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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 ERISA plan participants
and assignees; **Claude Aragon**, an
19 individual, on his behalf and on behalf of
20 all other similarly situated plan
participants and beneficiaries; **Jack**
21 **Adams**, an individual, on his behalf and
on behalf of all other similarly situated
22 plan participants and beneficiaries;
23 **Arizona Chiropractic Society**, an
Arizona non-profit association, on behalf
24 of its members, their patients, and all other
25 similarly situated health service providers,
assignees, and plan participants and
26 beneficiaries,

27 **Plaintiffs,**

28 **v.**

No. CV 08-457-PHX-ROS

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

1 **United Healthcare of Arizona, Inc.**, an
2 Arizona corporation; **United Healthcare,**
3 **Inc.**, a Delaware corporation; **United**
4 **HealthCare Insurance Company**, a
5 Connecticut corporation; **United**
6 **HelathCare Services, Inc.**, a Minnesota
7 corporation; **Ingenix, Inc.**, a Minnesota
8 corporation; **UnitedHealth Group Inc.**, a
9 Minnesota corporation; **5 & Diner**
10 **Franchise Corporation group health**
11 **plan**, an employee welfare benefit plan
12 assigned United Group No. 0311866;
13 **Abbott Laboratories group health plan**,
14 an employee welfare benefit plan assigned
15 United Group No. 0704077; **Acoustic**
16 **Technologies, Inc. group health plan**, an
17 employee welfare benefit plan assigned
18 United Group No. 0296833; **Adobe**
19 **Drywall, Inc. group health plan**, an
20 employee welfare benefit plan assigned
21 United Group No. 0706107; **ADP**
22 **TotalSource, Inc. group health plan**, an
23 employee welfare benefit plan assigned
24 United Group No. 4R3510; **Affiliated**
25 **Cardiologists of Arizona, P.C. group**
26 **health plan**, an employee welfare benefit
27 plan assigned United Group No. 60623;
28 **America West Holdings Corporation**
group health plan, an employee welfare
benefit plan assigned United Group No.
0704267; **American Express Company**
group health plan, an employee welfare
benefit plan assigned United Group No.
0215825; **Art In Metal U.S.A. group**
health plan, an employee welfare benefit
plan assigned United Group No. 0298866;
AT&T Corporation group health plan,
an employee welfare benefit plan assigned
United Group No. 0717000; **Citigroup,**
Inc. group health plan, an employee
welfare benefit plan assigned United
Group No. 0725000; **Delta Air Lines, Inc.**
group health plan, an employee welfare
benefit plan assigned United Group No.

1 0226310; **Discount Tire Co., Inc. group**
2 **health plan**, an employee welfare benefit
3 plan assigned United Group No. 0702649; **Downtown Tempe Community, Inc.**
4 **group health plan**, an employee welfare
5 benefit plan assigned United Group No.
6 83172; **Car-Graph, Inc. group health**
7 **plan**, an employee welfare benefit plan
8 assigned United Group No. 295426;
9 **Faxwatch, Inc. group health plan**, an
10 employee welfare benefit plan assigned
11 United Group No. 63545; **General**
12 **Motors Corporation group health plan**,
13 an employee welfare benefit plan assigned
14 United Group No. 0003200; **Genuine**
15 **Parts Company group health plan**, an
16 employee welfare benefit plan assigned
17 United Group No. 0184109; **Hasbro, Inc.**
18 **group health plan**, an employee welfare
19 benefit plan assigned United Group No.
20 0188662; **Home Depot U.S.A., Inc.**
21 **Medical and Dental Plan**, an employee
22 welfare benefit plan assigned United
23 Group No. 0241714; **Honeywell**
24 **International Inc. group health plan**, an
25 employee welfare benefit plan assigned
26 United Group No. 0144600; **International**
27 **Business Machines Corporation group**
28 **health plan**, an employee welfare benefit
plan assigned United Group No. 0401010;
Insight Enterprises, Inc. group health
plan, an employee welfare benefit plan
assigned United Group No. 0704208;
Iridium Satellite, LLC group health
plan, an employee welfare benefit plan
assigned United Group No. 0280498; **ITC**
Manufacturing and Powder Coating
group health plan, an employee welfare
benefit plan assigned United Group No.
0303821; **Lucent Technologies Inc.**
group health plan, an employee welfare
benefit plan; **The Martz Agency group**
health plan, an employee welfare benefit
plan assigned United Group No. 0704217;

1 **MetLife Securities, Inc. group health**
2 **plan**, an employee welfare benefit plan
3 assigned United Group No. 0193843;
4 **OldCastle Glass, Inc. group health plan**,
5 an employee welfare benefit plan assigned
6 United Group No. 0702842; **Pfizer, Inc.**
7 **group health plan**, an employee welfare
8 benefit plan assigned United Group No.
9 0183644; **The Procter & Gamble**
10 **Company group health plan**, an
11 employee welfare benefit plan assigned
12 United Group No. 0196819; **Qualex Inc.**
13 **group health plan**, an employee welfare
14 benefit plan assigned United Group No.
15 0213294; **Qwest Communications**
16 **International Inc. group health plan**, an
17 employee welfare benefit plan assigned
18 United Group No. Group No. 0197313;
19 **Qwest Communications International**
20 **Inc. group health plan**, an employee
21 welfare benefit plan assigned United
22 Group No. 0229050; **Revlon Consumer**
23 **Products Corporation group health**
24 **plan**, an employee welfare benefit plan
25 assigned United Group No. 0193160;
26 **Richard A. Bietz, D.D.S., P.C. group**
27 **health plan**, an employee welfare benefit
28 plan assigned United Group No. 83534;
Shamrock Foods Company group
health plan, an employee welfare benefit
plan assigned United Group No. 700560;
Shasta Industries, Inc. group health
plan, an employee welfare benefit plan
assigned United Group No. 22354;
Southwest Airlines Company group
health plan, an employee welfare benefit
plan assigned United Group No. 0199409;
SUMCO USA Corporation group health
plan, an employee welfare benefit plan
assigned United Group No. 0703691;
Temcon Concrete Construction
Company group health plan, an
employee welfare benefit plan assigned
United Group No. 0705175; **URS**

1 **Corporation group health plan**, an
2 employee welfare benefit plan assigned
3 United Group No. 122841; **Watson**
4 **Williams Freight Agency, Inc. group**
5 **health plan**, an employee welfare benefit
6 plan assigned United Group No. 0313749;
7 **Wells Fargo & Company group health**
8 **plan**, an employee welfare benefit plan
9 assigned United Group No. 0108000; and
10 **Pinnacle Engineering, Inc. group health**
11 **plan**, an employee welfare benefit plan
12 assigned United Group No. 321475,

13 **Defendants.**

14 Plaintiffs Spinedex Physical Therapy, U.S.A., Inc., Claude Aragon, Jack
15 Adams, and Arizona Chiropractic Society allege for their Second Amended Complaint
16 (“Complaint”) as follows:

17 **I. INTRODUCTION**

18 1. Counts I-IV of this action are class claims brought under the Employee
19 Retirement Income Security Act of 1974, as amended (“ERISA”). The class claims
20 seek relief due to systematic ERISA violations committed by United Healthcare of
21 Arizona, Inc. (“United”), UnitedHealthcare, Inc. (“UHC”), United HealthCare
22 Insurance Company (“UHCI”), United HealthCare Services, Inc. (“UHCS”), Ingenix,
23 Inc. (“Ingenix”), and UnitedHealth Group Inc. (“UHG”) (collectively, the “United
24 Defendants”), that have caused, and continue to cause, harm to the participants and/or
25 beneficiaries of the 45 employee welfare benefit plans described in paragraphs 16-60
26 (the “Named Plans”) and similarly situated participants and/or beneficiaries and health
27 care provider assignees of all other employee welfare benefit plans subject to ERISA
28 administered by any of the United Defendants, including the subsidiaries and affiliates
of UHG. Each of the Named Plans and each of the other employee welfare benefit
plans covering similarly situated participants and/or beneficiaries is, and at all relevant
times mentioned herein was, a “group health plan” within the meaning of 29 C.F.R. §
2560.503-1(m)(6). Collectively, the Named Plans and all other employee welfare

1 breach without regard to the amount in controversy. In addition, this action may be
2 brought before this Court pursuant to 28 U.S.C. § 1331, which gives the federal district
3 courts jurisdiction over actions that arise under the laws of the United States.

