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15 Attorneys for Defendant
16 UNITED BEHAVIORAL HEALTH

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

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

24 Plaintiffs,

25 v.

26 UNITED BEHAVIORAL HEALTH
(operating as OPTUMHEALTH
27 BEHAVIORAL SOLUTIONS),

Case No. 3:14-cv-5337 (JCS)

**UNITED BEHAVIORAL HEALTH'S
ANSWER AND AFFIRMATIVE
DEFENSES TO CLASS ACTION
COMPLAINT FILED ON DECEMBER 4,
2014**

1
2 Defendant.

3 Defendant United Behavioral Health (hereinafter referred to as “UBH” or “Defendant”),
4 submits this Answer in response to Plaintiffs’ Class Action Complaint (“Complaint”) filed on
5 December 4, 2014 and pleads as follows, with the numbered paragraphs corresponding to the
6 Paragraph numbers in the Complaint. All allegations not expressly admitted are hereby denied.
7 Any allegations that may be implied or inferred from the headings of the Complaint are denied.

8 1. In this Paragraph, Plaintiffs purport to set forth statistics and findings from various
9 studies and reports by third parties without citations sufficient to identify the source. Defendant
10 lacks knowledge or information sufficient to form a belief as to the truth of these assertions as
11 characterized, and on that basis denies each and every one of the allegations made in this
12 Paragraph.

13 2. In this Paragraph, Plaintiffs purport to set forth statistics and findings from
14 various studies and reports by third parties without citations sufficient to identify the source.
15 Defendant lacks knowledge or information sufficient to form a belief as to the truth of these
16 assertions as characterized, and on that basis denies each and every one of the allegations made in
17 this Paragraph.

18 3. In this Paragraph, Plaintiffs purport to set forth statistics regarding Defendant’s
19 operations without citations sufficient to identify the source. Defendant lacks knowledge or
20 information sufficient to form a belief as to the truth of these assertions as characterized, and on
21 that basis denies these allegations. Defendant denies that it violates any legal or fiduciary duties to
22 its members, participants or beneficiaries or that its practices and/or policies are inconsistent with
23 plan terms or generally accepted standards of mental health care. Defendant denies each and every
24 one of the remaining allegations in this Paragraph.

25 4. Defendant admits that Plaintiffs purport to bring their claims on behalf of
26 themselves and others similarly situated. Defendant lacks knowledge or information sufficient to
27 form a belief as to the truth of the allegations as characterized, and on that basis denies each and
28 every allegation in this Paragraph.

SUMMARY OF PLAINTIFFS' ALLEGATIONS

5. Defendant admits that during the relevant time period, Plaintiff Gary Alexander was and that Plaintiff Corinna Klein and David Haffner are a member or beneficiary of health insurance plans sponsored by an employer and governed by the Employee Retirement Income Security Act of 1974 ("ERISA"). The health plans for each of the Plaintiffs, including all of the documents comprising them, will be collectively referred to as "Plaintiffs' Plans" or the "Plans."¹

6. Defendant admits that Plaintiffs' Plans included coverage for sickness, injury and mental illness and substance abuse disorders described in the current edition of the *Diagnostic and Statistical Manual* ("DSM") of the American Psychiatric Association, subject to the terms, conditions and exclusions of the Plans. Defendant admits that Plaintiffs' Plans provide coverage for outpatient services and intensive outpatient treatment, which can include psychotherapy, where applicable, subject to the terms, conditions and exclusions set forth in the Plans. Defendant admits that to be covered under Plaintiffs' Plans, services must be medical necessary. The documents speak for themselves, and Defendant denies Plaintiffs' characterization of the documents. Defendant denies each and every one of the remaining allegations in this Paragraph.

7. Defendant admits that it is responsible for adjudicating mental health and substance abuse claims for Plaintiffs' Plans, and that it has developed "level of care" guidelines ("LOCs") and "coverage determination guidelines" ("CDGs") to use in adjudicating claims where applicable. Defendant admits that its LOCs and CDGs are available to its Care Advocates and Medical Directors to reference in adjudicating mental health care claims. Defendant admits that it

¹ The responses and allegations in this Answer regarding the Plans are based on the following plan documents: (i) for Plaintiff Alexander: the Certificate of Coverage for the Plan 7ED of Granite Construction, Enrolling Group Number: 702883, effective January 1, 2013 and the Certificate of Coverage for the Plan UZU of Granite Construction, Enrolling Group Number: 702883, effective January 1, 2014 (the "Alexander Plan"); (ii) for Plaintiff Haffner: the Certificate of Coverage for the Plan RC9 of Science Systems and Applications, Inc., Enrolling Group Number: 713094, effective January 1, 2014, and the Certificate of Coverage for the Plan 4VT MOD 1 of Science Systems and Applications, Inc., Enrolling Group Number: 713094, effective January 1, 2011 (the "Haffner Plan"); and (iii) for Plaintiff Klein: the Freedom Select Plan Summary of Benefits, Freedom Select Plan Member Handbook, "Certificate of Coverage & Member Handbook, and Supplemental Certificate of Coverage & Member Handbook, effective January 1, 2013 (the "Klein Plan").

1 developed its Algorithms for Effective Reporting and Treatment (“ALERT”) program and denies
 2 that it was developed to identify chronically ill patients and those whose needs exceed tolerance
 3 for coverage. The term “promulgated,” as alleged in this Paragraph, is vague and ambiguous, and
 4 on that basis Defendant denies that it “promulgated” the ALERT program. Defendant denies that
 5 Plaintiffs’ Plans have no role in the decision to approve or deny any particular claim submitted by
 6 a plan member. Defendant asserts that its CDGs and LOCs are shaped by input from a variety of
 7 persons and organizations outside of Defendant, and individual health plans have a role in
 8 determining which guidelines apply to their plans. Defendant denies each and every one of the
 9 remaining allegations in this Paragraph.

10 8. Defendant admits that Defendant’s CDGs are intended to provide assistance in
 11 interpreting certain behavioral health plans that are administered by Defendant, and Defendant
 12 has created CDGs specific to particular conditions or diagnoses. Defendant states that the
 13 documents speak for themselves, and Defendant denies Plaintiffs’ characterization of the
 14 documents. Defendant admits that Defendant’s CDGs explicitly instruct that when deciding
 15 coverage, the enrollee’s plan terms should be referenced and enrollee eligibility, any federal or
 16 state regulatory requirements, and the plan benefit coverage must be identified. Defendant admits
 17 that its CDGs reflect its understanding of best practices in care, where applicable and its CDGs
 18 reference, where appropriate, “level of care” criteria. Defendant denies each and every one of the
 19 remaining allegations in this Paragraph.

