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13
14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE DISTRICT OF ARIZONA**

16 **Spinedex Physical Therapy, U.S.A., Inc.,**
on behalf of itself as assignee of plan
17 participants, and on behalf of all other
18 similarly situated participants and
assignees,

19 **Plaintiff,**

20 vs.

21 **United Healthcare of Arizona, Inc.,** an
22 Arizona corporation; **Ingenix, Inc.,** a
23 Minnesota corporation; **UnitedHealth**
Group Inc., a Minnesota corporation; **5 &**
24 **Diner Franchise Corporation group**
health plan, an employee welfare benefit
25 plan assigned United Group No. 0311866;
26 **Abbott Laboratories group health plan,**
an employee welfare benefit plan assigned
27 United Group No. 0704077; **Acoustic**
Technologies, Inc. group health plan, an
28 employee welfare benefit plan assigned

No. CV 08-457-PHX-ROS

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR VIOLATIONS OF
THE EMPLOYEE RETIREMENT
INCOME SECURITY ACT OF 1974**

1 United Group No. 0296833; **Adobe**
2 **Drywall, Inc. group health plan**, an
3 employee welfare benefit plan assigned
4 United Group No. 0706107; **ADP**
5 **TotalSource, Inc. group health plan**, an
6 employee welfare benefit plan assigned
7 United Group No. 4R3510; **Affiliated**
8 **Cardiologists of Arizona, P.C. group**
9 **health plan**, an employee welfare benefit
10 plan assigned United Group No. 60623;
11 **America West Holdings Corporation**
12 **group health plan**, an employee welfare
13 benefit plan assigned United Group No.
14 0704267; **American Express Company**
15 **group health plan**, an employee welfare
16 benefit plan assigned United Group No.
17 0215825; **Art In Metal U.S.A. group**
18 **health plan**, an employee welfare benefit
19 plan assigned United Group No. 0298866;
20 **AT&T Corporation group health plan**,
21 an employee welfare benefit plan assigned
22 United Group No. 0717000; **Citigroup,**
23 **Inc. group health plan**, an employee
24 welfare benefit plan assigned United
25 Group No. 0725000; **Delta Air Lines, Inc.**
26 **group health plan**, an employee welfare
27 benefit plan assigned United Group No.
28 0226310; **Discount Tire Co., Inc. group**
health plan, an employee welfare benefit
plan assigned United Group No. 0702649;
Downtown Tempe Community, Inc.
group health plan, an employee welfare
benefit plan assigned United Group No.
83172; **E&K Premier Specialty**
Contractors group health plan, an
employee welfare benefit plan assigned
United Group No. 295426; **Faxwatch,**
Inc. group health plan, an employee
welfare benefit plan assigned United
Group No. 63545; **General Motors**
Corporation group health plan, an
employee welfare benefit plan assigned
United Group No. 0003200; **Genuine**
Parts Company group health plan, an

1 employee welfare benefit plan assigned
2 United Group No. 0184109; **GTM, Inc.**
3 **group health plan**, an employee welfare
4 benefit plan assigned United Group No.
5 0245221; **Hasbro, Inc. group health**
6 **plan**, an employee welfare benefit plan
7 assigned United Group No. 0188662;
8 **Home Depot U.S.A., Inc. group health**
9 **plan**, an employee welfare benefit plan
10 assigned United Group No. 0241714;
11 **Honeywell International Inc. group**
12 **health plan**, an employee welfare benefit
13 plan assigned United Group No. 0144600;
14 **International Business Machines**
15 **Corporation group health plan**, an
16 employee welfare benefit plan assigned
17 United Group No. 0401010; **Insight**
18 **Enterprises, Inc. group health plan**, an
19 employee welfare benefit plan assigned
20 United Group No. 0704208; **Iridium**
21 **Satellite, LLC group health plan**, an
22 employee welfare benefit plan assigned
23 United Group No. 0280498; **ITC**
24 **Manufacturing and Powder Coating**
25 **group health plan**, an employee welfare
26 benefit plan assigned United Group No.
27 0303821; **Lucent Technologies Inc.**
28 **group health plan**, an employee welfare
benefit plan; **The Martz Agency group**
health plan, an employee welfare benefit
plan assigned United Group No. 0704217;
MetLife Securities, Inc. group health
plan, an employee welfare benefit plan
assigned United Group No. 0193843;
OldCastle Glass, Inc. group health plan,
an employee welfare benefit plan assigned
United Group No. 0702842; **Pfizer, Inc.**
group health plan, an employee welfare
benefit plan assigned United Group No.
0183644; **The Procter & Gamble**
Company group health plan, an
employee welfare benefit plan assigned
United Group No. 0196819; **Qualex Inc.**
group health plan, an employee welfare

1 benefit plan assigned United Group No.
2 0213294; **Qwest Communications**
3 **International Inc. group health plan**, an
4 employee welfare benefit plan assigned
5 United Group No. Group No. 0197313;
6 **Qwest Communications International**
7 **Inc. group health plan**, an employee
8 welfare benefit plan assigned United
9 Group No. 0229050; **Revlon Consumer**
10 **Products Corporation group health**
11 **plan**, an employee welfare benefit plan
12 assigned United Group No. 0193160;
13 **Richard A. Bietz, D.D.S., P.C. group**
14 **health plan**, an employee welfare benefit
15 plan assigned United Group No. 83534;
16 **Shamrock Foods Company group**
17 **health plan**, an employee welfare benefit
18 plan assigned United Group No. 700560;
19 **Shasta Industries, Inc. group health**
20 **plan**, an employee welfare benefit plan
21 assigned United Group No. 22354;
22 **Southwest Airlines Company group**
23 **health plan**, an employee welfare benefit
24 plan assigned United Group No. 0199409;
25 **SUMCO USA Corporation group health**
26 **plan**, an employee welfare benefit plan
27 assigned United Group No. 0703691;
28 **Temcon Concrete Construction**
Company group health plan, an
employee welfare benefit plan assigned
United Group No. 0705175; **URS**
Corporation group health plan, an
employee welfare benefit plan assigned
United Group No. 122841; **Watson**
Williams Freight Agency, Inc. group
health plan, an employee welfare benefit
plan assigned United Group No. 0313749;
Wells Fargo & Company group health
plan, an employee welfare benefit plan
assigned United Group No. 0108000; and
Does 1-2, each an employee welfare
benefit plan,

Defendants.

1 Plaintiff Spinedex Physical Therapy, U.S.A., Inc. (“Spinedex”) alleges for its
2 First Amended Complaint (“Complaint”) as follows:

3 **I. INTRODUCTION**

4 1. Counts I-IV of this action are class claims brought under the Employee
5 Retirement Income Security Act of 1974, as amended (“ERISA”). The class claims
6 seek relief due to systematic ERISA violations committed by United Healthcare of
7 Arizona, Inc. (“United”), Ingenix, Inc. (“Ingenix”), and UnitedHealth Group Inc.
8 (“UHG”) (collectively, the “United Defendants”), that have caused, and continue to
9 cause, harm to the participants and/or beneficiaries of the 47 employee welfare benefit
10 plans described in paragraphs 10-56 (the “Named Plans”) and similarly situated
11 participants and/or beneficiaries and health care provider assignees of all other
12 employee welfare benefit plans subject to ERISA administered by any of the United
13 Defendants, including the subsidiaries and affiliates of UHG. Each of the Named
14 Plans and each of the other employee welfare benefit plans covering similarly situated
15 participants and/or beneficiaries is, and at all relevant times mentioned herein was, a
16 “group health plan” within the meaning of 29 C.F.R. § 2560.503-1(m)(6).

17 Collectively, the Named Plans and all other employee welfare benefit plans in which
18 similarly situated participants and/or beneficiaries, including those who have assigned
19 their claims to health care providers, are referred to herein as the “Plans.”

20 2. Plaintiff Spinedex is a physical therapy provider that has received an
21 assignment of the rights and benefits from 63 different participants and/or
22 beneficiaries (the “Named Participants”) of the various Named Plans. Collectively,
23 the Named Participants and all other similarly situated participants and/or
24 beneficiaries, including those who have assigned their claims to health care providers,
25 are referred to herein as the “Participants.”

26 3. Count V is an individual claim for penalties under ERISA § 502(c), 29
27 U.S.C. § 1132(c), due to United’s failure to comply with Plaintiff’s request on behalf
28 of certain Named Participants for documents required to be provided under ERISA.

1 **II. JURISDICTION AND VENUE**

2 4. Jurisdiction of the Court is based on ERISA, and in particular ERISA §
3 502(e)(1), 29 U.S.C. § 1132(e)(1) and § 502(f), 29 U.S.C. §1132(f). Those provisions
4 give the federal district courts jurisdiction to hear civil actions brought to recover
5 benefits due under the terms of an employee benefit plan and actions for fiduciary
6 breach without regard to the amount in controversy. In addition, this action may be
7 brought before this Court pursuant to 28 U.S.C. § 1331, which gives the federal district
8 courts jurisdiction over actions that arise under the laws of the United States.

9 5. Venue is proper under ERISA § 502(e)(2), 29 U.S.C. §1132(e)(2), in that
10 the breaches described below took place within the territorial limits of this District, the
11 Named Plans are administered within the territorial limits of this District, and/or a
12 Defendant resides or may be found within the territorial limits of this District.

13 **III. PARTIES**

14 6. Plaintiff Spinedex is, and at all relevant times mentioned herein was, an
15 Arizona corporation and is a proper party to this action pursuant to an assignment of
16 rights and benefits under the Named Plans executed by each of the Named
17 Participants. Each of the Named Participants was, and upon information and belief is,
18 a “participant” of one of the Named Plans, within the meaning of ERISA § 3(7), 29
19 U.S.C. §1002(7), and/or a “beneficiary” of one of the Named Plans within the meaning
20 of ERISA § 3(8), 29 U.S.C. § 1002(8).

