufficient to form a belief as to the  
 14 truth of these allegations as characterized, and on that basis denies each and every one of the  
 15 allegations set forth in this paragraph.

16 133. Defendant lacks knowledge or information sufficient to form a belief as to the  
 17 truth of these allegations as characterized, and on that basis denies each and every one of the  
 18 allegations set forth in this paragraph.

### 19 **DENIAL OF MUIR’S CLAIMS**

20 134. Defendant admits that Plaintiff Muir is a beneficiary in the self-funded, non-  
 21 grandfathered health plan sponsored by Deloitte LLP (the “Muir Plan”), and the Muir Plan is  
 22 subject to ERISA. Defendant lacks knowledge or information sufficient to form a belief as to the  
 23 truth of the remaining allegations as characterized, and on that basis denies each and every one of  
 24 the allegations set forth in this paragraph.

25 135. Defendant admits that Plaintiffs accurately quote portions of the Muir Plan, and  
 26 Defendant states that the totality of the documents speak for themselves. Defendant denies  
 27 Plaintiffs’ characterization of the documents. Defendant admits that, with limited exceptions,  
 28

1 UHIC delegates its discretion to UBH for purposes of mental health-related claims  
2 administration. Defendant denies each and every one of the allegations set forth in this  
3 paragraph.

4 136. Defendant admits that Plaintiffs purport to quote portions of the Muir Plan, but  
5 denies that the portions are quoted accurately. Defendant states that the totality of the documents  
6 speak for themselves. Defendant denies Plaintiffs' characterization of the documents. Defendant  
7 admits that the Muir Plan requires one internal appeal prior to filing suit.

8 137. Defendant admits that Plaintiffs accurately quote portions of the Muir Plan, and  
9 Defendant states that the totality of the documents speak for themselves. Defendant denies  
10 Plaintiffs' characterization of the documents.

11 138. Defendant admits that the Muir Plan provides for coverage for network and out-of-  
12 network residential treatment pursuant to the plan terms. Defendant admits that Plaintiffs  
13 accurately quote portions of the Muir Plan, and the totality of the documents speak for  
14 themselves. Defendant denies Plaintiffs' characterization of the documents, and Defendant  
15 denies each and every one of the remaining allegations set forth in this paragraph.

16 139. Defendant admits that Plaintiffs accurately quote portions of the Muir Plan, and  
17 Defendant states that the totality of the documents speak for themselves, and services that are not  
18 consistent with generally accepted standards of medical practice for the treatment of such  
19 conditions is not covered. Defendant denies Plaintiffs' characterization of the documents and  
20 denies each and every one of the remaining allegations set forth in this paragraph.

21 140. Defendant admits that Sierra Tucson is an in-network facility for Defendant.  
22 Defendant lacks knowledge or information sufficient to form a belief as to the truth of the  
23 remaining allegations as characterized, and on that basis denies each and every one of the  
24 remaining allegations set forth in this paragraph.

25 141. Defendant lacks knowledge or information sufficient to form a belief as to the  
26 truth of these allegations as characterized, and on that basis denies each and every one of the  
27 allegations set forth in this paragraph.

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1           142. Defendant admits that Plaintiffs purport to quote portions of Defendant's  
2 documents, but denies that the portions are quoted accurately. Defendant states that the totality of  
3 the documents speak for themselves. Defendant denies Plaintiffs' characterization of the  
4 documents. Defendant admits that on or about March 5, 2013, its case manager Anitra Stewart  
5 determined that Plaintiff Muir did not meet Defendant's CDG's for residential treatment and  
6 forwarded the file for review by Dr. Jerome Kaufman. Defendant denies each and every one of  
7 the remaining allegations set forth in this paragraph.