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

8 **III. PARTIES**

9 **A. Plaintiffs**

10 6. Plaintiff Spinedex was at all relevant times an Arizona corporation.
11 Spinedex provided covered medical services, including nonsurgical spinal
12 decompression therapy (“Decompression Therapy”) and/or physical therapy services
13 to Plaintiffs Claude Aragon and Jack Adams and to each of the Patients..

14 7. Plaintiff Claude Aragon is an individual who, at all times relevant
15 hereto, is and was a resident of Phoenix, Arizona, and a participant and/or beneficiary
16 of the Defendant International Business Machines Corporation group health plan,
17 within the meaning of ERISA §§ 3(7)-(8), 29 U.S.C. §§1002(7)-(8). Plaintiff Claude
18 Aragon was improperly denied benefits in violation of ERISA and the terms of said
19 Plan.

20 8. Plaintiff Jack Adams is an individual who, at all times relevant hereto, is
21 and was a resident of Phoenix, Arizona, and a “participant” and/or beneficiary of one
22 of Defendant the Qwest Communications International Inc. group health plan assigned
23 United Group No. 0197313, within the meaning of ERISA §§ 3(7)-(8), 29 U.S.C.
24 §§1002(7)-(8). Plaintiff Jack Adams was improperly denied benefits in violation of
25 ERISA and the terms of said Plan.

26 9. Plaintiff ACS is an Arizona non-profit association of chiropractors,
27 which asserts the claims herein alleged on behalf of its members, and their patients.
28 ACS’s members include Arizona health care providers that deliver any Decompression

1 Therapy and/or any other physical medicine modalities or procedures encompassed by
2 Current Procedural Terminology (“CPT”) codes in the 97000 series and/or HCPCS
3 code S9090 (individually or collectively, “Physical Therapy”), to participants and
4 beneficiaries of ERISA-regulated welfare benefit plans, including but not limited to
5 some or all of the Named Plans; and to which ACS members and their patients the
6 United Defendants have refused to make reimbursement for covered Physical Therapy
7 and/or Decompression Therapy, and/or have paid benefits for Physical Therapy and/or
8 Decompression Therapy using “usual reasonable and customary” or “allowable
9 amount” reimbursement rates which are calculated so as to be improperly depressed,
10 as set forth herein. ACS’s members and their patients have suffered actual injury as a
11 result of the violations of ERISA herein alleged. ACS’s members would otherwise
12 have standing to sue in their own right to obtain the relief hereby requested; the
13 interests ACS seeks to protect herein are germane to the organization's purpose and the
14 interests of its members; and neither the claims asserted nor the relief requested
15 requires the substantial participation in the lawsuit of ACS’s individual members or
16 their patients. Upon information and belief, the evidence necessary to establish proof
17 of liability and the magnitude of the injuries herein alleged is in the custody of the
18 United Defendants. Upon information and belief, the claims herein alleged can be
19 vindicated with no participation or merely limited participation of ACS’s members and
20 their patients. Additionally, ACS has standing to pursue the ERISA claims of its
21 members’ patients inasmuch as both the patients and the members have suffered injury
22 in fact; ACS’s members and their patients share an identity of interest; ACS members
23 and their patients have a close doctor-patient relationship; and the patients face
24 substantial obstacles that would prevent them from pursuing their own claims.

25 **B. United Defendants**

26 10. Defendant United is, and at all relevant times mentioned herein was, an
27 Arizona corporation with its principal place of business in Phoenix, Arizona. United is
28 licensed to operate by the Arizona Department of Insurance and is in the business of

1 administering and underwriting group health insurance plans sponsored by employers.
2 United is a direct subsidiary of UHC; is also, directly or indirectly, a subsidiary of
3 Defendants UHG and UHCS; and is an affiliate of Defendants UHCI and Ingenix.
4 United made benefit determinations and processed claims submitted under the Named
5 Plans and other Plans administered in Arizona. United had discretionary authority
6 and/or discretionary responsibility in the administration of the Named Plans and other
7 Plans administered in Arizona. United exercised discretionary authority or
8 discretionary control respecting management of the Plans administered in Arizona
9 and/or exercised authority or control respecting management or disposition of such
10 Plans' assets. At all relevant times mentioned herein, United was a fiduciary within
11 the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), of the Named Plans and
12 the other Plans administered in Arizona. At all relevant times mentioned herein,
13 United acted as administrator for all of the Named Plans and other Plans administered
14 in Arizona and was also a party in interest within the meaning of ERISA § 3(14), 29
15 U.S.C. § 1002(14).

16 11. Defendant UHC is, and at all relevant times mentioned herein was, a
17 Delaware Corporation. Defendant United is UHC's direct subsidiary. Defendant
18 UHC is itself a direct subsidiary of Defendant UHCS, and also, directly or indirectly,
19 of Defendant UHG and an affiliate of Defendants UHCI and Ingenix. UHC made
20 benefit determinations and processed claims submitted under the Named Plans and
21 other Plans. UHC had discretionary authority and/or discretionary responsibility in the
22 administration of the Named Plans and other Plans. UHC exercised discretionary
23 authority or discretionary control respecting management of the Plans and/or exercised
24 authority or control respecting management or disposition of such Plans' assets. At all
25 relevant times mentioned herein, UHC was a fiduciary within the meaning of ERISA §
26 3(21)(A), 29 U.S.C. § 1002(21)(A), of the Named Plans and the other Plans. At all
27 relevant times mentioned herein, UHC acted as administrator for all of the Named
28

1 Plans and other Plans and was also a party in interest within the meaning of ERISA §
2 3(14), 29 U.S.C. § 1002(14).

3 12. Defendant UHCS is, and at all relevant times mentioned herein was, a
4 Minnesota Corporation, with its principal place of business in Minnesota. Defendant
5 UHC is UHCS's direct subsidiary, and Defendant UHCI is UHCS's indirect
6 subsidiary. Defendant UHCS also does business as "AmeriChoice." Defendant
7 UHCS is itself a direct subsidiary of Defendant UHG and an affiliate of Defendant
8 Ingenix. UHCS made benefit determinations and processed claims submitted under
9 the Named Plans and other Plans. UHCS had discretionary authority and/or
10 discretionary responsibility in the administration of the Named Plans and other Plans.
11 UHCS exercised discretionary authority or discretionary control respecting
12 management of the Plans and/or exercised authority or control respecting management
13 or disposition of such Plans' assets. At all relevant times mentioned herein, UHCS
14 was a fiduciary within the meaning of ERISA § 3(21)(A), 29 U.S.C. § 1002(21)(A), of
15 the Named Plans and the other Plans. At all relevant times mentioned herein, UHCS
16 acted as administrator for all of the Named Plans and other Plans and was also a party
17 in interest within the meaning of ERISA § 3(14), 29 U.S.C. § 1002(14).

18 13. Defendant UHCI is, and at all relevant times mentioned herein was, a
19 Connecticut Corporation, with its principal place of business in Hartford, Connecticut.
20 Defendant UHCI is the underwriter of insurance provided by UHCS. Defendant
21 UHCI is the direct subsidiary of UHIC Holdings, Inc. (itself a direct subsidiary of
22 Defendant UHCS), the indirect subsidiary of UHG and UHCS, and an affiliate of
23 Defendant Ingenix. UHCI made benefit determinations and processed claims
24 submitted under the Named Plans and other Plans. UHCI had discretionary authority
25 and/or discretionary responsibility in the administration of the Named Plans and the
26 other Plans. UHCI exercised discretionary authority or discretionary control
27 respecting management of the Plans and/or exercised authority or control respecting
28 management or disposition of such Plans' assets. At all relevant times mentioned

1 herein, UHCI was a fiduciary within the meaning of ERISA § 3(21)(A), 29 U.S.C. §
2 1002(21)(A), of the Named Plans and the other Plans. At all relevant times mentioned
3 herein, UHCI acted as administrator for all of the Named Plans and other Plans and
4 was also a party in interest within the meaning of ERISA § 3(14), 29 U.S.C. §
5 1002(14).

