

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

1 Martin J. Bishop (admitted *pro hac vice*)  
Email: mbishop@reedsmith.com  
2 Rebecca R. Hanson (admitted *pro hac vice*)  
Email: rhanson@reedsmith.com  
3 REED SMITH LLP  
10 South Wacker Drive, 40th Floor  
4 Chicago, IL 60606  
Telephone: +1 312 207 1000  
5 Facsimile: +1 312 207 6400

6 Karen A. Braje (SBN 193900)  
Email: kbraje@reedsmith.com  
7 REED SMITH LLP  
101 Second Street, Suite 1800  
8 San Francisco, CA 94105-3659  
Telephone: +1 415 543 8700  
9 Facsimile: +1 415 391 8269

10 Attorneys for Defendants UnitedHealth Group  
Inc., UnitedHealthcare, Inc., UnitedHealthcare  
11 Insurance Company, United Healthcare  
Services, Inc., and UMR, Inc.  
12

13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN FRANCISCO DIVISION  
16

17 RACHEL CONDRY, JANCE HOY,  
CHRISTINE ENDICOTT, LAURA BISHOP,  
18 FELICITY BARBER, and RACHEL CARROLL,  
on behalf of themselves and all others similarly  
19 situated,

20 Plaintiffs,

21 vs.  
22

23 UNITEDHEALTH GROUP INC.,  
UNITEDHEALTHCARE, INC.,  
24 UNITEDHEALTHCARE INSURANCE  
COMPANY, UNITED HEALTHCARE  
25 SERVICES, INC., and UMR, INC.,  
26

27 Defendants.  
28

Case No.: 3:17-cv-00183-VC

**DEFENDANTS' ANSWER AND  
AFFIRMATIVE DEFENSES TO  
PLAINTIFFS' SECOND AMENDED  
CLASS ACTION COMPLAINT**

Honorable Vincent Chhabria

1 Defendants UnitedHealth Group Inc., UnitedHealthcare, Inc., UnitedHealthcare Insurance  
 2 Company, United Healthcare Services, Inc., and UMR, Inc. (collectively, “Defendants”), by and  
 3 through their undersigned counsel, hereby answer Plaintiffs Rachel Condry (“Condry”), Jance Hoy  
 4 (“Hoy”), Christine Endicott (“Endicott”), Laura Bishop (“Bishop”), Felicity Barber (“Barber”), and  
 5 Rachel Carroll’s (“Carroll”) (collectively, “Plaintiffs”) Second Amended Class Action Complaint  
 6 (the “Second Amended Complaint”) as follows:

7 **NATURE OF THE ACTION**

8 1. Defendants admit that some, but not all, of the Defendants issue or administer the  
 9 health care plans specified in Paragraph 1.

10 2. Defendants deny the allegations in Paragraph 2.

11 3. With respect to the first sentence of Paragraph 3, Defendants admit only that ACA  
 12 provides that a “group health plan and a health insurance issuer ... shall not impose any cost-sharing  
 13 requirements for ... preventive care ... [for women] as provided for in comprehensive guidelines  
 14 supported by the Health Resources and Services Administration” (“HRSA”). *See* 42 U.S.C. § 300gg-  
 15 13(a)(4). Defendants further admit that ACA does not apply to grandfathered plans as noted in  
 16 Plaintiffs’ footnote 1 but lack sufficient knowledge or information to form a belief as to the truth of  
 17 the remaining allegations in footnote 1 and deny the allegations on that basis. With respect to the  
 18 second sentence of Paragraph 3, the cited webpage, when copied into a browser, leads to  
 19 <https://www.hhs.gov/healthcare/about-the-aca/index.html>, which does not contain the cited  
 20 language. Defendants, therefore, lack sufficient knowledge or information to form a belief as to the  
 21 truth of the allegation contained in the quoted text and deny the substance of the quoted text in the  
 22 allegation on that basis. Defendants admit that the purpose of the preventive service provision of  
 23 ACA was to eliminate cost barriers to preventive services in that ACA requires coverage of  
 24 preventive care and that group health plans and health insurance issuers “shall not impose any cost-  
 25 sharing requirements” on such care. *See* 42 U.S.C. § 300gg-13(a)(4). Defendants deny any  
 26 remaining allegations in Paragraph 3.

27 4. With respect to the first sentence of Paragraph 4, the cited webpage, when copied into

1 a browser, leads to <https://www.hhs.gov/healthcare/about-the-aca/index.html>, which does not  
 2 support Plaintiffs' allegation and thus Defendants deny it on that basis. Defendants admit generally,  
 3 however, that ACA requires coverage without cost shares for "preventive care . . . [for women] as  
 4 provided for in comprehensive guidelines supported by the Health Resources and Services  
 5 Administration." *See* 42 U.S.C. § 300gg-13(a)(4). Defendants further admit that on August 1, 2011,  
 6 HRSA adopted and released guidelines for women's preventive health services ("HRSA Guidelines",  
 7 not HHS Guidelines) based on recommendations of the independent Institute of Medicine ("IOM").  
 8 Defendants deny any remaining allegations of Paragraph 4.

9         5. Defendants admit that the HRSA Guidelines (not HHS Guidelines) adopted the  
 10 recommendations from the IOM regarding women's preventive health services, but deny that the  
 11 HRSA Guidelines "ensure women's accessibility" to such services or that the HRSA Guidelines  
 12 state that women "must have access" to such services. Defendants further admit that the HRSA  
 13 Guidelines included "[b]reastfeeding support, supplies, and counseling" which initially was  
 14 described by HRSA as "[c]omprehensive lactation support and counseling, by a trained provider  
 15 during pregnancy and/or in the postpartum period, and costs for renting breastfeeding equipment,"  
 16 (*see* <http://hrsa.gov/womensguidelines/> (last visited 9/9/2017)), and was later amended to state:  
 17 "[c]omprehensive lactation support services (including counseling, education, and breastfeeding  
 18 equipment and supplies) during the antenatal, perinatal, and the postpartum period to ensure the  
 19 successful initiation and maintenance of breastfeeding." *See*  
 20 <https://www.hrsa.gov/womensguidelines2016/index.html> (last visited 9/9/2017). Defendants deny  
 21 the remaining allegations in Paragraph 5, including that the use of the term "Comprehensive  
 22 Lactation Benefits" throughout the Second Amended Complaint accurately describes the healthcare  
 23 benefit mandated by ACA.

24         6. Defendants admit that the referenced source contains the quoted material in  
 25 Paragraph 6 (without the emphasis).

26         7. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
 27 the allegations in Paragraph 7 and deny the allegations on that basis.

28         8. Defendants admit that the referenced source contains the portions of the quote set

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

1 forth in Paragraph 8 (without the emphasis) but state that the entire quote is not incorporated into  
2 Paragraph 8.

3 9. Defendants admit that the referenced source contains the quoted material in  
4 Paragraph 9.

5 10. Defendants deny the allegations in Paragraph 10.

6 11. Defendants deny the allegations in Paragraph 11, including those in each sub-part and  
7 footnote 2.

8 12. Defendants admit that Plaintiffs purport to seek the relief specified in the second and  
9 fourth sentences of Paragraph 12 but deny that they are entitled to such relief, or any other relief.