20 9. Defendant admits that Plaintiffs accurately quote portions of Defendant’s LOCs,
 21 and Defendant states that the documents speak for themselves. Defendant denies Plaintiffs’
 22 characterization of the documents. Defendant admits that its LOCs set forth criteria for making
 23 medical necessity determinations, when appropriate, to determine whether the benefit plan will pay
 24 for any portion of the cost of a health care service. Defendant admits that when making
 25 determinations of medical necessity, Defendant uses the information provided to it to ascertain
 26 whether services are in accordance with standards of practice, are clinically appropriate, are not
 27 mainly for convenience, and whether services are cost effective and provided in the least
 28 restrictive environment. Defendant denies that the LOCs do not instruct UBH employees to

1 consult plan terms, and Defendant denies each and every one of the remaining allegations in this
2 Paragraph.

3 10. This Paragraph contains legal argument and conclusions to which no response is
4 required. To the extent a response is required, Defendant denies each and every allegation in this
5 Paragraph.

6 11. UBH admits that under the Alexander and Haffner Plans, behavioral health
7 benefits are paid by UnitedHealthcare Insurance Company (“UHIC”). Defendant admits that
8 under the Klein Plan, behavioral health benefits are paid by Oxford Health Plans, Inc. (“Oxford”).
9 UnitedHealthcare Insurance Company and Oxford Health Plans, Inc. are affiliates of Defendant.
10 Defendant admits that it is an affiliate of United Health Group, Incorporated. Defendant denies
11 each and every one of the remaining allegations in this Paragraph.

12 12. Defendant denies each and every allegation in this Paragraph.

13 13. Defendant admits that the American Psychiatric Association, the American
14 Academy of Child and Adolescent Psychiatry, the American Association of Community
15 Psychiatrists, the American Society for Addiction Medicine, and the Association for Ambulatory
16 Behavioral Healthcare have guidelines for the treatment of certain behavioral health conditions and
17 symptoms. Plaintiffs make the broad assertions that generally accepted standards of care are
18 promulgated by these professional groups and “a body of published peer-reviewed research”
19 without specifically identifying any of the standards to which they refer. Defendant is without
20 knowledge or information sufficient to form a belief as to the truth of the remaining allegations in
21 this Paragraph, and on that basis denies each and every allegation in this Paragraph.

22 14. The allegations set forth in this Paragraph are incomplete and misleading summaries
23 of third-party documents not attached to the Complaint. Defendant is without knowledge or
24 information sufficient to form a belief as to the truth of these assertions as characterized, and on
25 that basis denies each and every one of the allegations made in this Paragraph.

26 15. Defendant denies each and every allegation in this Paragraph.

27 16. Defendant admits that the terms of the Alexander Plan provide that coverage for
28 mental health and substance use disorder treatment is excluded when the treatment is, *inter alia*,

1 inconsistent with generally accepted standards of medical practice or Defendant's LOCs, subject
 2 to the terms and conditions set forth in the plan. Defendant admits that the terms of the Klein
 3 Plan cover mental health and substance abuse treatment appropriate with regard to standards of
 4 good medical practice, subject to the terms and conditions set forth in the plan. Defendant denies
 5 that the Klein Plan does not reference UBH's LOCs. Defendant admits that the Haffner Plan
 6 covers treatment consistent with generally accepted standards of medical practice and excludes
 7 treatment for mental illnesses that in the professional judgment of health care providers are
 8 deemed untreatable or not medically necessary, subject to the terms and conditions set forth in the
 9 plan. Plaintiffs' Plans speak for themselves and Defendant denies Plaintiffs' characterization of
 10 them and each and every one of the remaining allegations set forth in this Paragraph.

11 17. This Paragraph contains legal argument and conclusion with respect to the
 12 existence of an alleged fiduciary duty and breach thereof, which do not require a response. To the
 13 extent a response may be required, Defendant denies each and every one of the allegations
 14 relating to a fiduciary duty and breach thereof set forth in this Paragraph. Defendant denies each
 15 and every one of the remaining allegations set forth in this Paragraph.

16 18. This Paragraph contains legal argument and conclusion with respect to the
 17 existence of an alleged fiduciary duty and breach thereof, which do not require a response. To the
 18 extent a response may be required, Defendant denies each and every one of the allegations
 19 relating to a fiduciary duty and breach thereof set forth in this Paragraph. Defendant denies each
 20 and every remaining allegation in this Paragraph.

21 19. Defendant admits that Plaintiffs purport to bring the claims and seek the remedies
 22 described in this Paragraph. Defendant denies that Plaintiffs have pled or can prove their claims,
 23 or that they are entitled to the relief sought.

24 **DEFENDANT, JURISDICTION AND VENUE**

25 20. Defendant admits that it operates under the name OptumHealth Behavioral
 26 Solutions, and is a corporation organized under California law with a principal place of business
 27 in San Francisco, California. Defendant admits that it is responsible for drafting and approving
 28 its LOCs and CDGs and that it is responsible for adjudicating the mental health and substance

1 abuse claims for Plaintiffs' Plans. The term "promulgating," as alleged in this Paragraph, is
 2 vague and ambiguous, and on that basis Defendant denies that it is responsible for
 3 "promulgating" the LOCs or CDGs. Defendant denies each and every one of the remaining
 4 allegations in this Paragraph.

5 21. Defendant admits that UBH, UHIC and Oxford are affiliates of UnitedHealth
 6 Group Incorporated. Defendant denies each and every one of the remaining allegations in this
 7 Paragraph.

8 22. Defendant admits that this Court has subject matter jurisdiction over this matter.

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

14 **UBH'S GUIDELINES APPLICABLE TO PLAINTIFFS' CLAIMS**

15 24. Defendant admits that it developed the LOCs and CDGs, which, when appropriate
 16 under a member's plan, Defendant's professionals use as a set of objective and evidence-based
 17 behavioral health criteria in determining whether a level of mental health treatment for a
 18 particular condition is covered under the member's health plan. Defendant admits that Plaintiffs
 19 accurately quote portions of the Introduction to Defendant's Level of Care Guidelines (2014), and
 20 Defendant states that the documents speak for themselves. Defendant denies Plaintiffs'
 21 characterization of the documents. Defendant denies each and every one of the remaining
 22 allegations in this Paragraph.

23 25. Defendant admits that its *Guideline Evidence* documents provide some of the
 24 sources for its LOCs and CDGs, but denies that they provide all the sources for its LOCs and
 25 CDGs. Defendant admits that among other sources available to Defendant, guidelines published
 26 by several nationally recognized medical associations provide an evidence base for Defendant's
 27 LOCs. Defendant states that the documents speak for themselves. Defendant denies Plaintiffs'
 28 characterization of the documents. Defendant denies each and every one of the remaining

1 allegations in this Paragraph.

2 26. Defendant admits that Plaintiffs accurately quote portions of Defendant's 2014
3 Level of Care Guidelines, Common Criteria. Defendant states that the totality of the documents
4 speak for themselves. Defendant denies Plaintiffs' characterization of the documents. Defendant
5 admits its 2014 Level of Care Guidelines, Common Criteria, are generally applicable to levels of
6 care for mental health and substance use disorders, where applicable under a member's plan, and
7 are incorporated by reference into the 2014 LOC Guidelines at issue in this case. Defendant
8 denies each and every one of the remaining allegations in this Paragraph.