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

25 15. Defendant UHG is a Minnesota corporation with its principal place of
26 business in Minneapolis, Minnesota. UHG is a holding company that conducts its
27 activities through its subsidiaries and affiliates. UHG is, and at all relevant times
28 mentioned herein was, the parent company, directly or indirectly, of United, UHC,

1 UHCS, UHCI and Ingenix, and, upon information and belief, directly exercised
2 control over the conduct of those and other subsidiaries and affiliates that administer
3 the Plans. UHG, or a division of UHG, pays all benefit claims submitted under
4 employee welfare benefits plans that UHG and/or its subsidiaries or affiliates
5 administer. Upon information and belief, UHG had discretionary authority or
6 discretionary responsibility in the administration of the Plans and/or exercised
7 discretionary authority or discretionary control respecting management of the Plans,
8 directly and by virtue of the control it exercised over its subsidiaries or affiliates,
9 including, but not limited to, United, UHC, UHCS, UHCI and Ingenix. In addition,
10 UHG exercised authority or control respecting management or disposition of the
11 Plans' assets. At all relevant times mentioned herein, UHG was a fiduciary of the
12 Plans within the meaning of ERISA §3(21), 29 U.S.C. §1002(21). At all relevant
13 times mentioned herein, United acted as administrator for all of the Named Plans and
14 other Plans and was also a party in interest within the meaning of ERISA § 3(14), 29
15 U.S.C. § 1002(14).

16 16. In addition to being subject to liability for the violations alleged herein
17 by virtue of their status as fiduciaries and parties in interest under ERISA, the United
18 Defendants, and each of them, are liable for the violations of ERISA alleged herein, of
19 each of the other United Defendants because they exercised substantial control over
20 the management and activities of one another, and observance of the corporate form
21 would sanction a fraud and/or promote injustice. At all relevant times mentioned
22 herein, upon information and belief, Defendants United, UHC, UHCS, UHCI, Ingenix,
23 and UHG, and the other subsidiaries and affiliates of UHG that administered the Plans,
24 each acted as an agent of the other, and each was the alter ego of the other, such that
25 each United Defendant may properly be held liable for the conduct of every United
26 Defendant, as alleged herein.

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1 **C. Named Plan Defendants**

2 17. Upon information and belief, Defendant 5 & Diner Franchise
3 Corporation group health plan (“5 & Diner Group Health Plan”) is, and at all relevant
4 times mentioned herein was, an “employee welfare benefit plan” within the meaning
5 of ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
6 District. The 5 & Diner Group Health Plan was assigned United Group No. 0311866.

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

13 19. 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. The Acoustic Technologies Group Health Plan was assigned United Group
18 No. 0296833.

19 20. Upon information and belief, Defendant Adobe Drywall, Inc. group
20 health plan (“Adobe Drywall 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. The Adobe Drywall Group Health Plan was assigned United Group No.
24 0706107.

25 21. Upon information and belief, Defendant ADP TotalSource, Inc. (“ADP
26 TotalSource Health Plan”) is, and at all relevant times mentioned herein was, an
27 “employee welfare benefit plan” within the meaning of ERISA § 3(1), 29 U.S.C. §
28

1 1002(1), administered within the territorial limits of this District. The ADP
2 TotalSource Health Plan was assigned United Group No. 4R3510.

3 22. Upon information and belief, Defendant Affiliated Cardiologists of
4 Arizona, P.C. group health plan (“Affiliated Cardiologists Group Health Plan”) is, and
5 at all relevant times mentioned herein was, an “employee welfare benefit plan” within
6 the meaning of ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial
7 limits of this District. The Affiliated Cardiologists Group Health Plan was assigned
8 United Group No. 60623.

9 23. Upon information and belief, Defendant America West Holdings
10 Corporation group health plan (“America West Group Health Plan”) is, and at all
11 relevant times mentioned herein was, an “employee welfare benefit plan” within the
12 meaning of ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial
13 limits of this District. The America West Group Health Plan was assigned United
14 Group No. 0704267.

15 24. Upon information and belief, Defendant American Express Company
16 group health plan (“American Express Group Health Plan”) is, and at all relevant times
17 mentioned herein was, an “employee welfare benefit plan” within the meaning of
18 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
19 District. The American Express Group Health Plan was assigned United Group No.
20 0215825.

21 25. Upon information and belief, Defendant Art In Metal U.S.A. group
22 health plan (“Art In Metal Group Health Plan”) is, and at all relevant times mentioned
23 herein was, an “employee welfare benefit plan” within the meaning of ERISA § 3(1),
24 29 U.S.C. § 1002(1), administered within the territorial limits of this District. The Art
25 In Metal Group Health Plan was assigned United Group No. 0298866.

26 26. Upon information and belief, Defendant AT&T Corporation group
27 health plan (“AT&T Group Health Plan”) is, and at all relevant times mentioned herein
28 was, an “employee welfare benefit plan” within the meaning of ERISA § 3(1), 29

1 U.S.C. § 1002(1), administered within the territorial limits of this District. The AT&T
2 Group Health Plan was assigned United Group No. 0717000.

3 27. Upon information and belief, Defendant Citigroup, Inc. group health
4 plan (“Citigroup Group Health Plan”) is, and at all relevant times mentioned herein
5 was, an “employee welfare benefit plan” within the meaning of ERISA § 3(1), 29
6 U.S.C. § 1002(1), administered within the territorial limits of this District. The
7 Citigroup Group Health Plan was assigned United Group No. 0725000.

8 28. Upon information and belief, Defendant Delta Air Lines, Inc. group
9 health plan (“Delta Air Lines Group Health Plan”) is, and at all relevant times
10 mentioned herein was, an “employee welfare benefit plan” within the meaning of
11 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
12 District. The Delta Air Lines Group Health Plan, was assigned United Group No.
13 0226310.

14 29. Upon information and belief, Defendant Discount Tire Co., Inc. group
15 health plan (“Discount Tire Group Health Plan”) is, and at all relevant times
16 mentioned herein was, an “employee welfare benefit plan” within the meaning of
17 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
18 District. The Discount Tire Group Health Plan was assigned United Group No.
19 0702649.

20 30. Upon information and belief, Defendant Downtown Tempe Community,
21 Inc. group health plan (“Downtown Tempe Community Group Health Plan”) 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. The Downtown Tempe Community Group Health Plan was
25 assigned United Group No. 83172.

26 31. Upon information and belief, Defendant Car-Graph, Inc. group health
27 plan (“Car-Graph Group Health Plan”) is, and at all relevant times mentioned herein
28 was, an “employee welfare benefit plan” within the meaning of ERISA § 3(1), 29

1 U.S.C. § 1002(1), administered within the territorial limits of this District. The Car-
2 Graph Group Health Plan was assigned United Group No. 295426.

3 32. Upon information and belief, Defendant Faxwatch, Inc. group health
4 plan (“Faxwatch Group Health Plan”) is, and at all relevant times mentioned herein
5 was, an “employee welfare benefit plan” within the meaning of ERISA § 3(1), 29
6 U.S.C. § 1002(1), administered within the territorial limits of this District. The
7 Faxwatch Group Health Plan was assigned United Group No. 63545.

8 33. Upon information and belief, Defendant General Motors Corporation
9 group health plan (“General Motors Group Health Plan”) is, and at all relevant times
10 mentioned herein was, an “employee welfare benefit plan” within the meaning of
11 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
12 District. The General Motors Group Health Plan was assigned United Group No.
13 0003200.

14 34. Upon information and belief, Defendant Genuine Parts Company group
15 health plan (“Genuine Parts Group Health Plan”) is, and at all relevant times
16 mentioned herein was, an “employee welfare benefit plan” within the meaning of
17 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
18 District. The Genuine Parts Group Health Plan was assigned United Group No.
19 0184109.

20 35. Upon information and belief, Defendant Hasbro, Inc. group health plan
21 (“Hasbro Group Health Plan”) is, and at all relevant times mentioned herein was, an
22 “employee welfare benefit plan” within the meaning of ERISA § 3(1), 29 U.S.C. §
23 1002(1), administered within the territorial limits of this District. The Hasbro Group
24 Health Plan was assigned United Group No. 0188662.