21 7. Defendant United is, and at all relevant times mentioned herein was, an
22 Arizona corporation with its principal place of business in Phoenix, Arizona. United is
23 licensed to operate by the Arizona Department of Insurance and is in the business of
24 administering and underwriting group health insurance plans sponsored by employers.
25 United is a subsidiary, directly or indirectly, of UHG and an affiliate of Ingenix.
26 United made benefit determinations and processed claims submitted under the Named
27 Plans and other Plans administered in Arizona. United had discretionary authority
28 and/or discretionary responsibility in the administration of the Named Plans and other

1 Plans administered in Arizona. United exercised discretionary authority or
2 discretionary control respecting management of the Plans administered in Arizona
3 and/or exercised authority or control respecting management or disposition of such
4 Plans' assets. At all relevant times mentioned herein, United was a fiduciary within
5 the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), of the Named Plans and
6 the other Plans administered in Arizona. At all relevant times mentioned herein,
7 United acted as administrator for all of the Named Plans and other Plans administered
8 in Arizona and was also a party in interest within the meaning of ERISA § 3(14), 29
9 U.S.C. § 1002(14).

10 8. Defendant Ingenix is, and at all relevant times mentioned herein was, a
11 Minnesota corporation with its principal place of business in Minneapolis, Minnesota.
12 Ingenix is a subsidiary, directly or indirectly, of UHG and an affiliate of United. Upon
13 information and belief, Ingenix reviewed, made determinations, and/or issued policy
14 guidance with respect to claims for benefits submitted by Spinedex on behalf of some
15 or all of the Named Participants and did so with respect to some or all of the
16 Participants of the Plans. Upon information and belief, United and/or UHG or its
17 subsidiaries or affiliates delegated the authority to interpret provisions of the Plans
18 permitting reimbursement of only usual, customary, and reasonable charges to Ingenix
19 and issue policy guidance with respect to the same. Upon information and belief,
20 Ingenix had discretionary authority and/or discretionary responsibility in the
21 administration of the Plans. In addition, upon information and belief, Ingenix
22 exercised discretionary authority or discretionary control respecting management of
23 the Plans and/or exercised authority or control respecting management or disposition
24 of the Plans' assets. Upon information and belief, at all relevant times mentioned
25 herein, Ingenix was a fiduciary of the Plans within the meaning of ERISA § 3(21)(A),
26 29 U.S.C. § 1002(21)(A). At all relevant times mentioned herein, Ingenix was a party
27 in interest of the Plans within the meaning of ERISA § 3(14), 29 U.S.C. § 1002(14).

28 9. Defendant UHG is a Minnesota corporation with its principal place of

1 business in Minneapolis, Minnesota. UHG is a holding company that conducts its
2 activities through its subsidiaries and affiliates. UHG is, and at all relevant times
3 mentioned herein was, the parent company, directly or indirectly, of United and
4 Ingenix, and, upon information and belief, directly exercised control over the conduct
5 of other subsidiaries and affiliates that administer the Plans. UHG, or a division of
6 UHG, pays all benefit claims submitted under employee welfare benefits plans that
7 UHG and/or its subsidiaries or affiliates administer. Upon information and belief,
8 UHG had discretionary authority or discretionary responsibility in the administration
9 of the Plans and/or exercised discretionary authority or discretionary control respecting
10 management of the Plans, directly and by virtue of the control it exercised over its
11 subsidiaries or affiliates, including, but not limited to, United and Ingenix. In addition,
12 UHG exercised authority or control respecting management or disposition of the
13 Plans' assets. At all relevant times mentioned herein, UHG was a fiduciary of the
14 Plans within the meaning of ERISA §3(21), 29 U.S.C. §1002(21). At all relevant
15 times mentioned herein, UHG was also a party in interest of the Plans within the
16 meaning of ERISA § 3(14), 29 U.S.C. § 1002(14). In addition to being subject to
17 liability for the violations alleged herein by virtue of its status as a fiduciary and party
18 in interest under ERISA, UHG is liable for the violations of ERISA of its subsidiaries
19 and affiliates alleged herein because it exercised substantially total control over the
20 management and activities of its subsidiaries and affiliates and observance of the
21 corporate form would sanction a fraud and/or promote injustice. At all relevant times
22 mentioned herein, upon information and belief, Defendants United, Ingenix, and UHG,
23 and the other subsidiaries and affiliates of UHG that administered the Plans, each acted
24 as an agent of the other, and each was the alter ego of the other, such that UHG may
25 properly be held liable for the conduct of Ingenix, United, and the other subsidiaries
26 and affiliates of UHG as alleged herein.

27 10. Upon information and belief, Defendant 5 & Diner Franchise
28 Corporation group health plan ("5 & Diner Group Health Plan") is, and at all relevant

1 times mentioned herein was, an “employee welfare benefit plan” within the meaning
2 of ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
3 District. [REDACTED] was, and upon information and belief is, a participant
4 and/or beneficiary of the 5 & Diner Group Health Plan assigned United Group No.
5 0311866.

6 11. Upon information and belief, Defendant Abbott Laboratories group
7 health plan (“Abbott Laboratories Group Health Plan”) is, and at all relevant times
8 mentioned herein was, an “employee welfare benefit plan” within the meaning of
9 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
10 District. [REDACTED] was, and upon information and belief is, a participant and/or
11 beneficiary of the Abbott Laboratories Group Health Plan assigned United Group No.
12 0704077.

13 12. Upon information and belief, Defendant Acoustic Technologies, Inc.
14 group health plan (“Acoustic Technologies Group Health Plan”) is, and at all relevant
15 times mentioned herein was, an “employee welfare benefit plan” within the meaning
16 of ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
17 District. [REDACTED] was, and upon information and belief is, a participant and/or
18 beneficiary of the Acoustic Technologies Group Health Plan assigned United Group
19 No. 0296833.

20 13. Upon information and belief, Defendant Adobe Drywall, Inc. group
21 health plan (“Adobe Drywall Group Health Plan”) is, and at all relevant times
22 mentioned herein was, an “employee welfare benefit plan” within the meaning of
23 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
24 District. [REDACTED] was, and upon information and belief is, a participant and/or
25 beneficiary of the Adobe Drywall Group Health Plan assigned United Group No.
26 0706107.

27 14. Upon information and belief, Defendant ADP TotalSource, Inc. (“ADP
28 TotalSource Health Plan”) is, and at all relevant times mentioned herein was, an

1 “employee welfare benefit plan” within the meaning of ERISA § 3(1), 29 U.S.C. §
2 1002(1), administered within the territorial limits of this District. [REDACTED] was,
3 and upon information and belief is, a participant and/or beneficiary of the ADP
4 TotalSource Health Plan assigned United Group No. 4R3510.

5 15. Upon information and belief, Defendant Affiliated Cardiologists of
6 Arizona, P.C. group health plan (“Affiliated Cardiologists Group Health Plan”) is, and
7 at all relevant times mentioned herein was, an “employee welfare benefit plan” within
8 the meaning of ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial
9 limits of this District. [REDACTED] was, and upon information and belief is, a
10 participant and/or beneficiary of the Affiliated Cardiologists Group Health Plan
11 assigned United Group No. 60623.

12 16. Upon information and belief, Defendant America West Holdings
13 Corporation group health plan (“America West Group Health Plan”) is, and at all
14 relevant times mentioned herein was, an “employee welfare benefit plan” within the
15 meaning of ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial
16 limits of this District. [REDACTED] and [REDACTED] were, and upon information
17 and belief are, participants and/or beneficiaries of the America West Group Health
18 Plan assigned United Group No. 0704267.

19 17. Upon information and belief, Defendant American Express Company
20 group health plan (“American Express Group Health Plan”) is, and at all relevant times
21 mentioned herein was, an “employee welfare benefit plan” within the meaning of
22 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
23 District. [REDACTED] was, and upon information and belief is, a participant and/or
24 beneficiary of the American Express Group Health Plan assigned United Group No.
25 0215825.

26 18. Upon information and belief, Defendant Art In Metal U.S.A. group
27 health plan (“Art In Metal Group Health Plan”) is, and at all relevant times mentioned
28 herein was, an “employee welfare benefit plan” within the meaning of ERISA § 3(1),

1 29 U.S.C. § 1002(1), administered within the territorial limits of this District. [REDACTED]
2 [REDACTED] was, and upon information and belief is, a participant and/or beneficiary of the
3 Art In Metal Group Health Plan assigned United Group No. 0298866.

4 19. Upon information and belief, Defendant AT&T Corporation group
5 health plan (“AT&T Group Health Plan”) is, and at all relevant times mentioned herein
6 was, an “employee welfare benefit plan” within the meaning of ERISA § 3(1), 29
7 U.S.C. § 1002(1), administered within the territorial limits of this District. [REDACTED]
8 [REDACTED] was, and upon information and belief is, a participant and/or beneficiary of the
9 AT&T Group Health Plan assigned United Group No. 0717000.

10 20. Upon information and belief, Defendant Citigroup, Inc. group health
11 plan (“Citigroup Group Health Plan”) is, and at all relevant times mentioned herein
12 was, an “employee welfare benefit plan” within the meaning of ERISA § 3(1), 29
13 U.S.C. § 1002(1), administered within the territorial limits of this District. [REDACTED]
14 was, and upon information and belief is, a participant and/or beneficiary of the
15 Citigroup Group Health Plan assigned United Group No. 0725000.