9 27. Defendant admits that Plaintiffs accurately quote limited portions of some of
10 Defendant's 2014 CDGs for mental health and substance abuse. Defendant states that the CDG
11 documents speak for themselves. Defendant denies Plaintiffs' characterization of the documents.
12 Defendant denies the allegation in this Paragraph that its guidelines are inconsistent with and
13 much more restrictive than evidence-based generally accepted standards of care. At page 9, lines
14 6-23, Plaintiffs quote from an alleged source and make allegations about that source, without
15 providing a sufficient citation to identify that source. Defendant lacks knowledge or information
16 sufficient to form a belief as to the truth of these assertions as characterized, and on that basis
17 denies each and every allegation on page 9, lines 6-23. Defendant denies each and every one of
18 the remaining allegations in this Paragraph.

19 28. Defendant admits that in this Paragraph, Plaintiffs purport to reference and quote
20 portions of a document by third party APA without providing the date, page or section of the
21 document sufficient to identify the source. The document speaks for itself. Defendant lacks
22 knowledge or information sufficient to form a belief about the truth of these allegations as
23 characterized, and on that basis denies each and every one of the allegations set forth in this
24 Paragraph.

25 **UBH's Guidelines Related to Outpatient Treatment**

26 29. Defendant admits that Plaintiffs purport to reference and quote portions of UBH's
27 guidelines for mental health and substance abuse services, without any reference to the dates,
28 pages or sections of the documents sufficient to identify the sources. Defendant states that the

documents speak for themselves. Defendant denies Plaintiffs' characterization of the documents. Defendant admits that certain of its LOCs include as a factor whether a member is in "imminent or current risk of harm to self or others and/or property," along with other criteria. The documents speak for themselves and Defendant denies Plaintiffs' characterization of them. Defendant denies each and every one of the remaining allegations in this Paragraph.

30. Defendant admits that Plaintiffs accurately quote portions of Defendant's LOC for Outpatient Treatment of Mental Health Conditions and Substance Use Disorders (2014). Defendant states that the documents speak for themselves. Defendant denies Plaintiffs' characterization of the document, and denies each and every one of the remaining allegations in this Paragraph.

31. Defendant admits that Plaintiffs accurately quote portions of Defendant's LOCs (2013) and CDGs (2013), and Defendant states that the documents speak for themselves. Defendant denies Plaintiffs' characterization of the documents, and Defendant denies each and every one of the remaining allegations in this Paragraph.

32. Defendant denies that statements in LOCs (2013) and CDGs (2013) do not reflect generally accepted standards of care. In this Paragraph, Plaintiffs purport to reference and quote portions of documents of third parties AACAP and AACP, without any reference to the date, page or section of the documents. The documents speak for themselves. 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 in this Paragraph.

33. Defendant admits that Plaintiffs purport to reference and quote portions of documents by third party ASAM, without any reference to the dates, pages or sections of the documents sufficient to identify the sources. The documents speak for themselves. 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 in this Paragraph.

34. Defendant admits that Plaintiffs purport to reference and quote portions of a third party document in this Paragraph, without any reference to the title, date, page or section of the document sufficient to identify the source. The document speaks for itself. Defendant lacks

1 knowledge or information sufficient to form a belief as to the truth of these assertions as
 2 characterized, and on that basis denies each and every allegation made regarding this document.
 3 Defendant denies each and every one of the remaining allegations in this Paragraph.

4 **UBH's Guidelines Related to Intensive Outpatient Treatment**

5 35. Defendant denies that the documents referred to in this Paragraph, on their own and
 6 separate and apart from any other standards, constitute the generally accepted standards of care.
 7 Defendant admits that Plaintiffs purport to reference and quote portions of a document from third
 8 party APA in this Paragraph, without any reference to the date, page or section of the document
 9 sufficient to identify the source. The document speaks for itself. Defendant lacks knowledge or
 10 information sufficient to form a belief as to the truth of these assertions as characterized, and on
 11 that basis denies each and every allegation in this Paragraph.

12 36. Defendant denies that the documents referenced in this Paragraph, on their own and
 13 separate and apart from any other standards, constitute the generally accepted standards of care.
 14 Defendant admits that Plaintiffs purport to reference and quote portions of documents from third
 15 party AABH in this Paragraph, without any reference to the dates, pages or sections of the
 16 documents sufficient to identify the sources. The documents speak for themselves. Defendant
 17 lacks knowledge or information sufficient to form a belief as to the truth of these assertions as
 18 characterized, and on that basis denies each and every one of the allegations made in this
 19 Paragraph.

20 37. Defendant admits that plaintiffs purport to reference and quote portions of
 21 documents from third party APA in this Paragraph, without any reference to the titles, dates,
 22 pages or sections of the documents sufficient to identify the sources. The document speaks for
 23 itself. Defendant lacks knowledge or information sufficient to form a belief as to the truth of
 24 these assertions as characterized, and on that basis denies each and every one of the allegations
 25 made in this Paragraph.

26 38. Defendant denies each and every allegation in the first sentence of this Paragraph.
 27 Defendant admits that its 2012 CDG entitled Intensive Outpatient Program for Substance Abuse
 28 Disorders ("IOP-SAD") was replaced by its 2013 and 2014 CDGs for Substance Use Disorders.

1 Defendant admits that the definition of “Intensive Outpatient Treatment Program” alleged in the
 2 third and fourth sentences of this Paragraph appears in IOP-SAD. Defendant denies that the
 3 definition of IOP alleged in the fifth sentence of this Paragraph appears in its 2013 and 2014
 4 CDGs for Substance Abuse Disorders. Defendant admits that the quote cited in the sixth sentence
 5 of this Paragraph appears in its 2014 CDG for Substance Use Disorders, but denies that it appears
 6 in its 2013 CDG for Substance Use Disorders. Defendant states that the totality of these
 7 documents speak for themselves and denies Plaintiffs’ characterization of the documents.
 8 Defendant denies each and every one of the remaining allegations in this Paragraph.

9 39. Defendant admits that Plaintiffs accurately quote portions of Defendant’s CDG IOP-
 10 SAD, and Defendant states that the totality of the document speaks for itself. Defendant denies
 11 Plaintiffs’ characterization of the document. Plaintiffs purport to reference and quote portions of
 12 third party APA’s *Practice Guideline for the Treatment of Patients with Substance Use*
 13 *Disorders*, in this Paragraph, without any reference to the date, page or section of the document
 14 sufficient to identify the source. Defendant lacks knowledge or information sufficient to form a
 15 belief as to the truth of these assertions as characterized, and on that basis denies each and every
 16 one of the remaining allegations in this Paragraph.

