GLENN E. SOLOMON (State Bar No. 155674)
gsolomon@kslaw.com
PETER A. STROTZ (State Bar No. 129904)
pstrotz@kslaw.com
CHRISTOPHER C. JEW (State Bar No. 302193)
cjew@kslaw.com
KING & SPALDING LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071
Telephone: +1 213 443 4355
Facsimile: +1 213 443 4310

Attorneys for Defendant
Radiology Partners, Inc.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

UNITED HEALTHCARE OF TEXAS, INC. AND UNITED HEALTHCARE SERVICES, INC.,
Plaintiffs,

v.

RADIOLOGY PARTNERS, INC.,

Defendant.

Case No. 2:23-cv-02825−MWF−AFM

DEFENDANT RADIOLOGY PARTNERS, INC.'S NOTICE OF MOTION AND MOTION TO COMPEL ARBITRATION AND STAY ACTION

[Declarations of Fredricka Richards and Christopher C. Jew with Exhibits and [Proposed] Order filed concurrently herewith]

Hon. Michael W. Fitzgerald
Courtroom 5A

Date: September 11, 2023
Time: 10:00 a.m.

Complaint Filed: April 14, 2023

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on Monday, September 11, 2023, at 10:00 a.m., or as soon thereafter as this matter may be heard, in in the courtroom of the Honorable Michael W. Fitzgerald, located in the First Street Courthouse, 350 West Fifth Street, Courtroom 5A, Los Angeles, CA 90012, Defendant Radiology Partners, Inc. ("RP") will, and hereby does, move this Court for an order compelling arbitration of the complaint ("Complaint") filed by Plaintiffs UnitedHealthcare of Texas, Inc ("UHCTX") and United HealthCare Services, Inc. ("UHC Services") (collectively "United"), and all the allegations therein, into the arbitration ("Arbitration") already pending with the American Arbitration Association ("AAA"), AAA Case No. 01-22-0001-4956 (the "Arbitration"), and staying the lawsuit pending outcome of the Arbitration.

This Motion is made pursuant to the Federal Arbitration Act, 9 U.S.C. §§ 1-16 ("FAA") for the reasons set forth in this notice, and the concurrently filed memorandum of points and authorities and declarations, which are incorporated herein. In brief, the Complaint is inextricably intertwined with a 1998 Medical Group Participation Agreement ("Agreement") between UHCTX and Singleton Associates, P.A. ("Singleton"), which contains a broad arbitration provision.

Further, the Arbitration has been pending between UHCTX and Singleton since Singleton initiated it over a year ago, in April 2022. UHCTX also already filed duplicative counterclaims ("Counterclaims") against Singleton in the Arbitration, before filing this copycat Complaint. The Counterclaims in Arbitration also repeatedly reference RP, and huge swaths of the Complaint are lifted wholesale from the Counterclaims. Under these circumstances, the Complaint should be compelled into arbitration and this lawsuit stayed pending the arbitration's outcome, based on equitable estoppel.

The allegations in the Complaint also reflect United knows RP is Singleton's agent. Agency is an independent basis to compel arbitration and stay the action.

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

This Motion is based on this Notice of Motion; the accompanying Memorandum of Points and Authorities; the Declarations of Fredricka Richards and Christopher C. Jew and all exhibits thereto; all of the pleadings and other documents on file in this action; all other matters of which the Court may take judicial notice; and any further argument or evidence that may be received by the Court at the hearing.

This motion is made following the conference of counsel pursuant to L.R. 7-3 which took place on July 21, 2023. *See* Declaration of Christopher C. Jew ("Jew Decl.), ¶12. The meet and confer included both written and verbal communications between counsel. *Id.* United was unwilling to agree to the requested relief. *Id.*

Dated: August 2, 2023

KING & SPALDING LLP

/s/Glenn E. Solomon

By: GLENN E. SOLOMON
PETER A. STROTZ
CHRISTOPHER C. JEW

Attorneys for Defendant
Radiology Partners, Inc.

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND ON SINGLETON, UNITED AND RP 2

A. Singleton 2

B. United 3

C. Radiology Partners 3

III. PROCEDURAL HISTORY OF THE ARBITRATION AND LAWSUIT 4

A. In April 2022, Singleton Filed Its Arbitration Demand, Due to Significant Underpayments by UHCTX under the Agreement 4

B. The Panel Set Phase I Hearings for March 2023 6

C. United Attempted to Delay, Including Filing the Counterclaims 6

D. March 2023 Hearings on Phase I 6

E. April 2, 2023, Decision for Singleton on Phase I and Granting United's Leave for the Counterclaims to Proceed in Arbitration 7

F. June 2023, Singleton Presented Evidence that United's Breach Caused More than $100 Million in Damages 8

G. Additional Discovery on Phases II and III 8

H. The Counterclaims Are Subject to a Pending Request for Summary Disposition in the Arbitration 8

I. United Filed the Duplicative Complaint Only After the Counterclaims were Accepted by the Panel into the Arbitration 9

J. The Complaint Duplicates the Counterclaims, Simply Recasting the Same Specific Allegations against Singleton as also against RP 10

IV. THE LAW STRONGLY SUPPORTS GRANTING THE MOTION 12

A. The Federal Arbitration Act and State Law Favor Arbitration 12

B. Applicable State Law, Including Equitable Estoppel and Agency, Support Non-Signatories Compelling Arbitration Clauses Under the Circumstances Here 13

C. Equitable Estoppel Prevents United from Evading the Agreement's Arbitration Provision 14

1. Equitable Estoppel Principles Under California and Texas Law Both Support Compelling Arbitration 14

2. United's Complaint Depends on the Agreement 15

D. United Cannot Escape Its Obligations to Arbitrate Against Singleton by Suing RP for Allegedly Acting on Behalf of Singleton – a Quintessential Act of an Agent 17