16 21. Upon information and belief, Defendant Delta Air Lines, Inc. group
17 health plan (“Delta Air Lines Group Health Plan”) is, and at all relevant times
18 mentioned herein was, an “employee welfare benefit plan” within the meaning of
19 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
20 District. [REDACTED] and [REDACTED] were and, upon information and
21 belief are, participants and/or beneficiaries of the Delta Air Lines Group Health Plan,
22 assigned United Group No. 0226310.

23 22. Upon information and belief, Defendant Discount Tire Co., Inc. group
24 health plan (“Discount Tire Group Health Plan”) is, and at all relevant times
25 mentioned herein was, an “employee welfare benefit plan” within the meaning of
26 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
27 District. [REDACTED] and [REDACTED] were, and upon information and belief
28 are, participants and/or beneficiaries of the Discount Tire Group Health Plan assigned

1 United Group No. 0702649.

2 23. Upon information and belief, Defendant Downtown Tempe Community,
3 Inc. group health plan (“Downtown Tempe Community Group Health Plan”) is, and at
4 all relevant times mentioned herein was, an “employee welfare benefit plan” within
5 the meaning of ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial
6 limits of this District. [REDACTED] was, and upon information and belief is, a
7 participant and/or beneficiary of the Downtown Tempe Community Group Health Plan
8 assigned United Group No. 83172.

9 24. Upon information and belief, Defendant E&K Premier Specialty
10 Contractors group health plan (“E&K Group Health Plan”) is, and at all relevant times
11 mentioned herein was, an “employee welfare benefit plan” within the meaning of
12 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
13 District. [REDACTED] was, and upon information and belief is, a participant and/or
14 beneficiary of the E&K Group Health Plan assigned United Group No. 295426.

15 25. Upon information and belief, Defendant Faxwatch, Inc. group health
16 plan (“Faxwatch Group Health Plan”) is, and at all relevant times mentioned herein
17 was, an “employee welfare benefit plan” within the meaning of ERISA § 3(1), 29
18 U.S.C. § 1002(1), administered within the territorial limits of this District. [REDACTED]
19 [REDACTED] was, and upon information and belief is, a participant and/or beneficiary
20 of the Faxwatch Group Health Plan assigned United Group No. 63545.

21 26. Upon information and belief, Defendant General Motors Corporation
22 group health plan (“General Motors Group Health Plan”) is, and at all relevant times
23 mentioned herein was, an “employee welfare benefit plan” within the meaning of
24 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
25 District. [REDACTED] was, and upon information and belief is, a participant and/or
26 beneficiary of the General Motors Group Health Plan assigned United Group No.
27 0003200.

28 27. Upon information and belief, Defendant Genuine Parts Company group

1 health plan (“Genuine Parts Group Health Plan”) is, and at all relevant times
2 mentioned herein was, an “employee welfare benefit plan” within the meaning of
3 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
4 District. [REDACTED] was, and upon information and belief is, a participant
5 and/or beneficiary of the Genuine Parts Group Health Plan assigned United Group No.
6 0184109.

7 28. Upon information and belief, Defendant GTM, Inc. group health plan
8 (“GTM Group Health Plan”) is and, at all relevant times mentioned herein, was an
9 “employee welfare benefit plan” within the meaning of ERISA § 3(1), 29 U.S.C. §
10 1002(1), administered within the territorial limits of this District. [REDACTED] was,
11 and upon information and belief is, a participant and/or beneficiary of the GTM Group
12 Health Plan assigned United Group No. 0245221.

13 29. Upon information and belief, Defendant Hasbro, Inc. group health plan
14 (“Hasbro Group Health Plan”) is, and at all relevant times mentioned herein was, an
15 “employee welfare benefit plan” within the meaning of ERISA § 3(1), 29 U.S.C. §
16 1002(1), administered within the territorial limits of this District. [REDACTED]
17 was, and upon information and belief is, a participant and/or beneficiary of the Hasbro
18 Group Health Plan assigned United Group No. 0188662.

19 30. Upon information and belief, Defendant Home Depot U.S.A., Inc. group
20 health plan (“Home Depot Plan Group Health”) is, and at all relevant times mentioned
21 herein was, an “employee welfare benefit plan” within the meaning of ERISA § 3(1),
22 29 U.S.C. § 1002(1), administered within the territorial limits of this District.
23 [REDACTED] was, and upon information and belief is, a participant and/or
24 beneficiary of the Home Depot Group Health Plan assigned United Group No.
25 0241714.

26 31. Upon information and belief, Defendant Honeywell International Inc.
27 group health plan (“Honeywell Group Health Plan”) is, and at all relevant times
28 mentioned herein was, an “employee welfare benefit plan” within the meaning of

1 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
2 District. [REDACTED], [REDACTED] and [REDACTED] were, and, upon information
3 and belief are, participants and/or beneficiaries of the Honeywell Group Health Plan
4 assigned United Group No. 0144600.

5 32. Upon information and belief, Defendant International Business
6 Machines Corporation group health plan (“IBM Group Health Plan”) is, and at all
7 relevant times mentioned herein was, an “employee welfare benefit plan” within the
8 meaning of ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial
9 limits of this District. [REDACTED] and [REDACTED] were, and upon
10 information and belief are, participants and/or beneficiaries of the IBM Group Health
11 Plan assigned United Group No. 0401010.

12 33. Upon information and belief, Defendant Insight Enterprises, Inc. group
13 health plan (“Insight Group Health Plan”) is, and at all relevant times mentioned
14 herein was, an “employee welfare benefit plan” within the meaning of ERISA § 3(1),
15 29 U.S.C. § 1002(1), administered within the territorial limits of this District.
16 [REDACTED] was, and upon information and belief is, a participant and/or
17 beneficiary of the Insight Plan assigned United Group No. 0704208.

18 34. Upon information and belief, Defendant Iridium Satellite, LLC group
19 health plan (“Iridium Satellite Group Health Plan”) is, and at all relevant times
20 mentioned herein was, an “employee welfare benefit plan” within the meaning of
21 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
22 District. [REDACTED] was, and upon information and belief is, a participant and/or
23 beneficiary of the Iridium Satellite Group Health Plan assigned United Group No.
24 0280498.

25 35. Upon information and belief, Defendant ITC Manufacturing and Powder
26 Coating group health plan (“ITC Group Health Plan”) is, and at all relevant times
27 mentioned herein was, an “employee welfare benefit plan” within the meaning of
28 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this

1 District. [REDACTED] was, and upon information and belief is, a participant and/or
2 beneficiary of the ITC Group Health Plan assigned United Group No. 0303821.

3 36. Upon information and belief, Defendant Lucent Technologies Inc. group
4 health plan (“Lucent Technologies Group Health Plan”) is, and at all relevant times
5 mentioned herein was, an “employee welfare benefit plan” within the meaning of
6 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
7 District. [REDACTED] was, and upon information and belief is, a participant and/or
8 beneficiary of the Lucent Technologies Group Health Plan.

9 37. Upon information and belief, Defendant The Martz Agency group
10 health plan (“Martz Agency Group Health Plan”) is, and at all relevant times
11 mentioned herein was, an “employee welfare benefit plan” within the meaning of
12 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
13 District. [REDACTED] was, and upon information and belief is, a participant and/or
14 beneficiary of the Martz Agency Group Health Plan assigned United Group No.
15 0704217.

16 38. Upon information and belief, Defendant MetLife Securities, Inc. group
17 health plan (“MetLife Group Health Plan”) is, and at all relevant times mentioned
18 herein was, an “employee welfare benefit plan” within the meaning of ERISA § 3(1),
19 29 U.S.C. § 1002(1), administered within the territorial limits of this District. [REDACTED]
20 [REDACTED] was, and upon information and belief is, a participant and/or beneficiary of the
21 MetLife Group Health Plan assigned United Group No. 0193843.

22 39. Upon information and belief, Defendant OldCastle Glass, Inc. group
23 health plan (“OldCastle Glass Group Health Plan”) is, and at all relevant times
24 mentioned herein was, an “employee welfare benefit plan” within the meaning of
25 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
26 District. [REDACTED] and [REDACTED] were, and upon information and belief are,
27 participants and/or beneficiaries of the OldCastle Glass Group Health Plan assigned
28 United Group No. 0702842.

1 40. Upon information and belief, Defendant Pfizer, Inc. group health plan
2 (“Pfizer Group Health Plan”) is, and at all relevant times mentioned herein was, an
3 “employee welfare benefit plan” within the meaning of ERISA § 3(1), 29 U.S.C. §
4 1002(1), administered within the territorial limits of this District. [REDACTED]
5 was, and upon information and belief is, a participant and/or beneficiary of the Pfizer
6 Group Health Plan assigned United Group No. 0183644.

7 41. Upon information and belief, Defendant The Procter & Gamble
8 Company group health plan, (“Procter & Gamble Group Health Plan”) is, and at all
9 relevant times mentioned herein was, an “employee welfare benefit plan” within the
10 meaning of ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial
11 limits of this District. [REDACTED] and [REDACTED] were, and upon information and
12 belief are, participants and/or beneficiaries of the Procter & Gamble Group Health
13 Plan assigned United Group No. 0196819.

14 42. Upon information and belief, Defendant Qualex Inc. group health plan
15 (“Qualex Group Health Plan”) is, and at all relevant times mentioned herein was, an
16 “employee welfare benefit plan” within the meaning of ERISA § 3(1), 29 U.S.C. §
17 1002(1), administered within the territorial limits of this District. [REDACTED] was,
18 and upon information and belief is, a participant and/or beneficiary of the Qualex
19 Group Health Plan assigned United Group No. 0213294.

