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2  
3 **IN THE UNITED STATES DISTRICT COURT**  
4 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

5  
6 **PACIFIC RECOVERY SOLUTIONS, ET AL.,**

7 Plaintiffs,

8 v.

9  
10 **UNITED BEHAVIORAL HEALTH, ET AL.,**

11 Defendants.

CASE NO. 4:20-cv-02249 YGR

**ORDER GRANTING MOTIONS TO  
DISMISS WITH LEAVE TO AMEND**

Re: Dkt. Nos. 71, 72, 80

12 Plaintiffs<sup>1</sup> bring this putative class action against defendants United Behavioral Health  
13 (“United”) and MultiPlan, Inc. (“MultiPlan”) for claims arising out of United’s alleged failure to  
14 reimburse plaintiffs at “a percentage” of the Usual, Customary, and Reasonable Rates (“UCR”) for  
15 Intensive Outpatient Program (“IOP”) services, which plaintiffs provided to patients with health  
16 insurance policies administered by United. The Court dismissed a prior iteration of the complaint  
17 in its entirety, with leave to amend. Plaintiffs filed a First Amended Complaint (“FAC”), in which  
18 they assert, on their own behalf and on behalf of a proposed class of similarly-situated out-of-  
19 network IOP providers, claims under Section 1 of the Sherman Act and the Racketeer Influenced  
20 and Corrupt Organizations Act (“RICO”), and multiple claims under California law.

21 Now pending are two motions to dismiss all claims in the FAC with prejudice under  
22 Federal Rule of Civil Procedure 12(b)(6) on the grounds that: (1) plaintiffs’ claims under Section 1  
23 of the Sherman Act and RICO fail for lack of statutory standing; (2) plaintiffs’ state-law claims are  
24 preempted by the Employee Retirement Income Security Act of 1974 (“ERISA”); and (3) all  
25 claims in the FAC continue to be inadequately pleaded.

26  
27  
28 <sup>1</sup> Plaintiffs are Pacific Recovery Solutions d/b/a Westwind Recovery, Miriam Hamideh  
PhD Clinical Psychologist Inc. d/b/a PCI Westlake Centers, Bridging the Gaps, Inc., and Summit

United States District Court  
Northern District of California

1 Having carefully considered the pleadings and the parties' briefs<sup>2</sup>, and for the reasons set  
 2 forth below, the Court **GRANTS** the motions to dismiss **WITH PREJUDICE** with respect to plaintiffs'  
 3 claims under the Sherman Act and RICO, and plaintiffs' state-law claims to the extent that they  
 4 arise out of the alleged under-reimbursement of claims for IOP services that were covered by  
 5 ERISA plans. The Court **GRANTS** the motions to dismiss **WITH LEAVE TO AMEND** with respect to  
 6 plaintiffs' state-law claims to the extent that they arise out of the alleged under-reimbursement of  
 7 claims for IOP services that were covered by plans that fall outside of the scope of ERISA.<sup>3</sup>

## 8 **I. BACKGROUND**

### 9 **A. Initial complaint**

10 In the first iteration of the complaint, plaintiffs alleged as follows. Plaintiffs are out-of-  
 11 network healthcare providers who provided IOP services to patients who had health insurance  
 12 policies that United administered. Compl. ¶ 2, Docket No. 1. The health insurance policies that  
 13 United administered are "health care benefit programs" covered by ERISA. *Id.* ¶¶ 348-359.  
 14 Before providing treatment to these patients, "each of the Plaintiffs confirmed with United that the  
 15 patients had active coverage and benefits for out of network IOP treatment services" through  
 16 verification-of-benefits ("VOB") calls, during which United "represented" that it would pay the  
 17 patients' claims for such services at a percentage of the UCR. *Id.* ¶¶ 3, 17, 188, 195, 202, 209.  
 18 Due to the communications in question, plaintiffs and United "understood" UCR to be "consistent  
 19 with United's published definition of UCR rates" on its website describing out-of-network plan  
 20 benefits. *Id.* ¶ 324; *id.* ¶ 17 n.6 (alleging that United published a definition of UCR on its webpage  
 21 describing out-of-network plan benefits). Plaintiffs provided IOP services to the patients in  
 22 reliance of United's representations. *Id.* ¶¶ 3, 17, 188, 195, 202, 209.