8           143. Defendant admits that Defendant denied residential treatment for Plaintiff Muir in  
9 a letter dated March 7, 2013 by Dr. Kaufman, M.D. Plaintiffs accurately quote portions of  
10 Defendant's documents (with certain emphasis added by Plaintiffs), and Defendant states that the  
11 totality of the documents speak for themselves. Defendant denies Plaintiffs' characterization of  
12 the documents. Defendant denies each and every one of the remaining allegations set forth in this  
13 paragraph.

14           144. Defendant admits that Defendant upheld the denial of residential treatment for  
15 Plaintiff Muir in a letter dated March 7, 2013 by Dr. Jed Goldart, M.D. Defendant admits that  
16 Plaintiffs accurately quote portions of the letter (with certain emphasis added by Plaintiffs), and  
17 Defendant states that the totality of the document speaks for itself. Defendant denies Plaintiffs'  
18 characterization of the document. Defendant denies each and every one of the remaining  
19 allegations set forth in this paragraph.

20           145. Defendant denies each and every one of the allegations set forth in this paragraph.

21           146. Defendant admits that Plaintiffs purport to reference portions of the Muir Plan in  
22 this paragraph. Defendant states that the totality of the documents speak for themselves, and  
23 Defendant denies Plaintiffs' characterization of the documents. Defendant admits that Plaintiff  
24 purports to reference and quote portions of documents of a third party, ASAM, in this paragraph,  
25 without any reference to the date of the document, page or section. The totality of the documents  
26 speak for themselves. Accordingly, Defendant is without knowledge or information sufficient to  
27 form a belief about the truth of the allegations set forth in this paragraph relating to ASAM  
28

1 documents, and therefore denies those allegations. Defendant denies each and every one of the  
2 remaining allegations set forth in this paragraph.

3 147. Defendant admits that Plaintiffs accurately quote portions of Defendant's  
4 documents, and Defendant states that the totality of the documents speak for themselves.  
5 Defendant denies Plaintiffs' characterization of the documents and denies each and every one of  
6 the remaining allegations set forth in this paragraph.

7 148. Defendant admits that on or about August 22, 2013, it received an external appeal  
8 request for Plaintiff Muir, and Defendant admits that Plaintiffs accurately quote portions of the  
9 appeal request. Defendant states that the totality of the document speaks for itself, and Defendant  
10 denies Plaintiffs' characterization of the document. This paragraph contains legal argument and  
11 conclusion regarding exhaustion of internal remedies, which do not require a response. To the  
12 extent a response may be required, Defendant denies each and every one of the allegations  
13 relating to exhaustion set forth in this paragraph.

14 149. Defendant admits that Plaintiffs accurately quote portions of the Muir Plan, and  
15 Defendant states that the totality of the documents speak for themselves. Defendant denies  
16 Plaintiffs' characterization of the document. This paragraph contains legal argument and  
17 conclusion regarding interpretation of the Muir Plan and Interim Procedures for external appeals,  
18 which do not require a response. To the extent a response may be required, Defendant denies  
19 each and every one of the remaining allegations set forth in this paragraph.

20 150. Defendant admits that MES Solutions, an IRO, acknowledged receipt of Plaintiff  
21 Muir's external appeal, and that United received the IRO's resolution of the appeal on or about  
22 October 14, 2013. Defendant admits that it subsequently gave notice to Plaintiff Muir.  
23 Defendant is without knowledge or information sufficient to form a belief about the truth of the  
24 allegations with respect to MES's actions, and therefore denies those allegations and each and  
25 every one of the remaining allegations set forth in this paragraph.

26 151. Defendant lacks knowledge or information sufficient to form a belief as to the  
27 truth of the allegations in this paragraph as characterized, and on that basis denies each and every  
28

one of the allegations set forth in this paragraph.

152. This paragraph contains inflammatory statements of opinion and conclusion, which do not require a response. To the extent a response may be required, Defendant denies each and every one of the allegations set forth in this paragraph.

153. This paragraph contains legal argument and conclusion with respect to Defendant's policies and practices, which does not require a response. To the extent a response may be required, Defendant denies each and every one of those allegations. Defendant lacks knowledge or information sufficient to form a belief as to the truth of remaining allegations as characterized, and on that basis denies each and every one of the allegations set forth in this paragraph.

154. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations as characterized, and on that basis denies each and every one of the allegations set forth in this paragraph.

#### **DENIAL OF FLANZRAICH'S CLAIMS**

155. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations as characterized, and on that basis denies each and every one of the allegations set forth in this paragraph.

156. Defendant admits that Lori and Casey Flanzraich are beneficiaries of the Oxford Health Plan ("Flanzraich Plan"), which is a fully-insurance group health policy governed by ERISA and is not grandfathered under ERISA.

157. Defendant admits that Plaintiffs accurately quote portions of the Flanzraich Plan, and Defendant states that the totality of the documents speak for themselves.

158. Defendant admits that Plaintiffs accurately quote portions of the Flanzraich Plan, and Defendant states that the totality of the documents speak for themselves. Defendant denies Plaintiffs' characterization of the documents.

159. Defendant admits that Plaintiffs accurately quote portions of the Flanzraich Plan, and Defendant states that the totality of the documents speak for themselves. Defendant denies

1 Plaintiffs' characterization of the documents.

2 160. Defendant admits that Plaintiffs accurately quote portions of the Flanzraich Plan,  
3 and Defendant states that the totality of the documents speak for themselves. Defendant denies  
4 Plaintiffs' characterization of the documents. Defendant admits that, with limited exceptions,  
5 Oxford delegates its discretion to UBH for purposes of mental health-related claims  
6 administration. Defendant denies each and every one of the remaining allegations set forth in this  
7 paragraph.

8 161. Defendant admits that the Flanzraich Plan provides for coverage for network and  
9 out-of-network residential treatment pursuant to the plan terms, and the Flanzraich Plan requires  
10 one internal appeal prior to filing suit. Defendant admits that Plaintiffs accurately quote portions  
11 of the Flanzraich Plan, and Defendant states that the totality of the documents speak for  
12 themselves. Defendant denies Plaintiffs' characterization of the documents, and Defendant  
13 denies each and every one of the remaining allegations set forth in this paragraph.

14 162. Defendant lacks knowledge or information sufficient to form a belief as to the  
15 truth of the allegations in this paragraph as characterized, and on that basis denies each and every  
16 one of the allegations set forth in this paragraph.

17 163. Defendant lacks knowledge or information sufficient to form a belief as to the  
18 truth of the allegations in this paragraph as characterized, and on that basis denies each and every  
19 one of the allegations set forth in this paragraph.

20 164. Defendant lacks knowledge or information sufficient to form a belief as to the  
21 truth of the allegations in this paragraph as characterized, and on that basis denies each and every  
22 one of the allegations set forth in this paragraph.

23 165. Defendant admits that New Haven is an out-of-network provider with Defendant.  
24 Defendant lacks knowledge or information sufficient to form a belief as to the truth of the  
25 remaining allegations in this paragraph as characterized, and on that basis denies each and every  
26 one of the remaining allegations set forth in this paragraph.

27 166. Defendant admits that Plaintiff purports to reference and quote portions of  
28

1 documents of a third party, New Haven, in this paragraph. The documents speak for themselves.  
2 Accordingly, Defendant lacks knowledge or information sufficient to form a belief as to the truth  
3 of these allegations as characterized, and on that basis denies each and every one of the  
4 allegations set forth in this paragraph.

5 167. Defendant admits that Plaintiffs accurately quote portions of a letter from  
6 Defendant dated February 18, 2103 by Dr. Satwant Ahluwalia, M.D. denying coverage (with  
7 certain emphasis added by Plaintiffs), and Defendant states that the totality of the document  
8 speaks for itself. Defendant denies Plaintiffs' characterization of the document and denies each  
9 and every one of the remaining allegations set forth in this paragraph.