20 43. Upon information and belief, Defendant Qwest Communications
21 International Inc. group health plan (“Qwest Group Health Plan 0197313”) is, and at
22 all relevant times mentioned herein was, an “employee welfare benefit plan” within
23 the meaning of ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial
24 limits of this District. [REDACTED], [REDACTED], [REDACTED], [REDACTED]
25 [REDACTED], and [REDACTED] were, and upon information and belief are,
26 participants and/or beneficiaries of the Qwest Group Health Plan 0197313 assigned
27 United Group No. 0197313.

28 44. Upon information and belief, Defendant Qwest Communications

1 International Inc. group health plan (“Qwest Group Health Plan 0229050”) is, and at
2 all relevant times mentioned herein was, an “employee welfare benefit plan” within
3 the meaning of ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial
4 limits of this District. [REDACTED] was, and upon information and belief is, a
5 participant and/or beneficiary of the Qwest Group Health Plan 0229050 assigned
6 United Group No. 0229050.

7 45. Upon information and belief, Defendant Revlon Consumer Products
8 Corporation group health plan (“Revlon Group Health Plan”) is, and at all relevant
9 times mentioned herein was, an “employee welfare benefit plan” within the meaning
10 of ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
11 District. [REDACTED] was, and upon information and belief is, a participant and/or
12 beneficiary of the Revlon Group Health Plan assigned United Group No. 0193160.

13 46. Upon information and belief, Defendant Richard A. Bietz, D.D.S., P.C.
14 group health plan (“Richard Bietz Group Health Plan”) is, and at all relevant times
15 mentioned herein was, an “employee welfare benefit plan” within the meaning of
16 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
17 District. [REDACTED] was, and upon information and belief is, a participant and/or
18 beneficiary of the Richard Bietz Group Health Plan assigned United Group No. 83534.

19 47. Upon information and belief, Defendant Shamrock Foods Company
20 group health plan (“Shamrock Foods Group Health Plan”) is, and at all relevant times
21 mentioned herein was, an “employee welfare benefit plan” within the meaning of
22 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
23 District. [REDACTED] was, and upon information and belief is, a beneficiary of the
24 Shamrock Foods Group Health Plan assigned United Group No. 700560.

25 48. Upon information and belief, Defendant Shasta Industries, Inc. group
26 health plan (“Shasta Industries Group Health Plan”) is, and at all relevant times
27 mentioned herein was, an “employee welfare benefit plan” within the meaning of
28 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this

1 District. [REDACTED] was, and upon information and belief is, a participant and/or
2 beneficiary of the Shasta Industries Group Health Plan assigned United Group No.
3 22354.

4 49. Upon information and belief, Defendant Southwest Airlines Company
5 group health plan (“Southwest Group Health Plan”) is, and at all relevant times
6 mentioned herein was, an “employee welfare benefit plan” within the meaning of
7 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
8 District. [REDACTED] and [REDACTED] were, and upon information and
9 belief are, participants and/or beneficiaries of the Southwest Group Health Plan
10 assigned United Group No. 0199409.

11 50. Upon information and belief, Defendant SUMCO USA Corporation
12 group health plan (“SUMCO Group Health Plan”) is, and at all relevant times
13 mentioned herein was, an “employee welfare benefit plan” within the meaning of
14 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
15 District. [REDACTED] was, and upon information and belief is, a participant and/or
16 beneficiary of the SUMCO Group Health Plan assigned United Group No. 0703691.

17 51. Upon information and belief, Defendant Temcon Concrete Construction
18 Company group health plan (“Temcon Concrete Group Health Plan”) is, and at all
19 relevant times mentioned herein was, an “employee welfare benefit plan” within the
20 meaning of ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial
21 limits of this District. [REDACTED] was and upon information and belief is, a
22 participant and/or beneficiary of the Temcon Concrete Group Health Plan assigned
23 United Group No. 0705175.

24 52. Upon information and belief, Defendant URS Corporation group health
25 plan (“URS Group Health Plan”) is, and at all relevant times mentioned herein was, an
26 “employee welfare benefit plan” within the meaning of ERISA § 3(1), 29 U.S.C. §
27 1002(1), administered within the territorial limits of this District. [REDACTED]
28 was, and upon information and belief is, a participant and/or beneficiary of the URS

1 Group Health Plan assigned United Group No. 122841.

2 53. Upon information and belief, Defendant Watson Williams Freight
3 Agency, Inc. group health plan (“Watson Williams Group Health Plan”) is, and at all
4 relevant times mentioned herein was, an “employee welfare benefit plan” within the
5 meaning of ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial
6 limits of this District. [REDACTED] was, and upon information and belief is, a
7 participant and/or beneficiary of the Watson Williams Group Health Plan assigned
8 United Group No. 0313749.

9 54. Upon information and belief, Defendant Wells Fargo & Company group
10 health plan (“Wells Fargo Group Health Plan”) is, and at all relevant times mentioned
11 herein was, an “employee welfare benefit plan” within the meaning of ERISA § 3(1),
12 29 U.S.C. § 1002(1), administered within the territorial limits of this District. [REDACTED]
13 [REDACTED], [REDACTED] and [REDACTED] were, and upon information and belief
14 are, participants and/or beneficiaries of the Wells Fargo Group Health Plan assigned
15 United Group No. 0108000.

16 55. Upon information and belief, DOE 1 is a group health plan under which
17 [REDACTED] was a participant and/or beneficiary. Plaintiff is unable to ascertain the
18 true name of the plan due to the unavailability of such information in Plaintiff’s
19 records. Upon information and belief, the group health plan under which [REDACTED]
20 is a participant and/or beneficiary is, and at all relevant times mentioned herein was, an
21 “employee welfare benefit plan” within the meaning of ERISA § 3(1), 29 U.S.C. §
22 1002(1), administered within the territorial limits of this District. When the true name
23 of DOE 1 is ascertained, Plaintiff will seek to amend this Complaint accordingly.

24 56. Upon information and belief, DOE 2 is a group health plan under which
25 [REDACTED] was a participant and/or beneficiary. Plaintiff is unable to ascertain
26 the true name of the plan due to the unavailability of such information in Plaintiff’s
27 records. Upon information and belief, the group health under which [REDACTED]
28 was a participant and/or beneficiary is, and at all relevant times mentioned herein was,

1 an “employee welfare benefit plan” within the meaning of ERISA § 3(1), 29 U.S.C. §
2 1002(1), administered within the territorial limits of this District. When the true name
3 of DOE 2 is ascertained, Plaintiff will seek to amend this Complaint accordingly.

4 57. Pursuant to ERISA § 502(d)(1), 29 U.S.C. § 1132(d)(1), an employee
5 benefit plan may be sued as an entity. The Named Plans are named as Defendants
6 herein pursuant to Fed. R. Civ. P. 19(a) solely to ensure that complete relief can be
7 granted. A copy of this Complaint will be served as required by ERISA § 502(h), 29
8 U.S.C. 1132(h), upon the Secretary of Labor and the Secretary of Treasury.

9 **IV. FACTUAL ALLEGATIONS**

10 58. Each of the Named Participants received treatment at Spinedex from a
11 licensed physical therapist.

12 59. Each of the Named Participants was referred to Spinedex by a licensed
13 physician.

14 60. On behalf of the Named Participants, Spinedex submitted claims for the
15 physical therapy received by the Named Participants to United.

16 61. Each of the Named Plans provides that physical therapy is a covered
17 benefit.

18 62. On behalf of the Named Participants, Spinedex submitted claims for
19 physical therapy using a device known as the Vertebral Axial Decompression Table
20 (“VAX-D Table”). Benefits for physical therapy using the VAX-D Table are not
21 subject to a general exclusion for experimental, investigational, or unproven treatments
22 under any of the Named Plans nor, upon information and belief, is there any specific
23 exclusion in any of the Named Plans for treatment using the VAX-D Table.

24 63. United failed to pay numerous claims for physical therapy benefits
25 covered under the Named Plans submitted by Spinedex on behalf of the Named
26 Participants, including, but not limited to, claims for physical therapy using the VAX-
27 D Table.

28

1 64. United paid some claims for physical therapy benefits submitted by
2 Spinedex on behalf of the Named Participants, but failed to pay other claims for the
3 same treatment.

4 65. During the time when the claims for physical therapy were submitted by
5 Spinedex on behalf of the Named Participants, the United Defendants treated
6 substantially similar claims of other Participants of the Named Plans, and substantially
7 similar claims of Participants of all of the Plans (which Plans contain language that is
8 the same or substantially similar to pertinent language of the Named Plans), in
9 manners that were and are inconsistent with United’s treatment of the physical therapy
10 claims submitted by Spinedex on behalf of the Participants.

11 66. Upon information and belief, the United Defendants continue to treat
12 claims for physical therapy submitted by participants of the Named Plans and other
13 Plans with the same or similar language as the Named Plans, inconsistently.

14 **A. Insufficient Notifications of Benefit Determinations By United and**
15 **Delay In Payments**

16 67. United’s routine practice was to issue an explanation of benefits
17 (“EOB”) in response to initial claims for benefits submitted by Spinedex on behalf of
18 the Named Participants. The EOBs contain only a remark code with a brief
19 description of the purported reason United failed to pay the claimed benefits.

20 68. When Spinedex appealed United’s failure to pay benefits on behalf of
21 the Named Participants, United routinely issued second EOBs in connection with the
22 same claims. The second EOBs likewise contained only a remark code with a brief
23 description of the purported reason United failed to pay the claimed benefits.