1. California and Texas Compel Arbitration of Claims Against Agents of Signatories 17

2. United's Complaint Alleges Reflect United Knows RP Acts as an Agent on Behalf of Singleton 18

E. Compelling United's Claims Against RP to Arbitration is Consistent with the FAA and the Purposes of Arbitration 19

F. The Court Should Stay United's Action Pending Arbitration 20

V. CONCLUSION 20

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

TABLE OF AUTHORITIES

Page(s)

Cases

Amisil Holdings Ltd. v. Clarium Capital Management,
622 F.Supp.2d 825 (N.D. Cal. 2007) 19

Arthur Andersen LLP v. Carlisle,
556 U.S. 624 (2009) 13

In re Border Steel, Inc.,
229 S.W.3d 825 (Tex. App.--El Paso 2007, org. proceeding) 12

Boucher v. Alliance Title Co., Inc.,
127 Cal.App.4th 262 (2005) 14

Cohen v. TNP 2008 Participating Notes Program, LLC,
31 Cal. App. 5th 840 (2019) 13

Coinbase, Inc. v. Bielski,
143 S. Ct. 1915 (2023) 19

Dean Witter Reynolds, Inc. v. Byrd,
470 U.S. 213 (1985) 12

Dryer v. Los Angeles Rams,
430 Cal.3d 406 (1985) 17

Ericksen, Arbuthnot, McCarthy, Kearney & Walsh, Inc. v. 100 Oak Street,
35 Cal. 3d 312 (1983) 12

In re FirstMerit Bank, N.A.,
52 S.W.3d 749 (Tex. 2001) 14

GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC,
140 S. Ct. 1637 (2020) 14

Gilmer v. Interstate/Johnson Lane Corp.,
500 U.S. 20 (1991) 12

Grigson v. Creative Artists Agency L.L.C.,
210 F.3d 524 (5th Cir. 2000) 15

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

Hays v. HCA Holdings, Inc.,
838 F.3d 605 (5th Cir. 2016) 15

In re Henson,
869 F.3d 1059-60 (9th Cir. 2017) 13

Jody James Farms, JV v. Altman Grp., Inc.,
547 S.W.3d 624 (Tex. 2018) 13, 16

Johnmohammadi v. Bloomingdale's, Inc.,
755 F.3d 1072 (9th Cir. 2014) 20

In re Kaplan Higher Educ. Corp.,
235 S.W.3d 206 (Tex. 2007) 17

In re Merrill Lynch Tr. Co. FSB,
235 S.W.3d 185 (Tex. 2007) 17

Pillar Project AG v. Payward Ventures, Inc.,
64 Cal. App. 5th 671 (2021) 14, 16

Rachal v. Reitz,
403 S.W.3d 840 (Tex. 2013) 15

Rower v. Exline,
153 Cal.App.4th 1276 (Cal. App. 1st Dist. 2007) 17

Sink v. Aden Enters., Inc.,
352 F.3d 1197 (9th Cir. 2003) 19

In re Vesta Ins. Grp., Inc.,
192 S.W.3d 759 (Tex. 2006) 18

Washington Mut. Bank, FA v. Superior Court,
24 Cal.4th 906 (2001) 12

In re Weekley Homes, L.P.,
180 S.W.3d 127 (Tex. 2005) 15

Statutes

ERISA 10

Federal Arbitration Act, 9 U.S.C. §§ 1-16 ..... *passim*

Federal Arbitration Act Chapter 1 (FAA) 14

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Court should compel this Complaint and all its allegations into the pending Arbitration and stay this action pending the outcome. The Complaint is inexplicably intertwined with the Agreement that led to the pending Arbitration. The Complaint also is a copycat of Counterclaims that UHCTX filed in the Arbitration before filing this lawsuit and hearing dates have been set on them.

Singleton, a prominent radiology group in Texas, initiated the Arbitration last year against UHCTX, pursuant to the arbitration provision in the Agreement, because UHCTX has substantially underpaid Singleton. The Arbitration has been underway for over a year, already involving extensive discovery, motion practice, and evidentiary hearings. In April 2023, the Panel in the Arbitration issued an order finding the Agreement to be operative, rejecting UHCTX's assertion that a replacement contract had taken effect, and setting Phase II hearings for Singleton to present damages against UHCTX. The Panel also at that time accepted UHCTX's motion to file the Counterclaims in Arbitration, deemed them filed, and ordered consolidated discovery on them, to which United has availed itself. Nonetheless, after the Counterclaims were filed in Arbitration, United filed this copycat Complaint, trying to have two forums for the same core disputes.

The Complaint, like the Counterclaims, refers to Singleton around 200 times, alleges the same basic legal causes of action, the same basic underlying alleged facts, the same examples of alleged wrongdoing, the same purported damages. More than 130 paragraphs of the Complaint are lifted whole cloth from the Counterclaims. The Counterclaims and Complaint also both rely upon the same flawed allegations related to the Agreement. This includes, among others, United's core fallacy that the Agreement was limited to Singleton's "Medical Group Physicians," *i.e.*, only Singleton's doctors who are shareholders, partners, or employees. The language in the Agreement shows that it has no such limitation.

In fact, the Agreement expressly provides that Singleton can provide services through "employed **or subcontracted** health care professionals and facilities including, **but not limited to,** Medical Group Physicians." *See* Agreement, § 3.2 (emphasis added), Exh. A. to Declaration of Fredricka Richards ("Richards Decl."). United's error is so clear from the express language in the Agreement that this core issue already is subject to a request for leave to file a summary disposition motion in the Arbitration. Thus, the evidence to be heard in Arbitration will show United's core premise to be false. But either way, the proper place to adjudicate it is in the Arbitration, not here.