10 168. Defendant admits that Dr. Ahluwalia was aware of the facts and circumstances of  
11 Ms. Flanzraich's condition and claim for treatment and other relevant factors based on the  
12 information obtained from her providers, and Dr. Ahluwalia applied its LOC's to these facts and  
13 circumstances. Defendant denies each and every one of the remaining allegations set forth in this  
14 paragraph.

15 169. Defendant admits that Plaintiffs accurately quote portions of correspondence sent  
16 to Defendant, and Defendant states that the totality of the document speaks for itself. Defendant  
17 denies each and every one of the remaining allegations set forth in this paragraph.

18 170. Defendant admits that Plaintiffs accurately quote portions of a document submitted  
19 to Defendant, and Defendant states that the totality of the document speaks for itself.

20 171. Defendant admits that Plaintiffs accurately quote portions of a document submitted  
21 to Defendant, and Defendant states that the totality of the document speaks for itself. Defendant  
22 denies Plaintiffs' characterization of the document and denies each and every one of the  
23 remaining allegations set forth in this paragraph.

24 172. Defendant admits that Plaintiffs accurately quote portions of a document submitted  
25 to Defendant, and Defendant states that the totality of the document speaks for itself.

26 173. Defendant admits that Defendant denied Ms. Flanzraich's appeal, and Plaintiffs  
27 accurately quote portions of a letter from Defendant dated August 23, 2013 by Dr. Alam, M.D.  
28

1 Defendant states that the totality of the document speaks for itself. Defendant denies Plaintiffs'  
2 characterization of the document and denies each and every one of the remaining allegations set  
3 forth in this paragraph.

4 174. Defendant denies each and every one of the allegations set forth in this paragraph.

5 175. Defendant denies each and every one of the allegations set forth in this paragraph.

6 176. Defendant admits that it was notified that Ms. Flanzraich submitted a request for  
7 an external review by an IRO, and the review was assigned to MCMC. This paragraph contains  
8 legal argument and conclusion with respect to the law of California and other states, which does  
9 not require a response. To the extent a response may be required, Defendant denies each and  
10 every one of those allegations set forth in this paragraph. Defendant lacks knowledge or  
11 information sufficient to form a belief as to the truth of the remaining allegations as characterized,  
12 and on that basis denies each and every one of the remaining allegations set forth in this  
13 paragraph.

14 177. Defendant lacks knowledge or information sufficient to form a belief as to the  
15 truth of the allegations as characterized, and on that basis denies each and every one of the  
16 allegations set forth in this paragraph.

17 178. Defendant denies that the decision of the IRO was erroneous and denies that  
18 Defendant's initial denial was improper or that Defendant failed to properly classify residential  
19 treatment or evaluate the appropriate level of care. Defendant lacks knowledge or information  
20 sufficient to form a belief as to the truth of remaining allegations as characterized, and on that  
21 basis denies each and every one of the remaining allegations set forth in this paragraph.

22 179. Defendant admits that Plaintiff purports to reference and quote portions of  
23 documents of a third party, AACAP, in this paragraph, without any reference to the date of the  
24 document, page or section. The documents speak for themselves. Accordingly, with respect to  
25 the allegations relating to AACAP's documents, Defendant is without knowledge or information  
26 sufficient to form a belief about the truth of the allegations set forth in this paragraph, and  
27 therefore denies those allegations. With respect to the remaining allegations set forth in this  
28

1 paragraph, Defendant lacks knowledge or information sufficient to form a belief as to the truth of  
 2 these allegations as characterized, and on that basis denies each and every one of the remaining  
 3 allegations set forth in this paragraph.

4 180. This paragraph contains legal argument and conclusion with respect to  
 5 Defendant's alleged acts, which does not require a response. To the extent a response may be  
 6 required, Defendant denies each and every one of those allegations. Defendant lacks knowledge  
 7 or information sufficient to form a belief as to the truth of the remaining allegations as  
 8 characterized, and on that basis denies each and every one of the allegations set forth in this  
 9 paragraph.