17 40. Defendant admits that Plaintiffs purport to quote certain “generally accepted
 18 standards of care” without citations sufficient to identify the source of these alleged standards.
 19 The sources speak for themselves. Defendant lacks knowledge or information sufficient to form a
 20 belief as to the truth of these assertions as characterized, and on that basis denies each and every
 21 one of the allegations made regarding these sources or the use of these sources in the CDGs.
 22 Defendant admits that Plaintiffs accurately quote and reference portions of Defendant’s 2014 CDG
 23 for Treatment of Substance Use Disorders, and Defendant states that the totality of the document
 24 speaks for itself. Defendant denies Plaintiffs’ characterization of the document. Defendant denies
 25 each and every remaining allegation in this Paragraph.

26 41. Defendant admits that Plaintiffs accurately quote portions of Defendant’s CDG IOP-
 27 SAD. The totality of the document speaks for itself, and Defendant denies Plaintiffs’
 28 characterization of the document. Defendant admits that Plaintiffs purport to reference Defendants’

2013 and 2014 CDGs for Treatment of Substance Use Disorders. The totality of these documents speak for themselves and Defendant denies Plaintiffs' characterization of these documents. Defendant admits that Plaintiffs purport to reference and quote portions of a third party ASAM document, without any reference to the date, page or section of the document sufficient to identify the source. The document speaks for itself. 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 allegation regarding the third party document. Defendant denies that the ASAM document, on its own and separate and apart from any other standard, sets the standard of care for substance abuse treatment. Defendant denies each and every one of the remaining allegations in this Paragraph.

UBH's Guidelines Related to Borderline Personality Disorder

42. Defendant admits that Plaintiffs purport to reference and quote portions of third party APA's *Practice Guideline for the Treatment of Patients with Substance Use Disorders*, without any reference to the date, page or section of the document sufficient to identify the source. The document speaks for itself. Defendant lacks knowledge or information sufficient to form a belief as to the truth of these assertions as characterized, and on that basis denies each and every one of the allegations made in this Paragraph. Defendant denies each and every one of the remaining allegations in this Paragraph.

43. Defendant denies that the documents referenced in this Paragraph constitute the generally accepted standards of care for the treatment of Borderline Personality Disorder ("BPD"). Defendant admits that Plaintiffs purport to reference and quote alleged third party sources, without any reference to the date, page or section of the documents sufficient to identify the sources. The documents speak for themselves. Defendant lacks knowledge or information sufficient to form a belief as to the truth of these assertions as characterized, and on that basis denies each and every one of the allegations made in this Paragraph concerning them. Defendant denies that its *Guideline Evidence Base for Coverage Determination Guidelines* fails to list generally accepted standards of care for any of the service categories for the treatment of BPD. Defendant denies each and every one of the remaining allegations in this Paragraph.

44. Defendant admits that many of its CDGs discuss co-occurring conditions. Defendant admits that portions of the material cited in the second sentence of this Paragraph appear in its CDGs for Personality Disorders, but denies that this sentence accurately quotes its CDGs. Defendant further states that its CDG documents speak for themselves and denies Plaintiffs' characterization of these documents. Defendant denies each and every one of the remaining allegations in this Paragraph.

45. Defendant admits that Plaintiffs purport to reference and quote alleged third party sources, without any reference to the date, page or section of the documents sufficient to identify the sources. The documents speak for themselves. Defendant lacks knowledge or information sufficient to form a belief as to the truth of these assertions as characterized, and on that basis denies each and every one of the allegations made in this Paragraph concerning them. Defendant denies each and every one of the remaining allegations in this Paragraph.

Summary of Ways in Which UBH's Guidelines Allegedly Violate Generally Accepted Standards of Care

46. Defendant denies each and every allegation set forth in this Paragraph.

47. Defendant admits that Plaintiffs purport to reference and quote portions of a document of a third party, ASAM, in this Paragraph, without any reference to the date, page or section of the document. The document speaks for itself. Defendant lacks knowledge or information sufficient to form a belief as to the truth of these assertions as characterized, and on that basis denies each and every one of the allegations made in this Paragraph regarding this source. Defendant denies each and every one of the remaining allegations in this Paragraph.

UBH'S ALLEGED BREACH OF FIDUCIARY DUTY AND IMPROPER DENIAL OF ALEXANDER'S CLAIMS

48. 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.

49. Defendant admits that Gary Alexander was a participant in a non-grandfathered group health plan sponsored by Granite Construction (the “Alexander Plan, as defined above) and

1 that the Alexander Plan is governed by ERISA. Defendant admits that Jordan Alexander was
 2 listed as a beneficiary under the Alexander Plan. Defendant admits that it first issued the policy
 3 for the plan effective November 1, 1997, that it renewed the policy annually, and that it reissued
 4 the policy effective January 1, 2013. Defendant admits that the Alexander Plan was a non-
 5 grandfathered group plan. With respect to the remaining allegations set forth in this Paragraph,
 6 Defendant lacks knowledge or information sufficient to form a belief as to the truth of the
 7 remaining allegations as characterized, and on that basis denies each and every one of the
 8 remaining allegations made in this Paragraph.

9 50. Defendant admits that Plaintiffs accurately quote portions of the Alexander Plan,
 10 effective January 1, 2013. The totality of the document speaks for itself and Defendant denies
 11 Plaintiffs' characterization of it. Defendant admits that, with limited exceptions, UHIC delegates
 12 its discretion to UBH for purposes of mental health-related claims administration. Defendant
 13 denies each and every one of the remaining allegations in this Paragraph.

14 51. Defendant admits that Plaintiffs accurately quote portions of the Alexander Plan,
 15 and Defendant states that the totality of the document speaks for itself.

16 52. Defendant admits that the Alexander Plan includes benefits for in and out-of-
 17 network, in- and outpatient treatment of mental illness, including substance abuse, subject to the
 18 terms and conditions of the plan. Defendant admits that Plaintiffs purport to quote portions of the
 19 Alexander Plan, but denies that Plaintiffs accurately quote the original source. The document
 20 speaks for itself, and Defendant denies Plaintiffs' characterization of it. Defendant denies each
 21 and every one of the remaining allegations in this Paragraph.

22 53. Defendant admits that the Alexander Plan provides for two levels of internal
 23 appeals. This Paragraph contains legal argument and conclusion regarding administrative
 24 exhaustion of remedies which does not require a response. To the extent a response may be
 25 required, Defendant denies each and every one of the remaining allegations set forth in this
 26 Paragraph.

27 54. Defendant admits that Plaintiffs accurately quote portions of the Alexander Plan,
 28 and Defendant states that the totality of the document speaks for itself.

1 55. Defendant admits that Plaintiffs purport to quote portions of the Alexander Plan,
2 but denies that these quotes accurately reflect the original source. Defendant states that the
3 document speaks for itself, and Defendant denies Plaintiffs' characterization of the document.
4 Defendant denies each and every one of the remaining allegations in this Paragraph.

