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16 Attorneys for Defendant
17 UNITED BEHAVIORAL HEALTH

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

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

27 Plaintiffs,

28 v.

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

**UNITED BEHAVIORAL HEALTH'S
ANSWER TO INTERVENOR PLAINTIFF
LINDA TILLITT'S INTERVENOR
COMPLAINT**

UBH'S ANSWER TO TILLITT'S INTERVENOR
COMPLAINT; CASE NO. 3:14-CV-02346-JCS

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UNITED BEHAVIORAL HEALTH
(operating as OPTUMHEALTH
BEHAVIORAL SOLUTIONS),
Defendant.

1 Defendant United Behavioral Health (“UBH” or “Defendant”) submits this Answer in
 2 response to Intervenor Plaintiff Linda Tillitt’s Intervenor Complaint (“Complaint”) filed on
 3 February 12, 2016 and pleads as follows, with the numbered paragraphs corresponding to the
 4 paragraph numbers in the Complaint. All allegations not expressly admitted are hereby denied.
 5 Any allegations that may be implied or inferred from the headings of the Complaint are denied.

6 **INTRODUCTION**

7 With respect to Plaintiff Linda Tillitt’s (“Plaintiff” or “Ms. Tillitt”) Introduction,
 8 Defendant admits that its professionals used objective and evidence-based behavioral health
 9 criteria in their determinations that specific substance abuse treatment for Maxwell Tillitt (“Mr.
 10 Tillitt” or “Max Tillitt”) was not covered under his health plan. Defendant admits that Plaintiff
 11 purports to bring her claims on behalf of a class of people and Defendant denies that Plaintiff is
 12 entitled to class certification. Defendant is without knowledge or information sufficient to form a
 13 belief about the truth of the remaining allegations in the Introduction, and therefore denies those
 14 allegations.

15 **SUMMARY OF PLAINTIFF’S ALLEGATIONS**

16 1. Defendant admits that during the relevant period, Plaintiff and her son Max
 17 Tillitt (collectively, the “Tillitts”) were members or beneficiaries of a health insurance plan
 18 sponsored by an employer and governed by the Employee Retirement Income Security Act of
 19 1974 (“ERISA”). The health plan for the Tillitts will be referred to as the “Lockton Plan.”

20 2. Defendant admits that the Lockton Plan covers treatment for sickness, injury,
 21 mental illness and substance use disorders where applicable, and subject to the terms and
 22 conditions set forth in the Lockton Plan. The Lockton Plan provides coverage for residential
 23 care where applicable, and subject to the terms and conditions set forth in that plan. The totality
 24 of the document speaks for itself, and Defendant denies Plaintiff’s characterization of the
 25 Lockton Plan.

26 3. Defendant admits that it is responsible for adjudicating mental health and
 27 substance use claims for the Lockton Plan, and that it has developed “level of care” guidelines
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1 (“LOC’s”) or “coverage determination guidelines” (“CDG’s”) to use in adjudicating claims
2 where applicable. Defendant admits that its LOC’s and CDG’s are available to its Care
3 Advocates, Medical Directors, and Psychologist Peer Reviewers to reference in adjudicating
4 mental health and substance use claims. Defendant denies each and every one of the remaining
5 allegations set forth in this paragraph.

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

15 5. Defendant admits that Plaintiff accurately quotes portions of Defendant’s LOC’s,
16 and Defendant states that the totality of the documents speak for themselves. Defendant denies
17 Plaintiff’s characterization of the documents. Defendant admits that its LOC’s set forth criteria
18 for making medical necessity determinations, when appropriate, to determine whether the
19 benefit plan will pay for any portion of the cost of a health care service. Defendant admits that
20 when making determinations of medical necessity, Defendant uses the information provided to
21 ascertain whether services are in accordance with standards of practice, are clinically
22 appropriate, not mainly for convenience, and whether services are cost effective and provided in
23 the least restrictive environment. Defendant denies each and every one of the remaining
24 allegations set forth in this paragraph.

25 6. Defendant denies that the Lockton Plan has no role in the decision to approve or
26 deny any particular claim submitted by a plan member. Defendant asserts that its CDG’s and
27 LOC’s are shaped by input from a variety of persons and organizations outside of Defendant,
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1 and individual health plans have a role in determining which guidelines apply to their plans, and
2 accordingly, Defendant denies each and every one of the remaining allegations set forth in this
3 paragraph.