10 Defendants deny the remaining allegations in Paragraph 12.

11 13. Defendants admit only that each Plaintiff is a member of a group health plan  
12 administered by one of the Defendants and deny any allegations or characterizations to the contrary  
13 in the first sentence of Paragraph 13. Defendants admit the allegations in the second sentence of  
14 Paragraph 13. Defendants deny any remaining allegations in Paragraph 13.

15 14. Defendants admit the allegations in Paragraph 14 to the extent that ERISA plans are  
16 at issue in this case and only to the extent Defendants are considered fiduciaries under any particular  
17 ERISA plan.

18 15. Defendants deny the allegations in Paragraph 15.

19 16. Defendants deny the allegations in Paragraph 16.

20 17. Defendants deny the allegations in Paragraph 17.

21 18. Defendants deny the allegations in Paragraph 18.

22 19. Defendants admit that Plaintiffs purport to seek the relief specified in the third  
23 sentence of Paragraph 19 but deny that Plaintiffs are entitled to such relief, or any other relief.

24 Defendants deny any remaining allegations in Paragraph 19.

25 **PARTIES**

26 ***Plaintiffs.***

27 20. Defendants admit the allegations in the first sentence of Paragraph 20 and that  
28 Condry is and has been a beneficiary of a Choice Plus health benefit plan sponsored by her spouse's

1 employer, Insperity Holdings, Inc and offered and underwritten by UnitedHealthcare Insurance  
2 Company. Defendants also admit that Condry received services from an out-of-network lactation  
3 consultant after giving birth to her child; that she submitted a claim for reimbursement; and that her  
4 claim was denied. Defendants lack sufficient knowledge or information to form a belief as to the  
5 truth of the allegation regarding the dollar amount of Condry's total out-of-pocket expenditure and  
6 deny the allegation on that basis. Defendants deny any remaining allegations in Paragraph 20.

7 21. Defendants admit the allegations in Paragraph 21.

8 22. Defendants admit the allegations in the first sentence of Paragraph 22 and that  
9 Endicott was a beneficiary of a Choice Plus health benefit plan sponsored by her spouse's employer,  
10 Travelers Companies, Inc. Defendants also admit that Endicott received services from an out-of-  
11 network lactation consultant after giving birth to her child; that she submitted a claim for  
12 reimbursement of the total \$255 fee for those services; and that the claim was denied. Defendants  
13 deny any remaining allegations in Paragraph 22.

14 23. Defendants admit the allegations in the first sentence of Paragraph 23 and that Bishop  
15 was a member of a Choice Plus health benefit plan sponsored by her employer and offered and  
16 underwritten by UHC Services. Defendants also admit that Bishop received services from an out-of-  
17 network lactation consultant after giving birth to her child; that she submitted a claim for  
18 reimbursement of the \$130 fee for those services; and that the claim was denied. Defendants deny  
19 any remaining allegations in Paragraph 23.

20 24. Defendants admit the allegations in the first sentence of Paragraph 24 and that Barber  
21 was a beneficiary of a health benefit plan sponsored by her spouse's employer, Eventbrite, Inc. and  
22 offered and underwritten by UnitedHealthcare Insurance Company. Defendants also admit that  
23 Barber received services from an out-of-network lactation consultant after giving birth to her child;  
24 that she submitted a claim for reimbursement for those services; and that the claim was partially  
25 denied, leaving her responsible for \$590 of the amount billed. Defendants deny any remaining  
26 allegations in Paragraph 24.

27 25. Defendants admit the allegations in the first and second sentences of Paragraph 25.  
28 Defendants also admit that Carroll received services from an out-of-network lactation consultant

1 after giving birth to her child; that she submitted claims for reimbursement for those services; and  
 2 that the claims were denied, leaving her responsible for \$280. Defendants deny any remaining  
 3 allegations in Paragraph 25.

4 ***Defendants.***

5 26. Defendants admit the allegations in the first sentence of Paragraph 26. With respect to  
 6 the remaining allegations in Paragraph 26, Defendants admit only that the UnitedHealth Group  
 7 family of businesses deploys core competencies “within ... two distinct, but strategically aligned,  
 8 business platforms: health benefits operating under UnitedHealthcare and health services operating  
 9 under Optum,” as stated in UnitedHealth Group’s 2015 Form 10k. Defendants deny any remaining  
 10 allegations in Paragraph 26

11 27. Defendants admit that UnitedHealthcare, Inc. is an indirect subsidiary of  
 12 UnitedHealth Group, Inc that maintains its principal place of business in Minnesota. Defendants  
 13 admit the remaining allegations in Paragraph 27 regarding “health care benefits [offered] to an array  
 14 of customers and markets through [specified] reportable segments,” provided that such allegations  
 15 refer generally to the UnitedHealthcare business platform, rather than solely UnitedHealthcare, Inc.

16 28. Defendants admit that UMR, Inc. is a Delaware corporation that serves as third party  
 17 administrator for medical claims for Carroll’s plan. Defendants lack sufficient knowledge or  
 18 information to form a belief as to the truth of the allegation that UMR, Inc. “provide[s] health benefit  
 19 plans to members of the Classes” and deny the allegation on that basis. Defendants deny the  
 20 remaining allegations in Paragraph 28.

21 29. Defendants admit the allegations in the second sentence of Paragraph 29. Defendants  
 22 further admit that UnitedHealthcare Insurance Company is an indirect subsidiary of UnitedHealth  
 23 Group Inc., that it has engaged in business as UnitedHealthOne in Pennsylvania, that it offers and  
 24 underwrites Condry’s plan, and that it administers Endicott’s plan. Defendants lack sufficient  
 25 knowledge or information to form a belief as to the truth of the allegation that UnitedHealthcare  
 26 Insurance Company “provides health benefit plans to members of the Classes” and deny the  
 27 allegation on that basis. Defendants deny the remaining allegations in Paragraph 29.

28 30. Defendants admit that UnitedHealthCare Services, Inc. is a subsidiary of

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

1 UnitedHealth Group Inc. that administers various health care plans. Defendants further admit that  
2 UnitedHealthCare Services, Inc. is a Minnesota corporation with its principal place of business in  
3 Minnesota and that it administers Hoy’s plan. Defendants lack sufficient knowledge or information  
4 to form a belief as to the truth of the allegation that UnitedHealthCare Services, Inc. “provides health  
5 benefit plans to members of the Classes” and deny the allegation on that basis. Defendants deny the  
6 remaining allegations in Paragraph 30.

7 31. Defendants admit the allegations in Paragraph 31, provided that the term “UHC”  
8 refers to the UnitedHealthcare business platform, rather than UnitedHealthcare, Inc. Defendants  
9 deny that the cited website contains the referenced allegations.

10 32. With respect to the allegations in the first sentence of Paragraph 32, Defendants admit  
11 that the UnitedHealth Group family of businesses participates in the health care benefit programs  
12 specified therein. With respect to the allegations in the second sentence of Paragraph 32, Defendants  
13 admit that the referenced source contains the quoted material in Paragraph 32. Defendants deny any  
14 remaining allegations in Paragraph 32.

15 33. Defendants admit the allegations in Paragraph 33 regarding UnitedHealthcare  
16 Military & Veterans, provided that the term “UHC” refers to the UnitedHealthcare business  
17 platform, rather than UnitedHealthcare, Inc.