24 69. Where United or UHG provided a letter purporting to explain the failure
25 to pay claims for physical therapy benefits submitted by Spinedex on behalf of the
26 Named Participants, such letter reflected that United and/or UHG failed to
27 appropriately review the claims and information submitted by Spinedex on behalf of
28 the Named Participants.

1 70. For many benefit claims submitted on behalf of the Named Participants
2 that United ultimately paid, United nonetheless failed to timely process the claims for
3 physical therapy benefits submitted by Spinedex on behalf of the Named Participants
4 by issuing multiple EOBs and/or failing to respond to the claims in a timely fashion, or
5 at all.

6 71. Upon information and belief, United continues to follow the same
7 practices alleged in paragraphs 67-70 with respect to claims submitted under the
8 Named Plans. In addition, upon information and belief, UHG and its subsidiaries or
9 affiliates continue to follow the practice alleged in paragraphs 67-70 for all of the
10 Plans that cover physical therapy.

11 **B. Failure to Pay Claims for Physical Therapy Using the VAX-D Table**

12 72. The VAX-D Table is a medical device approved by the U.S. Food and
13 Drug Administration (“FDA”) that has been determined to be safe and effective,
14 pursuant to FDA Premarket Notification 510(k) K951622 (the “FDA 510(k)”), dated
15 June 11, 1996.

16 73. During the period when Spinedex submitted claims on behalf of the
17 Named Participants, the United Defendants maintained a policy relating to the VAX-D
18 Table (“United VAX-D Policy”) created by the Medical Technology Assessment
19 Committee (the “Committee”) of UHG or its subsidiaries or affiliates. The United
20 VAX-D Policy concludes that “Vertebral Axial Decompression” is not a covered
21 health service based on potential exclusions for experimental, investigational, or
22 unproven treatments that may be found in employee welfare benefit plans that United
23 administers. Upon information and belief, United applies the United VAX-D Policy to
24 all claims involving the VAX-D Table under the Plans regardless of the language of
25 any exclusion for experimental, investigational, or unproven treatments. The United
26 VAX-D Policy is improper and unlawful under ERISA as set forth herein, and
27 otherwise.

28 74. In formulating the United VAX-D Policy, the Committee failed to

1 consider the language of specific exclusions of the documents and instruments
2 governing any of the Plans.

3 75. The members of the Committee lacked medical expertise sufficient to
4 evaluate whether or not the VAX-D Table is a covered benefit under the Plans.

5 76. The Committee failed to consider Arizona state law or the laws of any
6 other states in formulating the United VAX-D Policy.

7 77. During the period in which the claims were submitted by Spinedex on
8 behalf of the Named Participants and prior to that period, the Committee failed to
9 consider all relevant information regarding treatment using the VAX-D Table.

10 78. There exists treatments with less peer reviewed medical literature
11 supporting their efficacy than exists for treatment using the VAX-D Table, to which
12 the United Defendants do not apply exclusions for experimental, investigational, or
13 unproven treatments that may appear in the Plans.

14 79. Upon information and belief, UHG or a subsidiary or affiliate, distributes
15 United VAX-D Policy to United and its other subsidiaries and affiliates to be applied
16 when United or another UHG subsidiary or affiliate processes claims in connection
17 with employee welfare benefit plans, including the Plans.

18 80. Upon information and belief, United continues to follow a policy that is
19 the same or similar to the United VAX-D Policy and to treat claims involving the
20 VAX-D Table submitted by health care professionals as alleged in paragraphs 72-79
21 with respect to claims submitted under the Plans.

22 **C. Failure to Pay Other Claims for Physical Therapy In Whole or In Part**

23 81. After determining that it would not pay for claims for physical therapy
24 using the VAX-D Table and other physical therapy benefits, United failed to pay other
25 physical therapy benefits that were clearly covered under the Named Plans and/or
26 delayed payment of such claims.

27 82. United used its improper determination that physical therapy using the
28 VAX-D Table was not covered under the Named Plans and/or its improper

1 determination that other claims for physical therapy were not covered as a pretext for
2 failing to pay or delaying payment of additional covered physical therapy claims
3 submitted by Spinedex on behalf of the Named Participants.

4 83. For numerous claims for physical therapy submitted by Spinedex on
5 behalf of the Named Participants, United failed to pay the full amount of such claims.
6 United indicated that such claims were subject to reimbursement for only the usual,
7 customary, and reasonable (“UCR”) charges for covered services by health care
8 providers in the area. However, United did not provide sufficient specificity regarding
9 the purported basis for its UCR reduction.

10 84. The amount reimbursed by United for the physical therapy services
11 provided by Spinedex after United applied its improper UCR calculation did not
12 reflect the actual UCR charges of physical therapy providers in the geographic region
13 for Spinedex.

14 85. Upon information and belief, United and/or UHG or its subsidiaries or
15 affiliates selected and delegated to Ingenix authority to provide a database (“Ingenix
16 Database”) to calculate the UCR charge and make determinations as to the amount that
17 would be reimbursed under the Plans to out-of-network service providers.

18 86. Upon information and belief, the Ingenix Database was and is flawed,
19 and therefore inappropriate for use in calculating the UCR charges for physical therapy
20 that were reimbursable under the Plans. Upon information and belief, the UCR
21 Database was and is flawed, *inter alia*, in the following respects: i) Ingenix failed to
22 audit the information that it utilized to create the Ingenix Database (including
23 information that was provided by its affiliates); ii) the Ingenix Database lacks provider
24 and patient specific information that may cause comparables to be unreliable; iii)
25 Ingenix arbitrarily and capriciously manipulated and deleted data that might have
26 produced a higher UCR rate; iv) the Ingenix Database contains information that is
27 outdated; and v) Ingenix uses inappropriate information to derive additional charges
28 that constitute the UCR rate for such charges.

1 87. Upon information and belief, the United Defendants continue to rely on
2 the Ingenix Database to reduce the amount of benefits that it pays under the Plans.

3 **D. United Failed to Provide Requested Information Regarding the Named**
4 **Plans and Benefits**

5 88. On behalf of the Named Participants, Spinedex requested documents that
6 would provide information about the Named Plans and benefits on multiple different
7 occasions. This information included a copy of the master policy, the plan document
8 and related amendments, and all other documents constituting the benefit plan and/or
9 insurance policy under which the Named Plans were maintained. In addition, on
10 behalf of the Named Participants, Spinedex requested copies of all documents, records,
11 and other information relevant to United's failure to pay claims for physical therapy,
12 including copies of internal rules, guidelines, or protocols that were relied upon in
13 making claims determinations.

14 89. In some, but not all, cases, United provided the summary plan
15 descriptions. However, United failed to provide other information, in response to the
16 requests made by Spinedex on behalf of the Named Participants.

17 **E. Routine Practice of United Defendants or Their Subsidiaries and Affiliates**
18 **to Improperly Process Benefit Claims**

19 90. Since 2006, multiple state insurance departments have concluded that
20 UHG and/or its subsidiaries or affiliates routinely engage in improper processing of
21 claims. In a press release dated March 10, 2006, the Arizona Department of Insurance
22 indicated that United "had violated state laws governing: (a) member appeals of denied
23 services and claims; (b) timely payments to providers; (c) provider grievances; and, (d)
24 record keeping and documentation requirements." In a press release dated January 29,
25 2008, the California Department of Insurance and the California Department of
26 Managed Health Care announced a joint action against PacifiCare, a company owned
27 by UHG. The alleged violations against PacifiCare include: "Wrongful denials of
28 covered claims[;] Incorrect payment of claims[;] Lost documents including certificates

1 of creditable coverage and medical records[;] Failure to timely acknowledge receipt of
2 claims[;] Multiple requests for documentation that was previously provided[;] Failure
3 to address all issues and respond timely to member appeals and provider disputes[;
4 and] Failure to manage provider network contracts and resolve provider disputes.”

5 91. In a press release dated February 13, 2008, the New York State Attorney
6 General indicated the following: “[A] six-month investigation found that Ingenix
7 operates a defective and manipulated database that most major health insurance
8 companies use to set reimbursement rates or out-of-network medical expenses.”
9 Further, the press release states that “two subsidiaries of [UHG]...dramatically under-
10 reimbursed their members for out-of-network medical expenses by using data provided
11 by Ingenix.”

12 **V. CLASS ALLEGATIONS**

13 92. Plaintiff brings Counts I-IV (“Class Claims”) on behalf of the Named
14 Participants who have assigned their rights and benefits to Plaintiff Spinedex, and all
15 other employee welfare benefit plan participants and/or beneficiaries similarly
16 situated, who are or were participants and/or beneficiaries of any one of the Plans
17 whose claims for physical therapy benefits were not paid, in whole or in part, by any
18 of the United Defendants, including all subsidiaries and affiliates of UHG, during the
19 six years prior to March 7, 2008 (the “Physical Therapy Class”). The Physical
20 Therapy Class includes all physical therapy providers who received assignments from
21 participants of employee welfare benefit plan participants whose claims were not paid,
22 in whole or in part, by any of the United Defendants, including the subsidiaries and
23 affiliates of UHG, six years prior to March 7, 2008. Excluded from the Physical
24 Therapy Class are any participants and/or beneficiaries whose plans specifically
25 exclude physical therapy as a covered benefit. Plaintiff also brings the Class Claims
26 on behalf of all employee benefit plan participants and health care provider assignees
27 of such participants whose claims for benefits involving the VAX-D Table under any
28 employee welfare benefit plan have been denied by any of the United Defendants,

1 including all subsidiaries and affiliates of UHG, during the six years prior to March 7,
2 2008 (the “VAX-D Class”). Excluded from the VAX-D Class are any participants
3 and/or beneficiaries whose plans contain a specific exclusion mentioning the VAX-D
4 Table or vertebral axial decompression by name. Collectively, the Physical Therapy
5 Class and the VAX-D Class are referred to herein as the “Classes.” This action is
6 properly maintainable as a class action pursuant to Fed. R. Civ. P. 23.