5 56. Defendant admits that on April 9, 2012, Becky Alexander contacted UBH
6 regarding her son Jordan. Defendant denies that it provided treatment advice to Becky
7 Alexander. Defendant lacks knowledge or information sufficient to form a belief as to the truth
8 of the assertions relating to Jordan's condition or diagnoses and on that basis denies these
9 allegations. Defendant denies each and every one of the remaining allegations in this Paragraph.

10 57. Defendant admits that in April 2012, UBH employee Traci Babcock received a
11 call from a person who identified himself as affiliated with the University of Utah
12 Neuropsychiatric Institute, and that this person inquired about and was provided with information
13 regarding seeking authorization for coverage for different levels of service for Jordan Alexander.
14 Defendant denies each and every one of the remaining allegations in this Paragraph.

15 58. UBH admits that in June 2012 it received a call from a person who identified
16 himself as affiliated with Salt Lake Behavioral Health and who asked UBH to pre-certify
17 coverage of intensive outpatient treatment coverage for Jordan. UBH admits that, after
18 conducting a coverage review, it denied this request, but denies Plaintiffs' characterization of this
19 denial. Defendant denies each and every one of the remaining allegations in this Paragraph.

20 59. Defendant admits that in this Paragraph, Plaintiffs accurately cite portions of its
21 written records. Defendant states that its records speak for themselves. Defendant denies each
22 and every one of the remaining allegations in this Paragraph.

23 60. Defendant admits that on July 15, 2013, it received a request to authorize coverage
24 for inpatient services for Jordan at Salt Lake Behavioral Health. Defendant admits that it was told
25 that Jordan had been diagnosed with Bipolar I Disorder and Obsessive-Compulsive Disorder and
26 that Jordan was reported as not being compliant with psychiatric medication and to have been
27 involved in aggression a week prior with his sister's boyfriend. Defendant admits that Plaintiffs
28 purport to cite a portion of Plaintiff Alexander's medical records, but without a citation to the

1 title, date or page sufficient to identify the cited section. The records speak for themselves.
2 Defendant lacks information or knowledge sufficient to form a belief as to the allegations
3 regarding these records and on that basis denies each and every allegation regarding them.
4 Defendant denies each and every one of the remaining allegations in this Paragraph.

5 61. Defendant admits that it denied coverage for inpatient treatment on July 17, 2013
6 and for residential treatment on July 26, 2013, but denies that it denied Plaintiff Alexander's
7 admission to any facility. Defendant lacks knowledge and information sufficient to form an
8 opinion as to the truth of the remaining allegations in this Paragraph and on that basis denies each
9 and every remaining allegation in this Paragraph.

10 62. Defendant admits that on August 8, 2013, Becky Alexander called UBH and spoke
11 to UBH case manager Claudine Allen. Defendant admits that Plaintiffs accurately quote portions
12 of written records of Defendant. Defendant states that the documents speak for themselves and
13 denies Plaintiffs' characterization of these documents. Defendant denies each and every one of
14 the remaining allegations in this Paragraph.

15 63. Defendant admits that Plaintiffs purport to cite sections from a letter by Ralph W.
16 Knapp, M.D. Defendant states that the document speaks for itself and denies Plaintiffs'
17 characterization of it. Defendant lacks knowledge and information sufficient to form a belief as
18 to the allegations in this Paragraph and on that basis denies each and every allegation in this
19 Paragraph.

20 64. Defendant admits that it was contacted by Life Line on August 23, 2013 regarding
21 coverage for residential treatment for Jordan. Defendant admits that it conducted a review and
22 determined that the coverage criteria for residential treatment did not exist, but that coverage
23 existed for intensive outpatient treatment (IOP). Defendant lacks knowledge or information
24 sufficient to form a belief as to the truth of the remaining allegations in this Paragraph as
25 characterized, and on that basis denies each and every remaining allegation in this Paragraph.

26 65. Defendant denies the allegation made in first sentence of this Paragraph that it
27 conducted a preauthorization review on September 3, 2013. Defendant admits that in the
28 following sentences of this Paragraph, Plaintiffs purport to quote portions of Defendant's records.

1 Defendant denies that Plaintiffs quote these portions accurately. The records speak for
 2 themselves and Defendant denies Plaintiffs' characterization of the records. Defendant denies
 3 each and every one of the remaining allegations in this Paragraph.

4 66. Defendant admits Plaintiff accurately quote a portion of Defendant's records.
 5 Defendant states that the totality of the documents speak for themselves and denies Plaintiffs'
 6 characterization of them.

7 67. Defendant lacks information or knowledge sufficient to form a belief as to the
 8 allegations in the first two sentences of this Paragraph, and on that basis, denies each and every
 9 allegation therein. Defendant admits that in this Paragraph, Plaintiffs accurately quote portions of
 10 Defendant's written records and a letter sent by Defendant on September 16, 2013. The totality
 11 of these documents speak for themselves and Defendant denies Plaintiffs' characterization of
 12 these documents. Defendant denies each and every one of the remaining allegations in this
 13 Paragraph.

14 68. Defendant denies each and every allegation in this Paragraph. Furthermore,
 15 Defendant states that the documents referred to in this Paragraph speak for themselves and
 16 Defendant denies Plaintiffs' characterization of the documents.

17 69. Defendant admits that Plaintiffs purport to quote portions of Defendant's records,
 18 but denies that Plaintiffs accurately quote these records. The documents speak for themselves and
 19 Defendant denies Plaintiffs' characterization of the documents. Defendant denies each and every
 20 one of the remaining allegations in this Paragraph.

21 70. Defendant admits that Plaintiffs accurately quote portions of a letter by Dr. Webb
 22 dated September 16, 2013. Defendant states that the document speaks for itself and denies
 23 Plaintiffs' characterization of the document. Defendant denies each and every one of the
 24 remaining allegations in this Paragraph.

25 71. Defendant denies each and every allegation in this Paragraph. Defendant states
 26 that the documents referred to in this Paragraph speak for themselves and denies Plaintiffs'
 27 characterization of the documents.

28 72. This Paragraph contains legal argument and conclusion regarding exhaustion of

1 internal remedies, which do not require a response. To the extent a response may be required,
 2 Defendant denies each and every one of the allegations in this Paragraph.

3 73. Defendant lacks knowledge or information sufficient to form a belief as to the
 4 truth of the assertions in this Paragraph and on that basis denies each and every allegation therein.

5 74. Defendant admits that Plaintiff Gary Alexander purports to bring this suit on
 6 behalf of Jordan Alexander. Defendant lacks knowledge or information sufficient to form a belief
 7 as to the truth of the remaining assertions in this Paragraph, and on that basis denies each and
 8 every one of the remaining allegations in this Paragraph.

9 **UBH'S ALLEGED BREACH OF FIDUCIARY DUTY AND ALLEGED**
 10 **IMPROPER DENIAL OF KLEIN'S CLAIMS**

11 75. Defendant lacks knowledge or information sufficient to form a belief as to the
 12 truth of the assertions in this Paragraph and on that basis denies each and every allegation therein.