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

7 8. Defendant admits that the Lockton Plan is a self-funded behavioral health benefit
8 plan and benefits are paid by the group plan sponsor, which is not an affiliate of Defendant.
9 Defendant denies each and every one of the remaining allegations set forth in this paragraph.

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

12 10. Defendant admits that the American Association of Community Psychiatrists
13 (“AACP”) and the American Society for Addiction Medicine (“ASAM”) have guidelines for
14 the treatment of certain behavioral health conditions and symptoms, and that these guidelines
15 generally identify criteria for determining whether residential treatment is an appropriate level
16 of care for a patient. The remaining allegations set forth in this paragraph are incomplete and
17 misleading summaries of third-party documents not attached to the Complaint. Defendant is
18 without knowledge or information sufficient to form a belief about the truth of those allegations
19 set forth in this paragraph, and therefore denies those allegations.

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

22 12. Defendant admits that the terms of the Lockton Plan provide that coverage for
23 mental health and substance abuse treatment is excluded when the treatment is “inconsistent
24 with generally accepted standards of care” and Defendant’s LOC’s. This paragraph contains
25 legal argument and conclusion with respect to the existence of an alleged fiduciary duty and
26 breach thereof, which do not require a response. To the extent a response may be required,
27 Defendant denies each and every one of the allegations relating to a fiduciary duty and breach
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thereof set forth in this paragraph. Defendant denies each and every one of the remaining allegations set forth in this paragraph.

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

14. Defendant admits that Plaintiff purports to bring the claims and seek the remedies described in this paragraph. Defendant denies that Plaintiff has pled or can prove her claims, or that she is entitled to the relief sought.

DEFENDANT, JURISDICTION AND VENUE

15. 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 The Lockton Plan. 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.

16. Defendant admits that UBH and United Healthcare Insurance Company ("UHIC") are affiliates of UnitedHealth Group Incorporated. Defendant denies each and every one of the remaining allegations set forth in this paragraph.

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

18. 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 LEVEL OF CARE AND COVERAGE DETERMINATION GUIDELINES

RELEVANT TO TILLITT'S CLAIMS

19. Defendant admits that it has developed its CDG's and LOC's which, when

1 appropriate under a member's plan, Defendant's professionals use as a set of objective and
2 evidence-based behavioral health criteria in determining whether a level of mental health or
3 substance abuse treatment for a particular condition is covered under the member's health plan.
4 Defendant admits that its professionals used the objective and evidence-based behavioral health
5 criteria listed in specific LOC's and CDG's in their determinations that specific substance abuse
6 treatment for Mr. Tillitt was not covered under his health plan.

7 20. Defendant admits that Plaintiff accurately quotes portions of Defendant's 2015
8 LOC for Residential Rehabilitation, and Defendant states that the totality of the document
9 speaks for itself.

10 21. Defendant admits that Plaintiff accurately quotes portions of Defendant's 2015
11 LOC for Residential Rehabilitation and 2015 Common Criteria for all Levels of Care, and
12 Defendant states that the totality of the documents speak for themselves. Defendant denies
13 Plaintiff's characterization of the documents. Defendant denies each and every one of the
14 remaining allegations set forth in this paragraph.

15 22. Defendant admits that Plaintiff accurately quotes portions of Defendant's 2015
16 Common Criteria, and Defendant states that the totality of the document speaks for itself.
17 Defendant denies Plaintiff's characterization of the documents. Defendant denies each and
18 every one of the remaining allegations set forth in this paragraph.

19 23. Defendant admits that Plaintiff accurately quotes portions of Defendant's 2015
20 Common Criteria, and Defendant states that the totality of the document speaks for itself.
21 Defendant denies Plaintiff's characterization of the document. Defendant denies each and
22 every one of the remaining allegations set forth in this paragraph.

23 24. Defendant admits that at least one of its professionals cited, as a set of objective
24 and evidence-based behavioral health criteria, Defendant's CDG for Treatment of Substance
25 Related & Addictive Disorders in his determination that specific substance abuse treatment for
26 Mr. Tillitt was not covered under his health plan. Defendant denies that the version of that
27 CDG that was in effect at the time of that determination was the October 2014 revision (the
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1 “2014 Substance Abuse CDG”). Defendant admits that Plaintiff accurately quotes portions of
 2 Defendant’s 2014 Substance Abuse CDG, and Defendant states that the totality of the document
 3 speaks for itself. Defendant denies each and every one of the remaining allegations set forth in
 4 this paragraph.