United should not be permitted to circumvent the contractually agreed upon arbitration forum, get two bites at the apple, and risk inconsistent results, by filing the same duplicative allegations here. Both the doctrine of equitable estoppel and agency strongly support granting this motion.

II. BACKGROUND ON SINGLETON, UNITED AND RP

The background on Singleton, United, and Radiology Partners provides useful context for the disputes in the Arbitration, and now duplicated here:

A. Singleton

Singleton is a prominent Texas radiology group, dating back to the 1950s. Today, many premier hospital systems across the state of Texas, as well as many rural community hospitals in Texas, have chosen Singleton to staff their radiology departments. Effective January 1, 1998, Singleton and UHCTX entered into the Agreement, for Singleton to provide professional radiology services to UHCTX and affiliated health plans. *See* Agreement, Exh. A. to Richards Decl. This Agreement remained in place and was used by United for more than two decades. Health plans like United benefit from contracts to be in-network with medical groups like Singleton.

For example, the Agreement gave United access to Singleton, so that United would have an adequate network of radiology providers to sell to its customers.

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

United benefited by having Singleton as in-network at all the hospitals that have chosen Singleton to staff their radiology departments. Otherwise, United would lack the ability to tell its customers that United has an adequate network for when radiology services are needed by those who are considering whether to select or stay with United for health care coverage.

B. United

United is the largest health plan in the United States. United's corporate parent, United Health Group ("UHG") also is one of the largest companies in the world. UHG is Number 5 on the 2022 Fortune 500 list, ranked above Exxon, Disney, Berkshire Hathaway, and Google (Alphabet), with profits increasing over the last decade from $5.6 billion to $20.1 billion. Through its subsidiaries, including United, UHG operates as both a payor for and a provider of healthcare.

United and its affiliates also now are the nation's largest[1] employer of physicians, with more than 70,000 physicians, including radiologists.[2/3] Thus, United also has become a competitor with RP affiliated medical groups. United's huge size gives it substantial leverage against smaller providers. This size helps United exert leverage in negotiations, and sometimes leads it to launch untenable lawsuits, like this one, to try to pressure doctors, medical groups, and their managers, into submission.

C. Radiology Partners

---

[1] https://www.beckerspayer.com/payer/meet-americas-largest-employer-of-physicians-unitedhealth-group.html#:~:text=The%20largest%20employer%20of%20physicians,quickly%20changing%20healthcare%20delivery%20landscape (identifying United as the largest employer of medical groups in the country).

[2] https://radiologybusiness.com/topics/healthcare-management/mergers-and-acquisitions/radiologists-unitedhealth-physician-practice-crystal-run (describing United's purchase of a huge medical group in New York, including its radiologists).

[3] https://www.fiercehealthcare.com/practices/optum-to-acquire-atrius-health-to-grow-its-physician-network (describing United's purchase of the largest medical group in Massachusetts, which including its imaging specialists – i.e., radiologists).

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

Radiology Partners is a successful start-up company in the radiology sector, as well as a brand name for affiliated radiology medical groups and business entities providing support to them. RP is part of Radiology Partners, and provides certain management services, including billing and collection, to these affiliated radiology medical groups, one of which is Singleton. Through affiliations with local radiology practices, like Singleton, medical practices associated with Radiology Partners now have more than 3,300 radiologists across the country, interpreting 53 million exams annually, with the 3,250 sites where those radiologists provide services spanning all 50 states. More hospitals and doctors chose to contract with medical groups affiliated with Radiology Partners than any other radiology practice in the country. This speaks to the exceptional reputation that medical groups affiliated with RP have shown to hospitals across the nation.

III. PROCEDURAL HISTORY OF THE ARBITRATION AND LAWSUIT

The Arbitration started over a year ago, has gone through extensive discovery, motion practice, evidentiary hearings, and rulings, as elaborated below:

A. In April 2022, Singleton Filed Its Arbitration Demand, Due to Significant Underpayments by UHCTX under the Agreement

On April 8, 2022, Singleton filed its arbitration demand against UHCTX, pursuant to the arbitration provision in the Agreement. *See* Singleton Arbitration Demand, Exh. B to Jew Decl. The demand followed several attempts to resolve the underpayments through pre-filing efforts. For example, the arbitration demand included a letter that explained:

> "UHC has been systemically making payments to Singleton in amounts less than those required under the Agreement. Specifically, it appears that UHC unilaterally reduced reimbursement rates payable to Singleton in or about the Fourth Quarter of 2020 (during the height of the pandemic), to rates far below those required by the Agreement."

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

Id., Ex. B to Attachment 1 thereto.

Singleton's pre-arbitration demand letter also addressed United's false contention that Singleton entered into a replacement participation agreement with significantly lower rates, which purportedly caused the underpayments. *Id.* Singleton explained multiple reasons that the purported replacement contract was invalid, including, among others, that there was no consideration, there was zero meeting of the minds for the alleged replacement, and UHCTX had never provided notice pursuant to the Agreement of the amendment or termination thereof, let alone of a new contract. *Id.*

Section 8 of the Agreement, titled "Resolution of Disputes," requires binding arbitration of any disputes about the business relationship, using the American Arbitration Association ("AAA"):

> Plan [UHCTX] or Payor and Medical Group [Singleton] will work together in good faith to resolve **any disputes about their business relationship**. If the parties are unable to resolve the dispute within 30 days following the date one party sent written notice of the dispute to the other party, and if Plan, Medical Group, or any Payor that has consented in writing to binding arbitration, wishes to pursue the dispute, it **shall be submitted to binding arbitration in accordance with the rules of the American Arbitration Association**. In no event may arbitration be initiated more than one year following the sending of written notice of the dispute. **Any arbitration proceeding under this Agreement shall be conducted in Harris County, Texas**. The arbitrators may construe or interpret but shall not vary or ignore the terms of this Agreement, shall have no authority to award any punitive or exemplary damages, and shall be bound by controlling law. If the dispute pertains to a matter which is generally administered by certain Plan procedures, such as a credentialing or quality improvement plan, the procedures set forth in that plan must be fully exhausted by Medical Group before Medical Group may invoke its right to arbitration under this section. **The parties acknowledge that because this Agreement affects interstate commerce the Federal Arbitration Act applies.**

Agreement, §8 (emphasis added), Exh. A to Richards Decl.

