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16 Attorneys for Defendant
17 UNITED BEHAVIORAL HEALTH

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

21 GARY ALEXANDER, on his own behalf
22 and on behalf of his beneficiary son,
JORDAN ALEXANDER, and all others
23 similarly situated, CORINNA KLEIN, on
her own behalf and all others similarly
24 situated, and DAVID HAFFNER, on his
own behalf and all others similarly situated,

25 Plaintiffs,

26 v.

27 UNITED BEHAVIORAL HEALTH
28 (operating as OPTUMHEALTH)

Case No. 3:14-cv-05337-JCS

**UNITED BEHAVIORAL HEALTH'S
ANSWER AND AFFIRMATIVE
DEFENSES TO INTERVENOR
PLAINTIFF MICHAEL DRISCOLL'S
INTERVENOR COMPLAINT**

1 BEHAVIORAL SOLUTIONS),
2 Defendant.

3
4 MICHAEL DRISCOLL, on his own behalf
5 and on behalf of his daughter, SARA
6 DRISCOLL, and all others similarly
7 situated,

8 Intervenor Plaintiff,

9 UNITED BEHAVIORAL HEALTH
10 (operating as OPTUMHEALTH
11 BEHAVIORAL SOLUTIONS),

12 Defendant.

1 Defendant United Behavioral Health (“UBH” or “Defendant”), submits this Answer in
 2 response to Intervenor Plaintiff Michael Driscoll’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 Michael Driscoll’s (“Plaintiff” or “Mr. Driscoll”) Introduction,
 8 Defendant admits that its professionals used objective and evidence-based behavioral health
 9 criteria in their determinations that specific intensive outpatient (“IOP”) treatment for Sara
 10 Driscoll (“Ms. Driscoll” or “Sara Driscoll”) was not covered under her health plan. Defendant
 11 admits that Plaintiff purports to bring his claims on behalf of a class of people and Defendant
 12 denies that Plaintiff is entitled to class certification. Defendant is without knowledge or
 13 information sufficient to form a belief about the truth of the remaining allegations in the
 14 Introduction, and therefore denies those allegations.

15 **SUMMARY OF INTERVENOR PLAINTIFF’S ALLEGATIONS**

16 1. Defendant admits that during the relevant time period, Plaintiff and his daughter
 17 Sara Driscoll (collectively, “the Driscolls”) were members or beneficiaries of a health insurance
 18 plan sponsored by an employer and governed by the Employee Retirement Income Security Act
 19 of 1974 (“ERISA”). The health plan for the Driscolls will be referred to as “the GWU Plan” or
 20 the “Plan.”

21 2. Defendant admits that the GWU Plan included coverage for sickness, injury and
 22 mental illness and substance use disorders where applicable, and subject to the terms, conditions
 23 and exclusions of the GWU Plan. Defendant admits that the GWU Plan provides coverage for
 24 intensive outpatient treatment where applicable, and subject to the terms, conditions and
 25 exclusions set forth in those Plan. Defendant admits that to be covered under the GWU Plan,
 26 services must be consistent with generally accepted standards of medical practice for the
 27 treatment of such conditions. The documents speak for themselves, and Defendant denies
 28 Plaintiff’s characterization of the documents. Defendant denies each and every one of the

1 remaining allegations set forth in this paragraph.

2 3. Defendant admits that it is responsible for adjudicating mental health and substance
3 abuse claims for the GWU Plan. Defendant admits that it has developed “level of care” guidelines
4 (“LOCs”) and “coverage determination guidelines” (“CDGs”) to use in adjudicating claims where
5 applicable. Defendant admits that its LOCs and CDGs are available to its Care Advocates and
6 Medical Directors to reference in adjudicating mental health care claims. Defendant denies each
7 and every one of the remaining allegations set forth in this paragraph.

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

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

26 6. Defendant denies that GWU Plan has no role in the decision to approve or deny
27 any particular claim submitted by a plan member. Defendant asserts that its CDGs and LOCs are
28 shaped by input from a variety of persons and organizations outside of Defendant, and individual

1 health plans have a role in determining which guidelines apply to their plans. Defendant denies
2 each and every one of the remaining allegations set forth in this paragraph.