5 25. Defendant admits that its 2014 Substance Abuse CDG references its 2014 LOC’s.
 6 Defendant admits that its 2014 LOC’s contain “Common Criteria” and “Residential
 7 Rehabilitation” criteria, and that its 2015 LOC’s contain “Common Criteria” and “Residential
 8 Rehabilitation” criteria. Defendant states that the totality of these documents speak for
 9 themselves. Defendant denies Plaintiff’s characterization of the documents.

10 26. Defendant admits that Plaintiff accurately quotes portions of Defendant’s 2014
 11 Substance Abuse CDG, and Defendant states that the totality of the document speaks for itself.
 12 Defendant denies Plaintiff’s characterization of the document.

13 27. Defendant admits that Plaintiff accurately quotes portions of Defendant’s 2014
 14 Substance Abuse CDG, and Defendant states that the totality of the document speaks for itself.
 15 Defendant denies Plaintiff’s characterization of the document. Defendant denies that the
 16 following quote is contained in its 2014 Substance Abuse CDG:

- 17 • The “why now” factors leading to admission suggest that member’s condition cannot be
 18 safely, efficiently and effectively treated in a less intensive setting due to acute changes in
 19 the member’s signs and symptoms and/or psychosocial and environmental factors.

20 28. Defendant admits that Plaintiff accurately quotes portions of Defendant’s 2014
 21 Substance Abuse CDG, and Defendant states that the totality of the document speaks for itself.
 22 Defendant denies Plaintiff’s characterization of the document.

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

25 30. Defendant admits that ASAM and AACP have created their own substance
 26 abuse treatment guidelines, which are available to the public, and Defendant denies that these
 27 guidelines are the generally-accepted substance abuse treatment guidelines. Defendant admits
 28 that among other sources available to Defendant, the ASAM and AACP guidelines provide an

1 evidence base for Defendant's LOC's. Defendant admits that Plaintiff purports to quote
2 portions of Defendant's records, but denies that the portions are quoted accurately. Defendant
3 states that the totality of the documents speak for themselves. Defendant denies Plaintiff's
4 characterization of the documents, and Defendant denies each and every one of the remaining
5 allegations set forth in this paragraph.

6 31. Defendant admits that Plaintiff purports to reference and quote portions of a
7 document of a third party, AACCP, in this paragraph, without any reference to the date of the
8 document, page or section. The document speaks for itself. Accordingly, Defendant lacks
9 knowledge or information sufficient to form a belief as to the truth of these allegations as
10 characterized, and on that basis denies each and every one of the allegations set forth in this
11 paragraph.

12 32. Defendant admits that Plaintiff purports to reference and quote portions of a
13 document of a third party, AACCP, in this paragraph, without any reference to the date of the
14 document, page or section. The document speaks for itself. Accordingly, Defendant lacks
15 knowledge or information sufficient to form a belief as to the truth of these allegations as
16 characterized, and on that basis denies each and every one of the allegations set forth in this
17 paragraph.

18 33. Defendant admits that Plaintiff purports to reference and quote portions of a
19 document of a third party, ASAM, in this paragraph, without any reference to the date of the
20 document, page or section. The totality of the document speaks for itself. Accordingly,
21 Defendant lacks knowledge or information sufficient to form a belief as to the truth of these
22 allegations as characterized, and on that basis denies each and every one of the allegations set
23 forth in this paragraph.

24 34. Defendant admits that Plaintiff purports to reference and quote portions of a
25 document of a third party, ASAM, in this paragraph, without any reference to the date of the
26 document, page or section. The totality of the document speaks for itself. Accordingly,
27 Defendant lacks knowledge or information sufficient to form a belief as to the truth of these
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1 allegations as characterized, and on that basis denies each and every one of the allegations set
2 forth in this paragraph.

3 35. Defendant admits that Plaintiff purports to reference and quote portions of a
4 document 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 document speaks for itself. 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 36. Defendant admits that Plaintiff purports to reference and quote portions of
10 documents of third parties, ASAM and the American Psychiatric Association, in this paragraph,
11 without any reference to the date of the document, page or section. The totality of the
12 documents speaks for itself. Accordingly, Defendant lacks knowledge or information sufficient
13 to form a belief as to the truth of these allegations as characterized, and on that basis denies
14 each and every one of the allegations set forth in this paragraph.