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

UHCTX never challenged the application of this arbitration provision or objected to AAA serving as the administrator of the Arbitration. Arbitration Order #1 at p. 1, Exh. C to Jew Decl. In fact, UHCTX affirmatively announced that all prerequisites necessary for the commencement of the Arbitration were met or waived. *Id.* Further, as set forth below, UHCTX has fully engaged in the arbitration proceedings, including extensive discovery, motion practice, and hearings. Jew Decl., ¶ 5.

B. The Panel Set Phase I Hearings for March 2023

Following Singleton's demand, AAA appointed a panel of arbitrators for the Arbitration (the "Panel"). Arbitration Order #1 at p. 1, Exh. C to Jew Decl. In turn, on January 2, 2023, the Panel set a bifurcated arbitration schedule, with Phase I hearings to address the threshold liability issue – i.e., whether the operative contract between the parties was the Agreement versus the alleged replacement. *Id.*, p. 1-2. The Panel set the Phase I hearings for March 22-23, 2023. *Id.*

C. United Attempted to Delay, Including Filing the Counterclaims

Thereafter, United attempted multiple times to delay the hearings.

Among other delaying efforts, on February 22, 2023, with the Phase I hearing one month away, United filed a motion to continue the liability hearing, for another three months, despite almost a year having passed since the Arbitration began, and the straightforward issue to be determined in the bifurcated first phase. Jew Decl., ¶6a. Following briefing, the Panel denied that motion to continue. *Id.*

Thereafter, on March 10, 2023, United again sought a continuance, this time based on filing a request to pursue the Counterclaims in Arbitration. Jew Decl., ¶6b. Simultaneously, United pointed to the Counterclaims as a basis for again requesting that the Phase I hearings be continued. The Panel denied the new motion for a continuance. *Id.*

D. March 2023 Hearings on Phase I

On March 22-23, 2023, following discovery which included the production

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

between both parties of more than 100,000 pages of documents and 6 depositions in Phase I, the Panel received evidence, including testimony from Singleton and UHCTX witnesses, regarding whether the Agreement, versus the alleged replacement contract, governed the parties' relationship after November 1, 2020. Jew Decl., ¶5a.

E. April 2, 2023, Decision for Singleton on Phase I and Granting United's Leave for the Counterclaims to Proceed in Arbitration

Following the March evidentiary hearings, the Panel issued the following decision for Singleton on Phase I:

> The Panel entered a scheduling order on January 29, 2023, bifurcating the hearing of this matter. In Phase I of the hearing, the Panel was tasked with determining the limited question of which of two purported contracts between Singleton Associates, P.A. (Singleton) and United Healthcare of Texas, Inc. (United) is the operative contract between the parties. One contract was executed in 1998 and the parties operated under it continuously between 1998 and November of 2020. The other contract was allegedly executed in May of 2020 and allegedly became effective in November of 2020. Phase I of the hearing came before the Panel for a two-day hearing, on March 20th through March 21st, 2023, in Houston, Texas.
>
> The Panel has reviewed the pre-hearing briefs filed by the parties, heard two days of sworn testimony, considered the documentary evidence received into evidence as well as the presented demonstrative aids, heard the argument of counsel, reviewed the post-hearing brief filed by United, and has deliberated. **The Panel finds the 1998 contract to be the operative agreement between the parties.**
>
> The Damages Phase II hearing will be held, in accordance with the Scheduling Order, June 22nd through June 23rd, 2023, in Houston, Texas.

Arbitration Order # 3, Exh. D to Jew Decl. (Emphasis added).

The same order granted United leave for the Counterclaims and deemed them filed in the Arbitration. *Id* at p. 2.

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

The Panel also confirmed that discovery would be consolidated for efficiency, explaining that it "considers Singleton's first in time filed claim in this arbitration to be travelling on a separate track than United's counterclaim," but discovery "shall be consolidated (so that, to the extent there might be some overlap, witnesses are not deposed or the same documents produced more than once)." *Id.*

All of this occurred **before** United filed the copycat Complaint in this Court.

F. June 2023, Singleton Presented Evidence that United's Breach Caused More than $100 Million in Damages

The Phase II hearings started as scheduled on June 22-23, 2023, with two more days added that occurred a month later, on July 28-29, 2023. Jew Decl., ¶5b. In the June hearings, Singleton presented evidence that United caused Singleton more than $100 million in damages from its breach of the Agreement, plus statutory penalties, interest, and attorneys' fees. *Id.*, ¶5b. In the July hearings, United presented five witnesses. *Id.* The Panel now has issues to address in the Arbitration on all open phases.

G. Additional Discovery on Phases II and III

There also has been extensive additional discovery issued by both sides on Phase II and Phase III issues. This includes voluminous claims spreadsheets, four more depositions, additional outstanding document requests, and meet and confer correspondence about Phase III discovery disputes, which likely will result in more document productions, motion practice, or both. Jew Decl., ¶¶5a-c.