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

6 8. Defendant admits that the GWU Plan is a self-funded behavioral health benefit
7 plan and benefits are paid by the group plan sponsor, which is not an affiliate of Defendant.
8 Defendant admits that UnitedHealthcare Insurance Company is an affiliate of Defendant.
9 Defendant admits that it is an affiliate of United Health Group, Incorporated. Defendant denies
10 each and every one of the remaining allegations set forth in this paragraph.

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

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

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

22 12. Defendant admits that the terms of the GWU Plan provide that coverage for mental
23 health and substance use disorder treatment is excluded when the treatment is, *inter alia*,
24 inconsistent with generally accepted standards of medical practice, subject to the terms and
25 conditions set forth in the plan. This paragraph purports to quote language from the GWU Plan
26 that “[t]he claims administrator develops and maintains clinical policies that describe the
27 Generally Accepted Standards of Medical Practice, scientific evidence, prevailing medical
28 standards and clinical guidelines supporting its determinations regarding specific services.”

Defendant denies that this quoted language appears in the GWU Plan. The GWU Plan speaks for itself and Defendant denies Plaintiff's characterization of it. This paragraph contains legal argument and conclusion with respect to the existence of an alleged fiduciary duty and breach thereof, which do not require a response. To the extent a response may be required, Defendant denies each and every one of the allegations relating to a fiduciary duty and breach 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 his claims, or that he 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 LOCs and CDGs and that it is responsible for adjudicating the mental health and substance abuse claims for the GWU Plan. Defendant states that the term "promulgating" is vague and ambiguous, and on that basis denies that it is responsible for "promulgating" the LOCs or CDGs. Defendant denies each and every one of the remaining allegations set forth in this paragraph.

16. Defendant admits that UBH and 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 the Court has personal jurisdiction over this matter.

Defendant 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 INTERVENOR PLAINTIFF'S CLAIMS

19. Defendant admits that it has developed its LOCs and CDGs, 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 Plaintiff accurately quotes portions of the Introduction to Defendant's Level of Care Guidelines (2014), and Defendant states that the totality of the document speaks for itself. Defendant denies Plaintiff's characterization of the document. The term "basis," as alleged in this paragraph, is vague and ambiguous, and on that ground Defendant denies that its LOCs and CDGs were the "basis" of UBH's denial of Sara Driscoll's claim. Defendant admits that its professionals used the objective and evidence-based behavioral health criteria listed in specific LOCs or CDGs in their determinations that specific substance abuse treatment for Ms. Driscoll was not covered under the Plan. Defendant denies each and every one of the remaining allegations set forth in this paragraph.

20. Defendant admits that its *Guideline Evidence* documents provide some of the sources for its LOCs and CDGs, but denies that they provide all the sources for its LOCs and CDGs. Defendant admits that among other sources available to Defendant, guidelines published by several nationally recognized medical associations provide an evidence base for Defendant's LOCs and CDGs. Defendant states that the documents speak for themselves. Defendant denies Plaintiff's characterization of the documents. Defendant denies each and every one of the remaining allegations set forth in this paragraph.

21. Defendant admits that Plaintiff accurately quotes portions of Defendant's 2012 CDG entitled Intensive Outpatient Program for Substance Abuse Disorders ("IOP-SAD"), and Defendant states that the totality of the document speaks for itself. Defendant denies Plaintiff's characterization of the document. Defendant denies each and every one of the remaining allegations set forth in this paragraph.

22. Defendant admits that Plaintiff purports to quote certain "generally accepted standards of care" without citations sufficient to identify the source of these alleged standards.

1 The sources speak for themselves. Defendant lacks knowledge or information sufficient to form a
 2 belief as to the truth of these assertions as characterized, and on that basis denies each and every
 3 one of the allegations made regarding these sources or the use of these sources in the CDGs.
 4 Plaintiff purports to quote portions of Defendant's 2013 CDG for Treatment of Substance Use
 5 Disorders. Defendant denies that Plaintiff accurately quotes Defendant's 2013 CDG for
 6 Treatment of Substance Use Disorders, and denies Plaintiff's characterization of it. Defendant
 7 states that the totality of the document speaks for itself. Defendant admits that Plaintiff accurately
 8 quotes and references portions of Defendant's 2014 CDG for Treatment of Substance Use
 9 Disorders, and Defendant states that the totality of the document speaks for itself. Defendant
 10 denies Plaintiff's characterization of the document. The term "basis," as alleged in the first
 11 sentence of this paragraph, is vague and ambiguous, and on that ground Defendant denies that its
 12 2013 CDG for Treatment of Substance Use Disorders was the "basis" of UBH's denial of Sara
 13 Driscoll's claim. Defendant admits that its professionals used the objective and evidence-based
 14 behavioral health criteria listed in specific CDGs in their determinations that specific substance
 15 abuse treatment for Ms. Driscoll was not covered under the Plan. Defendant denies each and
 16 every one of the remaining allegations set forth in this paragraph.