23 United's representations that it would pay a percentage of the UCR were false, because  
 24 "United did not pay UCR amounts for any of the patient claims at issue in this litigation." *Id.* ¶

26 <sup>2</sup> Plaintiffs moved for leave to file a sur-reply on December 14, 2020. *See* Docket No. 80.  
 27 The Court **GRANTS** plaintiffs' motion for leave to file a sur-reply.

28 <sup>3</sup> Pursuant to Federal Rule of Civil Procedure 78(b) and Civil Local Rule 7-1(b), the Court  
 29 finds this motion appropriate for decision without oral argument. Accordingly, the Court

1 13. Instead, United engaged defendant Viant, a third-party “repricer,” to “negotiate”  
2 reimbursements with Plaintiffs. *Id.* United has a contract with Viant pursuant to which Viant has  
3 “financial incentives” to negotiate reimbursements “at well below the UCR rate.” *Id.* ¶ 33.  
4 During its negotiations with plaintiffs, Viant represented that it had authority to negotiate with  
5 providers on the patients’ behalf and that “the rate it offers is based on the UCR for the provider’s  
6 geographic location.” *Id.* ¶¶ 34, 48, 52. Viant’s negotiations with plaintiffs resulted in offers to  
7 reimburse them for IOP services at an amount below the UCR, and United paid the patients’  
8 claims at the “reduced Viant amount.” *Id.* ¶¶ 13-14. Neither United nor Viant disclosed to  
9 Plaintiffs the methodology they used for calculating the reimbursement rates for IOP services. *Id.*  
10 ¶ 54. United “unjustly retained” the difference between the amounts it “should have paid” to  
11 plaintiffs for the IOP services at issue and the amount that United actually did pay based on  
12 Viant’s negotiated reimbursements. *Id.* ¶ 15.

13 “[L]iability for the cost of care” that plaintiffs provided to patients ultimately falls on the  
14 patients. *Id.* ¶¶ 55, 155, 4. Plaintiffs “make every effort to recover unpaid amounts, first from  
15 United, then from patients.” *Id.* ¶ 55. Plaintiffs “balance bill” patients for the amounts that the  
16 patients owe after taking into account any amounts that United reimbursed. *Id.* ¶¶ 155, 4.

17 Further, United and other insurers were required as part of the settlement of an unrelated  
18 litigation (“*Ingenix* litigation”) to underwrite the creation of a database called the “FAIR health”  
19 database, which contains rates for the reimbursement for IOP treatment. *Id.* ¶ 20. However,  
20 United and the other insurers were *not* required by the *Ingenix* litigation settlement to use the  
21 FAIR health database. *Id.*

22 Plaintiffs asserted the following claims on their own behalf and on behalf of a proposed  
23 class of similarly-situated out-of-network IOP providers in the United States: (1) a claim for  
24 violations of the Unfair Competition Law (“UCL”), Cal. Bus. & Prof. Code § 17200 *et seq.*,  
25 against each defendant; (2) intentional misrepresentation and fraudulent inducement; (3) negligent  
26 misrepresentation; (4) civil conspiracy; (5) breach of oral or implied contract; (6) promissory  
27 estoppel; (7) a claim under RICO, 18 U.S.C. § 1962(c); and (8) a claim under Section 1 of the  
28 Sherman Act, 15 U.S.C. § 1.

1 On August 25, 2020, the Court granted defendants' motions to dismiss all claims in the  
2 initial complaint, and it did so with leave to amend. Docket No. 61.

3 **B. FAC**

4 In the FAC, plaintiffs continue to aver that United represented during VOB calls that it  
5 would pay for IOP services at a percentage of the UCR. *See, e.g.*, FAC ¶¶ 269, 276, 292.  
6 Plaintiffs also continue to allege that their understanding as to what United meant when it  
7 represented that it would pay a percentage of the UCR was based on United's published definition  
8 of UCR on its webpage describing out-of-network plan benefits, suggesting that the UCR  
9 definition has a connection to the terms of healthcare plans. *See, e.g.*, FAC ¶ 529 (alleging that the  
10 "UCR rate" was "understood by both parties to be consistent with United's published definition of  
11 UCR rates"); *id.* ¶ 154 & n.19 (alleging that United publishes on its webpage regarding out-of-  
12 network plan benefits a description of how it typically determines how to pay for out-of-network  
13 services at the UCR rate).