H. The Counterclaims Are Subject to a Pending Request for Summary Disposition in the Arbitration

The Counterclaims, like the Complaint, contain as their core allegations, that the Agreement, supposedly, is limited to employed Medical Group Physicians. *See* Counterclaims at ¶ ¶ 83 – 84 (alleging these purported limitations), Exh. G. to Jew Decl., & Complaint at ¶ ¶ 109a – 109b (same). But the express language in

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

the Agreement shows otherwise.

The language of the Agreement expressly confirms that Singleton can provide services through "employed **or subcontracted** health care professionals and facilities including, **but not limited to,** Medical Group Physicians [employed physicians]."") (Emphasis added). *See* Agreement, § 3.2, Exh. A. to Richards Decl.; *see also Id.,* § 5.2 (confirming that the Agreement includes "health care professionals employed by **or under contract with**" Singleton) (emphasis added). Thus, United's core alleged limitations, both in the Arbitration and Complaint, are untenable under the plain language of the document.

On June 30, 2023, Singleton filed a request for leave with the Panel to file a Motion for Summary Disposition ("MSD") as to these fatally flawed core allegations by United. *See* Singleton Request to File MSD (June 30, 2023), Exh. E to Jew Decl.[4] United has filed an opposition to this MSD request, based on substantive arguments about the contract language. UHCTX Opposition to Singleton Request to File MSD (July 24, 2023), Exh. F to Jew Decl. While United's opposition is wrong, either way, this core dispute already is in the Arbitration and should be addressed in the Arbitration, not here.

I. United Filed the Duplicative Complaint Only After the Counterclaims were Accepted by the Panel into the Arbitration

The Panel deemed the Counterclaims filed in the Arbitration on April 2, 2023. United did not file the Complaint until April 14, 2023, **after** United already had pursued and obtained leave to pursue the Counterclaims in the Arbitration.

Moreover, United delayed serving the Complaint for three months, and only finally served it on July 12, 2023, after being prompted by the Court about the delay. In the meantime, United actively participated in the Arbitration, including discovery regarding the Counterclaims. Jew Decl., ¶¶5b-c.

[4] An MSD is an AAA procedure similar to a summary judgment or summary adjudication motion.

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

J. The Complaint Duplicates the Counterclaims, Simply Recasting the Same Specific Allegations against Singleton as also against RP

The Complaint merely recasts the breach of contract claim against Singleton as tortious interference, unfair competition, and ERISA against RP. In this way, United seeks to transform the contract dispute about its breach, into inflammatory torts against Singleton and its agent, RP. But the underlying contract dispute with Singleton about the Agreement clearly is at the core.

Furthermore, a redline comparing the Complaint with the Counterclaims makes apparent that United's claims against RP here are essentially the same as the allegations already made and pending against Singleton in the Arbitration. *See* Redline of Complaint and Counterclaims, Exh. H to Jew Decl.

Similarly, the table below contains multiple examples showing allegations in the Complaint and Counterclaims that clearly arise from the Agreement. The cut-and-paste overlap between the Counterclaims and the Complaint are unmistakable. United often did not even bother to reword duplicate language, making it easy to see that these allegations are inextricably intertwined:

Counterclaims	**Complaint**
Singleton and United entered into the Medical Group Participation Agreement effective January 1, 1998. ¶ 28.	Singleton and United entered into a Medical Group Participation Agreement effective January 1, 1998. ¶ 44.
Neither Singleton nor Radiology Partners could have effectuated their pass-through billing scheme without the other. Radiology Partners needed access to Singleton's Agreements with United.	Neither Radiology Partners nor Singleton could have effectuated their pass-through billing scheme without the other. Radiology Partners needed access to Singleton's Agreement with United.

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

And Singleton needed Radiology Partners to acquire practices to become affiliated with non-Singleton Unauthorized Providers who were then linked to Singleton's TIN to accomplish the pass-through billing of claims for services performed by the Unauthorized Providers. ¶ 80.	And Singleton needed Radiology Partners to acquire practices to become affiliated with Unauthorized Providers who were then linked to Singleton's TIN to accomplish the pass-through billing of claims for services performed by the Unauthorized Providers. ¶ 91.
Pursuant to Section 1 of the 1998 Agreement, the only providers defined as "Medical Group Physicians" were individuals who "practice as a shareholder, partner or employee of [Singleton] and who has executed a Medical Group Physician Participation Addendum." ¶ 83.	Radiology Partners knew that pursuant to Section 1 of the Agreement, the only providers defined as "Medical Group Physicians" were individuals who "practice as a shareholder, partner or employee of [Singleton] and who [have] executed a Medical Group Physician Participation Addendum." ¶ 109a.
Radiology Partners knew that the Agreement only provided for reimbursement of services rendered by Singleton and Singleton Medical Group Physicians. ¶ 84.	Radiology Partners knew that the Agreement only provided for reimbursement of services rendered by Singleton and Singleton Medical Group Physicians. ¶ 109b.

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

In breach of the above provisions, as well as other provisions of the 1998 Agreement, Singleton billed United for services performed by Unauthorized Providers using the Singleton TIN. ¶ 88.	Radiology Partners caused Singleton to breach the Agreement by billing United for services performed by Unauthorized Providers using the Singleton TIN. ¶ 112.

See also Complaint ¶ ¶ 6 -8, 10, 46 – 52, 61 - 64, 66 - 67, 69 – 76, 78, 80 - 86, 88, 90, 92, 108, 109c., 109e., 110, 111, 113 – 116, 123, 125, 127, 147, 161, 164, 168c., 185, 188a., 188d., 188f., 205 (all specifically referencing the Agreement in alleging a cause of action).