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

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

23 39. Defendant admits that Plaintiff accurately quotes portions of a document of a
24 third party, ASAM, entitled *Public Policy Statement on Managed Care, Addiction Medicine,*
25 *and Parity* (March, 2009). The totality of the document speaks for itself. Because this
26 document is not Defendant's, it lacks knowledge or information sufficient to form a belief as to
27 the truth of these allegations as characterized, and on that basis denies each and every one of the
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allegations set forth in this paragraph.

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

UBH'S DENIAL OF MAX TILLITT'S CLAIMS

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

42. Defendant admits that Ms. Tillitt is a participant in the Lockton Plan and Max Tillitt was a beneficiary of the Lockton Plan. Defendant admits that the Lockton Plan is a self-funded, large group plan sponsored by Lockton, Inc.

43. Defendant admits that Plaintiff accurately quotes portions of the Summary Plan Document for the Lockton Plan, and Defendant states that the totality of the document speaks for itself. Defendant denies Plaintiff's characterization of the document. Defendant denies that any sentence that includes the following is in the Summary Plan Document for the Lockton Plan: "makes the final decision as to whether or not a particular service is covered." Defendant admits that, with limited exceptions, United Healthcare delegates its discretion to UBH for purposes of mental health-related claims administration. Defendant denies each and every one of the remaining allegations set forth in this paragraph.

44. Defendant admits that the Lockton Plan requires two internal appeals prior to filing suit. Defendant admits that Plaintiff accurately quotes portions of the Summary Plan Document for the Lockton Plan, and Defendant states that the totality of the document speaks for itself.

45. Defendant admits that Plaintiff accurately quotes portions of the Summary Plan Document for the Lockton Plan, and Defendant states that the totality of the document speaks for itself. To the extent this paragraph contains legal argument and conclusion with respect to a fiduciary's obligations, it does 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.

1 46. Defendant admits that the Lockton Plan provides for coverage for network and
2 out-of-network services under certain circumstances. Defendant admits that Plaintiff accurately
3 quotes portions of the Summary Plan Document for the Lockton Plan, and Defendant states that
4 the totality of the document speaks for itself. Defendant denies Plaintiff's characterization of
5 the documents and denies each and every one of the remaining allegations set forth in this
6 paragraph.

7 47. Defendant admits that the Lockton Plan covers treatment for mental illness and
8 substance use disorders where applicable, and subject to the terms and conditions set forth in
9 the Lockton Plan. Defendant admits that the Lockton Plan provides coverage for residential
10 care where applicable, and subject to the terms and conditions set forth in that plan.

11 48. Defendant admits that Beauterre Recovery Institute ("Beauterre") is an out-of-
12 network facility for UHIC. Defendant lacks knowledge or information sufficient to form a
13 belief as to the truth of the remaining allegations in this paragraph as characterized, and on that
14 basis denies each and every one of the remaining allegations set forth in this paragraph.

15 49. Defendant admits that Max Tillitt received treatment for one or more substance
16 abuse disorders multiple times before June 2015. Defendant lacks knowledge or information
17 sufficient to form a belief as to the truth of the remaining allegations in this paragraph as
18 characterized, and on that basis denies each and every other one of the allegations set forth in
19 this paragraph.

20 50. 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
22 every one of the allegations set forth in this paragraph.

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

26 52. 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
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1 every one of the allegations set forth in this paragraph.

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

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

8 55. Defendant admits that on June 17, 2015, Beauterre informed UBH case manager
9 Hillary Ikner of facts and circumstances relating to Plaintiff's pending admission to Beauterre.
10 Defendant denies Plaintiff's characterization of these facts and circumstances, and Defendant
11 denies each and every one of the remaining allegations set forth in this paragraph.

12 56. Defendant admits that Beauterre requested 28 days for residential rehabilitation
13 coverage and Ms. Ikner initially approved 6 days. To the extent this paragraph contains legal
14 argument and conclusion with respect to the United States Department of Labor ("DOL"), it
15 does not require a response. To the extent a response may be required, Defendant denies each
16 and every one of those allegations set forth in this paragraph. Defendant denies each and every
17 one of the remaining allegations set forth in this paragraph.

18 57. Defendant admits that Plaintiff accurately references portions of written records
19 of Defendant, and Defendant states that the totality of the documents speak for themselves.
20 Defendant denies Plaintiff's characterization of the documents.