18 34. Defendants admit the allegations in the first sentence of Paragraph 34 and that the  
19 referenced source contains the information in Paragraph 34, albeit on page 5, rather than page 4,  
20 provided that the term “UHC” refers to the UnitedHealthcare business platform, rather than  
21 UnitedHealthcare, Inc.

22 35. Defendants deny the allegations in Paragraph 35, including those in footnote 3.

23 36. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
24 the allegations in Paragraph 37 and deny the allegations on that basis.

25 37. Defendants deny the allegations in Paragraph 37.

26 **JURISDICTION AND VENUE**

27 38. Defendants admit that the Court has subject-matter jurisdiction over the present  
28 action but deny the remaining allegations in Paragraph 38.



REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

1 39. Defendants admit that the Court has subject-matter jurisdiction over the present  
2 action but deny the remaining allegations in Paragraph 39.

3 40. Defendants admit that the Court has subject-matter and personal jurisdiction, that  
4 venue is proper in this District, and that Plaintiffs purport to assert claims in the Second Amended  
5 Complaint pursuant to the Employee Retirement Income Security Act of 1974 (“ERISA”).  
6 Defendants deny the remaining allegations in Paragraph 40.

7 41. Defendants admit that the Court has personal jurisdiction over them and that some,  
8 but not all, of the Defendants conduct business in the Northern District of California and are  
9 authorized to do so. Defendants deny all remaining allegations in Paragraph 41.

10 42. Defendants admit that venue is proper in this District and that some, but not all, of the  
11 Defendants conduct business in the Northern District of California and are authorized to do so.  
12 Defendants deny all remaining allegations in Paragraph 42.

13 **FACTUAL ALLEGATIONS**

14 43. Defendants admit that the referenced document was issued in October 2000 and that  
15 it contains an introductory message from David Satcher. Defendants lack sufficient knowledge or  
16 information to form a belief as to the truth of the remaining allegations in Paragraph 43 and deny the  
17 allegations on that basis.

18 44. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
19 the allegations in Paragraph 44 and deny the allegations on that basis.

20 45. Defendants admit that HHS issued the referenced report in 2011. Defendants lack  
21 sufficient knowledge or information to form a belief as to the truth of the remaining allegations in  
22 Paragraph 45 and deny the allegations on that basis.

23 46. Defendants admit that the referenced source notes that the referenced organizations  
24 recommend “that most infants in the United States be breastfed for at least 12 months.” See  
25 [https://www.ncbi.nlm.nih.gov/books/NBK52682/pdf/Bookshelf\\_NBK52682.pdf](https://www.ncbi.nlm.nih.gov/books/NBK52682/pdf/Bookshelf_NBK52682.pdf) (last visited  
26 9/9/2017). Defendants deny any remaining allegations in Paragraph 46.

27 47. Defendants admit that the cited source contains the quoted material in sub-parts A  
28 and B, but Defendants deny that the cited source contains the information set forth in sub-part C.



REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

1 Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining  
2 allegations in Paragraph 47, including those in each sub-part, and deny the allegations on that basis.

3 48. Defendants admit that the referenced source contains the information set forth in  
4 Paragraph 48. Defendants lack sufficient knowledge or information to form a belief as to the truth  
5 of the allegations in footnote 4 and deny the allegations on that basis.

6 49. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
7 the allegations in the first sentence of Paragraph 49 and deny the allegations on that basis.

8 Defendants state that the website address leads to an error when copied into a browser, and as a  
9 result Defendants lack sufficient knowledge or information to form a belief as to the truth of the  
10 allegations in the second sentence of Paragraph 49 and deny the allegations on that basis.

11 50. Defendants admit that the referenced source contains the quoted material without the  
12 emphasis, but lack sufficient knowledge or information to form a belief as to the truth of the  
13 remaining allegation in Paragraph 50 and deny those allegations on that basis.

14 51. Defendants admit that the referenced source contains the quoted material in  
15 Paragraph 51, except not at the referenced page in the case of the quoted language in the first  
16 sentence of Paragraph 51.

17 52. Defendants admit that the information contained in the first sentence of Paragraph 52  
18 is contained in the cited source. Defendants further admit that IBCLCs work in many health care  
19 settings, including the settings set forth in Paragraph 52. Defendants lack sufficient knowledge or  
20 information to form a belief as to the truth of the remaining allegations in Paragraph 52 and deny  
21 those allegations on that basis.

22 53. Defendants admit that the cited source contains the information in Paragraph 53 but  
23 deny any remaining allegations in Paragraph 53.

24 54. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
25 the allegations in Paragraph 54 and deny the allegations on that basis but admit that the chart is  
26 contained in the referenced source.

27 55. Defendants admit that the information in the first six sentences of Paragraph 55 is  
28 contained in the cited source. Further, Defendants admit that the purpose of ACA's preventive

1 services provision is to decrease financial barriers to preventive services by eliminating cost-shares  
 2 in some cases. Defendants deny the remaining allegations in Paragraph 55, including the seventh and  
 3 final sentence of that Paragraph.

4 56. Defendants admit only that ACA provides that a “group health plan and a health  
 5 insurance issuer ... shall not impose any cost-sharing requirements for ... preventive care ... [for  
 6 women] as provided for in comprehensive guidelines supported by the Health Resources and  
 7 Services Administration.” See 42 U.S.C. § 300gg-13(a)(4). Defendants deny that ACA requires any  
 8 other form of “access.” Defendants deny any remaining allegations in Paragraph 56.

9 57. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
 10 the allegations in the first sentence of Paragraph 57 and deny the allegations on that basis.  
 11 Defendants deny that the cited reference contains the information set forth in the second sentence of  
 12 Paragraph 57 and deny the allegations on that basis.

13 58. Defendants admit that the cited source contains the information set forth in the first  
 14 sentence of Paragraph 58, except that it does not refer to “Comprehensive Lactation Benefits.”  
 15 Defendants deny the remaining allegations in Paragraph 58.

16 59. Defendants admit the allegations in Paragraph 59 but deny that ACA requires timely  
 17 or immediate access to the services referenced in Paragraph 59.

18 60. Defendants admit only that the PDA prohibits discrimination “on the basis of  
 19 pregnancy, childbirth, or related medical conditions” and deny any remaining allegations in  
 20 Paragraph 60. See 42 U.S.C. § 2000e(k).

21 61. Defendants admit that the referenced source contains the quoted material in  
 22 Paragraph 61.

23 62. Defendants admit that 42 U.S.C. § 18022(b)(1)(D) lists “[m]aternity and newborn  
 24 care” as an essential health benefit for purposes of ACA, and that the HRSA Guidelines contain the  
 25 quoted material in Paragraph 62. Defendants deny any remaining allegations in Paragraph 62.

26 63. Defendants admit that ACA contains the quoted material in Paragraph 63.

27 64. Defendants admit that 42 U.S.C § 18022(c)(3)(A) defines the term “cost-sharing” as  
 28 “include[ing] ... deductibles, coinsurance, copayments, or similar charges” but deny the remaining

1 allegations in Paragraph 64.

2 65. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
3 the allegations in the first five sentences of Paragraph 65 and deny the allegations on that basis.  
4 Defendants admit that the sources cited in footnotes 5 and 6 contain the information in the sixth  
5 and seventh sentences of Paragraph 65.

