

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF MINNESOTA**

<p><b>Matthew T. Zilhaver and Sascha Linn,</b></p> <p style="text-align:center"><b>Plaintiffs,</b></p> <p>v.</p> <p><b>UnitedHealth Group Incorporated, L. Robert Dapper, James A. Johnson, William G. Spears, Mary O. Munding, William W. McGuire, and Stephen J. Hemsley,</b></p> <p style="text-align:center"><b>Defendants.</b></p>	<p><b>Civil File No. 06-CV-02237 (JMR/FLN)</b></p> <p style="text-align:center"><b>DEFENDANT WILLIAM W. MCGUIRE'S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFFS' SECOND AMENDED COMPLAINT</b></p>
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Defendant William W. McGuire, through his undersigned counsel, hereby submits his Answer and Affirmative Defenses to Plaintiffs' Second Amended Complaint (the "Complaint").

1. To the extent that Paragraph 1 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire admits that Plaintiffs purport to bring a federal class action on behalf of all persons who were "participants" in the UnitedHealth Group 401(k) Savings Plan (the "Plan"), and whose individual accounts in the Plan held shares of UnitedHealth Group, Inc. ("UnitedHealth") common stock as part of the UnitedHealth Group Stock Fund investment option in the Plan at any time between December 21, 2005, and May 24, 2006. Dr. McGuire admits that UnitedHealth is a "named fiduciary" of the Plan for purposes of Section 402(a) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1102(a). Dr. McGuire otherwise denies the allegations in Paragraph 1 of the Complaint.

2. To the extent that Paragraph 2 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 2 of the Complaint.

3. To the extent that Paragraph 3 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 3 of the Complaint.

4. To the extent that Paragraph 4 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 4 of the Complaint.

5. Dr. McGuire admits that an Independent Committee of UnitedHealth's Board of Directors retained the law firm of Wilmer Cutler Pickering Hale and Dorr LLP ("WilmerHale") as its counsel for the Independent Committee's review of certain matters. Dr. McGuire admits that WilmerHale issued a written report to the Independent Committee. Dr. McGuire admits that Paragraph 5 of the Complaint purports to describe the WilmerHale report, which speaks for itself. Dr. McGuire otherwise denies the allegations on Paragraph 5 of the Complaint.

6. Dr. McGuire admits that Plaintiffs purport to bring claims under ERISA § 502, 29 U.S.C. § 1132. Dr. McGuire denies that Plaintiffs are entitled to any such relief.

7. Paragraph 7 of the Complaint states a legal conclusion rather than a factual allegation, and no response is necessary.

8. Dr. McGuire admits that the District of Minnesota is an appropriate venue for this action. To the extent that Paragraph 8 of the Complaint states a legal conclusion

rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 8 of the Complaint.

9. Dr. McGuire admits, upon information and belief, the allegations in the first sentence of Paragraph 9 of the Complaint. Dr. McGuire admits, upon information and belief, that before December 20, 2005, the PacifiCare Plan held shares of PacifiCare Health System, Inc. (“PacifiCare”) stock. Dr. McGuire admits that, following UnitedHealth’s acquisition of PacifiCare, assets and liabilities of the PacifiCare Plan were transferred to the United Plan, and that Plaintiff Matthew T. Zilhaver thereby came to have an account balance in the United Plan. Dr. McGuire otherwise denies the allegations in Paragraph 9 of the Complaint.

9A. Dr. McGuire admits, upon information and belief, the allegations in the first sentence of Paragraph 9A of the Complaint. Dr. McGuire admits that Plaintiff Sascha Linn was employed by UnitedHealth (or an affiliate of UnitedHealth), that Mr. Linn is and was a participant in the United Plan, and that a portion of Mr. Linn’s account balance in the United Plan has been allocated to the UHG ESOP Stock Fund, a pooled investment fund that holds shares of UnitedHealth’s common stock. Dr. McGuire otherwise denies the allegations in Paragraph 9A of the Complaint.

10. Dr. McGuire admits the allegations in Paragraph 10 of the Complaint.

11. Dr. McGuire admits that UnitedHealth sponsors the United Plan, and that UnitedHealth is the “administrator” of the Plan for purposes of Section 3(16)(A) of ERISA, 29 U.S.C. § 1102(a). Dr. McGuire admits, upon information and belief, that a summary plan description (“SPD”) has been issued to participants in the Plan. To the

extent that Paragraph 11 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire admits that Paragraph 11 of the Complaint purports to describe the Plan and the SPD, which speak for themselves. Dr. McGuire otherwise denies the allegations in Paragraph 11 of the Complaint.