21 58. Defendant admits that Plaintiff accurately quotes portions of written records of
22 Defendant, and Defendant states that the totality of the documents speak for themselves.
23 Defendant denies Plaintiff's characterization of the documents.

24 59. Defendant admits that Plaintiff accurately quotes portions of written records of
25 Defendant, and Defendant states that the totality of the documents speak for themselves.
26 Defendant denies Plaintiff's characterization of the documents.

27 60. Defendant admits that Plaintiff accurately quotes portions of written records of
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1 Defendant, and Defendant states that the totality of the documents speak for themselves.

2 Defendant denies Plaintiff's characterization of the documents.

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

5 62. Plaintiff purports to reference and quote portions of a document of a third party,
6 ASAM, in this paragraph, without reference to the date of the page or section. The totality of
7 the document speaks for itself. Accordingly, Defendant lacks knowledge or information
8 sufficient to form a belief as to the truth of these allegations as characterized, and on that basis
9 denies each and every one of these allegations set forth in this paragraph. Defendant also
10 denies each and every one of the remaining allegations set forth in this paragraph.

11 63. Defendant admits that Plaintiff accurately quotes portions of written records of
12 Defendant, and Defendant states that the totality of the documents speaks for themselves.
13 Defendant denies Plaintiff's characterization of the documents and denies each and every one of
14 the remaining allegations set forth in this paragraph.

15 64. Defendant admits that Plaintiff accurately quotes (except with respect to the
16 emphasis that Plaintiff added) portions of written records of Defendant, and Defendant states
17 that the totality of the documents speaks for themselves. Defendant denies Plaintiff's
18 characterization of the documents.

19 65. Defendant admits that Plaintiff accurately quotes portions of written records of
20 Defendant, and Defendant states that the totality of the documents speaks for themselves.
21 Defendant denies Plaintiff's characterization of the documents. Defendant denies each and
22 every one of the remaining allegations set forth in this paragraph.

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

26 67. Defendant admits that on July 10, 2015, Beauterre requested an urgent appeal of
27 UBH's denial. Defendant admits that Plaintiff accurately quotes portions of Defendant's
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1 documents, but denies that the phrase “no acute comorbid medial conditions” is in those
2 documents. Defendant states that the totality of the documents speak for themselves.
3 Defendant denies Plaintiff’s characterization of the documents, and Defendant denies each and
4 every one of the remaining allegations set forth in this paragraph.

5 68. Defendant admits that Plaintiff accurately quotes (except with respect to the
6 emphasis that Plaintiff added) portions of written records of Defendant, and Defendant states
7 that the totality of the documents speaks for themselves. Defendant denies Plaintiff’s
8 characterization of the documents.

9 69. Defendant admits that Plaintiff accurately quotes portions of written records of
10 Defendant, and Defendant states that the totality of the documents speaks for themselves.
11 Defendant denies Plaintiff’s characterization of the documents. Defendant denies each and
12 every one of the remaining allegations set forth in this paragraph.

13 70. Defendant admits that Plaintiff purports to reference and quotes portions of
14 documents of a third party, ASAM, in this paragraph, without reference to the date of the
15 document, page or section. The totality of the documents speak for themselves. Accordingly,
16 Defendant lacks knowledge or information sufficient to form a belief as to the truth of these
17 allegations as characterized, and on that basis denies each and every one of the allegations set
18 forth in this paragraph.

19 71. Defendant admits that its professionals used, as sets of objective and evidence-
20 based behavioral health criteria, Defendant’s guidelines in their determinations that certain
21 substance abuse treatment for Mr. Tillitt was not covered under his health plan. Defendant
22 admits that the Lockton Plan covers residential treatment for substance abuse and mental illness
23 subject to the terms and conditions set forth in the Lockton plan. Defendant denies each and
24 every one of the remaining allegations set forth in this paragraph.

25 72. Defendant lacks knowledge or information sufficient to form a belief as to the
26 truth of the allegations in this paragraph as characterized, and on that basis denies each and
27 every one of the allegations set forth in this paragraph.
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73. Defendant denies that it engaged in any wrongful conduct with respect to any requests for benefits made on Max Tillitt's behalf. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph as characterized, and on that basis denies each and every one of the remaining allegations set forth in this paragraph.