17 23. Defendant admits that Plaintiff accurately quotes portions of Defendant's CDG IOP-
 18 SAD (2012). The totality of the document speaks for itself, and Defendant denies Plaintiff's
 19 characterization of the document. Defendant admits that Plaintiff purports to reference Defendant's
 20 2013 CDG for Treatment of Substance Use Disorders. The totality of the document speaks for
 21 itself and Defendant denies Plaintiff's characterization of these documents. Defendant admits that
 22 Plaintiff purports to reference and quote portions of a third party ASAM document, without any
 23 reference to the date, page or section of the document sufficient to identify the source. The
 24 document speaks for itself. Defendant lacks knowledge or information sufficient to form a belief
 25 as to the truth of these assertions as characterized and on that basis denies each and every
 26 allegation regarding the third party document. Defendant denies that the ASAM document, on its
 27 own and separate and apart from any other standard, sets the standard of care for substance abuse
 28 treatment. Defendant denies each and every one of the remaining allegations set forth in this

1 paragraph.

2 24. Defendant denies that the definition of “Intensive Outpatient Program” alleged in
3 the first sentence of this paragraph appears in its 2013 CDG for Substance Use Disorders.
4 Defendant denies that the quote cited in the second sentence of this paragraph appears in its 2013
5 CDG for Substance Use Disorders. Defendant states that the totality of these documents speak for
6 themselves and denies Plaintiff’s characterization of the documents. Defendant denies each and
7 every one of the remaining allegations set forth in this paragraph.

8 25. Defendant admits that Plaintiff accurately quotes portions of Defendant’s LOCs
9 (2013) and its 2013 CDG for Treatment of Substance Use Disorders in this paragraph, and
10 Defendant states that the documents speak for themselves. Defendant denies Plaintiff’s
11 characterization of the documents. Defendant denies each and every one of the remaining
12 allegations set forth in this paragraph.

13 26. Defendant denies each and every allegation in the first sentence of this paragraph.
14 Defendant admits that its 2015 LOC for Inpatient Rehabilitation and its 2015 LOC for Residential
15 Rehabilitation incorporated Defendant’s 2015 Common Criteria for All Levels of Care.
16 Defendant states that the totality of the documents speak for themselves. Defendant denies
17 Plaintiff’s characterization of the documents. Defendant denies each and every one of the
18 remaining allegations set forth in this paragraph.

19 27. 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 every
22 one of the remaining allegations set forth in this paragraph.

23 28. Defendant admits that Plaintiff accurately quotes portions of Defendant’s 2015
24 Common Criteria, and Defendant states that the totality of the document speaks for itself.
25 Defendant denies Plaintiff’s characterization of the document. Defendant denies each and every
26 one of the remaining allegations set forth in this paragraph.

27 29. Defendant admits that Plaintiff accurately quotes portions of Defendant’s LOCs
28 (2015). Defendant states that the documents speak for themselves. Defendant denies Plaintiff’s

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

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

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

15 32. Defendant admits that Plaintiff purports to reference and quotes portions of
16 documents 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 documents speak for themselves. 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 33. Defendant admits that Plaintiff purports to reference and quotes portions of
22 documents of a third party, ASAM, in this paragraph, without any reference to the date of the
23 document, page or section. The totality of the documents speak for themselves. Accordingly,
24 Defendant lacks knowledge or information sufficient to form a belief as to the truth of these
25 allegations as characterized, and on that basis denies each and every one of the allegations set
26 forth in this paragraph.

27 34. Defendant admits that Plaintiff purports to reference and quotes portions of
28 documents of a third party, APA, in this paragraph, without any reference to the date of the

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

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

11 36. Defendant admits that Plaintiff purports to reference and quotes portions of
12 documents of a third party, AABH, in this paragraph, without any reference to the date of the
13 document, page or section. The totality of 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 37. Defendant admits that Plaintiff purports to reference and quotes portions of
18 documents of a third party, APA, in this paragraph, without any reference to the date of the
19 document, page or section. The totality of the documents speak for themselves. Accordingly,
20 Defendant lacks knowledge or information sufficient to form a belief as to the truth of these
21 allegations as characterized, and on that basis denies each and every one of the allegations set
22 forth in this paragraph.