25 36. Defendant Home Depot U.S.A., Inc. Medical and Dental Plan (“Home
26 Depot Plan”) is, and at all relevant times mentioned herein was, an “employee welfare
27 benefit plan” within the meaning of ERISA § 3(1), 29 U.S.C. § 1002(1), administered
28

1 within the territorial limits of this District. The Home Depot Plan was assigned United
2 Group No. 0241714.

3 37. Upon information and belief, Defendant Honeywell International Inc.
4 group health plan (“Honeywell 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. The Honeywell Group Health Plan was assigned United Group No. 0144600.

8 38. Upon information and belief, Defendant International Business
9 Machines Corporation group health plan (“IBM Group Health Plan”) is, and at all
10 relevant times mentioned herein was, an “employee welfare benefit plan” within the
11 meaning of ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial
12 limits of this District. The IBM Group Health Plan was assigned United Group No.
13 0401010.

14 39. Upon information and belief, Defendant Insight Enterprises, Inc. group
15 health plan (“Insight Group Health Plan”) is, and at all relevant times mentioned
16 herein was, an “employee welfare benefit plan” within the meaning of ERISA § 3(1),
17 29 U.S.C. § 1002(1), administered within the territorial limits of this District. The
18 Insight Plan was assigned United Group No. 0704208.

19 40. Upon information and belief, Defendant Iridium Satellite, LLC group
20 health plan (“Iridium Satellite 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. The Iridium Satellite Group Health Plan was assigned United Group No.
24 0280498.

25 41. 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

1 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
2 District. The ITC Group Health Plan was assigned United Group No. 0303821.

3 42. 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 by United within the territorial limits
7 of this District.

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

14 44. Upon information and belief, Defendant MetLife Securities, Inc. group
15 health plan (“MetLife Group Health Plan”) is, and at all relevant times mentioned
16 herein was, an “employee welfare benefit plan” within the meaning of ERISA § 3(1),
17 29 U.S.C. § 1002(1), administered within the territorial limits of this District. The
18 MetLife Group Health Plan was assigned United Group No. 0193843.

19 45. Upon information and belief, Defendant OldCastle Glass, Inc. group
20 health plan (“OldCastle Glass 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. The OldCastle Glass Group Health Plan was assigned United Group No.
24 0702842.

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

1 1002(1), administered within the territorial limits of this District. The Pfizer Group
2 Health Plan was assigned United Group No. 0183644.

3 47. Upon information and belief, Defendant The Procter & Gamble
4 Company group health plan, (“Procter & Gamble Group Health Plan”) is, and at all
5 relevant times mentioned herein was, an “employee welfare benefit plan” within the
6 meaning of ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial
7 limits of this District. The Procter & Gamble Group Health Plan was assigned United
8 Group No. 0196819.

9 48. Upon information and belief, Defendant Qualex Inc. group health plan
10 (“Qualex Group Health Plan”) is, and at all relevant times mentioned herein was, an
11 “employee welfare benefit plan” within the meaning of ERISA § 3(1), 29 U.S.C. §
12 1002(1), administered within the territorial limits of this District. The Qualex Group
13 Health Plan was assigned United Group No. 0213294.

14 49. Upon information and belief, Defendant Qwest Communications
15 International Inc. group health plan (“Qwest Group Health Plan 0197313 ”) is, and at
16 all relevant times mentioned herein was, an “employee welfare benefit plan” within
17 the meaning of ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial
18 limits of this District. The Qwest Group Health Plan 0197313 was assigned United
19 Group No. 0197313.

20 50. Upon information and belief, Defendant Qwest Communications
21 International Inc. group health plan (“Qwest Group Health Plan 0229050”) 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. The Qwest Group Health Plan 0229050 was assigned United
25 Group No. 0229050.

26 51. Upon information and belief, Defendant Revlon Consumer Products
27 Corporation group health plan (“Revlon Group Health Plan”) is, and at all relevant
28 times mentioned herein was, an “employee welfare benefit plan” within the meaning

1 of ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
2 District. The Revlon Group Health Plan was assigned United Group No. 0193160.

3 52. Upon information and belief, Defendant Richard A. Bietz, D.D.S., P.C.
4 group health plan (“Richard Bietz 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. The Richard Bietz Group Health Plan was assigned United Group No. 83534.

8 53. Upon information and belief, Defendant Shamrock Foods Company
9 group health plan (“Shamrock Foods Group Health Plan”) is, and at all relevant times
10 mentioned herein was, an “employee welfare benefit plan” within the meaning of
11 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
12 District. The Shamrock Foods Group Health Plan was assigned United Group No.
13 700560.

14 54. Upon information and belief, Defendant Shasta Industries, Inc. group
15 health plan (“Shasta Industries Group Health Plan”) is, and at all relevant times
16 mentioned herein was, an “employee welfare benefit plan” within the meaning of
17 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
18 District. The Shasta Industries Group Health Plan was assigned United Group No.
19 22354.

20 55. Upon information and belief, Defendant Southwest Airlines Company
21 group health plan (“Southwest 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. The Southwest Group Health Plan was assigned United Group No. 0199409.

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

1 ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial limits of this
2 District. The SUMCO Group Health Plan was assigned United Group No. 0703691.

3 57. Upon information and belief, Defendant Temcon Concrete Construction
4 Company group health plan (“Temcon Concrete Group Health Plan”) is, and at all
5 relevant times mentioned herein was, an “employee welfare benefit plan” within the
6 meaning of ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial
7 limits of this District. The Temcon Concrete Group Health Plan was assigned United
8 Group No. 0705175.

9 58. Upon information and belief, Defendant URS Corporation group health
10 plan (“URS Group Health Plan”) is, and at all relevant times mentioned herein was, an
11 “employee welfare benefit plan” within the meaning of ERISA § 3(1), 29 U.S.C. §
12 1002(1), administered within the territorial limits of this District. The URS Group
13 Health Plan was assigned United Group No. 122841.

14 59. Upon information and belief, Defendant Watson Williams Freight
15 Agency, Inc. group health plan (“Watson Williams Group Health Plan”) is, and at all
16 relevant times mentioned herein was, an “employee welfare benefit plan” within the
17 meaning of ERISA § 3(1), 29 U.S.C. § 1002(1), administered within the territorial
18 limits of this District. The Watson Williams Group Health Plan was assigned United
19 Group No. 0313749.

20 60. Upon information and belief, Defendant Wells Fargo & Company group
21 health plan (“Wells Fargo Group Health Plan”) is, and at all relevant times mentioned
22 herein was, an “employee welfare benefit plan” within the meaning of ERISA § 3(1),
23 29 U.S.C. § 1002(1), administered within the territorial limits of this District. The
24 Wells Fargo Group Health Plan was assigned United Group No. 0108000.

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

1 District. The Pinnacle Engineering Group Health Plan was assigned United Group No.
2 0321475.

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

8 **IV. FACTUAL ALLEGATIONS**

9 63. Plaintiffs Claude Aragon and Jack Adams, and each of the other
10 Patients, received treatment at Spinedex from a health care professional.

11 64. Plaintiffs Claude Aragon and Jack Adams, and each of the other
12 Patients, were referred to Spinedex by a licensed physician.

13 65. On behalf of Plaintiffs Claude Aragon and Jack Adams, and each of the
14 other Patients, Spinedex submitted claims to United for the Physical Therapy that they
15 received.

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

18 67. On behalf of Claude Aragon, Jack Adams, and the other Patients,
19 Spinedex submitted claims for Decompression Therapy administered using a device
20 known as the Vertebral Axial Decompression Table (“VAX-D Table”). Benefits for
21 Physical Therapy administered using the VAX-D Table are not properly subject to any
22 general exclusion for experimental, investigational, or unproven treatments under any
23 of the Named Plans nor, upon information and belief, is there any specific exclusion in
24 any of the Named Plans for Decompression Therapy.

25 68. United failed to pay numerous claims for Physical Therapy covered
26 under the Named Plans submitted by Spinedex on behalf of the Patients, including, but
27 not limited to, claims for Decompression Therapy.

28

1 69. United paid some claims for Physical Therapy submitted by Spinedex on
2 behalf of some the Patients, but failed to pay other claims for the same treatment.