10 181. Defendant lacks knowledge or information sufficient to form a belief as to the  
 11 truth of the allegations as characterized, and on that basis denies each and every one of the  
 12 allegations set forth in this paragraph.

13 182. Defendant lacks knowledge or information sufficient to form a belief as to the  
 14 truth of the allegations as characterized, and on that basis denies each and every one of the  
 15 allegations set forth in this paragraph.

### 16 **CLASS ACTION ALLEGATIONS**

17 183. Defendant incorporates by reference the preceding paragraphs as though such  
 18 paragraphs were fully stated herein.

19 184. Defendant admits that it is the claims administrator for mental health and  
 20 substance abuse treatment for multiple health insurance plans, including those in which the  
 21 Plaintiffs are members or beneficiaries. Defendant admits that some health insurance plans for  
 22 which it is the claims administrator include similar provisions regarding coverage for residential  
 23 treatment as those provisions in the Wit, Muir, Pfeifer and Holdnak Plans. Defendant admits that,  
 24 when applicable, it relies on its LOC's in adjudicating residential treatment claims under certain  
 25 plans, and that its application of those guidelines is based on the individual circumstances  
 26 presented by the member at issue, including his/her diagnosis, treatment and other facts  
 27 surrounding the residential treatment sought, as well as the health plan at issue and applicable  
 28

1 law. Defendant denies each and every one of the remaining allegations set forth in this  
2 paragraph.

3 185. Defendant admits that it is the claims administrator for mental health and  
4 substance abuse treatment for multiple health insurance plans, including those in which the  
5 Plaintiffs are members or beneficiaries. Defendant admits that some health insurance plans for  
6 which it is the claims administrator include similar provisions regarding coverage for residential  
7 treatments as those provisions in the Flanzraich Plan. Defendant admits that, when applicable, it  
8 relies on its CDG's in adjudicating residential treatment claims for certain plans, and that its  
9 application of those guidelines is based on the individual circumstances presented by the member  
10 at issue, including his/her diagnosis, treatment and other facts surrounding the residential  
11 treatment sought, as well as the health plan at issue and applicable law. Defendant denies each  
12 and every one of the remaining allegations set forth in this paragraph.

13 186. Defendant admits that Plaintiffs purport to bring their claims on behalf of the class  
14 stated and Defendant denies that Plaintiffs are entitled to class certification under FRCP 23. The  
15 remaining allegations set forth in this paragraph contain legal argument and conclusion, which do  
16 not require a response. To the extent a response may be required, Defendant denies each and  
17 every one of the remaining allegations set forth in this paragraph.

18 187. Defendant admits that it knows the members for whom it administers claims for  
19 mental health and substance abuse benefits, and it knows who they are insured by, what types of  
20 claims they have filed and how those claims were adjudicated. Defendant denies each and every  
21 one of the remaining allegations set forth in this paragraph.

22 188. Defendant admits that with respect to the class definition set forth by Plaintiffs,  
23 joinder of the putative class members is impracticable.

24 189. The allegations set forth in this paragraph contain legal argument and conclusion,  
25 which do not require a response. To the extent a response may be required, Defendant denies  
26 each and every one of the allegations set forth in this paragraph.

27 190. Defendant denies each and every allegation set forth in this paragraph.  
28

191. Defendant lacks knowledge or information sufficient to form a belief as to the truth of these assertions as characterized, and on that basis denies each and every one of the allegations set forth in these paragraphs.

192. Defendant denies each and every allegation set forth in this paragraph.

193. Defendant denies each and every allegation set forth in this paragraph.

## **COUNT I**

### **CLAIM FOR VIOLATION OF FIDUCIARY OBLIGATIONS BROUGHT ON BEHALF OF PLAINTIFFS AND THE CLASS**

194. Defendant incorporates by reference the preceding paragraphs as though such paragraphs were fully stated herein.

195. Defendant admits that Plaintiffs purport to bring Count I pursuant to 29 U.S.C. § 1132(a)(1)(B). Defendant denies that Plaintiffs state a cognizable claim under 29 U.S.C. § 1132(a)(1)(B) in Count I.