CLASS ACTION ALLEGATIONS

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

75. Defendant admits that it is the claims administrator for mental health and substance abuse treatment for multiple health insurance plans, including the Lockton Plan. Defendant admits that some health insurance plans for which it is the claims administrator include similar provisions regarding coverage for residential treatment as those provisions in the Lockton Plan. Defendant admits that, when applicable, it relies on its LOC's in adjudicating residential treatment claims under certain plans, and that its application of those guidelines is based on the individual circumstances presented by the member at issue, including his/her diagnosis, treatment and other facts surrounding the residential treatment sought, as well as the health plan at issue and applicable law. Defendant denies each and every one of the remaining allegations set forth in this paragraph.

76. Defendant admits that Plaintiff purports to bring her claims on behalf of the class stated and Defendant denies that Plaintiff is entitled to class certification under FRCP 23. The remaining allegations set forth in this paragraph contain 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 remaining allegations set forth in this paragraph.

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

78. Defendant admits that with respect to the class definition set forth by Plaintiff, joinder of the putative class members is impracticable.

79. The allegations set forth in this paragraph contain 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.

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

81. 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.

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

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

COUNT I

CLAIM FOR VIOLATION OF FIDUCIARY OBLIGATIONS BROUGHT ON BEHALF OF INTERVENOR PLAINTIFF AND THE CLASS

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

85. Defendant admits that Plaintiff purports to bring Count I pursuant to 29 U.S.C. § 1132(a)(1)(B). Defendant denies that Plaintiff states a cognizable claim under 29 U.S.C. § 1132(a)(1)(B) in Count I.

86. 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.

87. 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.

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

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

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

91. Defendant admits that Plaintiff purports to seek the relief identified in her Complaint, Defendant denies that Plaintiff is entitled to such relief.

COUNT II

CLAIM FOR IMPROPER DENIAL OF BENEFITS BROUGHT ON BEHALF OF INTERVENOR PLAINTIFF AND THE CLASS

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

93. Defendant admits that Plaintiff purports to bring Count II pursuant to 29 U.S.C. § 1132(a)(1)(B). Defendant denies that Plaintiff states a cognizable claim under 29 U.S.C. § 1132(a)(1)(B) in Count I.

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

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

96. Defendant admits that Plaintiff purports to seek the relief identified in her Complaint, Defendant denies that Plaintiff is entitled to such relief.

COUNT III

CLAIM FOR EQUITABLE RELIEF BROUGHT ON BEHALF OF INTERVENOR PLAINTIFF AND THE CLASS

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

98. Defendant admits that Plaintiff purports 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 Plaintiff states a cognizable claim under 29 U.S.C. § 1132(a)(3)(A) in Count III.

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

100. 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 INTERVENOR PLAINTIFF AND THE CLASS**

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

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

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

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

105. 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.

REQUESTED RELIEF

Answering the REQUESTED RELIEF (on pages 29 and 30), Defendant denies that Plaintiff is entitled to any of the relief sought in this action.

AFFIRMATIVE DEFENSES

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

FIRST AFFIRMATIVE DEFENSE

[Failure to State a Cause of Action]

Plaintiff's claims fail to state facts sufficient to constitute any cause of action as to Defendant.

SECOND AFFIRMATIVE DEFENSE**[No Damage or Injury]**

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

THIRD AFFIRMATIVE DEFENSE**[Exhaustion of Administrative Remedies]**

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

FOURTH AFFIRMATIVE DEFENSE**[Defendant's Equitable Conduct]**

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

FIFTH AFFIRMATIVE DEFENSE**[Lack of Standing]**

Plaintiff's claims are barred in whole or in part because Plaintiff does not have standing to sue.

SIXTH AFFIRMATIVE DEFENSE**[Privilege and Justification]**

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

SEVENTH AFFIRMATIVE DEFENSE**[Adequate Remedy at Law]**

Plaintiff's prayer for injunctive relief under 29 U.S.C. § 1132(a)(3)(A) and (B) is barred

1 because Plaintiff, and each of the members of the putative class, have adequate remedies under 29
 2 U.S.C. § 1132(a)(1)(B) for the conduct alleged against Defendant.

3 **EIGHTH AFFIRMATIVE DEFENSE**

4 **[Conformance With Plan Documents]**

5 Plaintiff's claims, and the claims of each of the members of the putative class, are barred
 6 in whole or in part on the ground that Defendant's alleged conduct and adjudication of claims was
 7 in accordance with the terms of the applicable plan documents.

8 **NINTH AFFIRMATIVE DEFENSE**

9 **[Waiver]**

10 Plaintiff's claims are barred in whole or in part to the extent Plaintiff, and each of the
 11 members of the putative class, waived any right to assert the claims in the Complaint.