7 93. The Classes are so numerous that joinder of all members is
8 impracticable. Although Plaintiff is unaware of the precise number and identities of
9 the members of the Classes, the Physical Therapy Class members who have assigned
10 their rights and benefits to Plaintiff number 63, which upon information belief, is only
11 a very small sampling of the total Participants of the Plans who have had claims for
12 physical therapy denied by the United Defendants. Upon information and belief, the
13 VAX-D Class exceeds more than 1,000 members. The members of the Classes should
14 be ascertainable through the records of the United Defendants.

15 94. Questions of law and fact common to the Classes predominate over any
16 unique to individual Class members. The questions of law and fact common to the
17 Physical Therapy Class include, but are not limited to, the following:

- 18 a. Whether the use of EOBs issued in response to initial claims for
19 benefits in the form issued by the United Defendants, or any of
20 them, are sufficient to comply with 29 C.F.R. § 2560.503-1 (the
21 “Claims Regulation”) and other ERISA requirements;
- 22 b. Whether the United Defendants, or any of them, treated claims for
23 physical therapy benefits under the Plans consistently;
- 24 c. Whether the United Defendants, or any of them, systematically
25 violated the Claims Regulation and other ERISA requirements in
26 connection with the processing of physical therapy benefit claims
27 under the Plans in breach of their fiduciary duties under ERISA §
28 404(a), 29 U.S.C. § 1104(a);

- 1 d. Whether the United Defendants, or any of them, properly denied
- 2 benefits under the Plans due to the use of a particular device or
- 3 aid determined to be appropriate for physical therapy by a
- 4 licensed physical therapist;
- 5 e. Whether the United Defendants, or any of them, used improper
- 6 determinations that benefits are not covered benefits as a pretext
- 7 for failing to pay or delaying payment of other physical therapy
- 8 benefit claims in violation of ERISA;
- 9 f. Whether the delay in payment of benefits by the United
- 10 Defendants, or any of them, constituted a violation of ERISA;
- 11 g. Whether the Ingenix Database is flawed and lead to
- 12 improper calculations of the UCR rate for physical therapy
- 13 benefits covered under the Plans;
- 14 h. Whether the United Defendants, or any of them, violated ERISA
- 15 in connection with the selection of Ingenix to provide services
- 16 relating to the UCR rate for physical therapy permitted by the
- 17 Plans;
- 18 i. Whether the United Defendants, or any of them, breached their
- 19 fiduciary duties in connection with the services they provide to
- 20 the Plans when they failed to provide documents and instruments
- 21 governing the plans and copies of internal rules, guidelines, or
- 22 protocols relied upon in making claims determinations when such
- 23 documents were requested;
- 24 j. Whether it was the policy of UHG communicated to its
- 25 subsidiaries and/or affiliates to disregard and/or violate the
- 26 Claims Regulation and other ERISA requirements in order to
- 27 increase profits;
- 28

- 1 k. Whether the United Defendants, or any of them, continue to
- 2 engage in the conduct described in paragraphs 94.a. – j. above.
- 3 l. Whether the United Defendants, or any of them, should be
- 4 enjoined from serving as a fiduciary to the Plans or any employee
- 5 welfare benefit plan covered by ERISA due to violations of
- 6 ERISA as set forth herein; and
- 7 m. Whether any of the United Defendants are liable as a
- 8 knowing participant in a fiduciary breach pursuant to ERISA §
- 9 502(a)(3), 29 U.S.C. § 1132(a)(3).

10 95. The questions of law or fact common to the VAX-D Class include, but
11 are not limited to, the following:

- 12 a. Whether the use of EOBs issued in response to initial claims for
- 13 benefits involving the VAX-D Table in the form issued by the
- 14 United Defendants, or any of them, are sufficient to comply with
- 15 the Claims Regulation and other ERISA requirements;
- 16 b. Whether the United Defendants, or any of them, treated claims
- 17 involving the VAX-D Table under the Plans consistently;
- 18 c. Whether the United Defendants, or any of them, systematically
- 19 violated the Claims Regulation and other ERISA requirements in
- 20 connection with the processing of benefit claims relating to the
- 21 VAX-D Table under the Plans in breach of their fiduciary duties
- 22 under ERISA § 404(a), 29 U.S.C. § 1104(a);
- 23 d. Whether the United Defendants, or any of them, properly denied
- 24 benefits under the Plans due to the use of the VAX-D Table
- 25 which was determined to be appropriate for treatment by health
- 26 care professionals;
- 27 e. Whether the United Defendants, or any of them, used an improper
- 28 determination that treatment using the VAX-D Table is not a

- 1 covered benefit as a pretext for failing to pay or delaying payment
2 of other benefit claims in violation of ERISA;
- 3 f. Whether the United Defendants, or any of them, breached their
4 fiduciary duties in connection with the services they provide to
5 the Plans when they failed to provide documents and instruments
6 governing the plans and copies of internal rules, guidelines, or
7 protocols relied upon in making claims determinations relating to
8 the VAX-D Table when such documents were requested;
- 9 g. Whether it was the policy of UHG communicated to its
10 subsidiaries to disregard and/or violate the Claims Regulation and
11 other ERISA requirements in connection with VAX-D claims in
12 order to increase profits;
- 13 h. Whether the United Defendants, or any of them, continue to
14 engage in the conduct described in paragraphs 95.a. – g. above.
- 15 i. Whether the United Defendants, or any of them, should be
16 enjoined from serving as a fiduciary to the Plans or any employee
17 welfare benefit plan covered by ERISA due to violations of
18 ERISA as set forth herein; and
- 19 j. Whether any of the United Defendants are liable as a
20 knowing participant in a fiduciary breach pursuant to ERISA §
21 502(a)(3), 29 U.S.C. § 1132(a)(3).

22 96. Plaintiff's claims are typical of those of the Classes. Plaintiff, like other
23 members of the Physical Therapy Class, was harmed by the systematic violations of
24 the Claims Regulation and other ERISA violations alleged herein, the failure of the
25 United Defendants to pay physical therapy claims, and the United Defendants use of
26 the Ingenix Database to discount physical therapy benefit claims. Plaintiff, like other
27 members of the VAX-D Class, was harmed by the systematic violations of the Claims
28 Regulation and other ERISA violations relating to the VAX-D Table alleged herein

1 and the failure of the United Defendants to pay VAX-D claims. Further, the United
2 Defendants owed exactly the same duties under ERISA to each of the members of the
3 Classes as those members who have assigned their rights and benefits to Plaintiff.

4 97. Plaintiff will fairly and adequately protect the interests of the Classes.
5 Plaintiff has no interests antagonistic to or in conflict with those of the Classes.
6 Plaintiff has retained competent counsel with experience in ERISA, class actions, and
7 complex litigation.

8 98. Certification of the Class Claims is appropriate pursuant to Fed. R. Civ.
9 P. 23(b)(1) because the prosecution of separate actions by individual members of the
10 Classes would create a risk of inconsistent or varying adjudications which would
11 establish incompatible standards of conduct for the United Defendants, and/or because
12 adjudications with respect to individual members of the Classes would as a practical
13 matter be dispositive of the interests of the non-party members of the Classes or would
14 substantially impair or impede their ability to protect their interests.

15 99. Certification of the Class Claims is also appropriate pursuant to Fed. R.
16 Civ. P. 23(b)(2) because the United Defendants have acted or refused to act on
17 grounds generally applicable to the Classes, making final declaratory and injunctive
18 relief appropriate with respect to Plaintiffs and the Class as a whole. The Classes are
19 entitled to declaratory and injunctive relief to remedy the ERISA violations of the
20 United Defendants.

21 100. Certification of the Class Claims is further appropriate pursuant to Fed.
22 R. Civ. P. 23(b)(3) because questions of law and fact common to the Classes
23 predominate over any questions affecting only individual members of the Classes, and
24 a class action is superior to other available methods for fairly and efficiently
25 adjudicating the controversy. The harm suffered by the individual members of the
26 Classes is small compared to the expense and burden of individual prosecution of this
27 litigation. Class certification is superior because it obviates the need for unduly
28 duplicative litigation which may result in inconsistent judgments about the practices of

1 the United Defendants. Plaintiff knows of no difficulty that will be encountered in the
2 management of this litigation that would preclude its maintenance as a class action.

3 **VI. CLAIMS FOR RELIEF**

4 **COUNT I**

5 **(Breach of Fiduciary Duty In Violation of ERISA § 404, 29 U.S.C. § 1104)**

6 **(Against the United Defendants)**

7 101. Plaintiff incorporates by reference all previous paragraphs of this
8 Complaint as if set forth fully herein.

9 102. ERISA § 404(a)(1)(A), 29 U.S.C. § 1104 (a)(1)(A), requires fiduciaries
10 to discharge their duties solely in the interests of employee benefit plan participants
11 and beneficiaries and for the exclusive purpose of providing benefits and defraying
12 reasonable expenses of administering the plan.

13 103. ERISA § 404(a)(1)(B), 29 U.S.C. § 1104(a)(1)(B), requires fiduciaries
14 to discharge their duties with the care, skill, prudence, and diligence under the
15 circumstances then prevailing that a prudent man acting in a like capacity and familiar
16 with such matters would use in the conduct of an enterprise of a like character and
17 with like aims.