13 76. Defendant admits that Plaintiff Klein is a participant in the Legal Aid Society
 14 Group Health Plan (the "Klein Plan"). Defendant admits that the Klein Plan is a non-
 15 grandfathered group plan that is insured through a healthcare policy issued by Oxford Health
 16 Plans, Inc. in New York with an effective date of January 1, 2013 and that it is subject to ERISA.
 17 Defendant lacks knowledge and information sufficient to form a belief as to the truth of the
 18 remaining assertions in this Paragraph and on that basis denies each and every one of the
 19 remaining allegations.

20 77. Defendant admits that Plaintiffs accurately quote portions of written records of
 21 Defendant. Defendant states that the documents speak for themselves and denies Plaintiff's
 22 characterization of them.

23 78. Defendant admits that the first sentence in this Paragraph accurately quotes a
 24 portion of the Klein Plan. Defendant states that the document speaks for itself and denies
 25 Plaintiffs' characterization of it. Defendant is unable to locate the quote alleged in the second
 26 sentence in this Paragraph, and on that basis denies each and every allegation regarding it.

27 79. Defendant admits that Plaintiffs accurately quote portions of the Klein Plan.
 28 Defendant states that the document speaks for itself and denies Plaintiffs' characterization of it.

1 Defendant admits that Oxford has delegated responsibility for adjudicating certain mental health
2 and substance abuse claims to UBH. Defendant denies each and every one of the remaining
3 allegations in this Paragraph.

4 80. Defendant admits that Plaintiffs accurately quote from portions of documents of
5 Defendant. Defendant states that the document speaks for itself and denies Plaintiffs'
6 characterization of the document.

7 81. Defendant admits the allegation in this Paragraph that the Klein Plan includes
8 coverage for in and out of network, in and outpatient treatment for "mental, nervous or emotional
9 disorders or ailments" and "substance use disorders," subject, to the terms, conditions, and
10 exclusions on coverage in the Klein Plan. Defendant admits that the Klein Plan identifies bipolar
11 disorder as a "Biologically Based Mental Illness." Defendant admits that the Klein Plan includes
12 the term "good medical practice." Defendant states that the documents speak for themselves and
13 denies Plaintiffs' characterization of the documents. Defendant denies each and every one of the
14 remaining allegations in this Paragraph.

15 82. Defendant admits that Plaintiffs accurately quote portions of the Klein Plan.
16 Defendant states that the documents speak for themselves and denies Plaintiffs' characterization
17 of the documents.

18 83. Defendant admits that the Klein Plan provides for two internal appeals. This
19 Paragraph contains legal argument and conclusion regarding exhaustion of administrative
20 remedies, which do not require a response. To the extent a response may be required, Defendant
21 denies each and every one of the allegations relating to exhaustion set forth in this Paragraph.

22 84. Defendant lacks knowledge or information sufficient to form a belief as to the
23 truth of the assertions as characterized in this Paragraph and on that basis denies each and every
24 one of the allegations therein.

25 85. Defendant admits that on August 12, 2014, it identified Plaintiff Klein's case for
26 review and that on August 27, 2014, Dr. Moldauer had a call with Dr. Leffert. Defendant admits
27 that Plaintiffs accurately refer to or quote portions of written records of Defendant. Defendant
28 states that the documents speak for themselves, and denies Plaintiffs characterization of them.

1 Defendant denies each and every one of the remaining allegations in this Paragraph.

2 86. Defendant admits that Dr. Moldauer would not conduct a peer review with the
3 member present. Defendant admits that Plaintiffs accurately quote portions of the referenced
4 letter. Defendant states that the document speaks for itself and denies Plaintiffs' characterization
5 of the document. Defendant denies each and every one of the remaining allegations in this
6 Paragraph.

7 87. Defendant lacks knowledge or information sufficient to form a belief as to the
8 truth of the assertions as characterized in this Paragraph and on that basis denies each and every
9 allegation in this Paragraph.

10 88. Defendant admits that Plaintiffs accurately quote portions of the referenced letter.
11 Defendant states that the documents speak for themselves and denies Plaintiffs' characterization
12 of the documents. Defendant denies each and every one of the remaining allegations in this
13 Paragraph.

14 89. Defendant lacks knowledge or information sufficient to form a belief as to the
15 truth of the assertions as characterized in this Paragraph and on that basis denies each and every
16 allegation in this Paragraph.

17 90. Defendant lacks knowledge or information sufficient to form a belief as to the
18 truth of the assertions as characterized in this Paragraph and on that basis denies each and every
19 allegation therein. This Paragraph contains legal argument and conclusion regarding exhaustion
20 of administrative remedies, which do not require a response. To the extent a response may be
21 required, Defendant denies each and every one of the allegations relating to exhaustion set forth
22 in this Paragraph.

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

24 92. Defendant lacks knowledge or information sufficient to form a belief as to the
25 truth of the assertions in this Paragraph and on that basis denies each and every allegation in this
26 Paragraph.

27 **UBH'S ALLEGED BREACH OF FIDUCIARY DUTY AND ALLEGED**
28 **IMPROPER DENIAL OF HAFFNER'S CLAIMS**

1 93. Defendant lacks knowledge or information sufficient to form a belief as to the
2 truth of the assertions in this Paragraph and on that basis denies each and every allegation therein.

3 94. Defendant admits that Plaintiff Haffner is a participant in the Science Systems and
4 Applications, Inc. Health and Medical Plan (“Haffner Plan” as defined above). Defendant admits
5 that the Haffner Plan is a non-grandfathered group plan that is insured by UHIC under a policy
6 issued in Maryland with an effective date of January 1, 2011. Defendant admits that the Haffner
7 Plan is subject to ERISA. Defendant lacks knowledge and information sufficient to form a belief
8 as to the truth of the remaining assertions in this Paragraph and on that basis denies each and
9 every remaining allegation in this Paragraph.

10 95. Defendant admits that Plaintiffs accurately quote portions of the Haffner Plan that
11 was effective January 1, 2011. Defendant states that the documents speak for themselves, and
12 denies Plaintiffs’ characterization of the documents. Defendant admits that UHIC has delegated
13 its discretion for mental health and substance abuse claims administration to UBH. Defendant
14 denies each and every one of the remaining allegations in this Paragraph.

15 96. Defendant admits that Plaintiffs accurately quote portions of the Haffner Plan, and
16 Defendant states that the document speaks for itself.

17 97. Defendant admits that Plaintiffs accurately quote a portion of the Haffner Plan.
18 Defendant states that the document speaks for itself and denies Plaintiffs’ characterization of it.

19 98. Defendant admits that Plaintiffs accurately quote a portion of the Haffner Plan.
20 Defendant states that the document speaks for itself and denies Plaintiffs’ characterization of it.
21 Defendant denies each and every one of the remaining allegations in this Paragraph.

22 99. Defendant admits that Plaintiffs purport to quote portions of the Haffner Plan but
23 denies that the portions are quoted accurately. Defendant states that the document speaks for
24 itself and denies Plaintiffs’ characterization of the document. Defendant denies each and every
25 one of the remaining allegations in this Paragraph.