3 70. During the time when the claims for Physical Therapy were submitted
4 by Spinedex on behalf of the Patients, the United Defendants treated substantially
5 similar claims of other participants of the Named Plans, and substantially similar
6 claims of participants of all of the Plans, in manners that were and are inconsistent
7 with United’s treatment of the Physical Therapy claims submitted by Spinedex on
8 behalf of the Participants. The relevant provisions of the Named Plans, and all Plans
9 administered by the United Defendants, are typical of one another.

10 71. Upon information and belief, the United Defendants continue to treat
11 claims for Physical Therapy submitted by participants of the Named Plans, and other
12 Plans, inconsistently.

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

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

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

24 74. Where the United Defendants provided a letter purporting to explain the
25 failure to pay claims for Physical Therapy submitted by Spinedex on behalf of the
26 Patients, such letter reflected that the United Defendants failed appropriately to review
27 the claims and information submitted by Spinedex on behalf of the Patients.

28

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

6 76. Upon information and belief, the United Defendants continues to follow
7 the same practices alleged in paragraphs 72-75 with respect to claims submitted under
8 the Named Plans. In addition, upon information and belief, the United Defendants and
9 their subsidiaries or affiliates continue to follow the practice alleged in paragraphs 72-
10 75 for all of the Plans that cover physical therapy.

11 **B. Failure to Pay Claims for Decompression Therapy**

12 77. 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 78. During the period when Spinedex submitted claims on behalf of the
17 Patients, the United Defendants maintained a policy relating to Decompression
18 Therapy (“United Decompression Therapy Policy”) created by the Medical
19 Technology Assessment Committee (the “Committee”) of UHG or its subsidiaries or
20 affiliates. The United Decompression Therapy Policy concludes that Decompression
21 Therapy is not a covered health service based on potential exclusions for experimental,
22 investigational, or unproven treatments that may be found in employee welfare benefit
23 plans that United administers. Upon information and belief, United applies the United
24 Decompression Therapy Policy to claims involving the VAX-D Table under the Plans
25 regardless of the language of any particular Plan’s exclusion for experimental,
26 investigational, or unproven treatments. The United Decompression Therapy Policy is
27 improper and unlawful under ERISA as set forth herein, and otherwise.

28 79. In formulating the United Decompression Therapy Policy, the

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

3 80. The members of the Committee lacked medical expertise sufficient to
4 evaluate whether or not Decompression Therapy is a covered benefit under the Plans.

5 81. The Committee failed to consider Arizona state law or the laws of any
6 other states in formulating the United Decompression Therapy Policy.

7 82. During the period during which Spinedex submitted the claims on behalf
8 of the Patients, and prior to that period, the Committee failed to consider all relevant
9 information regarding Decompression Therapy.

10 83. There exist treatments the efficacy of which is supported by less peer
11 reviewed medical literature than exists for Decompression Therapy, to which
12 treatments the United Defendants do not apply exclusions for experimental,
13 investigational, or unproven treatments that may appear in the Plans.

14 84. Upon information and belief, the United Defendants and/or their
15 subsidiaries or affiliates, distribute the United Decompression Therapy Policy to
16 United and its other subsidiaries and affiliates to be applied when they process claims
17 in connection with employee welfare benefit plans, including the Plans.

18 85. Upon information and belief, the United Defendants continue to follow a
19 policy that is the same as or similar to the United Decompression Therapy Policy and
20 to treat claims involving Decompression Therapy submitted by health care
21 professionals in the manner alleged in paragraphs 77-84 with respect to claims
22 submitted under the Plans.

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

24 86. After determining that they would not pay claims for physical therapy
25 using Decompression Therapy and other Physical Therapy, the United Defendants
26 failed to pay other Physical Therapy that were clearly covered under the Named Plans
27 and/or delayed payment of such claims.

28

1 87. The United Defendants used their improper determination that
2 Decompression Therapy was not covered under the Named Plans and/or their
3 improper determination that other claims for Physical Therapy were not covered as a
4 pretext for failing to pay and/or delaying payment of other covered Physical Therapy
5 claims submitted by Spinedex on behalf of the Patients.

6 88. For numerous claims for Physical Therapy submitted by Spinedex on
7 behalf of the Patients, the United Defendants failed to pay the full amount of such
8 claims. The United Defendants indicated that such claims were subject to
9 reimbursement for only the usual, customary, and reasonable, or “allowable”
10 (collectively “UCR”) charges for covered services by health care providers in the area.
11 However, the United Defendants did not provide sufficient specificity regarding the
12 purported basis for its UCR reductions.

13 89. The amount reimbursed by the United Defendants for the Physical
14 Therapy services provided by Spinedex after the United Defendants applied their
15 improper UCR calculation did not reflect the actual UCR rates of Physical Therapy
16 providers in the geographic region for Spinedex.

17 90. Upon information and belief, the United Defendants selected and
18 delegated to Ingenix the authority to calculate and provide a database (“Ingenix
19 Database”) of the UCR rates and make determinations as to the amount that would be
20 reimbursed under the Plans to out-of-network service providers.

21 91. Upon information and belief, the Ingenix Database was and is flawed,
22 and therefore inappropriate for use in calculating the UCR rates for Physical Therapy
23 that were reimbursable under the Plans. Upon information and belief, the UCR
24 Database was and is flawed, *inter alia*, in the following respects:

- 25 i) Ingenix failed to audit the information that it utilized to create the
26 Ingenix Database (including information that was provided by its
27 affiliates);

28

- 1 ii) the Ingenix Database lacks provider and patient specific information that
- 2 may cause comparables to be unreliable;
- 3 iii) Ingenix arbitrarily and capriciously manipulated and deleted data that
- 4 might have produced a higher UCR rate;
- 5 iv) the Ingenix Database contains information that is outdated;
- 6 v) the Ingenix database incorporates data which when compiled was not
- 7 intended or designed to determine reimbursement rates;
- 8 vi) the Ingenix database incorporates charges from other non-comparable
- 9 geographic areas in which provider charges are or were lower;
- 10 vii) the Ingenix database incorporates charges from in-network providers that
- 11 reflect contractual discounts from actual UCR rates;
- 12 viii) Ingenix uses inappropriate information to derive additional charges that
- 13 constitute the UCR rate for such charges.

14 The flaws in the Ingenix Database that the United Defendants use to establish UCR
15 rates for Physical Therapy cause the United Defendants to reimburse providers for
16 those services at rates below the actual UCR rates for such services in the localities
17 where they are provided.

18 92. Upon information and belief, the United Defendants continue to rely on
19 a flawed Ingenix Database and/or similarly flawed data in order improperly to reduce
20 the amount of benefits that they pay under the Plans.

21 **D. United Failed to Provide Requested Information Regarding the Named**
22 **Plans and Benefits**

23 93. On behalf of the Patients, Spinedex requested documents that would
24 provide information about the Named Plans and benefits on multiple different
25 occasions. This information included a copy of the master policy, the plan document
26 and related amendments, and all other documents constituting the benefit plan and/or
27 insurance policy under which the Named Plans were maintained. In addition, on
28 behalf of the Patients, Spinedex requested copies of all documents, records, and other

1 information relevant to United's failure to pay claims for physical therapy, including
2 copies of internal rules, guidelines, or protocols that were relied upon in making
3 claims determinations.

4 94. In some, but not all, cases, United provided the summary plan
5 descriptions. However, United failed to provide other information, in response to the
6 requests made by Spinedex on behalf of the Patients.

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

9 95. Since 2006, multiple state insurance departments have concluded that the
10 United Defendants and/or their subsidiaries or affiliates routinely engage in improper
11 processing of claims. In a press release dated March 10, 2006, the Arizona
12 Department of Insurance indicated that United "had violated state laws governing: (a)
13 member appeals of denied services and claims; (b) timely payments to providers; (c)
14 provider grievances; and, (d) record keeping and documentation requirements." In a
15 press release dated January 29, 2008, the California Department of Insurance and the
16 California Department of Managed Health Care announced a joint action against
17 PacifiCare, a company owned by UHG. The alleged violations against PacifiCare
18 include: "Wrongful denials of covered claims[;] Incorrect payment of claims[;] Lost
19 documents including certificates of creditable coverage and medical records[;] Failure
20 to timely acknowledge receipt of claims[;] Multiple requests for documentation that
21 was previously provided[;] Failure to address all issues and respond timely to member
22 appeals and provider disputes[;] and Failure to manage provider network contracts and
23 resolve provider disputes."

