

IN THE CIRCUIT COURT OF JASPER COUNTY, MISSOURI

SAMUEL R. CARTER, M.D. individually
and on behalf of all others similarly
situated,

Plaintiffs,

v.

MERCY HEALTH,
MERCY NETWORK, LLC,
MHM SUPPORT SERVICES,
MERCY HEALTH SPRINGFIELD
COMMUNITIES,
MERCY HEALTH EAST
COMMUNITIES,
and
MERCY HEALTH SOUTHWEST
MISSOURI/KANSAS COMMUNITIES
AND JOPLIN, MISSOURI

Defendants.

JURY TRIAL DEMAND

Case No. 23AO-CC-00118
Division 3

SECOND AMENDED PETITION – CLASS ACTION

Plaintiff Samuel R. Carter, M.D. (“**Dr. Carter**”), individually and on behalf of the certified Classes, submits the following Amended Petition against Defendants Mercy Health (“**Mercy Health**”), Mercy Network, LLC (“**Mercy Network**”), MHM Support Services (“**MHM**”), Mercy Health Springfield Communities (“**Mercy Springfield**”), Mercy Health East Communities (“**Mercy East**”) and Mercy Health Southwest Missouri/Kansas Communities and Joplin, Missouri (“**Mercy Southwest**”), referred to collectively herein as the “**Mercy Defendants**,” and alleges the following upon knowledge and belief, and investigation of counsel:

PARTIES

1. Plaintiff Dr. Carter is a resident of Jasper County, Missouri. His zip code is 64804.

2. Defendant Mercy Health is a Missouri corporation that transacts business at 14528 South Outer Road 40, Suite 100, Chesterfield, Missouri.

3. Defendant Mercy Network is a Missouri limited liability company whose organizer is located at the principal office of Mercy Health, 14528 South Outer Road 40, Suite 100, Chesterfield, Missouri, and on information and belief Mercy Network transacts business from the Mercy Health office.

4. At all relevant times, and as stated in the Mercy Network LLC Articles of Organization, Defendant Mercy Health organized Defendant Mercy Network to promote the coordination and integration of health services provided by affiliates and subsidiaries of Mercy Health.

5. Defendant MHM is a Missouri corporation that transacts business at the principal office of Mercy Health office at 14528 South Outer Road 40, Suite 100, Chesterfield, Missouri. Defendant MHM is the sole member of Defendant Mercy Network. Defendant MHM Support Services' corporate Secretary is also the corporate Secretary of Mercy Health.

6. Defendant Mercy Springfield is a Missouri corporation that transacts business at 100 Mercy Way, Joplin, Missouri 64804 in Jasper County, Missouri. Mercy Springfield's corporate Secretary is also the corporate Secretary for Defendants Mercy East and Mercy Southwest.

7. Defendant Mercy Springfield is the successor-in-interest of St. John’s Health System, Inc.

8. Defendant Mercy East is a Missouri corporation that transacts business at 615 S. New Ballas Road, Saint Louis, Missouri. Mercy East’s corporate Secretary is also the corporate Secretary for Defendants Mercy Springfield and Mercy Southwest.

9. Defendant Mercy Southwest is a Missouri corporation that transacts business at 100 Mercy Way, Joplin, Missouri. Mercy Southwest’s corporate Secretary is also the corporate Secretary for Defendants Mercy Springfield and Mercy East.

10. The Mercy Defendants share the same registered agent.

JURISDICTION AND VENUE

11. As Missouri corporations and entities, the Mercy Defendants are subject to the jurisdiction of this Court.

12. Venue is proper in this Court because Plaintiff resides in and Defendants Mercy Springfield and Mercy Southwest may be found in Jasper County, Missouri. *See* 508.010.2(1) RSMo.