196. This paragraph contains legal argument and conclusion, which do not require a response. To the extent a response may be required, Defendant denies each and every allegation set forth in this paragraph.

197. This paragraph contains legal argument and conclusion, which do not require a response. To the extent a response may be required, Defendant denies each and every allegation set forth in this paragraph.

198. Defendant denies each and every allegation set forth in this paragraph.

199. Defendant denies each and every allegation set forth in this paragraph.

200. Defendant denies each and every allegation set forth in this paragraph.

201. Defendant denies each and every allegation set forth in this paragraph.

202. Defendant admits that Plaintiffs purport to seek the relief identified in their FAC, Defendant denies that Plaintiffs are entitled to such relief.

## **COUNT II**

### **CLAIM FOR IMPROPER DENIAL OF BENEFITS BROUGHT ON BEHALF OF PLAINTIFFS AND THE CLASS**

203. Defendant incorporates by reference the preceding paragraphs as though such paragraphs were fully stated herein.

204. Defendant admits that Plaintiffs purport to bring Count II pursuant to 29 U.S.C. § 1132(a)(1)(B). Defendant denies that Plaintiffs state a cognizable claim under 29 U.S.C. § 1132(a)(1)(B) in Count I.

205. Defendant denies each and every allegation set forth in this paragraph.

206. Defendant denies each and every allegation set forth in this paragraph.

207. Defendant admits that Plaintiffs purport to seek the relief identified in their FAC, Defendant denies that Plaintiffs are entitled to such relief.

### **COUNT III**

#### **CLAIM FOR EQUITABLE RELIEF BROUGHT ON BEHALF OF PLAINTIFFS AND THE CLASS**

208. Defendant incorporates by reference the preceding paragraphs as though such paragraphs were fully stated herein.

209. Defendant admits that Plaintiffs purport to bring Count III pursuant to 29 U.S.C. § 1132(a)(3)(A) only to the extent that the Court finds that injunctive relief sought to remedy Counts I and/or II is unavailable pursuant to 29 U.S.C. § 1132(a)(1)(B). Defendant denies that Plaintiffs state a cognizable claim under 29 U.S.C. § 1132(a)(3)(A) in Count III.

210. Defendant denies each and every allegation set forth in this paragraph.

211. This paragraph contains legal argument and conclusion, which do not require a response. To the extent a response may be required, Defendant denies each and every allegation set forth in this paragraph.

### **COUNT IV**

#### **CLAIM FOR OTHER APPROPRIATE EQUITABLE RELIEF BROUGHT ON BEHALF OF PLAINTIFFS AND THE CLASS**

212. Defendant incorporates by reference the preceding paragraphs as though such paragraphs were fully stated herein.

213. Defendant admits that Plaintiffs purport to bring Count IV pursuant to 29 U.S.C. §

1 1132(a)(3)(B) only to the extent that the Court finds that equitable relief sought to remedy Counts  
 2 I and/or II is unavailable pursuant to 29 U.S.C. § 1132(a)(1)(B). Defendant denies that Plaintiffs  
 3 state a cognizable claim under 29 U.S.C. § 1132(a)(3)(B) in Count III.

4 214. Defendant denies each and every allegation set forth in this paragraph.

5 215. Defendant denies each and every allegation set forth in this paragraph.

6 216. This paragraph contains legal argument and conclusion, which do not require a  
 7 response. To the extent a response may be required, Defendant denies each and every allegation  
 8 set forth in this paragraph.