23 38. Defendant admits that Plaintiff purports to reference and quotes portions
24 unidentified CDGs and LOCs in this paragraph without any reference to the title of the document,
25 date, page or section. The totality of the documents speak for themselves. Defendant denies
26 Plaintiff's characterization of the documents. Defendant denies each and every one of the
27 remaining allegations set forth in this paragraph.

28 39. Defendant admits that Plaintiff accurately quotes portions of a document entitled

1 *Public Policy Statement on Managed Care, Addiction Medicine, and Parity* (March, 2009). The
 2 totality of the document speaks for itself. Because this document is not Defendant's, it lacks
 3 knowledge or information sufficient to form a belief as to the truth of these allegations as
 4 characterized, and on that basis denies each and every one of the allegations set forth in this
 5 paragraph.

6 **UBH'S ALLEGED BREACH OF FIDUCIARY DUTY AND DENIAL OF**
 7 **DRISCOLL'S CLAIMS**

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

11 41. Defendant admits that Michael Driscoll was a participant in the GWU Plan and
 12 Sara Driscoll was a beneficiary of the GWU Plan. Defendant admits that the GWU Plan is a large
 13 group self-funded plan governed by ERISA. Defendant admits that the GWU Plan is a non-
 14 grandfathered group plan. Defendant denies each and every one of the remaining allegations set
 15 forth in this paragraph.

16 42. Defendant admits that Plaintiff accurately quotes portions of the GWU Plan. The
 17 totality of the document speaks for itself and Defendant denies Plaintiff's characterization of it.
 18 Defendant admits that, with limited exceptions, UHIC delegates its discretion to UBH for
 19 purposes of mental health-related claims administration. Defendant denies each and every one of
 20 the remaining allegations set forth in this paragraph.

21 43. Defendant admits that Plaintiff accurately quotes portions of the Summary Plan
 22 Documents for the GWU Plan, and Defendants states that the documents speak for themselves.
 23 Defendant denies Plaintiff's characterization of the documents and Defendant denies each and
 24 every one of the remaining allegations set forth in this paragraph.

25 44. Defendant admits that the GWU Plan provides for coverage for network and out-
 26 of-network services under certain circumstances. Defendant admits that Plaintiff accurately
 27 quotes portions of the Summary Plan Descriptions for the GWU Plan and Defendant states that
 28 the totality of the documents speak for themselves. Defendant denies Plaintiff's characterization

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

3 45. Defendant admits that the GWU Plan provides for two levels of internal appeals.
4 Defendant denies each and every one of the remaining allegations set forth in this paragraph.

5 46. Defendant admits that the GWU Plan covers treatment for mental illness and
6 substance use disorders, including intensive outpatient treatment, where applicable, and subject to
7 the terms and conditions set forth in the GWU Plan. Defendant admits that Plaintiff purports to
8 quote portions of the Summary Plan Descriptions for the GWU Plan, but denies that these quotes
9 accurately reflect the original source. Defendant states that the totality of these documents speak
10 for themselves. Defendant denies Plaintiff's characterization of the documents. Defendant
11 denies each and every one of the remaining allegations set forth in this paragraph.

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

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

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

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

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

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

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

5 54. Defendant admits that it was contacted by The Meadows on May 21, 2013
6 regarding coverage for inpatient treatment for Sara Driscoll. Defendant admits that it conducted a
7 review and determined that coverage existed for inpatient treatment. Defendant lacks knowledge
8 or information sufficient to form a belief as to the truth of the remaining allegations set forth in
9 this paragraph as characterized, and on that basis denies each and every one of the remaining
10 allegations set forth in this paragraph.

11 55. Defendant admits that it was contacted by The Ranch on July 2, 2013 regarding
12 coverage for partial hospitalization for Sara Driscoll. Defendant admits that it conducted a review
13 and determined that coverage existed for partial hospitalization. Defendant lacks knowledge or
14 information sufficient to form a belief as to the truth of the remaining allegations set forth in this
15 paragraph as characterized, and on that basis denies each and every one of the remaining
16 allegations set forth in this paragraph.