BACKGROUND

13. Dr. Carter is an independent physician specializing in internal medicine.

14. Dr. Carter is not, and has never been, an employee of any of the Mercy Defendants.

15. Mercy Health describes itself and the Mercy Defendants as “a highly integrated, multi-state healthcare system including more than 40 acute care, managed and specialty (heart, children’s, orthopedic and rehab) hospitals, convenient and urgent care

locations, imaging centers and pharmacies. Mercy has 900 physician practices and outpatient facilities, 4,000 Mercy Clinic physicians and advanced practitioners, and more than 40,000 co-workers serving patients and families across Arkansas, Kansas, Missouri and Oklahoma. Mercy also has clinics, outpatient services and outreach ministries in Arkansas, Louisiana, Mississippi and Texas.” See <https://www.mercy.net/newsroom/2023-06-13/three-world-renowned-health-systems-join-mercy-in-mayo-clinic-pl/>.

16. Beginning as early as the 1960s, the hospitals and health care facilities of what is now called the Mercy Health System shared management and consulting staff resources. In the mid-1980s, the Mercy Health System was formally created. On their website, the Mercy Defendants state that they and other Mercy hospitals/communities operate “under the united name of Mercy.” See <https://www.mercy.net/about/history/>.

17. Accordingly, and upon information and belief, at all relevant times Mercy Health’s executive leadership has exercised and continues to exercise oversight and control over the related Mercy Defendant entities, including but not limited to the “communities” such as Defendants Mercy Springfield, Mercy East, and Mercy Southwest.

18. Mercy Health is the sole corporate member of the other Mercy Defendants and/or has organized and exercised control over certain business operations of the Mercy Defendants, including managed care contracts with third-party payors, as alleged herein.

19. For example, Mercy Health’s current Executive Director of Managed Care Contracting and Operations describes her job duties as “operationalizing, developing, and executing managed care contracting activities and related strategic and operational initiatives *across Mercy*.” In other words, Mercy Health’s Executive Director of Managed

Care Contracting and Operations is not just responsible for *Mercy Health's* managed care contracts; her responsibilities extend to the entire Mercy system.

20. And as previously alleged, Mercy Health created Defendants Mercy Network and MHM to help oversee and manage matters related to the managed care contracts, and those Defendants purport to maintain and provide information related to the managed care contracts, including reimbursement payments from third-party payors, and provide Managed Care Bulletins, as alleged below.

21. Upon information and belief, at all relevant times the Mercy Defendants, including Mercy Health, characterized and managed all managed care contracts for Missouri providers similarly under the same Mercy “umbrella,” as evidenced by each of the following facts: the corporate structure of the Mercy Health “ministry” and healthcare system; Defendant Mercy Health’s creation and utilization of Mercy Network and MHM as alleged above; Defendant Mercy Health’s placement of its officers/managers as officers of Defendants Mercy Springfield, Mercy East and Mercy Southwest as alleged above; and the Mercy Defendants’ utilization of Managed Care Bulletins (sent by Mercy Network) that provide reminders for “All Regions,” provide updates for all managed care contracts for all Mercy entities “ministry-wide,” and that list a ministry wide contracting list of employer groups for independent providers.

22. The Mercy Defendants operate as a single economic unit. According to their auditors Ernst & Young, the Mercy “Health System” – which the auditors define to include all Mercy Defendants named in this case – engages in the following business functions *jointly*:

- a. “The Health System determines the transaction price associated with services provided to patients who have third-party payor coverage with Medicare, Medicaid, managed care programs, and other third-party payors based on reimbursement terms per contractual agreements, discount policies, and historical experience.”
 - b. “The Health System provides general health care services to residents within communities served, including acute inpatient, subacute inpatient, outpatient, ambulatory, long term, and home care. Administration services include administration, finance and accounting, integrated marketing, human resources, and other functions.”
 - c. “The Health System administers a liability program to provide for general and professional liability risks within certain limits.”
 - d. “The Health System retirement benefits are provided through 401(k) and 403(b) plans covering all eligible employees.”
 - e. “The Health System has frozen defined benefit retirement benefits.”
 - f. “The Health System has interest-rate-related derivative instruments to manage its interest rate exposure....”
 - g. “The Health System will enter into transactions where the counterparty rating is high enough to maintain the rating on Health System bonds.”
 - h. “The Health System leases certain health care equipment, vehicles, and real property.”
23. As further explained by Mercy Defendants’ auditors, while various Mercy Defendants incur debt obligations (e.g., through bonds), “only the revenues of Mercy [Health] collateralize the outstanding borrowings of the Health System.”