IV. THE LAW STRONGLY SUPPORTS GRANTING THE MOTION

A. The Federal Arbitration Act and State Law Favor Arbitration

The Agreement is governed by the Federal Arbitration Act ("FAA"), which requires courts to compel parties to arbitrate all claims subject to arbitration agreements and puts any doubts in favor of arbitration. *See Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218 (1985) ("By its terms, the Act leaves no place for the exercise of discretion by a district court, but instead mandates that district courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed.") (Citing 9 U.S.C. §§ 3, 4). "[A]ny doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24-25; *accord Gilmer v. Interstate/Johnson Lane Corp*., 500 U.S. 20, 24-25 (1991).

Similarly, both Texas, where the Arbitration and Counterclaims already are pending, and California, where United filed this Complaint, have strong public policies in favor of arbitration. *See, e.g.*, *Ericksen, Arbuthnot, McCarthy, Kearney & Walsh, Inc. v. 100 Oak Street*, 35 Cal. 3d 312, 323 (1983) (citation omitted)

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

(holding that, in light of the strong public policy in California favoring arbitration, any "doubts concerning the scope of arbitrable issues are to be resolved in favor of arbitration."); *In re Border Steel, Inc*., 229 S.W.3d 825, 832 (Tex. App.--El Paso 2007, org. proceeding) (holding that Texas law presumes the existence of an arbitration agreement, and any doubts regarding the existence or scope of an agreement are resolved in favor of arbitration). [5]

B. Applicable State Law, Including Equitable Estoppel and Agency, Support Non-Signatories Compelling Arbitration Clauses Under the Circumstances Here

Both Texas and California recognize that there are "six scenarios in which arbitration with non-signatories may be required: (1) incorporation by reference, (2) assumption, (3) agency, (4) alter ego, (5) equitable estoppel, and (6) third-party beneficiary." *Jody James Farms, JV v. Altman Grp., Inc.*, 547 S.W.3d 624, 633 (Tex. 2018); *Cohen v. TNP 2008 Participating Notes Program, LLC*, 31 Cal. App. 5th 840, 859 (2019) (explaining that the "six theories by which a nonsignatory may be bound to arbitration" included "(a) incorporation by reference; (b) assumption; (c) agency; (d) veil-piercing or alter ego; (e) estoppel; and (f) third-party beneficiary.") (Citations omitted).[6]

---

[5] The Ninth Circuit applies "the choice-of-law principles of the forum state," when considering compelling arbitration of claims against a non-signatory, because a contract signatory has not agreed to the contractual choice-of-law provisions with a non-signatory. *In re Henson*, 869 F.3d 1059-60 (9th Cir. 2017). Under California's choice-of-law principles, the laws of the state of Texas will apply if, *inter alia*, Texas law "materially differs from the law of California." *Washington Mut. Bank, FA v. Superior Court*, 24 Cal.4th 906, 919 (2001). California and Texas law do not materially differ, but in an abundance of caution, RP provides case citations to the laws of both states providing the same or similar propositions.

[6] The FAA permits courts to apply "traditional principles of state law" to "allow a contract to be enforced by or against non-parties to the contract through assumption, piercing the corporate veil, later ego, incorporation by reference, third-party beneficiary theories, waiver and estoppel." *Arthur Andersen LLP v. Carlisle*,

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

Here, the third and fifth of these scenarios – i.e., equitable estoppel and agency – each support granting this motion. Either one is sufficient.

C. Equitable Estoppel Prevents United from Evading the Agreement's Arbitration Provision

1. Equitable Estoppel Principles Under California and Texas Law Both Support Compelling Arbitration

Both Texas and California law recognize that equitable estoppel prevents United from avoiding the arbitration clause contained in the Agreement for the allegations in the Complaint and can be compelled into the Arbitration. *See In re FirstMerit Bank, N.A.*, 52 S.W.3d 749, 755 (Tex. 2001) ("[A] litigant who sues based on a contract subjects him or herself to the contract's terms."); *Boucher v. Alliance Title Co., Inc.*, 127 Cal.App.4th 262, 271 (2005) ("By relying on contract terms in a claim against a nonsignatory defendant, even if not exclusively, a plaintiff may be equitably estopped from repudiating the arbitration clause contained in that agreement.").

Both states also recognize that "[t]he application of equitable estoppel principles to arbitrability questions arises in a variety of circumstances." *Boucher*, 127 Cal.App.4th at 268. Two of these circumstances are what have been called intertwined-claims estoppel and/or direct-benefits estoppel. *See Pillar Project AG v. Payward Ventures, Inc.*, 64 Cal. App. 5th 671, 677-78 (2021) (estoppel under California law may occur (1) when claims are asserted that are "dependent upon, or inextricably intertwined with, the underlying contractual obligations of the agreement containing the arbitration clause" or (2) when a party "receives a direct benefit from a contract containing an arbitration clause") (citations omitted); *see*

---

556 U.S. 624, 631 (2009) (citations omitted); *see also GE Energy Power Conversion France SAS, Corp. v. Outokumpu Stainless USA, LLC*, 140 S. Ct. 1637, 1643 (2020) ("Chapter 1 of the Federal Arbitration Act (FAA) permits courts to apply state-law doctrines related to the enforcement of arbitration agreements.").

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

Rachal v. Reitz, 403 S.W.3d 840, 846-848 (Tex. 2013) (under direct benefits estoppel, "a non-signatory who is seeking the benefits of a contract or seeking to enforce it is estopped from simultaneously attempting to avoid the contract's burdens, such as the obligation to arbitrate disputes." (quotation marks omitted); *see Hays v. HCA Holdings, Inc*., 838 F.3d 605, 612 (5th Cir. 2016) (applying intertwined-claims estoppel to case arising under Texas law).

The rationale underlying equitable estoppel is simple; a party "cannot both have his contract and defeat it too." *In re Weekley Homes, L.P.*, 180 S.W.3d 127, 133 (Tex. 2005). Thus, courts routinely reject attempts by parties to evade the arbitration clauses in their contracts by suing affiliated nonsignatories and compel arbitration of claims against the nonsignatories based on equitable estoppel.