17 56. Defendant admits that on July 18, 2013, UBH received a call from a person who
18 identified herself as affiliated with the Sierra Tucson treatment facility, and that this person
19 inquired about and was provided with information regarding seeking authorization for coverage
20 for different levels of service for Sara Driscoll. Defendant admits that it was contacted by Sierra
21 Tucson on July 25, 2013 regarding coverage for intensive outpatient treatment for Sara Driscoll.
22 Defendant admits that it conducted a review and determined that coverage existed for intensive
23 outpatient treatment. Defendant lacks knowledge or information sufficient to form a belief as to
24 the truth of the remaining allegations set forth in this paragraph as characterized, and on that basis
25 denies each and every one of the remaining allegations set forth in this paragraph.

26 57. Defendant admits that on September 9, 2013, UBH received a call from a person
27 who identified herself as affiliated with the The Canyon at Santa Monica, and that this person
28 inquired about and was provided with information regarding seeking authorization for coverage

1 for different levels of service for Sara Driscoll. Defendant admits that on September 10, 2013,
 2 UBH received a call from a person who identified herself as affiliated with The Canyon at Santa
 3 Monica, and that this person stated Sara Driscoll had been admitted for intensive outpatient
 4 substance abuse treatment. Defendant lacks knowledge or information sufficient to form a belief
 5 as to the truth of the remaining allegations set forth in this paragraph as characterized, and on that
 6 basis denies each and every one of the remaining allegations set forth in this paragraph.

7 58. Defendant admits that unauthenticated records provided to UBH purportedly from
 8 The Canyon at Santa Monica state that Sara Driscoll was diagnosed with post-traumatic stress
 9 disorder, alcohol dependence, polysubstance dependence, general anxiety disorder, and major
 10 depressive disorder in September 2013. Defendant lacks knowledge or information regarding
 11 the authenticity of these documents or their accuracy sufficient to form a belief as to the truth of
 12 the allegations set forth in this paragraph as characterized, and on that basis denies each and every
 13 one of the remaining allegations set forth in this paragraph.

14 59. Defendant admits that Plaintiff accurately quotes portions of unauthenticated
 15 records provided to UBH purportedly from The Canyon at Santa Monica. The documents speak
 16 for themselves, and Defendant denies Plaintiff's characterization of the documents. Defendant
 17 lacks knowledge or information regarding the authenticity of these documents or their accuracy
 18 sufficient to form a belief as to the truth of the allegations set forth in this paragraph as
 19 characterized, and on that basis denies each and every one of the remaining allegations set forth in
 20 this paragraph.

21 60. Defendant admits that Plaintiff accurately quotes portions of unauthenticated
 22 records provided to UBH purportedly from The Canyon at Santa Monica. The documents speak
 23 for themselves, and Defendant denies Plaintiff's characterization of the documents. Defendant
 24 lacks knowledge or information regarding the authenticity of these documents or their accuracy
 25 sufficient to form a belief as to the truth of the allegations set forth in this paragraph as
 26 characterized, and on that basis denies each and every one of the remaining allegations set forth in
 27 this paragraph.

28 61. Defendant admits that on September 10, 2013, UBH received a call from a person

1 who identified herself as affiliated with The Canyon at Santa Monica, and that this person stated
2 Sara Driscoll had been admitted for intensive outpatient substance abuse treatment. Defendant
3 admits that UBH records reflect UBH informed the caller that pre-authorization was not required
4 and that The Canyons at Santa Monica was an out-of-network provider. Defendant lacks
5 knowledge or information sufficient to form a belief as to the truth of the remaining allegations
6 set forth in this paragraph as characterized, and on that basis denies each and every one of the
7 remaining allegations set forth in this paragraph.

8 62. Defendant lacks knowledge or information sufficient to form a belief as to the
9 truth of the allegation that The Canyon at Santa Monica received the document referenced in the
10 first sentence of this paragraph. Defendant admits that on January 24, 2014, UBH received a call
11 from a person who identified herself as affiliated with The Canyon at Santa Monica, and that this
12 person requested retroactive authorization for intensive outpatient substance abuse treatment for
13 Sara Driscoll. Defendant admits that UBH records reflect UBH informed the caller that pre-
14 authorization was not required and instructed the caller to resubmit the denied claim. Defendant
15 lacks knowledge or information sufficient to form a belief as to the truth of the remaining
16 allegations set forth in this paragraph as characterized, and on that basis denies each and every
17 one of the remaining allegations set forth in this paragraph.