24. On or about July 26, 2010, Mercy Springfield (f/k/a St. John’s Health System, Inc.) entered into a network affiliation agreement with Dr. Carter.¹

¹ Plaintiff attached the network affiliation agreement between Dr. Carter and Mercy Springfield to his original Petition. Because the agreement contains a “confidentiality”

25. Upon information and belief, the Mercy Defendants also entered into network affiliation agreements (“NAAs”) with the other Class members that are substantially similar in all relevant, material respects to the NAA between Mercy Springfield and Dr. Carter.

26. Pursuant to the NAAs, the Class members participate in the provider network for the provision of medical services and provide such services to beneficiaries of managed care contracts negotiated and entered into by Mercy Defendants.

27. In a letter dated March 1, 2022, Mercy Defendants sent Dr. Carter written confirmation that his “application for continued participation was approved by the chair of the Mercy Managed Care Credentials Committee.” Defendant Mercy Network directed Dr. Carter to “reach out to Stacey Grisham Stacey.grisham@mercy.net with Mercy Network, LLC to verify [his] participation status” if he moved his practice or had any changes to his billing tax id.

28. The March 1, 2022, letter further states “we value your continued Mercy Managed Care Network participation”

29. Stacey Grisham’s LinkedIn profile identifies lists her title as “Director, Managed Care at Mercy Health Springfield Communities” and lists her employer as “Mercy.”

provision, Dr. Carter filed his Petition under seal. Defendant Mercy Springfield filed a motion to dismiss that discussed and quoted from the network affiliation agreement. Defendant Mercy Springfield, however, did not file its motion under seal. Accordingly, Dr. Carter does not file this Second Amended Petition under seal.

30. Ms. Grisham's LinkedIn profile describes her duties as negotiating contracts with providers – e.g., the Class members. Ms. Grisham does not list as one of her job duties negotiating managed care contracts with third-party payors – e.g., health insurance companies.

31. The March 1, 2022, letter is signed by Nick Boelke, Network Credentialing Coordinator, Mercy Credentialing & Data Center. Mr. Boelke's LinkedIn profile identifies his employer as "Mercy."

32. Dr. Carter and the rest of the Class have fulfilled their obligations under the NAAs by participating in the provider network for the provision of medical services and providing such services to beneficiaries of the managed care contracts negotiated and entered into by the Mercy Defendants.

33. Under the NAAs, Dr. Carter and the rest of the Class cooperated with and participated in all aspects of the quality management and utilization management programs as required by the managed care contracts of various third-party payors.

34. Pursuant to Paragraph 1.6 of the NAA between Dr. Carter and Mercy Springfield, Mercy Springfield is obligated to "provide Provider with initial information and adequate notice of any changes in benefits, copayments or other policies." Mercy Springfield has failed to do so. And upon information and belief, the other Mercy Defendants are required to but have equally failed to provide such information to the other Class members.

35. Under the NAAs, the Mercy Defendants committed to negotiate and enter into managed care contracts on behalf of and for the benefit of the Class members, including Dr. Carter.

36. Dr. Carter's NAA with Mercy Springfield even gave Mercy Springfield the responsibility to act as Dr. Carter's "power-of-attorney" with respect to the managed care contracts.

37. As power of attorney, at all relevant times Mercy was "under a duty to act in the interest" of the Class Members and had "a fiduciary obligation to exercise the powers conferred in the best interests of the principal, and to avoid self-dealing and conflicts of interest...." Sec. 404.714.1, RSMo.