6 66. Defendants admit the allegations in the first sentence of Paragraph 66, and that the  
7 referenced source contains the quoted material in the second sentence of Paragraph 66.

8 67. Defendants admit that the referenced regulation contains the quoted material in  
9 Paragraph 67 (without alteration), and that the regulation applies to non-grandfathered plans.

10 68. Defendants admit that the HRSA Guidelines apply to plan years beginning on or after  
11 August 1, 2012, that they are cited in footnote 7, and that they include “[b]reastfeeding support,  
12 supplies, and counseling,” which initially was described by HRSA as “[c]omprehensive lactation  
13 support and counseling, by a trained provider during pregnancy and/or in the postpartum period, and  
14 costs for renting breastfeeding equipment,” (see <http://hrsa.gov/womensguidelines/> (last visited  
15 9/9/2017)), and was later amended to state: “[c]omprehensive lactation support services (including  
16 counseling, education, and breastfeeding equipment and supplies) during the antenatal, perinatal, and  
17 the postpartum period to ensure the successful initiation and maintenance of breastfeeding.” See  
18 <https://www.hrsa.gov/womensguidelines2016/index.html> (last visited 9/9/2017). Defendants deny  
19 any remaining allegations in Paragraph 68.

20 69. Defendants admit that ACA requires coverage without cost shares for “preventive  
21 care . . . [for women] as provided for in comprehensive guidelines supported by the Health  
22 Resources and Services Administration.” *See* 42 U.S.C. § 300gg-13(a)(4). Defendants further admit  
23 that the HRSA Guidelines include “[b]reastfeeding support, supplies, and counseling,” which  
24 initially was described by HRSA as “[c]omprehensive lactation support and counseling, by a trained  
25 provider during pregnancy and/or in the postpartum period, and costs for renting breastfeeding  
26 equipment,” (*see* <http://hrsa.gov/womensguidelines/> (last visited 9/9/2017)), and was later amended  
27 to state: “[c]omprehensive lactation support services (including counseling, education, and  
28 breastfeeding equipment and supplies) during the antenatal, perinatal, and the postpartum period to

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

1 ensure the successful initiation and maintenance of breastfeeding.” *See*  
2 <https://www.hrsa.gov/womensguidelines2016/index.html> (last visited 9/9/2017). Defendants deny  
3 any remaining allegations in Paragraph 69. Defendants deny that the webpage cited in footnote 8  
4 contains the information and quoted material in that footnote and therefore lack sufficient knowledge  
5 or information to form a belief as to the truth of the allegations in footnote 8 and deny them on that  
6 basis.

7 70. Defendants admit that ACA’s preventive services provision applies to all non-  
8 grandfathered private plans but deny the remaining allegations in Paragraph 70.

9 71. Defendants admit the allegations in Paragraph 71, except to the extent that the term  
10 “Comprehensive Lactation Benefits” may not accurately describe the services mandated by ACA.

11 72. Defendants admit that the referenced document is dated October 23, 2015 and  
12 contains the quoted material in Paragraph 72.

13 73. Defendants admit that the referenced document, which is cited in footnote 9, contains  
14 the quoted material in Paragraph 73 (without emphasis) and deny any remaining allegations in  
15 Paragraph 73.

16 74. Defendants deny the allegations in Paragraph 74.

17 75. Defendants admit that the referenced regulation contains the quoted material in  
18 Paragraph 75 (without emphasis).

19 76. Defendants deny the allegations in Paragraph 76.

20 77. Defendants deny the allegations in Paragraph 77.

21 78. Defendants admit that the cited section of the Federal Register contains the quoted  
22 material in Paragraph 78 (without emphasis) and deny any remaining allegations in Paragraph 78.

23 79. Defendants admit only that they or their subsidiaries administer and underwrite health  
24 care plans that are subject to ACA’s preventive services requirements, including those pertaining to  
25 breastfeeding support and counseling services, and deny any characterizations to the contrary and  
26 any remaining allegations in Paragraph 79.

27 80. Defendants admit that the referenced Guideline, which is cited in footnote 10, contains  
28 the information in Paragraph 80, but deny the remaining allegations in Paragraph 80.

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

1 81. Defendants admit that the referenced Bulletin contains the information in Paragraph  
2 81, but deny the remaining allegations in Paragraph 81.

3 82. Defendants admit the allegations in the first sentence of Paragraph 82 and that the  
4 referenced Certificate of Coverage contains the information in the second sentence of Paragraph 82,  
5 except that Defendants deny the allegation that Defendants cite to sources that “acknowledge  
6 coverage for comprehensive breastfeeding support as a preventive care service.”

7 83. Defendants deny the allegations in Paragraph 83.

8 84. Defendants deny the allegations in Paragraph 84, including those in each sub-part.

9 85. Defendants deny the allegations in the body of Paragraph 85. Defendants admit that  
10 the source referenced in footnote 11 contains the quoted material.

11 86. Defendants deny the allegations in Paragraph 86.

12 87. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
13 the allegations in the first sentence of Paragraph 87 and deny the allegations on that basis.

14 Defendants deny the remaining allegations in Paragraph 87.

15 88. Defendants deny the allegations in Paragraph 88.

16 **Plaintiff Condry**

17 89. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
18 the allegations in the first five sentences of Paragraph 89 and deny those allegations on that basis.

19 Defendants admit the allegations in the sixth sentence of Paragraph 89.

20 90. Defendants admit the allegations in the first sentence of Paragraph 90. Defendants  
21 admit that the EOB referenced in the second, third, and fourth sentences of Paragraph 90 contains  
22 the quoted material.

23 91. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
24 the allegations in Paragraph 91 and deny the allegations on that basis.

25 92. Defendants admit only that Condry did not submit claims for reimbursement of the  
26 above-referenced services or submit an appeal of the denied claim. Defendants lack sufficient  
27 knowledge or information to form a belief as to the truth of the remaining allegations in Paragraph  
28 92 and deny the allegations on that basis.

1 93. Defendants admit the allegations in the first sentence of Paragraph 93. Defendants  
2 lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations  
3 in Paragraph 93 and deny the allegations on that basis.

4 94. Defendants admit the allegations in the first sentence of Paragraph 94. Defendants  
5 further admit that the referenced documents contain the information and quoted material in  
6 Paragraph 94, except that Defendants deny the allegations regarding the “Medicare amount.”

7 95. Defendants admit that the referenced documents contain the information in Paragraph  
8 95.

9 96. Defendants deny the allegations in Paragraph 96.

10 **Plaintiff Hoy**

11 97. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
12 the allegations in Paragraph 97, including those in footnote 12, and deny the allegations on that  
13 basis.

14 98. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
15 the allegations in the first two sentences of Paragraph 98 and deny the allegations on that basis.  
16 Defendants admit that Hoy participated in a telephone call with a customer service representative on  
17 September 9, 2015 but lack sufficient knowledge or information to form a belief as to the truth of the  
18 remaining allegations in Paragraph 98 and deny the allegations on that basis.

19 99. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
20 the allegations in Paragraph 99 and deny the allegations on that basis.