24 96. In a press release dated February 13, 2008, the New York State Attorney
25 General indicated the following: "[A] six-month investigation found that Ingenix
26 operates a defective and manipulated database that most major health insurance
27 companies use to set reimbursement rates or out-of-network medical expenses."
28 Further, the press release stated that "two subsidiaries of [UHG]...dramatically under-

1 reimbursed their members for out-of-network medical expenses by using data provided
2 by Ingenix.”

3 **V. CLASS ALLEGATIONS**

4 97. Plaintiffs bring Counts I-IV (“Class Claims”) on behalf of the Patients,
5 and all other employee welfare benefit plan participants and/or beneficiaries similarly
6 situated, who are or were participants and/or beneficiaries of any one of the Plans
7 whose claims for Physical Therapy were not paid, in whole or in part, by any of the
8 United Defendants, including all subsidiaries and affiliates of UHG, during the six
9 years prior to March 7, 2008 (the “Physical Therapy Class”). The Physical Therapy
10 Class includes all health care providers who received assignments from participants
11 and beneficiaries of employee welfare benefit plans, whose claims were not paid, in
12 whole or in part, by any of the United Defendants, including the subsidiaries and
13 affiliates of the United Defendants, six years prior to March 7, 2008. Excluded from
14 the Physical Therapy Class are any participants and/or beneficiaries whose plans
15 specifically exclude Physical Therapy as a covered benefit. Plaintiffs also bring the
16 Class Claims on behalf of all employee benefit plan participants and beneficiaries, and
17 health care provider assignees of such participants and beneficiaries, whose claims for
18 benefits involving Decompression Therapy under any employee welfare benefit plan
19 have been denied by any of the United Defendants, including their subsidiaries and
20 affiliates, during the six years prior to March 7, 2008 (the “VAX-D Class”). Excluded
21 from the VAX-D Class are any participants and/or beneficiaries whose plans contain a
22 specific exclusion mentioning the Decompression Therapy by name. Collectively, the
23 Physical Therapy Class and the VAX-D Class are referred to herein as the “Classes.”
24 This action is properly maintainable as a class action pursuant to Fed. R. Civ. P. 23.

25 98. The Classes are so numerous that joinder of all members is
26 impracticable. Although Plaintiffs are unaware of the precise number and identities of
27 the members of the Classes, the Physical Therapy Class members who have assigned
28 their rights and benefits to Plaintiff Spinedex number at least 62, which upon

1 information belief, is only a very small sampling of the total Participants of the Plans
2 who have had claims for Physical Therapy denied by the United Defendants. Upon
3 information and belief, the membership of the VAX-D Class exceeds 1,000 members.
4 The members of the Classes should be ascertainable through the records of the United
5 Defendants.

6 99. Questions of law and fact common to the Classes predominate over any
7 unique to individual Class members. The questions of law and fact common to the
8 Physical Therapy Class include, but are not limited to, the following:

- 9 a. Whether the use of EOBs issued in response to initial claims for
10 benefits in the form issued by the United Defendants, or any of
11 them, is sufficient to comply with 29 C.F.R. § 2560.503-1 (the
12 “Claims Regulation”) and other ERISA requirements;
- 13 b. Whether the United Defendants, or any of them, treated claims for
14 Physical Therapy under the Plans consistently;
- 15 c. Whether the United Defendants, or any of them, systematically
16 violated the Claims Regulation and other ERISA requirements in
17 connection with the processing of Physical Therapy claims under
18 the Plans in breach of their fiduciary duties under ERISA §
19 404(a), 29 U.S.C. § 1104(a);
- 20 d. Whether the United Defendants, or any of them, properly denied
21 benefits under the Plans due to the use of a particular device or
22 aid determined to be appropriate for Physical Therapy by a health
23 care professional;
- 24 e. Whether the United Defendants, or any of them, used improper
25 determinations that Physical Therapy was not covered as a pretext
26 for failing to pay or delaying payment of other Physical Therapy
27 claims in violation of ERISA;

28

- 1 f. Whether the delay in payment of benefits by the United
2 Defendants, or any of them, constituted a violation of ERISA;
- 3 g. Whether the Ingenix Database is flawed and leads to improper
4 calculations of the UCR rates for Physical Therapy benefits
5 covered under the Plans;
- 6 h. Whether the United Defendants, or any of them, violated ERISA
7 in connection with the selection of Ingenix to provide services
8 relating to the UCR rate for Physical Therapy permitted by the
9 Plans;
- 10 i. Whether the United Defendants, or any of them, breached their
11 fiduciary duties in connection with the services they provide to
12 the Plans when they failed to provide documents and instruments
13 governing the plans and copies of internal rules, guidelines, or
14 protocols relied upon in making claims determinations when such
15 documents were requested;
- 16 j. Whether it was the policy of the United Defendants to disregard
17 and/or violate the Claims Regulation and other ERISA
18 requirements in order to increase profits;
- 19 k. Whether the United Defendants, or any of them, continue to
20 engage in the conduct described in paragraphs 99.a. – j. above.
- 21 l. Whether the United Defendants, or any of them, should be
22 enjoined from serving as a fiduciary to the Plans or any employee
23 welfare benefit plan covered by ERISA due to violations of
24 ERISA as set forth herein; and
- 25 m. Whether any of the United Defendants is liable as a knowing
26 participant in a fiduciary breach pursuant to ERISA § 502(a)(3),
27 29 U.S.C. § 1132(a)(3).
28

1 100. The questions of law or fact common to the VAX-D Class include, but
2 are not limited to, the following:

- 3 a. Whether the use of EOBs issued in response to initial claims for
4 benefits involving Decompression Therapy in the form issued by
5 the United Defendants, or any of them, is sufficient to comply
6 with the Claims Regulation and other ERISA requirements;
- 7 b. Whether the United Defendants, or any of them, treated claims
8 involving Decompression Therapy under the Plans consistently;
- 9 c. Whether the United Defendants, or any of them, systematically
10 violated the Claims Regulation and other ERISA requirements in
11 connection with the processing of benefit claims relating to
12 Decompression Therapy under the Plans in breach of their
13 fiduciary duties under ERISA § 404(a), 29 U.S.C. § 1104(a);
- 14 d. Whether the United Defendants, or any of them, properly denied
15 benefits under the Plans due to the use of Decompression Therapy
16 which was determined to be appropriate for treatment by health
17 care professionals;
- 18 e. Whether the United Defendants, or any of them, used an improper
19 determination that treatment using Decompression Therapy is not
20 a covered benefit as a pretext for failing to pay or delaying
21 payment of other benefit claims in violation of ERISA;
- 22 f. Whether the United Defendants, or any of them, breached their
23 fiduciary duties in connection with the services they provide to
24 the Plans when they failed to provide documents and instruments
25 governing the plans and copies of internal rules, guidelines, or
26 protocols relied upon in making claims determinations relating to
27 Decompression Therapy when such documents were requested;
- 28

- 1 g. Whether it was the policy of the United Defendants to disregard
2 and/or violate the Claims Regulation and other ERISA
3 requirements in connection with Decompression Therapy claims
4 in order to increase profits;
- 5 h. Whether the United Defendants, or any of them, continue to
6 engage in the conduct described in paragraphs 100.a. – g. above.
- 7 i. Whether the United Defendants, or any of them, should be
8 enjoined from serving as a fiduciary to the Plans or any employee
9 welfare benefit plan covered by ERISA due to violations of
10 ERISA as set forth herein; and
- 11 j. Whether any of the United Defendants is liable as a knowing
12 participant in a fiduciary breach pursuant to ERISA § 502(a)(3),
13 29 U.S.C. § 1132(a)(3).

14 101. Plaintiffs' claims are typical of those of the Classes. Plaintiffs, like other
15 members of the Physical Therapy Class, have been harmed by the systematic
16 violations of the Claims Regulation and other ERISA violations alleged herein, the
17 failure of the United Defendants to pay Physical Therapy claims, and the United
18 Defendants use of the Ingenix Database to discount Physical Therapy claims.