38. Under Missouri law, the Mercy Defendants have a legal duty to keep Dr. Carter and other Class members "fully informed of all facts pertinent" to the managed care contracts. *Mercantile Trust Co. v. Harper*, 622 S.W.2d 345, 349 (Mo. App. 1981); *Packard v. KC One, Inc.*, 727 S.W.2d 435, 436 (Mo. App. 1987); *Herb Tillman Co. v. Sissel*, 348 S.W.2d 819, 824 (Mo. App. 1961).

39. The Mercy Defendants also have a legal duty to make a "full disclosure" to Dr. Carter and other Class members of "all facts that materially affect the subject matter" of the managed care contracts. *Mercantile Trust Co.*, 622 S.W.2d at 349; *Packard*, 727 S.W.2d at 436; *Herb Tillman Co.*, 348 S.W.2d at 824.

40. The Mercy Defendants have a legal duty to "exercise reasonable care and diligence in the performance" of their duties. *Mercantile Trust Co.*, 622 S.W.2d at 349; *Packard*, 727 S.W.2d at 436; *Herb Tillman Co.*, 348 S.W.2d at 824.

41. The Mercy Defendants also owe a legal duty of loyalty to Dr. Carter and other Class members. *Emerson Elec. Co. v. Marsh & McLennan Cos.*, 362 S.W.3d 7, 18 (Mo. 2012) (citing *Restatement (Third) of Agency* § 8.02).

42. The Mercy Defendants' duty of loyalty includes an obligation "not to engage in self-dealing by 'acquiring a material benefit from a third party in connection with transactions conducted...on behalf of the principal.'" *Emerson Elec. Co.*, 362 S.W.3d at 18 (citations omitted).

43. Paragraph 4.2 of Dr. Carter's NAA states that the Mercy Defendants "shall indemnify, defend and hold harmless Provider, its officers, employees and agents from and against all costs (including reasonable attorney fees), expenses, claims demands, causes of action, damages and judgments resulting from or arising out of the acts or omissions of Mercy Health, its officers, employees or agents." Upon information and belief, the NAAs with other Class members contain similar indemnification language.

44. Since at least July 26, 2010, Mercy Defendants, including Mercy Health, have negotiated and entered into managed care contracts with third-party payors (*e.g.*, Humana and Aetna) on behalf of and ostensibly for the benefit of Class members, including Dr. Carter.

45. It is Mercy Health's Executive Director, as alleged above, who negotiates the managed care contracts with third-party payors "across Mercy."

46. A July 2023 Mercy Managed Care Bulletin references the managed care contracts and refers to them as "Mercy Network LLC payor contract[s]."

47. In negotiating and entering into the managed care contracts on behalf of and for the benefit of Class members, the Mercy Defendants, including Mercy Health, acted as Dr. Carter's and the Class members' agents and, as such, owed (and owe) fiduciary duties to the Class, including Dr. Carter.

48. The Humana and Aetna PHO Agreements each had "reimbursement" provisions addressing the reimbursement models and amounts that Humana and Aetna would pay for services performed by Plaintiff and the Class. Those reimbursement models included not only fee-for-service reimbursement, but also value-based accountable care program reimbursement money consisting of shared savings money and care coordination fee payments.

49. In signing the Humana and Aetna PHO Agreements, the Mercy Defendants agreed they would make the provisions of its agreements with the Plaintiff and the Class, such as the NAAs, consistent with the provisions of the PHO Agreements.

50. In addition, even if the Mercy Defendants failed to do as they agreed and failed to ensure their agreements with the Class Members were consistent with the PHO Agreements, those consistency agreements ensured uniformity would exist and that the reimbursement provisions would apply nonetheless. In the consistency agreements, the Mercy Defendants specifically agreed that if there was a conflict between the provisions of the PHO Agreements and the Mercy Defendants' agreements with the Class, the terms of the PHO Agreements would control.