21 100. Defendants admit only that Hoy received services from an out-of-network lactation  
22 consultant on September 10, September 28, and October 5, 2015 and was charged \$155, \$95, and  
23 \$95, respectively, for the services for a total of \$345. Defendants lack sufficient knowledge or  
24 information to form a belief as to the truth of the remaining allegations in Paragraph 100 and deny  
25 the allegations on that basis.

26 101. Defendants admit that Hoy participated in a telephone call with a customer service  
27 representative on October 22, 2015. Defendants lack sufficient knowledge or information to form a  
28 belief as to the truth of the remaining allegations in Paragraph 101 and deny the allegations on that

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

1 basis.

2 102. Defendants admit only that Hoy faxed a letter to United Healthcare dated October 23,  
3 2015, which appended, among other things, receipts evidencing the services she received.

4 Defendants also admit that United Healthcare sent a letter to Hoy dated October 28, 2015, which  
5 acknowledged the receipt of “a complaint or grievance” and stated that a letter would be sent to Hoy  
6 “within 30 days.” Defendants deny any remaining allegations in Paragraph 102.

7 103. Defendants admit that the referenced letter contains the information in the first two  
8 sentences of Paragraph 103. Defendants deny the allegations in the third sentence of Paragraph 103.

9 104. Defendants admit that Hoy participated in a telephone call with a customer service  
10 representative on December 29, 2015. Defendants lack sufficient knowledge or information to form  
11 a belief as to the truth of the allegations regarding the contents of the call and deny those allegations  
12 on that basis. Defendants admit that Hoy faxed a letter to the United Healthcare Appeals Board dated  
13 December 29, 2015, purporting “to follow up on an appeal [she] originally submitted on October 23,  
14 2015.” Defendants deny the remaining allegations in Paragraph 104.

15 105. Defendants admit that Hoy filed a complaint with the Pennsylvania Insurance  
16 Department dated December 29, 2015 and that the complaint contains the information described in  
17 Paragraph 105 but deny that any such allegations were accurate.

18 106. Defendants admit that United Healthcare sent a letter to Hoy dated December 31,  
19 2015, which acknowledged the receipt of “a complaint or grievance” and stated that a letter would  
20 be sent to Hoy “within 30 days.” Defendants deny any remaining allegations in Paragraph 106.

21 107. Defendants admit that United Healthcare sent a letter to Hoy dated January 11, 2016,  
22 which contained the quoted material in Paragraph 107. Defendants deny the remaining allegations in  
23 Paragraph 107.

24 108. Defendants admit that the Pennsylvania Insurance Department sent Hoy a letter dated  
25 January 19, 2016, which informed her, among other things, that she “ha[d] not initiated [her] internal  
26 appeal(s) with [her] insurance company.” Defendants deny the remaining allegations in Paragraph  
27 108.

28 109. Defendants admit that Hoy’s plan provides for the three types of claims specified in  
3:17-cv-00183-VC



REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

1 Paragraph 109 and footnotes 13 and 14 but deny the remaining allegations in Paragraph 109.

2 110. Defendants admit that Hoy’s plan contains the quoted material in Paragraph 110.

3 111. Defendants admit that Hoy’s plan contains the quoted material in Paragraph 111.

4 112. Defendants admit that Hoy’s plan contains the quoted material in the first sentence of  
5 Paragraph 112. Defendants deny the allegations in the second sentence of Paragraph 112.

6 113. Defendants admit that Hoy’s plan contains the information in Paragraph 113.

7 114. Defendants deny the allegations in Paragraph 114.

8 115. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
9 the allegations in Paragraph 115 regarding the time Hoy spent “trying to have her claim ... processed  
10 and paid” and deny those allegations on that basis. Defendants deny the remaining allegations in  
11 Paragraph 115.

12 **Plaintiff Endicott**

13 116. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
14 the allegations in Paragraph 116 and deny the allegations on that basis.

15 117. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
16 the allegations in Paragraph 117 and deny the allegations on that basis.

17 118. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
18 the allegations in the first and third sentences of Paragraph 118 and deny the allegations on that  
19 basis. Defendants admit the allegations in the second sentence of Paragraph 118.

20 119. Defendants admit that the referenced documents contain the information in Paragraph  
21 119.

22 120. Defendants admit that the referenced documents contain the information in Paragraph  
23 120.

24 121. Defendants admit that the referenced EOB contains the information and quoted  
25 material in Paragraph 121.

26 122. Defendants admit that Endicott participated in a telephone call with a customer  
27 service representative but lack sufficient knowledge or information to form a belief as to the truth of  
28 the remaining allegations in Paragraph 122 and deny the allegations on that basis.

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

1 123. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
2 the allegations in Paragraph 123 and deny the allegations on that basis.

3 124. Defendants admit that Endicott submitted a complaint to the State of Connecticut  
4 Insurance Department dated February 1, 2016 and that United Healthcare’s response, dated February  
5 15, 2016, contains the information and quoted material in Paragraph 124. Defendants deny any  
6 remaining allegations in Paragraph 124.

7 125. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
8 the allegation in Paragraph 125 regarding the time Endicott spent “trying to access timely  
9 Comprehensive Lactation Benefits” and deny the allegation on that basis. Defendants deny the  
10 remaining allegations in Paragraph 125.

11 **Plaintiff Bishop**

12 126. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
13 the allegations in Paragraph 126 and deny the allegations on that basis.

14 127. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
15 the allegations in Paragraph 127 and deny the allegations on that basis.

16 128. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
17 the allegations in Paragraph 128 and deny the allegations on that basis.

18 129. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
19 the allegations in Paragraph 129 and deny the allegations on that basis.

20 130. Defendants admit that Bishop received services from an out-of-network lactation  
21 consultant on August 5, 2015 and paid \$130 for the service. Defendants lack sufficient knowledge or  
22 information to form a belief as to the truth of the remaining allegations in Paragraph 130 and deny  
23 the allegations on that basis.

24 131. Defendants admit the allegations in the first sentence of Paragraph 131 and that the  
25 referenced EOB contains the information and quoted material in Paragraph 131.

26 132. Defendants admit that the referenced documents contain the information and quoted  
27 material in Paragraph 132.

28 133. Defendants admit that Bishop re-submitted her claim and that the referenced EOB

1 contains the information and quoted material in Paragraph 133. Defendants deny any remaining  
2 allegations in Paragraph 133.

3 134. Defendants admit that the referenced EOB contains the quoted material in Paragraph  
4 134.

5 135. Defendants admit that Bishop’s claim for reimbursement was denied and that she was  
6 therefore responsible for the \$130 fee. Defendants lack sufficient knowledge or information to form  
7 a belief as to the truth of the allegations in Paragraph 135 regarding the time Bishop spent “trying to  
8 access timely Comprehensive Lactation Benefits” and deny the allegations on that basis. Defendants  
9 deny the remaining allegations in Paragraph 135.

10 ***Plaintiff Barber***

11 136. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
12 the allegations in Paragraph 136 and deny the allegations on that basis.

13 137. Defendants admit the allegations in the first two sentences of Paragraph 137.  
14 Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations  
15 in the third sentence of Paragraph 137 and deny the allegations on that basis.

16 138. Defendants admit that the referenced documents contain the information and quoted  
17 material in Paragraph 138.

18 139. Defendants admit that the referenced documents contain the information and quoted  
19 material in Paragraph 139.