18 63. Defendant admits that Plaintiff accurately quotes portions of unauthenticated
19 records provided to UBH purportedly from The Canyon at Santa Monica. The documents speak
20 for themselves, and Defendant denies Plaintiff's characterization of the documents. Defendant
21 lacks knowledge or information regarding the authenticity of these documents or their accuracy
22 sufficient to form a belief as to the truth of the allegations set forth in this paragraph as
23 characterized, and on that basis denies each and every one of the remaining allegations set forth in
24 this paragraph.

25 64. Defendant admits that Plaintiff accurately cites portions of unauthenticated records
26 provided to UBH purportedly from The Canyon at Santa Monica. The documents speak for
27 themselves, and Defendant denies Plaintiff's characterization of the documents. Defendant lacks
28 knowledge or information regarding the authenticity of these documents or their accuracy

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

4 65. Defendant admits that Plaintiff accurately quotes portions of a letter by Eugene
5 Kwon, M.D. dated March 26, 2014. Defendant states that the document speaks for itself and
6 denies Plaintiff's characterization of it. Defendant lacks knowledge or information sufficient to
7 form a belief as to the truth of the remaining allegations set forth in this paragraph as
8 characterized, and on that basis denies each and every one of the remaining allegations set forth in
9 this paragraph.

10 66. Defendant denies that it does not appear that Dr. Kwon's letter dated March 26,
11 2014 was ever sent to Michael or Sara Driscoll. The remaining allegations set forth in this
12 paragraph contain legal argument and conclusion regarding the requirements of ERISA, which do
13 not require a response. To the extent a response may be required, Defendant denies each and
14 every one of the remaining allegations set forth in this paragraph.

15 67. Defendant admits that Plaintiff accurately quotes portions of a letter by Andrew
16 Martorana, M.D. dated June 2, 2014. Defendant states that the document speaks for itself and
17 denies Plaintiff's characterization of it. Defendant denies each and every one of the remaining
18 allegations set forth in this paragraph.

19 68. Defendant admits that Plaintiff accurately quotes portions of a letter by Andrew
20 Martorana, M.D. dated June 2, 2014. Defendant states that the document speaks for itself and
21 denies Plaintiff's characterization of it. Defendant denies each and every one of the remaining
22 allegations set forth in this paragraph.

23 69. Defendant admits that its records include a letter dated July 28, 2014, purportedly
24 from Sara Driscoll. Defendant states that the totality of the document speaks for itself and denies
25 Plaintiff's characterization of it. Defendant lacks knowledge and information sufficient to form a
26 belief as to the remaining allegations set forth in this paragraph and on that basis denies each and
27 every one of the remaining allegations set forth in this paragraph.

28 70. Defendant admits that Plaintiff purports to cite portions of a letter by Nancy

1 Steichmann, dated June 2, 2014. Defendant states that the document speaks for itself and denies
 2 Plaintiff's characterization of it. Defendant lacks knowledge and information sufficient to form a
 3 belief as to the remaining allegations set forth in this paragraph and on that basis denies each and
 4 every one of the remaining allegations set forth in this paragraph.

5 71. Defendant denies each and every allegation set forth in this paragraph.
 6 Furthermore, Defendant states that the documents referred to in this paragraph speak for
 7 themselves and Defendant denies Plaintiff's characterization of the documents.

8 **CLASS ACTION ALLEGATIONS**

9 72. Defendant incorporates by reference the preceding paragraphs as though such
 10 paragraphs were fully stated herein.

11 73. Defendant admits that it serves as the claims administrator for mental health and
 12 substance abuse claims for other health insurance plans, including the GWU Plan. Defendant
 13 admits that some health insurance plans for which it is the claims administrator include similar
 14 provisions regarding coverage for outpatient (and intensive outpatient) treatment as the provisions
 15 in the GWU Plan. Defendant admits that, when applicable, it relies on its CDGs or LOC's in
 16 adjudicating residential treatment claims under certain plans, and that its application of those
 17 guidelines is based on the individual circumstances presented by the member at issue, including
 18 his/her diagnosis, treatment and other facts surrounding the intensive outpatient treatment sought,
 19 as well as the health plan at issue and applicable law. Defendant denies each and every one of the
 20 remaining allegations set forth in this paragraph.