51. Mercy Defendants have received payments under the managed care contracts from third-party payors, including Humana and Anthem (Blue Cross), based on the Class

members' participation in and compliance with the quality management and utilization management programs set by the third-party payors.

52. These payments, which are attributable to the Class, total millions of dollars.

53. Mercy Defendants admit that through Anthem's quality management and utilization program, for example, "reimbursement to Mercy *providers* correlates to results-based quality metrics and patient satisfaction." <https://www.mercy.net/newsroom/2021-02-09/mercy-and-anthem-blue-cross-and-blue-shield-join-to-improve-heal/> (emphasis added).

54. As explained by the president of Anthem Blue Cross and Blue Shield of Missouri, the quality management and utilization program model provide "a reimbursement structure and data flow that enables primary care physicians and specialists to coordinate more closely, close gaps in care and optimize results." <https://www.mercy.net/newsroom/2021-02-09/mercy-and-anthem-blue-cross-and-blue-shield-join-to-improve-heal/> (emphasis added).

55. Upon information and belief, some or all of the payments tied to quality management and utilization management programs have been received by the Mercy Defendants and/or the Mercy Defendants have otherwise received and appreciated a benefit from such payments.

56. The Mercy Defendants have withheld these payments, and all information regarding these payments, from Dr. Carter and the rest of the Class.

57. The Mercy Defendants are obligated to forward these payments to the Class members who participated in and complied with the third-party payors' quality

management and utilization management programs. The payments/money belong to the Class, not the Mercy Defendants.

58. In failing to do so, the Mercy Defendants breached their duties to the Class and never made sure, as required by the Humana and Aetna PHO Agreements, that the provisions of those contracts were applied to the Class Members or that the Mercy Defendants' agreements with the Class were consistent with the Humana and Aetna contracts.

59. The Mercy Defendants never created any action plan to engage the Class (despite Humana's insistence), nor did they pay the Class from any surplus payments paid to the Mercy Defendants by Humana (or any other third-party payor); even when they had all the data needed to determine whose work generated specific payment amounts. Instead, the Mercy Defendants treated all of the payments as revenue to Mercy.

60. Plaintiff and the Class never knew the truth or the material facts about the Humana or Aetna shared savings/value-based payments because the Mercy Defendants concealed the facts from the Class.

61. Indeed, at a November 2018 meeting of non-employed physicians, the Mercy Defendants flatly denied receiving any quality money from any third-party payor based on the performance of independent primary physicians.

62. And after a Humana representative told Plaintiff that he should be receiving checks from Mercy for his "star rating," a quality-based metric, the Mercy Defendants requested that Humana tell them all of the information Humana provided Plaintiff and the Class, asked to be included on all future communications with Plaintiff and the Class, and

eventually directed Humana to stop sending representatives to speak with Plaintiff and the Class.

63. In 2021 and 2022, Plaintiff continued to seek information from the Mercy Defendants about the shared savings/value-based payments, but the Mercy Defendants refused to provide the information to him.

64. Beginning February 15, 2023, Dr. Carter requested that Mercy produce the managed care contracts that include him as a network provider.

65. Mercy's in-house counsel responded and represented in writing that Mercy Health's in-house counsel would contact Dr. Carter's counsel regarding the managed care contracts. That never happened.

66. Mercy's in-house counsel also represented in writing that Mercy Health's outside counsel would contact Dr. Carter's counsel regarding the managed care contracts. That never happened.

67. To obtain information about the managed care contracts that the Mercy Defendants entered into on behalf of and for the benefit of Dr. Carter, he was forced to file this lawsuit.

68. On July 13, 2023, Mercy Springfield for the first time produced purported "summaries" of managed care contracts. The summaries consist of an excel spreadsheet that omits almost all material terms of the managed care contracts.

69. In multiple places, the excel spreadsheet states that the provider should "Please see the Mercy contract" for more information about the managed care contract.