20 140. Defendants admit that Barber’s claim for reimbursement was denied and that she was  
21 therefore responsible for the \$590 fee. Defendants lack sufficient knowledge or information to form  
22 a belief as to the truth of the allegations in Paragraph 140 regarding the time Barber spent  
23 “attempting to access timely Comprehensive Lactation Benefits” and deny the allegations on that  
24 basis. Defendants deny the remaining allegations in Paragraph 140.

25 ***Plaintiff Carroll***

26 141. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
27 the allegations in Paragraph 141 and deny the allegations on that basis.

28 142. Defendants admit the allegations in the first two sentences of Paragraph 142. With

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

1 respect to the remaining allegations in Paragraph 142, Defendants admit that the referenced  
2 documents contain the information and quoted material in Paragraph 142.

3 143. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
4 the allegations in Paragraph 143 and deny the allegations on that basis.

5 144. Defendants admit the allegations in the fourth sentence of Paragraph 144, as well as  
6 the allegations that Carroll received services from Cara Munson on November 2 and 14, 2015,  
7 paying \$125 and \$50, respectively, for a total of \$175. Defendants lack sufficient knowledge or  
8 information to form a belief as to the truth of the remaining allegations in Paragraph 144 and deny  
9 the allegations on that basis.

10 145. Defendants admit that the referenced documents contain the information and quoted  
11 material in Paragraph 145.

12 146. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
13 the allegation in the first sentence of Paragraph 146 regarding the time Carroll spent “attempting to  
14 access timely Comprehensive Lactation Benefits” and deny the allegation on that basis. Defendants  
15 deny the remaining allegations in Paragraph 146.

16 147. Defendants deny the allegations in Paragraph 147.

17 148. Defendants admit that ACA contains the quoted language in Paragraph 148.

18 149. Defendants admit the allegations in Paragraph 149.

19 150. Defendants admit the allegations in Paragraph 150.

20 151. Defendants admit that the cited section of the Federal Register contains the quoted  
21 material in Paragraph 151 (without emphasis).

22 152. Defendants admit that 81 Fed. Reg. 31376-01, 31439 (May 18, 2016) provides that  
23 “OCR interprets Section 1557 as authorizing a private right of action for claims of disparate impact  
24 discrimination on the basis of any of the criteria enumerated in the legislation.”

25 153. Defendants admit the allegations in the first sentence of Paragraph 153. Defendants  
26 deny the remaining allegations in Paragraph 153.

27 154. Defendants admit that Title IX prohibits discrimination on the basis of sex and that  
28 the cited section of the Federal Register contains the quoted material in Paragraph 54.

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

1 155. Defendants admit that the cited sections of the Federal Register and Code of Federal  
2 Regulations contain the quoted material in Paragraph 155.

3 156. Defendants admit that the cited section of the Federal Register contains the quoted  
4 material in Paragraph 156.

5 157. Defendants admit that the Textbook of Med. Physiology and the Collins English  
6 Dictionary contain the information and quoted material in the parentheticals associated with those  
7 sources in Paragraph 157. Defendants lack sufficient knowledge or information to form a belief as to  
8 the truth of the remaining allegations in Paragraph 157 and deny the allegations on that basis.

9 158. Defendants deny that the referenced source contains the information in Paragraph 158  
10 and therefore lack sufficient knowledge or information to form a belief as to the truth of the  
11 allegations in Paragraph 158 and deny the allegations on that basis.

12 159. Defendants deny the allegations in Paragraph 159.

13 160. Defendants deny the allegations in Paragraph 160.

14 161. Defendants deny the allegations in Paragraph 161.

15 162. Defendants deny the allegations in Paragraph 162.

16 163. Defendants deny the allegations in the body of Paragraph 163, as well as those in the  
17 third sentence of footnote 15 thereto. Defendants admit that the referenced statutes contain the  
18 quoted language in the first sentence of footnote 15. Defendants admit the allegations in the second  
19 sentence of footnote 15.

20 164. Defendants deny the allegations in Paragraph 164.

21 165. Defendants deny the allegations in Paragraph 165.

22 166. Defendants deny the allegations in Paragraph 166.

23 167. Defendants deny the allegations in Paragraph 167.

24 168. Defendants admit that Defendant UnitedHealthcare Insurance Company has received  
25 federal financial assistance in the past. Defendants deny the remaining allegations of Paragraph 168.

26 169. Defendants admit that the information in Paragraph 169 is included in UnitedHealth  
27 Group's 2015 Form 10k, provided that the term "UnitedHealth Group" refers to the UnitedHealth  
28 Group family of businesses, rather than solely UnitedHealth Group Inc.

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

1           170. With respect to the allegations in the first and fourth sentences of Paragraph 170,  
2 Defendants admit that UnitedHealthcare Insurance Company has formerly offered health plans  
3 through the ACA Exchanges and has, in the past, received the subsidies referenced therein.  
4 Defendants admit that the referenced source contains the information in the second and third  
5 sentences of Paragraph 170. Defendants deny any remaining allegations in Paragraph 170.

6           171. Defendants admit that the referenced source contains the information in the first three  
7 sentences of Paragraph 171. With respect to the allegations in the fourth sentence of Paragraph 171,  
8 Defendants admit that UnitedHealthcare Insurance Company has received the subsidies referenced  
9 therein. Defendants deny any remaining allegations in Paragraph 171.

10          172. Defendants admit that the referenced sources, which are cited in footnotes 16 and 17,  
11 contain the information in Paragraph 172. Defendants admit that UnitedHealth Military & Veterans  
12 Services, LLC and UnitedHealthCare Services, Inc. received the federal funds described in sub-parts  
13 A and B of Paragraph 172. Defendants deny the remaining allegations of Paragraph 172.

14          173. Defendants deny the allegations in Paragraph 173.

15          174. Defendants deny the allegations in Paragraph 174.

16          175. Defendants deny the allegations in Paragraph 175.

17          176. Defendants admit the allegations in the first sentence of Paragraph 176 and that the  
18 cited sections of ERISA contain the quoted material in Paragraph 176. The remaining allegations are  
19 conclusions of law to which no response is required. To the extent a response is required,  
20 Defendants deny the remaining allegations in Paragraph 176.

21          177. Defendants deny the allegations in Paragraph 177.

22          178. Defendants admit that 29 U.S.C. § 1104(a)(1) provides, among other things, that “a  
23 fiduciary shall discharge his duties with respect to a plan solely in the interest of the participants and  
24 beneficiaries and ... for the exclusive purpose of ... providing benefits to participants and their  
25 beneficiaries; and ... with the care, skill, prudence, and diligence under the circumstances then  
26 prevailing that a prudent man acting in a like capacity and familiar with such matters would use in  
27 the conduct of an enterprise of a like character and with like aims.” Defendants further admit that the  
28 cited case contains the information and quoted material in the second sentence of Paragraph 178.

1 179. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
2 the allegations in Paragraph 179 and deny the allegations on that basis.

3 180. Defendants admit that 29 U.S.C. § 1105(a) provides that “a fiduciary with respect to a  
4 plan shall be liable for a breach of fiduciary responsibility of another fiduciary” under certain  
5 specified circumstances, and that the referenced legislative source contains the quoted material in  
6 Paragraph 180. Defendants deny the remaining allegations in Paragraph 180.