26 100. Defendant admits that the Haffner Plan includes coverage for in and out of
27 network, in and outpatient treatment for mental health services subject to the terms, conditions,
28 and exclusions on coverage in the Haffner Plan. Defendant admits that Plaintiffs purport to quote

1 portions of the Haffner Plan, but denies that the portions are quoted accurately. Defendant states
2 that the document speaks for itself and denies Plaintiffs' characterization of the document.

3 Defendant denies each and every one of the remaining allegations in this Paragraph

4 101. Defendant admits that Plaintiffs accurately quotes portions of the Haffner Plan,
5 and Defendant states that the document speaks for itself.

6 102. Defendant admits that the Haffner Plan provides for an Adverse Decision
7 Grievance Process. This Paragraph contains legal argument and conclusion regarding exhaustion
8 of internal remedies, which do not require a response. To the extent a response may be required,
9 Defendant denies each and every one of the allegations relating to exhaustion set forth in this
10 Paragraph. Defendant denies each and every one of the remaining allegations in this Paragraph.

11 103. Defendant lacks knowledge or information sufficient to form a belief as to the
12 truth of the allegations in this Paragraph and on that basis denies each and every allegation
13 therein.

14 104. Defendant admits that in 2011, claims were submitted on behalf of Plaintiff
15 Haffner for twice weekly psychotherapy visits with an out-of-network physician, Michael S.
16 Diamond, M.D. Defendant admits that it paid these claims during certain periods in 2011.
17 Defendant admits that in the second and third sentences of this Paragraph, Plaintiffs accurately
18 quote a portion of Defendant's written records and an August 29, 2011 letter from Defendant.
19 The documents speak for themselves and Defendant denies Plaintiffs' characterization of the
20 documents. Defendant denies each and every one of the remaining allegations in this Paragraph.

21 105. Defendant lacks knowledge or information sufficient to form a belief as to the
22 remaining allegations in this Paragraph, and on that basis denies the remaining allegations in this
23 Paragraph.

24 106. Defendant admits that in December 1, 2011, Cristiana Motet-Grigoras, a UBH
25 Associate Medical Director, performed a concurrent review. Defendant admits that Plaintiffs
26 accurately quote portions of written records of Defendant. Defendant states that the documents
27 speak for themselves and denies Plaintiffs' characterization of the documents.

28 107. Defendant lacks knowledge or information sufficient to form a belief as to the

1 truth of the assertions in this Paragraph and on that basis denies each and every one of the
2 allegations in this Paragraph.

3 108. Defendant admits that on December 5, 2011, Dr. Motet-Grigoras issued an adverse
4 benefit determination letter for prospective claims dated December 1, 2011 forward. Defendant
5 admits that Plaintiffs accurately quote portions of written records of Defendant. Defendant states
6 that the documents speak for themselves and denies Plaintiffs' characterization of the documents.
7 Defendant denies each and every one of the remaining allegations in this Paragraph.

8 109. Defendant denies the allegation that Dr. Motet-Grigoras recognized "that
9 borderline personality disorder was 'probably the focus of the intensive psychotherapy.'" Defendant
10 admits that it made reimbursements to Dr. Walder at \$150 per session. Defendant
11 denies each and every one of the remaining allegations in this Paragraph.

12 110. Defendant admits that Dr. Motet-Grigoras's December 5, 2011 letter did not
13 identify the CDGs upon which she relied. Defendant admits that in this Paragraph, Plaintiffs
14 accurately quote portions of written records of Defendant. Defendant states that the documents
15 speak for themselves and denies Plaintiffs' characterization of them. Defendant denies each and
16 every one of the remaining allegations in this Paragraph.

17 111. Defendant admits that its *Level of Care Guidelines Utilization Base* refers to
18 LOCUS. Defendant states that its *Level of Care Guidelines Utilization Base* speaks for itself and
19 denies Plaintiffs' characterization of this document. Defendant denies that LOCUS provides the
20 sole standards that relate to level of care determinations and that Dr. Haffner was required to
21 follow LOCUS standards. Defendant admits that in the second sentence of this Paragraph,
22 Plaintiffs purport to reference and quote portions of documents from LOCUS without any
23 reference to the date, page or section of the document sufficient to identify the source. The
24 documents speak for themselves. Defendant lacks knowledge or information sufficient to form a
25 belief as to the truth of the allegations regarding these sources, and on that basis denies each and
26 every allegation regarding them. Defendant denies each and every one of the remaining
27 allegations in this Paragraph.

28 112. Defendant admits that Plaintiffs purport to reference and quote portions of

documents of third party APA without any reference to the date, page or section of the document sufficient to identify the source. The document speaks for itself. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding this source, and on that basis denies each and every allegation regarding it. Defendant denies each and every one of the remaining allegations in this Paragraph.

113. Plaintiffs' allegations in this Paragraph include legal argument to which Defendant is not obligated to respond. To the extent that an answer is required, Defendant denies each and every allegation in this Paragraph. Defendant admits that Dr. Motet-Grigoras's December 5, 2011 determination was effective from December 1, 2011 forward. Defendant denies each and every one of the remaining allegations in this Paragraph.

114. Defendant admits that Plaintiffs accurately refer to or quote portions of written records of Defendant. Defendant states that the documents speak for themselves and denies Plaintiffs' characterization of them.

115. Defendant admits that in April 2012, Plaintiff Haffner appealed UBH's December 5, 2011 adverse benefit determination. Defendant admits that Plaintiffs accurately quote portions of Plaintiff Haffner's appeal letter, but states that the document speaks for itself. Defendant denies each and every one of the remaining allegations in this Paragraph.

116. Defendant lacks knowledge or information sufficient to form a belief as to the remaining allegations in this Paragraph, and on that basis denies the remaining allegations in this Paragraph.

117. Defendant admits that Defendant upheld the denial of outpatient treatment for Plaintiff Haffner in a letter dated May 17, 2012 by Dr. Andrew Martorana, M.D. Defendant admits that Plaintiffs accurately quote portions of the letter, and Defendant states that the document speaks for itself.

118. Defendant denies each and every allegation in this Paragraph. Furthermore, Defendant states that the documents speak for themselves and denies Plaintiffs' characterization of the documents.

119. Defendant lacks knowledge or information sufficient to form a belief as to the

1 truth of the allegations in this Paragraph regarding Dr. Walder's recommendations and on that
 2 basis denies each and every allegation regarding them. Defendant denies each and every one of
 3 the remaining allegations in this Paragraph.

4 120. Defendant admits that Plaintiffs accurately cites portions of a May 17, 2012 letter
 5 from Andrew Martorana, M.D. Defendant states that the totality of the document speaks for itself
 6 and denies Plaintiffs' characterization of the document. This Paragraph contains legal arguments
 7 regarding Plaintiff Haffner's exhaustion of remedies to which no response is required. To the
 8 extent that a response is required, Defendant denies each and every such allegation. Defendant
 9 denies each and every remaining allegation in this Paragraph.