19 Plaintiffs, like other members of the VAX-D Class, have been harmed by the United
20 Defendants' systematic violations of the Claims Regulation and other ERISA
21 violations relating to Decompression Therapy alleged herein, and by the failure of the
22 United Defendants to pay Decompression Therapy claims. Further, the United
23 Defendants owed exactly the same duties under ERISA to each of the members of the
24 Classes as those members who have assigned their rights and benefits to each of the
25 Plaintiffs and/or their respective assignors.

26 102. Plaintiffs will fairly and adequately protect the interests of the Classes.
27 Plaintiffs have no interests antagonistic to or in conflict with those of the Classes.
28

1 Plaintiffs have retained competent counsel with experience in ERISA, class actions,
2 and complex litigation.

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

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

16 105. Certification of the Class Claims is further appropriate pursuant to Fed.
17 R. Civ. P. 23(b)(3) because questions of law and fact common to the Classes
18 predominate over any questions affecting only individual members of the Classes, and
19 a class action is superior to other available methods for fairly and efficiently
20 adjudicating the controversy. The harm suffered by the individual members of the
21 Classes is small compared to the expense and burden of individual prosecution of this
22 litigation. Class certification is superior because it obviates the need for unduly
23 duplicative litigation which may result in inconsistent judgments about the practices of
24 the United Defendants. Plaintiffs know of no difficulty that will be encountered in the
25 management of this litigation that would preclude its maintenance as a class action.

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1 **VI. CLAIMS FOR RELIEF**

2 **COUNT I**

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

4 **(Against the United Defendants)**

5 106. Plaintiffs incorporate by reference all previous paragraphs of this
6 Complaint as if set forth fully herein.

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

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

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

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

27 111. The Department of Labor has promulgated the Claims Regulation, 29
28 C.F.R. § 2560.503-1, which establishes minimum requirements for procedures

1 pertaining to claims for benefits made under employee benefit plans. In addition to
2 setting forth requirements applicable to all employee benefit plans, the Claims
3 Regulation sets forth specific requirements pertaining to group health plans.

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

- 7 a. Administering claims procedures in a way that unduly inhibits
8 and/or hampers the initiation and processing of claims for
9 benefits, in violation of 29 C.F.R. § 2560.503-1(b)(3).
- 10 b. Administering claims procedures in a way that requires claimants
11 to file more than two appeals of an adverse benefit determination
12 in violation of 29 C.F.R. § 2560.503-1(c)(2).
- 13 c. Failing to respond to claims for benefits within 30 days after
14 receipt of the initial claim contrary to 29 C.F.R. § 2560.503-
15 1(f)(2)(iii)(B).
- 16 d. Failing to implement and apply administrative processes and
17 safeguards designed to ensure and to verify that claim
18 determinations are made in accordance with the plan documents
19 in violation of 29 C.F.R. § 2560.503-1(b)(5).
- 20 e. Failing to implement and apply administrative processes and
21 safeguards designed to ensure and to verify that plan provisions
22 have been applied consistently with respect to similarly situated
23 participants in violation of 29 C.F.R. § 2560.503-1(b)(5).
- 24 f. Failing to comply with the content of notification of benefit
25 determination in violation of 29 C.F.R. § 2560.503-1(g) by
26 initially sending only EOBs in connection with claims that are not
27 paid. The EOBs do not indicate that they are a notice of
28 extension pursuant to 29 C.F.R. § 2560.503-1(f)(2)(iii)(B), nor do

1 they contain the necessary content to comply with 29 C.F.R. §
2 2560.503-1(f)(2)(iii)(B). In particular, and without limitation, the
3 United Defendants' EOBs fail to provide, in a manner calculated
4 to be understood by the claimant, any of the following:

- 5 (i.) the specific reasons for the adverse determination;
- 6 (ii.) reference to the specific plan provisions on which the
7 determination is based;
- 8 (iii.) a description of any additional information necessary for
9 the claimant to perfect the claim and an explanation of why
10 such material or information is necessary;
- 11 (iv.) a description of the plan's review procedures and time
12 limits applicable to such procedures, including a statement
13 of the claimant's right to bring a civil action under ERISA
14 § 502(a) following an adverse benefit determination upon
15 review;
- 16 (v.) when a specific rule, guideline, protocol, or other similar
17 criterion ("Guideline") was relied upon when making the
18 adverse benefit determination, the Guideline or a statement
19 that such Guideline will be provided free of charge to the
20 claimant upon request; and
- 21 (vi.) when the adverse benefit determination is based on a
22 medical necessity or experimental treatment or similar
23 exclusion or limit, either an explanation of the scientific or
24 clinical judgment for the determination, applying the terms
25 of the plan to the claimant's medical circumstances, or a
26 statement that such explanation will be provided free of
27 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). In particular, and without limitation, the United Defendants systematically failed to:
 - (i.) provide copies of all documents, records, and other information relevant to benefit claims, including but not limited to the Ingenix Database and that data used by the United Defendants to calculate UCR rates;
 - (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;

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(v.) identify medical or vocational experts whose advice was obtained in connection with the adverse benefit 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). In particular, and without limitation, the United Defendants systematically failed to provide the following mandatory items:

- (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);

- 1 (v.) for adverse determinations where a Guideline was relied
2 upon in making the adverse determination, the Guideline
3 or a statement that the Guideline was relied upon and that a
4 copy of the Guideline will be provided free of charge to the
5 claimant upon request;
- 6 (vi.) for adverse determinations based on a medical necessity or
7 experimental treatment or similar exclusion or limit, either
8 an explanation of the scientific or clinical judgment for the
9 determination, applying the terms of the plan to the
10 claimant's medical circumstances, or a statement that such
11 explanation will be provided free of charge upon request;
- 12 (vii.) the following statement: "You and your plan may have
13 other voluntary alternative dispute resolution options, such
14 as mediation. One way to find out what may be available
15 is to contact your local U.S. Department of Labor Office
16 and your State insurance regulatory agency."

17 113. The United Defendants' systematic violations of the Claims Regulation
18 set forth in paragraph 112 above constituted breaches of ERISA § 404(a)(1)(A), (B),
19 and (D), 29 U.S.C. §1104(a)(1)(A), (B), and (D).

20 114. Upon information and belief, the United Defendants failed to develop
21 and preserve complete administrative records relating to the claims submitted by
22 Spinedex on behalf of the Patients in violation of ERISA §§ 404(a)(1)(A), (B), and
23 (D), 29 U.S.C. §§ 1104(a)(1)(A), (B), and (D), and also routinely fails to do so in
24 connection with claims submitted under the Plans.

25 115. Fiduciaries responsible for making benefit claims determinations, such
26 as the United Defendants, have a duty to obtain all necessary information to make a
27 claims decision consistent with their fiduciary duties. The United Defendants' failure
28 to pay Decompression Therapy claims under the Plans also violated ERISA §§

1 404(a)(1)(A), (B), and (D), 29 U.S.C. §§ 1104(a)(1)(A),(B), and (D), because in
2 relying on the United Decompression Therapy Policy when processing claims under
3 the Plans, the United Defendants failed, and continue to fail, to obtain, review, and
4 appropriately consider, all necessary information.

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

10 117. Upon information and belief, in violation of ERISA §§ 404(a)(1)(A) and
11 (B), 29 U.S.C. §§ 1104(a)(1)(A) and (B), the United Defendants failed to investigate
12 whether or not it was appropriate to select their own subsidiary/affiliate Ingenix to
13 provide the Ingenix Database and/or make actual determinations of the UCR rate for
14 Physical Therapy under the Plans. Upon information and belief, the United
15 Defendants selected their own subsidiary/affiliate Ingenix to provide the Ingenix
16 Database and/or make actual determinations of UCR rates under the Plans in order to
17 decrease unlawfully the amount of benefits that they would pay, and to increase the
18 United Defendants profits in violation of ERISA §§ 404(a)(1)(A) and (B).

19 118. As administrators and/or fiduciaries of the Plans, the United Defendants
20 have a duty under ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), to provide
21 information about employee benefit plans and benefits upon request. Defendant
22 United violated ERISA § 404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A), by failing to
23 provide the documents set forth in paragraph 93 when Spinedex requested such
24 documents on behalf of Patients. Upon information and belief, the United Defendants
25 routinely fail to provide documents requested by participants of the Plans, or on behalf
26 of participants of the Plans, in breach of ERISA § 404(a)(1)(A), 29 U.S.C. §
27 1104(a)(1)(A).