7 181. Defendants admit that 29 U.S.C. § 1132(a)(3) contains the quoted material in  
8 Paragraph 181. Defendants deny the remaining allegations in Paragraph 181.

9 182. Defendants deny the allegations in Paragraph 182.

10 183. Defendants admit that Plaintiffs purport to bring the present action under ERISA and  
11 purport to seek the relief described in Paragraph 183 but deny that they are entitled to such relief, or  
12 any other relief. Defendants deny any remaining allegations in Paragraph 183.

13 **CLASS ACTION ALLEGATIONS**

14 184. Defendants admit that Plaintiffs purport to represent the putative classes described in  
15 Paragraph 184 but deny that the putative classes may be certified pursuant to Federal Rule of Civil  
16 Procedure 23 or otherwise. Defendants deny any remaining allegations in Paragraph 184.

17 185. Defendants admit that Plaintiffs purport to exclude various entities and individuals  
18 from the putative classes in Paragraph 185 but deny that the putative classes may be certified  
19 pursuant to Federal Rule of Civil Procedure 23 or otherwise.

20 186. Defendants deny the allegations in Paragraph 186.

21 187. Defendants deny the allegations in Paragraph 187, including those in each sub-part.

22 188. Defendants deny the allegations in Paragraph 188.

23 189. Defendants deny the allegations in Paragraph 189.

24 190. Defendants deny the allegations in Paragraph 190.

25 191. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
26 the allegations in Paragraph 191 regarding what Plaintiffs “know” and deny the allegations on that  
27 basis. Defendants deny all remaining allegations in Paragraph 191.



**EXHAUSTION/FUTILITY OF ADMINISTRATIVE REMEDIES**

192. Defendants admit the allegations in the first sentence of Paragraph 192 and that Condry did not appeal her claim denial or submit other claims for reimbursement. Defendants lack sufficient knowledge or information to form a belief as to Condry’s motivation for failing to exhaust her administrative remedies and deny the allegations on that basis. Defendants deny any remaining allegations in Paragraph 192.

193. Defendants deny the allegations in Paragraph 193.

194. Defendants deny the allegations in Paragraph 194.

195. Defendants admit only that Bishop’s claim for reimbursement was denied and that the EOB stated that the service was “not a reimbursable service.” Defendants deny the remaining allegations in Paragraph 195.

196. Defendants admit only that Barber’s claim was denied and that the EOB stated that the service was “not covered by the health benefit plan.” Defendants deny the remaining allegations in Paragraph 196.

197. Defendants deny the allegations in the first sentence of Paragraph 197. Defendants lack sufficient knowledge or information to form a belief as to the truth of the allegations in the second and third sentences of Paragraph 197 and deny those allegations on that basis.

198. Defendants deny the allegations in Paragraph 198.

199. Defendants admit that Plaintiffs purport to assert the allegations in the first sentence of Paragraph 199 but deny that such allegations are accurate or give rise to any liability on the part of Defendants. Defendants deny the allegations in the second sentence of Paragraph 199.

200. Defendants admit that Condry, Hoy, Endicott, Bishop, and Barber purport to assert the allegations in the first sentence of Paragraph 200 but deny that such allegations are accurate or give rise to any liability on the part of Defendants. Defendants deny the allegations in the second sentence of Paragraph 200.

///

///

///

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

**COUNT I**

**Declaratory and Injunctive Relief for UnitedHealth’s Breaches of Fiduciary Duty in Violation of 29 U.S.C. §§ 1104(a)(1)(A)(I), 1104(a)(1)(B), and 1104(a)(1)(D), Violation of 29 U.S.C. § 1133, and For Other Appropriate Equitable Relief (On Behalf of the Claims Review Class)**

201. Defendants incorporate their answers to all preceding Paragraphs of the Second Amended Complaint as their answer to Paragraph 201.

202. With respect to the allegations in the first sentence of Paragraph 202, Defendants admit that Condry, Hoy, Endicott, Bishop, and Barber purport to bring Count I individually and putatively on behalf of a class under ERISA but deny that such claims are properly asserted in this manner. Defendants admit that they are fiduciaries of Condry’s, Hoy’s, Endicott’s, Bishop’s, and Barber’s plans to the extent the particular plans state but deny the remaining allegations in the second sentence of Paragraph 202.

203. Paragraph 203 contains a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

204. Paragraph 204 contains a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.

205. Defendants admit that 29 U.S.C. § 1133 provides, among other things, that “every employee benefit plan shall ... provide adequate notice in writing to any participant or beneficiary whose claim for benefits under the plan has been denied ... and ... afford a reasonable opportunity to any participant whose claim for benefits has been denied for a full and fair review by the appropriate named fiduciary of the decision denying the claim.”

206. Defendants deny the allegations in Paragraph 206.

207. Defendants deny the allegations in Paragraph 207.

**COUNT II**

**Declaratory and Injunctive Relief for UnitedHealth’s Breaches of Fiduciary Duty in Violation of 29 U.S.C. §§ 1104(a)(1)(A)(I), 1104(a)(1)(B), and 1104(a)(1)(D) and for Other Appropriate Equitable Relief (On Behalf of the Lactation Services Class)**

208. Defendants incorporate their answers to all preceding Paragraphs of the Second

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

1 Amended Complaint as their answer to Paragraph 208.

2 209. With respect to the allegations in the first sentence of Paragraph 209, Defendants  
3 admit that Plaintiffs purport to bring Count II individually and putatively on behalf of a class under  
4 ERISA but deny that such claims are properly asserted in this manner. Defendants admit that they  
5 are fiduciaries of Condry’s, Hoy’s, Endicott’s, Bishop’s, and Barber’s plans to the extent the plans  
6 state but deny the remaining allegations in the second sentence of Paragraph 209.

7 210. Paragraph 210 contains a conclusion of law to which no response is required. To the  
8 extent a response is required, the allegations are denied.

9 211. Paragraph 211 contains a conclusion of law to which no response is required. To the  
10 extent a response is required, the allegations are denied.

11 212. Defendants deny the allegations in Paragraph 212.

12 **COUNT III**

13 **For Co-Fiduciary Breach and Liability for Knowing Breach of Trust**  
14 **(On Behalf Of Both ERISA Classes)**

15 213. Defendants incorporate their answers to all preceding Paragraphs of the Second  
16 Amended Complaint as their answer to Paragraph 213.

17 214. Defendants deny the allegations in Paragraph 214.

18 215. Defendants admit that 29 U.S.C. § 1105 contains the quoted material in Paragraph  
19 215.

20 216. Defendants deny the allegations in Paragraph 216.

21 217. Defendants deny the allegations in Paragraph 217.

22 218. Defendants deny the allegations in Paragraph 218.

23 219. Defendants deny the allegations in Paragraph 219.

24 220. Defendants deny the allegations in Paragraph 220.

25 **COUNT IV**

26 **Discrimination in Violation of Section 1557(a), 42 U.S.C. § 18116(a),**  
27 **of the Patient Protection and Affordable Care Act**  
28 **Against Defendants**  
**(On Behalf of the ACA Class)**

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

1 221. Defendants incorporate their answers to all preceding Paragraphs of the Second  
2 Amended Complaint as their answer to Paragraph 221.

3 222. Defendants admit that ACA contains the quoted material in Paragraph 222.

4 223. Defendants admit the allegations in Paragraph 223.