### 9 **REQUESTED RELIEF**

10 Answering the REQUESTED RELIEF (on page 65 and 66), Defendant denies that  
 11 Plaintiffs are entitled to any of the relief sought in this action.  
 12

### 13 **AFFIRMATIVE DEFENSES**

14 Without admitting any facts alleged by Plaintiffs, Defendant asserts the following separate  
 15 and affirmative defenses to the FAC. By pleading the following defenses, Defendant does not  
 16 concede that it bears the burden of proof on any issue raised through the pleadings.  
 17

#### 18 **FIRST AFFIRMATIVE DEFENSE**

##### 19 **[Failure to State a Cause of Action]**

20 Plaintiffs' claims fail to state facts sufficient to constitute any cause of action as to  
 21 Defendant.

#### 22 **SECOND AFFIRMATIVE DEFENSE**

##### 23 **[No Damage or Injury]**

24 Plaintiffs' claims are barred, in whole or in part, because Plaintiffs, and each of the  
 25 members of the putative class, have not suffered any cognizable injury or damages.  
 26

#### 27 **THIRD AFFIRMATIVE DEFENSE**

##### 28 **[Exhaustion of Administrative Remedies]**

1 Plaintiffs' claims are barred in whole or in part to the extent Plaintiffs, and each of the  
 2 members of the putative class, failed to exhaust administrative remedies prior to the  
 3 commencement of this lawsuit, and thus this Court lacks jurisdiction.

4  
 5 **FOURTH AFFIRMATIVE DEFENSE**

6 **[Defendant's Equitable Conduct]**

7 Plaintiffs' prayer for injunctive relief is barred because Plaintiffs, and each of the  
 8 members of the putative class, have received all benefits to which they are entitled from  
 9 Defendant and cannot demonstrate inequitable conduct on the part of Defendant.

10 **FIFTH AFFIRMATIVE DEFENSE**

11 **[Lack of Standing]**

12 Plaintiffs' claims are barred in whole or in part because Plaintiffs do not have standing to  
 13 sue.

14 **SIXTH AFFIRMATIVE DEFENSE**

15 **[Privilege and Justification]**

16 All claims set forth in the FAC are barred in that the actions allegedly taken by Defendant  
 17 in this matter were entirely privileged and/or legally justified.

18 **SEVENTH AFFIRMATIVE DEFENSE**

19 **[Adequate Remedy at Law]**

20 Plaintiffs' prayer for injunctive relief under 29 U.S.C. § 1132(a)(3)(A) and (B) is barred  
 21 because Plaintiffs, and each of the members of the putative class, have adequate remedies under  
 22 29 U.S.C. § 1132(a)(1)(B) for the conduct alleged against Defendant.

23  
 24 **EIGHTH AFFIRMATIVE DEFENSE**

25 **[Conformance With Plan Documents]**

26 Plaintiffs' claims, and the claims of each of the members of the putative class, are barred  
 27 in whole or in part on the ground that Defendant's alleged conduct and adjudication of claims was  
 28

1 in accordance with the terms of the applicable plan documents.

2  
3 **NINTH AFFIRMATIVE DEFENSE**

4 **[Waiver]**

5 Plaintiffs' claims are barred in whole or in part to the extent Plaintiffs, and each of the  
6 members of the putative class, waived any right to assert the claims in the FAC.

7 **TENTH AFFIRMATIVE DEFENSE**

8 **[Laches]**

9 Any recovery on the FAC is barred in whole or in part by the doctrine of laches.

10 **ELEVENTH AFFIRMATIVE DEFENSE**

11 **[Statute of Limitations]**

12 Plaintiffs' claims, and the claims of each of the members of the putative class, are barred  
13 to the extent that they were filed after the running of the applicable statute of limitations under the  
14 state law applicable to each of the Plaintiffs and the putative class.

15 **TWELFTH AFFIRMATIVE DEFENSE**

16 **[Deferential Standard of Review]**

17 Plaintiffs' claims, and the claims of each of the members of the putative class, are barred  
18 on the ground that to the extent Defendant was acting in a fiduciary capacity with regard to  
19 Plaintiffs' claims, it did not act arbitrarily or capriciously, but acted with the care, skill, prudence  
20 and diligence under the circumstances then prevailing that a prudent person acting in the like  
21 capacity and familiar with such matters would use in the conduct of an enterprise of a like  
22 character with like aims, and in accordance with applicable Plan documents, and said acts are  
23 entitled to a deferential standard of review.