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1 119. Upon information and belief, it was, and is, the policy of the United
2 Defendants to engage in the violations alleged in this Count in order to increase
3 unlawfully their profits at the expense of Plaintiffs and the Classes, in breach of
4 ERISA §404(a)(1)(A), 29 U.S.C. § 1104(a)(1)(A).

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

8 121. As a result of the violations of ERISA §§ 404, 29 U.S.C. § 1104, and §
9 405, 29 U.S.C. § 1105, Plaintiffs, the Classes, and the Plans have been harmed.

10 **COUNT II**

11 **(Prohibited Transactions and Self-Dealing Violations of ERISA § 406(a) and (b))** 12 **(Against the United Defendants)**

13 122. Plaintiffs incorporate by reference all previous paragraphs of this
14 Complaint as if set forth fully herein.

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

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

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

25 126. 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.

1 227. 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.

5 228. 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).

11 229. 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).

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

25 231. By selecting their own affiliate to provide the flawed Ingenix Database
26 and/or make actual determinations of the UCR rate under the Plans, in order to
27 increase their profits from plan assets (*i.e.*, the amount by which the Ingenix Database
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1 understates the correct UCR rate), the United Defendants violated ERISA § 406(b)(2),
2 29 U.S.C. § 1106(b)(2).

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

5 133. As a result of the violations of ERISA §§ 406, 29 U.S.C. § 110, and §
6 405, 29 U.S.C. § 1105, Plaintiff, the Class, and the Plans have been harmed.

7 **COUNT III**

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

9 **(Against the United Defendants)**

10 134. Plaintiffs incorporate by reference all previous paragraphs of this
11 Complaint as if set forth fully herein.

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

16 **COUNT IV**

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

18 **(Against the United Defendants and the Named Plans)**

19 136. Plaintiffs incorporate by reference all previous paragraphs of this
20 Complaint as if set forth fully herein.

21 137. The Physical Therapy claims submitted by Plaintiff Spinedex and the
22 members of Plaintiff ACS on behalf of the Participants, including Decompression
23 Therapy, constitute claims for covered benefits under the terms of the Named Plans
24 that the United Defendants have failed to pay. Upon information and belief, the
25 United Defendants continue to fail to pay such benefits to all participants of the Plans.
26 Pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), Plaintiffs and the
27 Physical Therapy Class are entitled to recovery of unpaid claims for Physical Therapy
28 and for a clarification of rights to future benefits under the terms of the Plans. Further,

1 pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), Plaintiffs and the
2 Classes are entitled to recovery of unpaid claims for treatment using Decompression
3 Therapy and for a clarification of rights to future benefits under the terms of the Plans
4 regarding treatment using Decompression Therapy.

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

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

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COUNT V

(Failure to Provide Information Required by ERISA § 104(b)(4) and ERISA § 404(a)(1)(A))

(Against The United Defendants)

140. Plaintiff Spinedex incorporates by reference all previous paragraphs of this Complaint as if set forth fully herein.

141. ERISA § 104(b)(4), 29 U.S.C. § 1024(b)(4), requires that a plan administrator provide “any instruments under which the plan is established or operated.”

142. ERISA § 404(a)(1)(A) requires disclosure of documents relating to the provision of benefits or the defrayment of costs.

143. ERISA § 502(a)(1)(A), 29 U.S.C. § 1132(a)(1)(A), authorizes a civil action for the relief provided in ERISA § 502(c), 29 U.S.C. § 1132(c). ERISA § 502(c), 29 U.S.C. § 1132(c), provides that an administrator may be held personally liable for penalties of \$100 per day (increased to \$110 per day by 29 C.F.R. § 2570.502c-1) for failure to comply within 30 days of a request for information required to be provided under ERISA.

144. The United Defendants are the administrator of one or more of the Named Plans. Acting in the capacity of administrator, the United Defendants failed to provide documents required to be provided to Plaintiff Spinedex acting on behalf of the Patients pursuant to ERISA § 104(b)(4) and/or ERISA § 404(a)(1)(A).

145. Pursuant to ERISA § 502(c), the United Defendants are liable to Plaintiff Spinedex for penalties for each separate failure to provide the requested documents.

VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment, on behalf of themselves and the Classes as to Counts I-IV:

As to Counts I-IV:

1. Certify Counts I-IV as class claims pursuant to Fed. R. Civ. P. 23;

1 2. Declare that the United Defendants have breached their fiduciary duties
2 in violation of ERISA § 404(a), 29 U.S.C. § 1104(a), and engaged in prohibited
3 transactions and self-dealing in violation of ERISA § 406, 29 U.S.C. § 1106;

4 3. Impose a constructive trust over any monies by which the United
5 Defendants were unjustly enriched as a result of their breaches of ERISA § 404, 29
6 U.S.C. § 1104, and ERISA § 406, 29 U.S.C. § 1106 and/or award all other appropriate
7 equitable relief, including but not limited to disgorgement of profits and ill-gotten
8 gains and restitution;

9 4. Enjoin the United Defendants from continuing to deny coverage under
10 the Plans for Decompression Therapy in violation of ERISA, pursuant to ERISA §§
11 409 and 502(a)(2), 29 U.S.C §§ 1109 and 1132(a)(2).

12 5. Declare that Decompression Therapy is a covered benefit under the
13 Plans and is not subject to any exclusion in the Plans for experimental, investigational,
14 or unproven treatments, pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B);

15 6. Declare that the United Defendants have improperly failed to pay claims
16 for Physical Therapy benefits, including but not limited to Physical Therapy using
17 Decompression Therapy, under the Plans and award benefits that should have been
18 paid pursuant to ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B);

19 7. Award appropriate equitable relief including, but not limited to,
20 disgorgement of all profits and ill-gotten gains realized by the United Defendants as
21 result of delays in making payments for benefits under the Plans pursuant to ERISA §§
22 502(a)(3) or (a)(2), 29 U.S.C. §§ 1132(a)(3) or (a)(2);

23 8. Declare that the Ingenix Database is flawed and that the calculations of
24 the UCR rates with respect to physical therapy benefits under the Plans were and are
25 improper;

26 9. Award Plaintiffs and the Physical Therapy Class the full amount charged
27 for Physical Therapy services that were improperly discounted as a result of reliance
28 on the Ingenix Database to calculate the UCR rates;

1 10. Enjoin the United Defendants from any further violations of ERISA,
2 including, but not limited to violations of the Claims Regulation;

3 11. Enjoin the United Defendants from serving in any fiduciary capacity to
4 any of the Plans, and to any and all other ERISA welfare benefit plans;

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

9 13. Award all such other relief that the Court deems appropriate available to
10 Plaintiffs and the Classes pursuant to ERISA §§ 502(a)(1)(B), 29 U.S.C. §
11 1132(a)(1)(B) or ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), and available to
12 Plaintiffs and the Classes on behalf of the Plans pursuant to ERISA § 502(a)(2) or
13 (a)(3), 29 U.S.C. § 1132(a)(2) or (a)(3);

14 14. Award attorney's fees and costs pursuant to the common fund doctrine
15 and/or ERISA § 502(g), 29 U.S.C. § 1132(g);

16 15. Award pre and post judgment interest to the extent permitted by law; and

17 16. Award any other and further relief available to Plaintiffs, the Classes,
18 and the Plans.

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1 AND WHEREFORE, Plaintiff Spinedex prays for judgment, on behalf of itself
2 as assignee of the Patients, as to Count V:

3 **As to Count V:**

4 1. Award Plaintiff Spinedex penalties of \$110.00 per day against the
5 United Defendants from the date 30 days after the request for each separate failure to
6 provide the requested documents;

7 2. Award attorney's fees and costs pursuant to ERISA § 502(g), 29 U.S.C.
8 § 1132(g);

9 3. Award pre and post judgment interest to the extent permitted by law; and

10 4. Award any other and further relief available to Plaintiff.

11 DATED this 7th day of July, 2008.

12 Respectfully submitted,

13 LAW OFFICE OF JOSEPH A. GAROFOLLO, P.C

14
15 /s/ Joseph A. Garofolo

16 LAW OFFICE OF JOSEPH A. CREITZ, P.C.

17
18 /s/ Joseph A. Creitz

19 Attorneys for Plaintiffs

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