5 224. Defendants deny the allegations in Paragraph 224.

6 225. Defendants admit the allegations in the first sentence of Paragraph 225. Defendants  
7 deny the remaining allegations in Paragraph 225.

8 226. Defendants admit that 81 Fed. Reg. 31376-01, 31439 (May 18, 2016) provides that  
9 “OCR interprets Section 1557 as authorizing a private right of action for claims of disparate impact  
10 discrimination on the basis of any of the criteria enumerated in the legislation.”

11 227. Defendants admit that the cited sections of the Federal Register and the Code of  
12 Federal Regulations contain the quoted material in Paragraph 227.

13 228. Defendants lack sufficient knowledge or information to form a belief as to the truth of  
14 the allegations in Paragraph 228 and deny the allegations on that basis.

15 229. Defendants deny the allegations in Paragraph 229.

16 230. Defendants deny the allegations in Paragraph 230.

17 231. Defendants deny the allegations in Paragraph 231.

18 232. Defendants deny the allegations in Paragraph 232.

19 233. Defendants deny the allegations in Paragraph 233.

20 234. Defendants deny the allegations in Paragraph 234.

21 235. Defendants deny the allegations in Paragraph 235.

22 236. Defendants deny the allegations in Paragraph 236.

23 237. Defendants deny the allegations in Paragraph 237.

24 238. Defendants deny the allegations in Paragraph 238.

25 239. Defendants deny the allegations in Paragraph 239.

26 ///

27 ///

28 ///

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**COUNT V**

**Violation of the Patient Protection and Affordable Care Act  
through Incorporation by Reference in Defendants’ Plan Documents  
Against Defendants  
(On Behalf of the ACA Class)**

240. Defendants incorporate their answers to all preceding Paragraphs in the Second Amended Complaint as their answer to Paragraph 240.

241. Defendants admit the allegations in Paragraph 241.

242. Defendants admit that Carroll’s plan is governed by ACA’s preventive services requirements, including those pertaining to ACA-mandated breastfeeding support, supplies, and counseling, and that Carroll’s plan provides coverage consistent with such requirements.

243. Defendants deny the allegations in Paragraph 243.

244. Defendants deny the allegations in Paragraph 244.

**COUNT VI**

**Unjust Enrichment  
Against Defendants**

245. Defendants incorporate their answers to all preceding Paragraphs in the Second Amended Complaint as their answer to Paragraph 245.

246. Defendants deny the allegations in Paragraph 246.

247. Defendants deny the allegations in Paragraph 247.

248. Defendants deny the allegations in Paragraph 248.

249. Defendants deny the allegations in Paragraph 249.

**JURY DEMAND**

Defendants admit that Plaintiffs demand a trial by jury in the Jury Demand but deny that a jury trial is appropriate for the claims asserted in the Second Amended Complaint.

///  
///  
///  
///

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Plaintiffs’ Second Amended Complaint fails to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiffs’ claims and those of the putative class members are barred, in whole or in part, by the doctrine of laches and/or the applicable statutes of limitation or statutes of repose.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiffs’ claims and those of the putative class members are barred, in whole or in part, by the doctrines of waiver and estoppel, because Plaintiffs and the putative class members acquiesced in, consented to, or ratified the conduct of which Plaintiffs complain.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiffs’ claims and those of the putative class members are barred, in whole or in part, by the doctrine of unclean hands.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff’ claims and those of the putative class members are barred, in whole or in part, because Plaintiffs and the putative class members have not suffered any compensable damages.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs’ claims and those of the putative class members are barred, in whole or in part, because to the extent Plaintiffs and the putative class members suffered any compensable damages, Plaintiffs’ and the putative class members’ own actions and/or omissions and/or failure to mitigate caused, contributed, or resulted in the damages of which Plaintiffs and the putative class members

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

1 complain.

2  
3 **SEVENTH AFFIRMATIVE DEFENSE**

4 Plaintiffs’ claims and those of the putative class members are barred, in whole or in part,  
5 because to the extent Plaintiffs and the putative class members suffered any compensable damages,  
6 those damages were proximately caused by the acts, omissions, or fault of persons or entities over  
7 whom Defendants exercised no control and for whose acts, omissions, or fault Defendants cannot be  
8 held liable.

9  
10 **EIGHTH AFFIRMATIVE DEFENSE**

11 Plaintiffs’ claims and those of the putative class members are barred, in whole or in part, by  
12 the doctrine of accord and satisfaction, because each Plaintiff and putative class member received  
13 the full monetary benefit to which she was entitled under the terms of her plan.

14  
15 **NINTH AFFIRMATIVE DEFENSE**

16 Plaintiffs’ claims and those of the putative class members are barred, in whole or in part, for  
17 failure to exhaust administrative remedies as required by ERISA.

18  
19 **TENTH AFFIRMATIVE DEFENSE**

20 Plaintiffs’ claims and those of the putative class members are barred, in whole or in part,  
21 because Defendants are the claims administrators of Plaintiffs’ and the putative class members’  
22 plans, rather than the insurers, and therefore cannot be held liable for alleged violations of the terms  
23 of the plans, or pursuant to section 503 of ERISA.

24  
25 **ELEVENTH AFFIRMATIVE DEFENSE**

26 Plaintiffs’ claims and those of the putative class members are barred, in whole or in part, by,  
27 or for failure to comply with, the express terms, conditions, and exclusions of their plans.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiffs’ claims and those of the putative class members are barred, in whole or in part, to the extent Plaintiffs’ and the putative class members’ plans do not afford fiduciary status to Defendants.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs’ claims and those of the putative class members are barred, in whole or in part, to the extent they were paid for by secondary insurance.

**FOURTEENTH AFFIRMATIVE DEFENSE**

The claims of those Plaintiffs and the putative class members whose plans are governed by ERISA are barred, in whole or in part, to the extent they purport to seek remedies outside of ERISA’s statutory scheme.

**FIFTEENTH AFFIRMATIVE DEFENSE**

The claims of those Plaintiffs and the putative class members whose plans are not governed by ERISA are barred, in whole or in part, to the extent they purport to seek remedies pursuant to ERISA’s statutory scheme.

**SIXTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs’ claims and those of the putative class members are barred, in whole or in part, because the services they received were designed to treat an existing or clinically apparent condition and are therefore classified as diagnostic care, rather than preventive services for purposes of ACA.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

Count IV is barred, in whole or in part, to the extent Defendants do not receive federal financial assistance.

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiffs’ demand for a jury trial is barred, in whole or in part, because the ERISA and equitable claims asserted in the Complaint require a bench trial.

**RESERVATION OF RIGHTS**

Defendants reserve the right to assert additional defenses and to amend this Answer at such time and to such extent as warranted by discovery and the factual developments in this case.

DATED: September 19, 2017.

REED SMITH LLP

By: /s/ Karen A. Braje  
Karen A. Braje (SBN 193900)  
Martin J. Bishop (admitted *pro hac vice*)  
Rebecca R. Hanson (admitted *pro hac vice*)  
Attorneys for Defendants UnitedHealth Group Inc.,  
UnitedHealthcare, Inc., UnitedHealthcare  
Insurance Company, United Healthcare Services,  
Inc., and UMR, Inc.

REED SMITH LLP  
A limited liability partnership formed in the State of Delaware