18 104. ERISA § 404(a)(1)(D), 29 U.S.C. § 1104(a)(1)(D), requires fiduciaries
19 to discharge their duties in accordance with the documents and instruments governing
20 the plan insofar as such documents and instruments are consistent with the provisions
21 of ERISA.

22 105. ERISA § 503, 29 U.S.C. § 1133, mandates a claims procedure that
23 requires every employee benefit plan, including employee welfare benefit plans, to
24 provide adequate notice in writing to participants whose claims for benefits have been
25 denied, setting forth the specific reasons for such denials in a manner calculated to be
26 understood by such participants. ERISA § 503, 29 U.S.C. § 1133, further requires that
27 a reasonable opportunity be afforded to any plan participant whose claims for benefits
28 has been denied for a full and fair review by the appropriate named fiduciary.

1 106. The Department of Labor has promulgated the Claims Regulation, 29
2 C.F.R. § 2560.503-1, which establishes minimum requirements for procedures
3 pertaining to claims for benefits made under employee benefit plans. In addition to
4 setting forth requirements applicable to all employee benefit plans, the Claims
5 Regulation sets forth specific requirements pertaining to group health plans.

6 107. The United Defendants have engaged in systematic violations of the
7 Claims Regulation in connection with their administration of the Plans, including,
8 *inter alia*, the following:

- 9 a. Administering claims procedures in a way that unduly inhibits
10 and/or hampers the initiation and processing of claims for
11 benefits, in violation of 29 C.F.R. § 2560.503-1(b)(3).
- 12 b. Administering claims procedures in a way that requires claimants
13 to file more than two appeals of an adverse benefit determination
14 in violation of 29 C.F.R. § 2560.503-1(c)(2).
- 15 c. Failing to respond to claims for benefits within 30 days after
16 receipt of the initial claim contrary to 29 C.F.R. § 2560.503-
17 1(f)(2)(iii)(B).
- 18 d. Failing to implement and apply administrative processes and
19 safeguards designed to ensure and to verify that claim
20 determinations are made in accordance with the plan documents
21 in violation of 29 C.F.R. § 2560.503-1(b)(5).
- 22 e. Failing to implement and apply administrative processes and
23 safeguards designed to ensure and to verify that plan provisions
24 have been applied consistently with respect to similarly situated
25 participants in violation of 29 C.F.R. § 2560.503-1(b)(5).
- 26 f. Failing to comply with the content of notification of benefit
27 determination in violation of 29 C.F.R. § 2560.503-1(g) by
28 initially sending only EOBs in connection with claims that are not

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paid. The EOBs do not indicate that they are a notice of extension pursuant to 29 C.F.R. § 2560.503-1(f)(2)(iii)(B), nor do they contain the necessary content to comply with 29 C.F.R. § 2560.503-1(f)(2)(iii)(B). The EOBs fail to provide, in a manner calculated to be understood by the claimant, any of the following:

- (i.) the specific reasons for the adverse determination;
- (ii.) reference to the specific plan provisions on which the determination is based;
- (iii.) a description of any additional information necessary for the claimant to perfect the claim and an explanation of why such material or information is necessary;
- (iv.) a description of the plan’s review procedures and time limits applicable to such procedures, including a statement of the claimant’s right to bring a civil action under ERISA § 502(a) following an adverse benefit determination upon review;
- (v.) when a specific rule, guideline, protocol, or other similar criterion (“Guideline”) was relied upon when making the adverse benefit determination, the Guideline or a statement that such Guideline will be provided free of charge to the claimant upon request; and
- (vi.) when the adverse benefit determination is based on a medical necessity or experimental treatment or similar exclusion or limit, either an explanation of the scientific or clinical judgment for the determination, applying the terms of the plan to the claimant’s medical circumstances, or a statement that such explanation will be provided free of charge.

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- g. Failing to provide a full and fair review of adverse benefit determinations in violation of 29 C.F.R. § 2560.503-1(h). The United Defendants systematically failed to:
 - (i.) provide copies of all documents, records, and other information relevant to benefit claims;
 - (ii.) provide for a review that takes into account all comments, documents, records, and other information submitted relating to the claim.
 - (iii.) provide a review that does not afford deference to the initial adverse benefit determination and that is conducted by an appropriate named fiduciary of the plan who is neither the individual who made the adverse benefit determination that is the subject of the appeal, nor a subordinate of such individual;
 - (iv.) consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment (and is not an individual who was consulted in connection with the adverse benefit determination that is the subject of the appeal nor the subordinate of any such individual) in deciding appeals of adverse benefit determinations based in whole or in part on a medical judgment, including, but not limited to, determinations with regard to whether a particular treatment is experimental, investigational, or not medically necessary or appropriate;
 - (v.) identify medical or vocational experts whose advice was obtained in connection with the adverse benefit

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determination, without regard to whether the advice was relied upon in making the benefit determination.

- h. Failing to provide notification of a benefit determination upon review within 60 days after receipt of an appeals for benefits and/or failing to provide a notification upon review at all contrary to 29 C.F.R. § 2560.503-1(i)(2)(iii).
- i. In instances where the United Defendants did provide a benefit determination upon review, in the form of an EOB or other written form, they failed to comply with the content or notification requirements of benefit determination on review in violation of 29 C.F.R. § 2560.503-1(j). The United Defendants systematically failed to provide:
 - (i.) the specific reason or reasons for the adverse determination (in the case of an EOB);
 - (ii.) reference to the specific plan provisions on which the benefit determination is based;
 - (iii.) a statement that the claimant is entitled to receive, upon request and free of charge, reasonable access to, and copies of, all documents, records, and other information relevant to the claimant's claim for benefits;
 - (iv.) a statement describing any voluntary appeal procedures offered by the plan and the claimant's right to obtain information about such procedures, and a statement of the claimant's rights to bring an action under ERISA § 502(a);
 - (v.) for adverse determinations where a Guideline was relied upon in making the adverse determination, the Guideline or a statement that the Guideline was relied upon and that a

1 copy of the Guideline will be provided free of charge to the
2 claimant upon request;

3 (vi.) for adverse determinations based on a medical necessity or
4 experimental treatment or similar exclusion or limit, either
5 an explanation of the scientific or clinical judgment for the
6 determination, applying the terms of the plan to the
7 claimant's medical circumstances, or a statement that such
8 explanation will be provided free of charge upon request;

9 (vii.) the following statement: "You and your plan may have
10 other voluntary alternative dispute resolution options, such
11 as mediation. One way to find out what may be available
12 is to contact your local U.S. Department of Labor Office
13 and your State insurance regulatory agency."

14 108. The United Defendants' systematic violations of the Claims Regulation
15 set forth in paragraph 107 above constituted breaches of ERISA § 404(a)(1)(A), (B),
16 and (D), 29 U.S.C. §1104(a)(1)(A),(B), and (D).

17 109. Upon information and belief, the United Defendants failed to develop
18 and preserve complete administrative records relating to the claims submitted by
19 Spinedex on behalf of the Named Participants in violation of ERISA §§ 404(a)(1)(A),
20 (B), and (D), 29 U.S.C. §§ 1104(a)(1)(A),(B), and (D), and also routinely failed to do
21 so in connection with other claims submitted under the Plans.

22 110. Fiduciaries responsible for making benefit claims determinations, such
23 as Defendant United, have a duty to obtain all necessary information to make a claims
24 decision consistent with its fiduciary duties. The United Defendants' failure to pay
25 physical therapy claims involving the VAX-D Table under the Plans also violated
26 ERISA §§ 404(a)(1)(A), (B), and (D), 29 U.S.C. §§ 1104(a)(1)(A),(B), and (D),
27 because they failed, and continue to fail, to obtain, review, and appropriately consider,
28 all necessary information in relying on the United VAX-D Policy when processing

1 claims under the Plans.

2 111. Upon information and belief, the United Defendants engage in a routine
3 practice of using improper determinations that benefits are not covered under the Plans
4 as a pretext to fail to pay or delay the payments of other benefits that are covered in
5 violation of ERISA §§ 404(a)(1)(A), (B), and (D), 29 U.S.C. §§ 1104(a)(1)(A),(B),
6 and (D).

7 112. Upon information and belief, Defendant UHG and its subsidiaries and
8 affiliates, including, but not limited to Defendant United, failed to investigate whether
9 or not it was appropriate to select their subsidiary/affiliate to provide the Ingenix
10 Database and/or make actual determinations of the UCR rate for physical therapy
11 under the Plans, in violation of ERISA §§ 404(a)(1)(A) and (B), 29 U.S.C. §§
12 1104(a)(1)(A) and (B). Upon information and belief, Defendant UHG, and its
13 subsidiaries and affiliates, including, but not limited to Defendant United, selected
14 their own subsidiary/affiliate to provide the Ingenix Database and/or make actual
15 determinations of the UCR rate under the plans to unlawfully decrease the amount of
16 benefits that they would pay and to increase UHG's profits in violation of ERISA §§
17 404(a)(1)(A) and (B).

18 113. As administrators of the Plans, United and the other subsidiaries and
19 affiliates of Defendant UHG have a duty under ERISA § 404(a)(1)(A), 29 U.S.C. §
20 1104(a)(1)(A), to provide information about employee benefit plans and benefits upon
21 request. Defendant United violated ERISA § 404(a)(1)(A), 29 U.S.C. §
22 1104(a)(1)(A), by failing to provide the documents set forth in paragraph 88 when
23 Spinedex requested such documents on behalf of Named Participants. Upon
24 information and belief, Defendant United and the other subsidiaries and affiliates of
25 UHG routinely fail to provide documents requested by Participants of the Plans, or on
26 behalf of participants of the Plans, in breach of ERISA § 404(a)(1)(A), 29 U.S.C. §
27 1104(a)(1)(A).