14 The FAC differs from the initial complaint in the following ways: (1) plaintiffs deleted  
15 most of the allegations that the Court relied upon in its order dismissing the initial complaint; (2)  
16 plaintiffs added new allegations, some of which contradict the allegations in the initial complaint  
17 upon which the Court relied in its order dismissing that pleading; (3) plaintiffs substituted  
18 MultiPlan for Viant as a defendant; (4) plaintiffs added a claim for conspiracy in violation of  
19 RICO, 18 U.S.C. § 1962(d); and (5) plaintiffs deleted their request for injunctive relief under the  
20 Sherman Act.

21 Specifically, whereas in the initial complaint plaintiffs alleged that the plans administered  
22 by United are healthcare benefit programs covered by ERISA, Compl. ¶¶ 348-59, the FAC  
23 contains no such allegations. Plaintiffs aver that each of the patients who received the IOP  
24 services at issue had an insurance plan whose premiums were paid by the patient's employer, *see*,  
25 *e.g.*, FAC ¶¶ 403, 388, but they also allege that a "large percentage" of these plans are not covered  
26 by ERISA, FAC ¶ 33 (alleging that "[a] large percentage of the claims which underlie this lawsuit  
27 do not involve ERISA plans"). In the FAC, plaintiffs do not specify which of the allegedly under-

1 In the initial complaint, plaintiffs alleged that their patients are liable for any amounts not  
2 reimbursed by United for IOP services, and that their injuries arose from their patients' failure to  
3 pay outstanding balances for IOP services and from having to seek reimbursement from their  
4 patients for any amounts not reimbursed by United. The allegations in the FAC attribute  
5 plaintiffs' injuries, not to their patients' failure to pay outstanding balances, but to United's failure  
6 to properly reimburse the claims for IOP services in question. *See, e.g.*, FAC ¶ 20.

7 Plaintiffs also modified their allegations with respect to the process that United allegedly  
8 used to reprice the claims for IOP services at issue. In the initial complaint, plaintiffs alleged that  
9 United had engaged Viant to "negotiate" reimbursements with plaintiffs; that Viant's negotiations  
10 with plaintiffs resulted in offers to reimburse them for IOP services at an amount below the UCR;  
11 and that United paid the patients' claims for IOP services at the "reduced Viant amount." *See*  
12 *Compl.* ¶¶ 13-14. In FAC, by contrast, plaintiffs allege that United entered into a contract with  
13 MultiPlan, Viant's parent company, to use a database that allowed defendants to generate  
14 "fraudulent UCR rates" for IOP services, which they used to under-reimburse for the cost of the  
15 IOP services at issue. FAC ¶¶ 121, 13-62. Plaintiffs deleted all allegations as to Viant's alleged  
16 negotiations with plaintiffs from the FAC.

## 17 II. LEGAL STANDARD

18 To survive a Rule 12(b)(6) motion to dismiss, a complaint must contain sufficient factual  
19 matter that, when accepted as true, states a claim that is plausible on its face. *Ashcroft v. Iqbal*,  
20 556 U.S. 662, 678 (2009). "A claim has facial plausibility when the plaintiff pleads factual  
21 content that allows the court to draw the reasonable inference that the defendant is liable for the  
22 misconduct alleged." *Id.* While this standard is not a probability requirement, "[w]here a  
23 complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the  
24 line between possibility and plausibility of entitlement to relief." *Id.* (internal quotation marks and  
25 citation omitted). In determining whether a plaintiff has met this plausibility standard, the Court  
26 must "accept all factual allegations in the complaint as true and construe the pleadings in the light  
27 most favorable" to the plaintiff. *Knievel v. ESPN*, 393 F.3d 1068, 1072 (9th Cir. 2005). "[A]

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