70. Instructing providers to “Please see the Mercy contract” highlights the problem and a reason the Class was forced to file this lawsuit: To gain access to the managed care contracts.

71. All of this means that the Mercy Defendants – as *agents* for Dr. Carter and the Class – refused to produce information about the very managed care contracts that the Mercy Defendants entered on behalf of and for the benefit of the Class members.

72. Since the original filing of this lawsuit, and showing no remorse, the Mercy Defendants terminated Plaintiff’s NAA (with 90 days’ notice) on February 26, 2025. On information and belief, this action was taken to retaliate against Plaintiff for filing this lawsuit. Worse is that hundreds of Plaintiff’s patients were suddenly left with a primary care physician no longer part of the Mercy network.

73. On information, belief, and investigation of counsel, the only NAA Mercy terminated was Dr. Carter’s.

74. As described here, the Mercy Defendants have breached their agreements with the Classes, have breached their fiduciary duty to act in the interest of Plaintiff as the Classes, have breached their fiduciary duty in engaging in self-dealing and creating conflicts of interest between the Mercy Defendants and the Classes, and have been unjustly enriched.

75. Instead of keeping Dr. Carter and other Class members fully informed of the managed care contracts that they entered on behalf of and for the benefit of the Classes, the Mercy Defendants have withheld all information and refuse to disclose the payments

that they have unjustly received for the Class members' (including Dr. Carter's) work and participation in the Mercy provider network.

76. Further, by unlawfully receiving and withholding from Dr. Carter and Class members the money (and appreciating the benefit of the money) paid by the third-party payors to the Mercy Defendants based on Dr. Carter's and the Class members' performance, the Mercy Defendants have breached their fiduciary and contractual duties owed to the Class, and the Class members have suffered injuries and damages in an amount to be determined but in excess of \$25,000.

77. By unlawfully withholding information from Class members and failing to keep them "fully informed" as required under Missouri law, the Mercy Defendants have fraudulently concealed their unlawful conduct from the Classes and prevented them from discovering the existence and amount of their injuries.

78. All of this conduct was reprehensible, intentional, willful, wanton and in reckless disregard of Plaintiffs' rights.

CLASS ACTION ALLEGATIONS

70. Plaintiff, on behalf of himself and the certified Classes, re-alleges the foregoing paragraphs as if fully set forth herein.

71. Pursuant to the Court's Order granting Class Certification, Plaintiff represents the following Classes of Missouri citizens:

All Network Providers who the Mercy Defendants included as network providers in connection with the Humana managed care and value-based contracts who have a net-positive total of Humana shared savings payment amounts, care coordination fee amounts, quality payment amounts and model practice reward program amounts attributable to

them during the period of January 1, 2016 through the date of certification. (July 9, 2025)

All Network Providers who the Mercy Defendants included as network providers in connection with the Aetna managed care and value-based contracts during the period from January 1, 2014 through 2023.

72. This action has been brought and may properly be maintained on behalf of the Classes under the criteria set forth in Missouri Supreme Court Rule 52.08.

73. **Numerosity.** The Classes satisfy the numerosity requirements under Rule 52.08 in that its members are too numerous to practically join in a single action. Class members may be notified of the pendency of this action by mail or other means.

74. **Predominance.** Common questions of law and fact exist as to all members of the Class and predominate over questions affecting only individual class members. These common questions include, but are not limited to:

- a. Whether the Mercy Defendants were agents for the Class;
- b. Whether the Mercy Defendants owed fiduciary duties, including a duty of loyalty, to the Class;
- c. Whether the Mercy Defendants breached their fiduciary duties to the Class;
- d. Whether the Mercy Defendants used their position as agents for the Class to unjustly enrich themselves;
- e. Whether the Mercy Defendants breached their contracts with and obligations to the Class; and
- f. Whether the Class was injured as a result of the Mercy Defendants' unlawful conduct.