For example, in *Grigson v. Creative Artists Agency L.L.C.,* 210 F.3d 524 (5th Cir. 2000), a producer was bound to arbitrate disputes with a film's distributor under the terms of the film's distribution contract. *Id.* at 526. After suing the distributor for breach of contract, the producer also decided to sue the film's non-signatory star and his talent agent, for tortious interference with contractual relations for inducing the breach of contract. *Id.* The Fifth Circuit affirmed the district court's compelling the lawsuit against the non-signatories to arbitration, based on equitable estoppel, explaining: "The claims are intertwined with, and dependent upon, the distribution agreement." *Id.* at 531. The Fifth Circuit also described the producer's actions as "an obvious attempt to make an end-run around the arbitration clause," and the actions as "the quintessential situation for when the [equitable estoppel] doctrine should be applied." *Id.* at 530-531.

The same is true here, where United seeks an end-round on the already pending Arbitration, which already contains the same allegations filed in the Counterclaims, and repeatedly refers to assertions about the Agreement.

2. United's Complaint Depends on the Agreement

The claims United asserts in its complaint against RP, which parallel the

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

same claims UHCTX asserted as Counterclaims against Singleton, are clearly "dependent upon," and "inextricably intertwined" with the contractual obligations set forth in the Agreement, as required for intertwined-claims estoppel. *Pillar Project AG.*, 64 Cal. App. 5th at 677-78. Similarly, it is readily apparent that United's claims "arise solely from the contract or must be determined by reference to it," as seen by the Complaint's numerous references to Singleton and the Agreement, meeting the requirements for direct benefits estoppel. *Jody James*, 547 S.W.3d at 637. United's restating its Counterclaims against Singleton as the Complaint against RP is an obvious attempt to avoid the Agreement's arbitration requirement. The law does not permit this.

United's allegations here, as in the Counterclaims, are based on RP submitting bills for radiology services provided by Singleton pursuant to the terms of the Agreement. Just as with the Counterclaims, the critical premise underlying United's Complaint is the incorrect assertion that the Agreement is restricted in its application to "Medical Group Physicians." Complaint ¶ 109b ("the Agreement only provided for reimbursement of services rendered by Singleton and Singleton Medical Group Physicians"). United's tortious interference, fraud, and other claims are all dependent upon the Agreement. It is impossible to describe how RP submitted bills for services Singleton's subcontractors rendered to Singleton's patients without reference to the Agreement.

The Complaint, like the Counterclaims, relies heavily on the Agreement, referencing it 78 times. As explained above, United remains flat wrong about the Agreement, as its allegations ignore the express contractual language contemplating that Singleton will provide "Health Services to all Members" through "employed **or subcontracted** health care professionals and facilities including, **but not limited to,** Medical Group Physicians." Agreement, § 3.2 (emphasis added), Exh. A. to Richards Decl. But either way, this dispute should be addressed by the Panel in the pending Arbitration, not in this second front

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

United seeks to open against Singleton and RP.

D. United Cannot Escape Its Obligations to Arbitrate Against Singleton by Suing RP for Allegedly Acting on Behalf of Singleton – a Quintessential Act of an Agent

As discussed above, equitable estoppel is a sufficient basis to grant RP's motion to compel arbitration and stay this lawsuit. The Court need look no further than equitable estoppel to grant the motion. But agency is an additional, independent basis for the Court to compel arbitration here.

1. California and Texas Compel Arbitration of Claims Against Agents of Signatories

Principles of state agency law also require United to address its claims with RP in arbitration. United cannot escape the arbitration forum to which UHCTX agreed by suing RP, an agent of Singleton. *In re Kaplan Higher Educ. Corp.*, 235 S.W.3d 206, 209 (Tex. 2007) ("a contracting party generally cannot avoid unfavorable clauses by suing the other party's agents"); *Rower v. Exline*, 153 Cal.App.4th 1276, 1284 (Cal. App. 1st Dist. 2007) ("a nonsignatory sued as an *agent* of a signatory may enforce an arbitration agreement.").

Both Texas and California permit a nonsignatory defendant to compel a signatory plaintiff to arbitrate where there is a connection between the claims alleged against the nonsignatory and its agency relationship with a signatory. *See Dryer v. Los Angeles Rams*, 430 Cal.3d 406, 418 (1985) (nonsignatory agents entitled to enforce a contract's arbitration provision where the plaintiff sued them in their capacities as agents for the signatory and the dispute arose out of the contractual relationship between the parties); *In re Merrill Lynch Tr. Co. FSB*, 235 S.W.3d 185, 188-89 (Tex. 2007) (noting that "parties to an arbitration agreement may not evade arbitration through artful pleading, such as by naming individual agents of the party to the arbitration clause and suing them in their individual capacity" and finding that a nonsignatory employee could invoke his employer's

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

arbitration agreement where the substance of the claims were against employer); *see also In re Vesta Ins. Grp., Inc.*, 192 S.W.3d 759, 762-63 (Tex. 2006) (tortious interference claims against contract signatory's agents must be arbitrated, even though the latter are non-signatories).

The agency rule prevents a party from circumventing arbitration by suing the other parties' agents. This makes particular sense in the managed care contracting context where both sides typically use agents. Medical groups, like Singleton, often use agents to perform management, billing, collections, and other back-office services. Likewise, health plans, like United, clearly also often use agents. Indeed, United Healthcare Services, Inc. casts itself as one of the plaintiffs here, based solely on allegations about the Agreement signed by one of its affiliates, UHCTX, to which United Healthcare Services, Inc. presumably provides services on behalf of UHCTX, so as to project United's health plan business in Texas, and beyond.