24 **THIRTEENTH AFFIRMATIVE DEFENSE**

25 **[No Causation For Alleged Loss]**

26 Plaintiffs' claims, and the claims of each of the members of the putative class, are barred,  
27 in whole or in part, because if any loss was suffered by Plaintiffs, which is expressly denied, that  
28

loss did not result from any purported breach of the alleged fiduciary duties by Defendant.

#### **FOURTEENTH AFFIRMATIVE DEFENSE**

##### **[Settlor Function]**

Assuming, in the alternative, that Defendant was not acting in a fiduciary capacity, then the conduct complained of constituted “settlor” functions pertaining to, among other things, plan design and/or were merely ministerial duties and, in any case, not fiduciary functions; therefore, Defendant cannot be sued as a fiduciary under ERISA under the circumstances.

#### **FIFTEENTH AFFIRMATIVE DEFENSE**

##### **[Indispensable Parties]**

Plaintiffs’ claims are barred because of Plaintiffs’ failure to name indispensable parties.

#### **SIXTEENTH AFFIRMATIVE DEFENSE**

##### **[Conditions Precedent/Subsequent]**

Plaintiffs’ claims for benefits, and the claims of each of the members of the putative class, are barred, in whole or in part, because the requisite conditions precedent and/or subsequent to each of their alleged entitlement to such benefits did not occur.

#### **SEVENTEENTH AFFIRMATIVE DEFENSE**

##### **[No Class Action]**

The allegations in Plaintiffs’ FAC have failed to and cannot meet the prerequisites for a class action under Federal Rule of Civil Procedure 23. A class action is inappropriate or improper under the facts alleged in this case and Plaintiffs are not appropriate class representatives.

#### **EIGHTEENTH AFFIRMATIVE DEFENSE**

##### **[Good Faith]**

Plaintiffs’ claims are barred, in whole or in part, because Defendant at all times acted in good faith and consistent with reasonable care.

#### **NINETEENTH AFFIRMATIVE DEFENSE**

1 **[Attorneys' Fees and Costs]**

2 Plaintiffs have failed to state facts sufficient to provide a legal or factual basis to award  
3 attorneys' fees or costs to Plaintiffs.

4 **TWENTIETH AFFIRMATIVE DEFENSE**

5 **[No Surcharge Remedy]**

6 Plaintiffs have failed to state facts sufficient to entitle them to surcharge relief in the form  
7 Plaintiffs' seek on their own behalf or on behalf of the putative class.

8 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

9 **[Offset]**

10 Any recovery for surcharge allegedly due to Plaintiffs or to the putative class is subject to  
11 offset in the amount of any compensation actually received by Plaintiffs for the mental health  
12 services at issue.

13 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

14 **[Arbitration]**

15 Plaintiffs' claims on behalf of putative class members are barred to the extent that such  
16 putative class members are subject to mandatory arbitration provisions in their applicable health  
17 benefit plans.

18 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

19 **[Additional Defenses]**

20 Defendant hereby gives notice that it intends to rely upon any other defenses that may  
21 become available or appear during the discovery proceedings in this case, and hereby reserves the  
22 right to amend its answer to assert any such defenses.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Defendant prays for judgment as follows:

25 A. That Plaintiffs take nothing by reason of the FAC;

- 1           B.       That the FAC be dismissed upon the merits and with prejudice;
- 2           C.       That Defendant be awarded its costs of suit incurred herein, including reasonable
- 3 attorneys' fees as appropriate; and
- 4           D.       That Defendant be awarded such additional and further relief as the Court deems
- 5 just and proper.

6       Dated: December 19, 2014

CROWELL & MORING LLP

/s/ Jennifer D. Romano

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Jennifer D. Romano  
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