75. **Typicality.** Plaintiff's claims are typical of the claims of the Class because he was injured by the Mercy Defendants' self-dealing; this similarity gives rise to substantially the same claims as the Class.

76. **Adequacy.** Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the members of the Class that he seeks to represent. Plaintiff has retained counsel competent and experienced in complex class action litigation, and Plaintiff will prosecute this action vigorously by monitoring and directing the actions of class counsel. The interests of members of the Class will be fairly and adequately protected by Plaintiff and undersigned counsel.

77. **Superiority.** A class action is superior to other available means for the fair and efficient adjudication of this dispute. The injury suffered by each Class member is not of such magnitude as to make the prosecution of individual actions against Defendants economically feasible. Even if Class members availed themselves of individual litigation, the court system could not sustain such an imposition. In addition to the burden and expense of managing many actions arising from the pricing scheme, individualized litigation presents a potential for inconsistent or contradictory judgments. Individualized litigation increases the delay and expense to all parties and the court system presented by the legal and factual issues of the case. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economy of scale, and comprehensive supervision by a single court.

CLAIMS FOR RELIEF

COUNT I BREACH OF FIDUCIARY DUTY

79. Plaintiffs incorporate by reference all foregoing paragraphs as if fully set forth herein and further state as follows.

80. A fiduciary relationship exists between the Class, including Dr. Carter, and the Mercy Defendants, in that the Mercy Defendants act as the Class members' agent in negotiating and entering into the managed care contracts on behalf of and for the benefit of the Class.

81. As described herein, the Mercy Defendants breached their fiduciary duties owed to the Class by, among other things:

- a. Failing to keep the Class fully informed of all facts pertinent to the managed care contracts that the Mercy Defendants negotiated and entered into;
- b. Failing to make a full disclosure to the Class of all facts material to the managed care contracts;
- c. Failing to exercise reasonable care and diligence in the performance of their duties;
- d. Withholding information regarding the managed care contracts from the Class, even after being (a) requested to produce such information before the lawsuit was filed and (b) required to produce such information as part of this lawsuit;

- e. Engaging in self-dealing by negotiating for and taking payments paid by third-party payors for work performed by the Class members;
- f. Withholding all information about the payments that they received from third-party payors for the work done by Class members, even after being (a) requested to produce such information before this lawsuit was filed and (b) required to produce such information as part of this lawsuit;
- g. Refusing to pay the Class any of the shared savings/value-based payments attributable to the Class;
- h. Putting their own interest above that of the Class, their principal; and/or
- i. Obtaining a material benefit from third-party payors in connection with the transactions – i.e., negotiation of the managed care contracts – conducted on behalf of the Class.

82. The Mercy Defendants conduct as described herein was done intentionally, willfully, and wantonly and in reckless disregard of Plaintiff's and the Class's rights, to enrich the Mercy Defendants at the expense of the Class in breach of the Mercy Defendants' fiduciary duties. As a result, Plaintiff and the Class are entitled to punitive damages to deter the Mercy Defendants and others from like conduct.

83. The Class has been damaged by the Mercy Defendants' breaches of fiduciary duty because (a) the Class has been forced to file this lawsuit to obtain information that the Mercy Defendants should voluntarily provide and (b) the Mercy Defendants have pocketed money paid by third-party payors that should have been paid and/or is due to the Class members.

84. The Mercy Defendants' breaches of fiduciary duty directly caused or directly contributed to cause the injuries of the Class members, in an amount to be determined at trial.

COUNT II
BREACH OF CONTRACT

85. Plaintiffs incorporate by reference all foregoing paragraphs as if fully set forth herein and further state as follows.

86. The Mercy Defendants entered into NAAs with the Class whereby the Mercy Defendants agreed to negotiate and enter into managed care contracts with third-party payors on behalf of and for the benefit of the Class members.

87. The Mercy Defendants agreed to provide details regarding the managed care contracts entered into by the Mercy Defendants in which a Class member is listed and included as a network provider.