10 121. Defendant admits that after December 1, 2011, Plaintiff Haffner submitted bills for
 11 services by Dr. Diamond. Defendant lacks knowledge or information sufficient to form a belief
 12 as to the truth of the remaining allegations in this Paragraph and on that basis denies each and
 13 every allegation therein.

14 **CLASS ACTION ALLEGATIONS**

15 122. Defendant incorporates by reference the preceding Paragraphs as though such
 16 Paragraphs were fully stated herein.

17 123. Defendant admits that its serves as the claims administrator for mental health and
 18 substance abuse claims for other health insurance plans, including those in which the Plaintiffs
 19 are members or beneficiaries. Defendant admits that some health insurance plans for which it is
 20 the claims administrator include similar provisions regarding coverage for outpatient (and
 21 intensive outpatient) treatment as the provisions in the Alexander, Klein, and Haffner Plans.
 22 Defendant denies each and every one of the remaining allegations in this Paragraph.

23 124. Defendant admits that Plaintiffs purport to bring their claims on behalf of the class
 24 stated and Defendant denies that Plaintiffs are entitled to class certification under FRCP 23. The
 25 remaining allegations set forth in this Paragraph contain legal argument and conclusion, which do
 26 not require a response. To the extent a response may be required, Defendant denies each and
 27 every one of the remaining allegations set forth in this Paragraph.

28 125. Defendant admits that it knows the members for whom it administers claims for

1 mental health and substance abuse benefits, and it knows who they are insured by, what types of
 2 claims they have filed, and how those claims were adjudicated. Defendant denies each and every
 3 one of the remaining allegations set forth in this Paragraph.

4 126. Defendant admits that with respect to the class definition set forth by Plaintiffs,
 5 joinder of the putative class members is impracticable.

6 127. The allegations set forth in this Paragraph contain legal argument and conclusion,
 7 which do not require a response. To the extent a response may be required, Defendant denies each
 8 and every one of the allegations set forth in this Paragraph.

9 128. Defendant denies each and every allegation set forth in this Paragraph.

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

13 130. Defendant denies each and every allegation set forth in this Paragraph.

14 131. Defendant denies each and every allegation set forth in this Paragraph.

15 **COUNT I**

16 132. Defendant incorporates by reference the preceding Paragraphs as though such
 17 Paragraphs were fully stated herein.

18 133. Defendant admits that Plaintiffs purport to bring Count I pursuant to 29 U.S.C. §
 19 1132(a)(1)(B). Defendant denies that Plaintiffs state a cognizable claim under 29 U.S.C. §
 20 1132(a)(1)(B) in Count I.

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

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

27 136. Defendant denies each and every allegation set forth in this Paragraph.

28 137. Defendant denies each and every allegation set forth in this Paragraph.

138. Defendant admits that Plaintiffs purport to seek the relief identified in their Complaint. Defendant denies that Plaintiffs are entitled to such relief.

COUNT II

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

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

141. Defendant denies each and every allegation set forth in this Paragraph.

142. Defendant denies each and every allegation set forth in this Paragraph.

143. Defendant admits that Plaintiffs purport to seek the relief identified in their Complaint. Defendant denies that Plaintiffs are entitled to such relief.

COUNT III

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

145. Defendant admits that Plaintiffs purport to bring Count III pursuant to 29 U.S.C. § 1132(a)(3)(A) only to the extent that the Court finds that 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 Plaintiffs state a cognizable claim under 29 U.S.C. § 1132(a)(3)(A) in Count III.

146. Defendant denies each and every allegation set forth in this Paragraph.

147. 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

148. Defendant incorporates by reference the preceding Paragraphs as though such Paragraphs were fully stated herein. Defendant denies each and every allegation in this Paragraph to the same and extent and for the same reasons that it denied the allegations in the preceding Paragraphs.

149. Defendant admits that Plaintiffs purport to bring Count IV pursuant to 29 U.S.C. § 1132(a)(3)(B). Defendant denies that Plaintiffs state a cognizable claim under 29 U.S.C. § 1132(a)(3)(B) in Count IV.

150. Defendant denies each and every allegation set forth in this Paragraph.

151. Defendant denies each and every allegation set forth in this Paragraph.

152. 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, Defendant denies that Plaintiffs are entitled to any of the relief sought in this action.

AFFIRMATIVE DEFENSES

Without admitting any facts alleged by Plaintiffs, 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]

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

SECOND AFFIRMATIVE DEFENSE

[No Damage or Injury]

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

THIRD AFFIRMATIVE DEFENSE

[Exhaustion of Administrative Remedies]

Plaintiffs' claims are barred in whole or in part to the extent Plaintiffs, 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]

Plaintiffs' prayer for injunctive relief is barred because Plaintiffs, 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]

Plaintiffs' claims are barred in whole or in part because Plaintiffs do 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]

Plaintiffs' prayer for injunctive relief under 29 U.S.C. § 1132(a)(3)(A) and (B) is barred because Plaintiffs, 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]

Plaintiffs' 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]

Plaintiffs' claims are barred in whole or in part to the extent Plaintiffs, 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]**

Plaintiffs' 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 each of the Plaintiffs and the putative class.

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

Plaintiffs' 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 Plaintiffs' 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]**

Plaintiffs' 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 Plaintiffs, 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,

1 in that event, Defendant cannot be sued as a fiduciary under ERISA under the circumstances.

2 **FIFTEENTH AFFIRMATIVE DEFENSE**

3 **[Indispensable Parties]**

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

5 **SIXTEENTH AFFIRMATIVE DEFENSE**

6 **[Conditions Precedent/Subsequent]**

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

10 **SEVENTEENTH AFFIRMATIVE DEFENSE**

11 **[No Class Action]**

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

16 **EIGHTEENTH AFFIRMATIVE DEFENSE**

17 **[Good Faith]**

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

20 **NINETEENTH AFFIRMATIVE DEFENSE**

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

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

24 **TWENTIETH AFFIRMATIVE DEFENSE**

25 **[No Surcharge Remedy]**

26 Plaintiffs have failed to state facts sufficient to entitle them to surcharge relief in the form
27 Plaintiffs' seek on their own behalf or on behalf of the putative class.
28

TWENTY-FIRST AFFIRMATIVE DEFENSE**[Offset]**

Any recovery for surcharge allegedly due to Plaintiffs 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]**

Plaintiffs' 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]**

Plaintiffs' 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 Plaintiffs take nothing by reason of the complaint;

B. That Defendant be awarded its costs of suit incurred herein, including reasonable attorneys' fees as appropriate; and

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

/

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1 Dated: April 21, 2015

CROWELL & MORING LLP

2
3 /s/ Jennifer Romano

Jennifer Romano

4 Attorney for Defendant

5 UNITED BEHAVIORAL HEALTH (operating as
6 OPTUMHEALTH BEHAVIORAL SOLUTIONS)