28 114. Upon information and belief, it was, and is, the policy of the United

1 Defendants to engage in the violations alleged in this Count in order to unlawfully
2 increase their profits at the expense of Plaintiff and the Classes, in breach of ERISA
3 §404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A).

4 115. The United Defendants are liable as co-fiduciaries with respect to the
5 fiduciary violations of the other fiduciaries of the Plans under ERISA § 405, 29 U.S.C.
6 § 1105.

7 116. As a result of the violations of ERISA §§ 404, 29 U.S.C. § 1104, and §
8 405, 29 U.S.C. § 1105, Plaintiff, the Classes, and the Plans have been harmed.

9 **COUNT II**

10 **(Prohibited Transactions and Self-Dealing Violations of ERISA § 406(a) and (b))**

11 **(Against the United Defendants)**

12 117. Plaintiff incorporates by reference all previous paragraphs of this
13 Complaint as if set forth fully herein.

14 118. ERISA § 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B), prohibits a fiduciary
15 from causing an employee benefit plan to engage in a transaction if the fiduciary
16 knows, or should know, that such transaction constitutes a direct or indirect lending of
17 money or other extension of credit between the plan and a party in interest.

18 119. ERISA § 406(a)(1)(D), 29 U.S.C. § 1106(a)(1)(D), prohibits a fiduciary
19 from causing an employee benefit plan to engage in a transaction if the fiduciary
20 knows, or should know, that such transaction constitutes a direct or indirect transfer to,
21 or use by or for the benefit of, a party in interest of any assets of a plan.

22 120. ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1), prohibits a fiduciary from
23 dealing with the assets of an employee benefit plan for its own interest or own
24 account.

25 121. ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2), prohibits a fiduciary, in its
26 individual or any other capacity, from acting in any transaction involving an employee
27 benefit plan on behalf of a party (or to represent a party) whose interests are adverse to
28 the interest of the plan or the interests of its participants or beneficiaries.

1 122. ERISA § 406(b)(3), 29 U.S.C. § 1106(b)(3), prohibits fiduciaries from
2 receiving any consideration for their own personal account from any party dealing
3 with an employee benefit plan in connection with a transaction involving the assets of
4 the plan.

5 123. By delaying payments for covered benefits under the Plans and retaining
6 the use of funds that were payable as reimbursements for covered health services, the
7 United Defendants violated ERISA § 406(a)(1)(B), 29 U.S.C. § 1106(a)(1)(B). In
8 addition, by continuing to retain the use of funds that were payable as reimbursements
9 for covered health services, the United Defendants violate § 406(a)(1)(B), 29 U.S.C. §
10 1106(a)(1)(B)

11 124. Monies payable as reimbursement for covered health care benefits under
12 an employee welfare benefit plan become plan assets within a reasonable time after the
13 responsible fiduciary knew, or should have known, that the benefit was covered after
14 submission of a claim. By delaying payments to Participants of plan assets and
15 retaining the use of plan assets that were payable as reimbursements for covered health
16 services, the United Defendants violated ERISA § 406(a)(1)(D), 29 U.S.C. §
17 1106(a)(1)(D), and ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1). In addition, by
18 continuing to retain plan assets that were payable as reimbursements for covered
19 health services, the United Defendants violate ERISA § 406(a)(1)(D), 29 U.S.C. §
20 1106(a)(1)(D), and ERISA § 406(b)(1), 29 U.S.C. § 1106(b)(1).

21 125. By selecting Ingenix (a subsidiary of UHG and affiliate of United) to
22 provide the Ingenix Database and/or make actual determinations of the UCR rates
23 under the Plans, for the purpose of increasing their profits at the expense of Plaintiff,
24 the Classes ,and the Plans, Defendants UHG and United violated ERISA § 406(b)(2),
25 29 U.S.C. § 1106(b)(2).

26 126. By selecting its own affiliate to provide the flawed Ingenix Database
27 and/or make actual determinations of the UCR rate under the Plans, in order to
28 increase its profits from plan assets (*i.e.*, the amount by which the correct UCR rate

1 was reduced), Defendant United violated ERISA § 406(b)(2), 29 U.S.C. § 1106(b)(2).
2 By causing United and its other subsidiaries and affiliates to select Ingenix to provide
3 the flawed Ingenix Database and/or make actual determinations of the UCR rate under
4 the Plans, in order to increase its profits from plan assets (*i.e.*, the amount by which the
5 correct UCR rate was reduced), Defendant UHG also violated ERISA § 406(b)(2), 29
6 U.S.C. § 1106(b)(2).

7 127. The United Defendants are liable as co-fiduciaries with respect to the
8 violations of the other fiduciaries of the Plans under ERISA § 405, 29 U.S.C. § 1105.

9 128. As a result of the violations of ERISA §§ 406, 29 U.S.C. § 110, and §
10 405, 29 U.S.C. § 1105, Plaintiff, the Class, and the Plans have been harmed.

11 **COUNT III**

12 **(Knowing Participant Liability Pursuant to ERISA § 502(a)(3))**

13 **(Against the United Defendants)**

14 129. Plaintiff incorporates by reference all previous paragraphs of this
15 Complaint as if set forth fully herein.

16 130. Because they participated in conduct which they knew, or should have
17 known, constituted ERISA violations by fiduciaries as alleged in Counts I-II, the
18 United Defendants are subject to injunctive and/or other appropriate equitable relief
19 pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3).

20 **COUNT IV**

21 **(Relief Under ERISA § 502(a)(1)(B))**

22 **(Against the United Defendants and the Plans)**

23 131. Plaintiff incorporates by reference all previous paragraphs of this
24 Complaint as if set forth fully herein.

25 132. The physical therapy claims submitted by Plaintiff on behalf of the
26 Named Participants, including physical therapy using the VAX-D Table, are covered
27 benefits under the terms of the Named Plans that the United Defendants have failed to
28 pay. Upon information and belief, the United Defendants continue to fail to pay such

1 benefits to all participants of the Plans. Pursuant to ERISA § 502(a)(1)(B), 29 U.S.C.
2 § 1132(a)(1)(B), Plaintiff and the Physical Therapy Class are entitled to recovery of
3 unpaid claims for physical therapy and for a clarification of rights to future benefits
4 under the terms of the Plans. Further, pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. §
5 1132(a)(1)(B), Plaintiff and the Classes are entitled to recovery of unpaid claims for
6 treatment using the VAX-D Table and for a clarification of rights to future benefits
7 under the terms of the Plans regarding treatment using the VAX-D Table.

8 133. The UCR rate for physical therapy under the Plans has been improperly
9 calculated due to the selection of Ingenix by Defendants UHG and United to provide
10 the flawed Ingenix Database and/or make actual determinations of the UCR rate under
11 the Plans. Upon information and belief, United continues to pay physical therapy
12 benefits based on the improper UCR rates for benefit claims to all Participants under
13 the Plans. Pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), Plaintiff
14 and the Physical Therapy Class are entitled to recovery of the difference between the
15 UCR rates that were improperly calculated for physical therapy and for a clarification
16 of rights to future benefits regarding the UCR rates for physical therapy.

17 134. Plaintiff has exhausted all administrative appeals process, and/or appeals
18 of the United Defendants' failure to pay benefits would be futile or are excused due to
19 the systematic violations of the United Defendants. In addition, pursuant to 29 C.F.R.
20 § 2560.503-1(l) exhaustion was excused due to the failure of the United Defendants to
21 establish and follow reasonable claims procedures, which occurred on an individual
22 and systematic basis.

23 **COUNT V**

24 **(Failure to Provide Information Required by ERISA § 104(b)(4) and ERISA §**
25 **404(a)(1)(A))**
26 **(Against United)**

27 135. Plaintiff incorporates by reference all previous paragraphs of this
28 Complaint as if set forth fully herein.

1 equitable relief, including but not limited to disgorgement of profits and ill-gotten
2 gains and restitution;

3 4. Declare that the VAX-D Table is a covered benefit under the Plans and
4 is not subject to any exclusion in the Plans for experimental, investigational, or
5 unproven treatments, pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B);

6 5. Declare that the United Defendants have improperly failed to pay claims
7 for physical therapy benefits, including but not limited to physical therapy using the
8 VAX-D Table, under the Plans and award benefits that should have been paid pursuant
9 to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B);

10 6. Award appropriate equitable relief including, but not limited to,
11 disgorgement of all profits and ill-gotten gains realized by the United Defendants as
12 result of delays in making payments for benefits under the Plans pursuant to ERISA §§
13 502(a)(3) or (a)(2), 29 U.S.C. §§ 1132(a)(3) or (a)(2);

14 7. Declare that the Ingenix Database is flawed and that the calculations of
15 the UCR rates with respect to physical therapy benefits under the Plans were and are
16 improper;

17 8. Award Plaintiff and the Physical Therapy Class the full amount of
18 benefits for physical therapy services that were improperly discounted as a result of
19 reliance on the Ingenix Database to calculate the UCR charge;

20 9. Enjoin the United Defendants from serving in any fiduciary capacity to
21 any of the Plans and all other ERISA welfare benefit plans and enjoin the United
22 Defendants from any further violations of ERISA, including, but not limited to
23 violations of the Claims Regulation;

24 10. Declare that any of the United Defendants who may have acted other
25 than in a fiduciary capacity, who nonetheless participated in conduct that they knew,
26 or should have known, constituted ERISA fiduciary violations as alleged herein, and
27 order them to restore any profits and ill-gotten gains;

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