88. The Class participated in the provider network for the provision of medical services and provide such services to beneficiaries of the managed care contracts negotiated and entered into by the Mercy Defendants.

89. In addition, the Class cooperated with and participated in the quality management and utilization management programs required by the managed care contracts.

90. The Class performed its obligations under the NAAs with the Mercy Defendants.

91. The Mercy Defendants, however, breached the NAA Contracts by, among other things, (a) failing to negotiate and enter into managed care contracts for the benefit of the Class, rather than the Mercy Defendants' own benefit, (b) negotiating terms that benefit the Mercy Defendants at the expense of the Class, (c) unlawfully taking payments paid by third-party payors for work performed by the Class, and/or (d) failing to operate with good faith and fair dealing.

92. The Class was damaged by the Mercy Defendants' breaches in an amount to be determined at trial. At a minimum, the Class was forced to incur significant expense to investigate and file this lawsuit and is entitled to recovery of the payments that the Mercy Defendants obtained from third-party payors for work performed by Class members.

COUNT III
UNJUST ENRICHMENT

93. Plaintiffs incorporate by reference all foregoing paragraphs as if fully set forth herein and further state as follows.

94. The Class members conferred a benefit on the Mercy Defendants by, among other things, participating in the provider network and complying with the quality management and utilization management programs required by the managed care contracts.

95. The Mercy Defendants received and appreciated the benefit from the Class members and further received payment from third-party payors for the benefit provided by the Class members.

96. The Mercy Defendants accepted and retained the benefit under circumstances that would make it inequitable for the Mercy Defendants to retain the benefit without paying the value thereof.

97. Specifically, the Mercy Defendants not only received benefit from the Class members because they were able to expand their provider network, but the Mercy Defendants also received payment for the *Class members'* work to participate in and comply with the quality management and utilization management programs.

98. The Class members – not the Mercy Defendants – performed the work necessary to comply with the quality management and utilization management programs.

99. The Class members should be compensated for their work.

100. The Mercy Defendants' conduct as alleged herein has directly caused or directly contributed to cause the Class members' damage in an amount to be determined at trial.

101. It would be inequitable for the Mercy Defendants to retain payments for the work performed by the Class members. By reason of the foregoing, the Mercy Defendants should be required to account for and disgorge all monies, profits and gains they have obtained at the expense of Dr. Carter and the Class members.

**COUNT IV
PROMISSORY ESTOPPEL**

102. Plaintiffs incorporate by reference all foregoing paragraphs as if fully set forth herein and further state as follows.

103. The Mercy Defendants promised the Class that they would negotiate and enter into managed care contracts on behalf of and for the benefit of the Class members.

104. The Class members relied on this promise.

105. The Mercy Defendants could reasonably foresee that the Class would rely on the promise and that the Mercy Defendants would negotiate and enter into managed care contracts that benefited the Class members.

106. The Mercy Defendants could reasonably foresee that because the Class members were required to participate in and comply with quality management and utilization management programs, payments from third-party payors for such participation and compliance would be made to the Class members (who performed the work), not the Mercy Defendants.

107. The Mercy Defendants' conduct as alleged herein has directly caused or directly contributed to cause the Class members damage in an amount to be determined at trial.

108. It would be an injustice to not enforce the promise and allow the Mercy Defendants to retain the payments from third-party payors for the work performed by the Class.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs request that the Court enter judgment awarding the following:

- a. An order awarding Plaintiff and the Class members their actual damages, and/or any other form of monetary relief provided by and pursuant to law;

- b. An order awarding Plaintiff and the Class members punitive damages on their breach of fiduciary duty claim;
- c. An order enjoining Defendant from further engaging in the conduct alleged herein; and
- d. An order awarding Plaintiff and the Class pre-judgment and post-judgment interest, attorneys' fees and costs, and all other relief as allowed under the law.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all claims so triable.

Dated: October 17, 2025

Respectfully submitted by:

BOULWARE LAW LLC

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