12 **TENTH AFFIRMATIVE DEFENSE**

13 **[Laches]**

14 Any recovery on the Complaint is barred in whole or in part by the doctrine of laches.

15 **ELEVENTH AFFIRMATIVE DEFENSE**

16 **[Statute of Limitations]**

17 Plaintiff's claims, and the claims of each of the members of the putative class, are barred
 18 to the extent that they were filed after the running of the applicable statute of limitations under the
 19 state law applicable to the Plaintiff and the putative class.

20 **TWELFTH AFFIRMATIVE DEFENSE**

21 **[Deferential Standard of Review]**

22 Plaintiff's claims, and the claims of each of the members of the putative class, are barred
 23 on the ground that to the extent Defendant was acting in a fiduciary capacity with regard to
 24 Plaintiff's claims, it did not act arbitrarily or capriciously, but acted with the care, skill, prudence
 25 and diligence under the circumstances then prevailing that a prudent person acting in the like
 26 capacity and familiar with such matters would use in the conduct of an enterprise of a like
 27
 28

1 character with like aims, and in accordance with applicable Plan documents, and said acts are
2 entitled to a deferential standard of review.

3 **THIRTEENTH AFFIRMATIVE DEFENSE**

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

5 Plaintiff's claims, and the claims of each of the members of the putative class, are barred,
6 in whole or in part, because if any loss was suffered by Plaintiff, which is expressly denied, that
7 loss did not result from any purported breach of the alleged fiduciary duties by Defendant.

8 **FOURTEENTH AFFIRMATIVE DEFENSE**

9 **[Settlor Function]**

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

14 **FIFTEENTH AFFIRMATIVE DEFENSE**

15 **[Indispensable Parties]**

16 Plaintiff's claims are barred because of Plaintiff's failure to name indispensable parties.

17 **SIXTEENTH AFFIRMATIVE DEFENSE**

18 **[Conditions Precedent/Subsequent]**

19 Plaintiff's claims for benefits, and the claims of each of the members of the putative class,
20 are barred, in whole or in part, because the requisite conditions precedent and/or subsequent to
21 each of her alleged entitlement to such benefits did not occur.

22 **SEVENTEENTH AFFIRMATIVE DEFENSE**

23 **[No Class Action]**

24 The allegations in Plaintiff's Complaint have failed to and cannot meet the prerequisites
25 for a class action under Federal Rule of Civil Procedure 23. A class action is inappropriate or
26 improper under the facts alleged in this case and Plaintiff is not an appropriate class
27
28

1 representative.

2
3 **EIGHTEENTH AFFIRMATIVE DEFENSE**

4 **[Good Faith]**

5 Plaintiff's claims are barred, in whole or in part, because Defendant at all times acted in
6 good faith and consistent with reasonable care.

7 **NINETEENTH AFFIRMATIVE DEFENSE**

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

9 Plaintiff has failed to state facts sufficient to provide a legal or factual basis to award
10 attorneys' fees or costs to Plaintiff.

11 **TWENTIETH AFFIRMATIVE DEFENSE**

12 **[No Surcharge Remedy]**

13 Plaintiff has failed to state facts sufficient to entitle her to surcharge relief in the form
14 Plaintiff seeks on her own behalf or on behalf of the putative class.

15 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

16 **[Offset]**

17 Any recovery for surcharge allegedly due to Plaintiff or to the putative class is subject to
18 offset in the amount of any compensation actually received by Plaintiff for the mental health
19 services at issue.

20
21 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

22 **[Arbitration]**

23 Plaintiff's claims on behalf of putative class members are barred to the extent that such
24 putative class members are subject to mandatory arbitration provisions in her applicable health
25 benefit plans.

TWENTY-THIRD AFFIRMATIVE DEFENSE

[Additional Defenses]

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

PRAYER FOR RELIEF

WHEREFORE, Defendant prays for judgment as follows:

- A. That Plaintiff take nothing by reason of the Complaint;
- B. That the Complaint be dismissed upon the merits and with prejudice;
- C. That Defendant be awarded its costs of suit incurred herein, including reasonable attorneys' fees as appropriate; and
- D. That Defendant be awarded such additional and further relief as the Court deems just and proper.

Dated: March 16, 2015

CROWELL & MORING LLP

/s/ Nathaniel P. Bualat

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UNITED BEHAVIORAL HEALTH