21 74. Defendant admits that Plaintiff purports to bring his claims on behalf of the class
 22 stated and Defendant denies that Plaintiff is entitled to class certification under FRCP 23. The
 23 remaining allegations set forth in this paragraph contain legal argument and conclusion, which do
 24 not require a response. To the extent a response may be required, Defendant denies each and
 25 every one of the remaining allegations set forth in this paragraph.

26 75. Defendant admits that it knows the members for whom it administers claims for
 27 mental health and substance abuse benefits, and it knows who they are insured by, what types of
 28 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.

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

77. 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.

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

79. 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 this paragraph.

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

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

COUNT I

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

83. 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.

84. 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.

85. 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.

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

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

88. Defendant admits that Plaintiff purports to seek the relief identified in his Complaint. Defendant denies that Plaintiff is entitled to such relief.

COUNT II

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

90. 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) under Count II.

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

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

93. Defendant admits that Plaintiff purports to seek the relief identified in their Complaint. Defendant denies that Plaintiff is entitled to such relief.

COUNT III

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

95. 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 the injunctive relief remedy 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.

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

97. 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

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

99. Defendant admits that Plaintiff purports to bring Count IV pursuant to 29 U.S.C. § 1132(a)(3)(B). Defendant denies that Plaintiff states a cognizable claim under 29 U.S.C. § 1132(a)(3)(B) in Count IV.

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

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

102. 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 26 and 27), 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 Defendant 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, has 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 because Plaintiff, and each of the members of the putative class, have adequate remedies under 29 U.S.C. § 1132(a)(1)(B) for the conduct alleged against Defendant.

EIGHTH AFFIRMATIVE DEFENSE

[Conformance With Plan Documents]

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

NINTH AFFIRMATIVE DEFENSE

[Waiver]

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

TENTH AFFIRMATIVE DEFENSE

[Laches]

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

ELEVENTH AFFIRMATIVE DEFENSE**[Statute of Limitations]**

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

TWELFTH AFFIRMATIVE DEFENSE**[Deferential Standard of Review]**

Plaintiff's claims, and the claims of each of the members of the putative class, are barred on the ground that to the extent Defendant was acting in a fiduciary capacity with regard to Plaintiff's claims, it did not act arbitrarily or capriciously, but acted with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in the like capacity and familiar with such matters would use in the conduct of an enterprise of a like character with like aims, and in accordance with applicable Plan documents, which grant Defendant the power to interpret plan terms and to make final benefits determinations, and said acts are entitled to a deferential standard of review.

THIRTEENTH AFFIRMATIVE DEFENSE**[No Causation For Alleged Loss]**

Plaintiff's claims, and the claims of each of the members of the putative class, are barred, in whole or in part, because if any loss was suffered by Plaintiff, which is expressly denied, that 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, in that event, Defendant cannot be sued as a fiduciary under ERISA under the circumstances.

FIFTEENTH AFFIRMATIVE DEFENSE

[Indispensable Parties]

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

SIXTEENTH AFFIRMATIVE DEFENSE

[Conditions Precedent/Subsequent]

Plaintiff's 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 Plaintiff's Complaint 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 Plaintiff is not an appropriate class representative.

EIGHTEENTH AFFIRMATIVE DEFENSE

[Good Faith]

Plaintiff's 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

[Attorneys' Fees and Costs]

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

TWENTIETH AFFIRMATIVE DEFENSE

[No Surcharge Remedy]

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

TWENTY-FIRST AFFIRMATIVE DEFENSE

[Offset]

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

TWENTY-SECOND AFFIRMATIVE DEFENSE

[Discharge, Payment, Release, Accord/Satisfaction]

Plaintiff's claims are barred, in whole or in part by the doctrines of discharge, payment, release, and/or accord and satisfaction.

TWENTY-THIRD AFFIRMATIVE DEFENSE

[Arbitration]

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

TWENTY-FOURTH 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 takes 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

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1 D. That Defendant be awarded such additional and further relief as the Court deems
2 just and proper.

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Dated: March 16, 2015

CROWELL & MORING LLP

/s/ Nathaniel P. Bualat

Nathaniel P. Bualat

Attorney for Defendant

UNITED BEHAVIORAL HEALTH (operating as
OPTUMHEALTH BEHAVIORAL SOLUTIONS)

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