2. United's Complaint Alleges Reflect United Knows RP Acts as an Agent on Behalf of Singleton

United's allegations in the Counterclaims and Complaint reflect that United also is pursuing RP for work being done as Singleton's agent. These pleadings are filled with accusations against RP that relate to alleged work RP conducted on behalf of Singleton. As one example, paragraph 57 of the Counterclaims alleges: "Singleton and Radiology Partners accomplished this [i.e., the alleged wrongdoing] by conspiring to have an individual—**representing themselves as acting on behalf of Singleton**—to make requests to United's operations team to link the "newly added providers" to the Singleton Tax Identification Number ("TIN") in United's systems." Exh. G. to Jew Decl. (Emphasis added) Paragraph 68 of the Complaint alleges the same thing: "Radiology Partners and Singleton accomplished this by conspiring to have an individual—**representing themselves as acting on behalf of Singleton**—make requests to United's operations team to

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

link the "newly added providers" to the Singleton Tax Identification Number ("TIN") in United's systems." (Emphasis added)

While United is incorrect to argue that these doctors could not be added under the terms of the Agreement, the pleadings leave no doubt that United's contentions are based on alleged actions of RP to add them to the Agreement "acting on behalf of Singleton." This phraseology United used is a quintessential way to describe what agents do – i.e., act on behalf of another. Therefore, agency principles provide another basis compelling the Complaint into the Arbitration.

E. Compelling United's Claims Against RP to Arbitration is Consistent with the FAA and the Purposes of Arbitration

One of the major purposes of the Federal Arbitration Act is "the efficient and expeditious resolution of claims," *Sink v. Aden Enters., Inc.*, 352 F.3d 1197, 1201 (9th Cir. 2003) (citations omitted). Thus, the U.S. Supreme Court recently explained that district courts should stay proceedings when an appeal on arbitrability is ongoing, because otherwise, the benefits of arbitration like "efficiency, less expense, less intrusive discovery, and the like" would be "irretrievably lost," and "parties also could be forced to settle to avoid the district court proceedings (including discovery and trial) that they contracted to avoid through arbitration." *Coinbase, Inc. v. Bielski*, 143 S. Ct. 1915, 1921 (2023); *see also Amisil Holdings Ltd. v. Clarium Capital Management*, 622 F.Supp.2d 825, 840 (N.D. Cal. 2007) ("duplicative litigation…undermines the efficiency of arbitration" and would see "the federal policy in favor of arbitration effectively thwarted.") United's Complaint undercuts this purpose.

Furthermore, the inequities that will result by permitting United to persist in its claims against RP in this forum rather than in the Arbitration are manifest, not hypothetical. United only filed its Complaint in this Court **after** the Panel ruled against United in Phase I, finding that United had been paying Singleton pursuant to an inapplicable contract. United already has parallel claims against Singleton in

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

the Arbitration. Absent this Court compelling United's claims to arbitration, UHCTX will have effectively thwarted the Agreement's arbitration requirement, which is contrary to the strong policies supporting arbitration.

Moreover, the efficiencies of arbitration will be undermined, and the potential for inconsistent results created, if United's parallel lawsuit were permitted to proceed. In the Arbitration, Singleton and UHCTX have already combined to produce more than 100,000 pages of discovery, conducted ten depositions, and held six days of evidentiary hearings in Phases I and II of the arbitration. Phase III is scheduled for the Counterclaims in February 2024. There is no reason to permit United to avail itself of duplicative discovery, motion practice, or adjudication in this forum.

F. The Court Should Stay United's Action Pending Arbitration

For the reasons enumerated above, each of United's claims should be compelled to the pending Arbitration. Then, the Court should stay United's action entirely pending outcome of the Arbitration. *Johnmohammadi v. Bloomingdale's, Inc.*, 755 F.3d 1072, 1073–74 (9th Cir. 2014) ("a district court may either stay the action or dismiss it outright when, as here, the court determines that all of the claims raised in the action are subject to arbitration."). The federal judicial system already has more than enough work not to need to indulge United's improper desire to saddle the Court with parallel litigation.

V. CONCLUSION

The Court should compel United's allegations in this Court into the Arbitration and stay this litigation pending the outcome of the arbitration. The Arbitration likely will make the Complaint a nullity. If anything were to be left of these bogus allegations after the Arbitration concludes, the Court can take it up at that time.

/ / /

/ / /

/ / /

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071

Dated: August 2, 2023

KING & SPALDING LLP

/s/Glenn E. Solomon

By: GLENN E. SOLOMON
PETER A. STROTZ
CHRISTOPHER C. JEW

P. KEVIN LEYENDECKER
(*pro hac vice* pending)
kleyendecker@azalaw.com
MICHAEL KILLINGSWORTH
(*pro hac vice* pending)
mkillingsworth@azalaw.com
DARYL MOORE
(*pro hac vice* pending)
dmoore@azalaw.com
JOHN ZAVITSANOS
(*pro hac vice* pending)
jzavitsanos@azalaw.com
AHMAD ZAVITSANOS &
MENSING PLLC
1221 McKinney, Suite 2500
Houston, TX 77010
Telephone: +1 713 600 4961
Facsimile: +1 713 655 0062

Attorneys for Defendant
Radiology Partners, Inc.

SARA BRINKMANN
(*pro hac vice* pending)
sbrinkmann@kslaw.com
KING & SPALDING LLP
1100 Louisiana Street, Suite 4100
Houston, TX 77002-5213
Telephone: +1 713 751 3200
Facsimile: +1 713 751 3290

Attorneys for Defendant
Radiology Partners, Inc.

King & Spalding LLP
633 West Fifth Street
Suite 1600
Los Angeles, CA 90071