12. Dr. McGuire admits, upon information and belief, that L. Robert Dapper served as UnitedHealth's Senior Vice President, Human Capital, between December 21, 2005 and May 24, 2006, and that effective May 15, 2002, the Committee appointed under Section 12.2.1 of the Plan was dissolved and that UnitedHealth delegated to its Senior Vice President, Human Capital, all duties, authority and responsibilities that formerly had been assigned to that Committee. Dr. McGuire admits that Paragraph 12 of the Complaint purports to describe the WilmerHale report, which speaks for itself. To the extent that Paragraph 12 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 12 of the Complaint.

13. Dr. McGuire admits, upon information and belief, that James A. Johnson was a member of the Company's Board of Directors between December 21, 2005, and May 24, 2006, as well as a member of the Compensation and Human Resources Committee of the Board of Directors. Dr. McGuire admits that Paragraph 13 partially quotes and purports to describe UnitedHealth's 2006 Proxy Statement (dated April 7, 2006), which speaks for itself. Dr. McGuire is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 13 of the Complaint.

14. To the extent that Paragraph 14 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire admits that Paragraph 14 partially quotes and purports to describe a *Wall Street Journal* article dated August 23, 2006, under the title “KB Home Reviews Stock Options Given to CEO,” which speaks for itself. Dr. McGuire is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 14 of the Complaint.

15. Dr. McGuire admits, upon information and belief, that William G. Spears was a member of UnitedHealth’s Board of Directors between December 21, 2005, and May 24, 2006. Dr. McGuire admits, upon information and belief, that Mr. Spears was a member of the Compensation Committee during the same period. To the extent that Paragraph 15 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire admits that Paragraph 15 of the Complaint purports to describe the WilmerHale report, which speaks for itself. Dr. McGuire denies the remaining allegations in Paragraph 15 of the Complaint.

16. Dr. McGuire admits, upon information and belief, that Mary O. Munding was a member of UnitedHealth’s Board of Directors between December 21, 2005 and May 24, 2006. Dr. McGuire admits, upon information and belief, that Dr. Munding was a member of the Compensation and Human Resources Committee of the Board of Directors. To the extent that Paragraph 16 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire denies the remaining allegations in Paragraph 16 of the Complaint.

17. Dr. McGuire admits that he was the Chief Executive Officer and Chairman of the Board of Directors of United Health from 1991 until 2006. Dr. McGuire admits that he was a director of UnitedHealth from 1989 until 2006. To the extent that Paragraph 17 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 17 of the Complaint.

18. Dr. McGuire admits, upon information and belief, that Steven J. Hemsley served as Chief Operating Officer of UnitedHealth between 1998 and 2006, as President of UnitedHealth between 1999 and 2006, and that he has served on UnitedHealth's Board of Directors since 2000. To the extent that Paragraph 18 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire denies the remaining allegations in Paragraph 18 of the Complaint.

19. Paragraph 19 of the Complaint contains no factual allegations, and therefore no response is required.

20. To the extent that Paragraph 20 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 20 of the Complaint.

21. Dr. McGuire admits that Plaintiffs purport to bring this action in part as a class action pursuant to Rules 23(a) and (b)(1) and (3) of the Federal Rules of Civil Procedure. Dr. McGuire denies that a class action can be certified or maintained under applicable law.

22. To the extent that Paragraph 22 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire denies that a class action can be certified or maintained under applicable law. Dr. McGuire is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 22 of the Complaint.

23. Dr. McGuire denies the allegations in Paragraph 23 of the Complaint.

24. Dr. McGuire denies the allegations in Paragraph 24 of the Complaint.

25. Dr. McGuire denies the allegations in Paragraph 25 of the Complaint.

26. Dr. McGuire is without knowledge or information sufficient to form a belief as to the truth of the allegation in the first sentence of Paragraph 26 of the Complaint. Dr. McGuire otherwise denies the remaining allegations in Paragraph 26 of the Complaint.

27. Dr. McGuire denies the allegations in Paragraph 27 of the Complaint.

28. Dr. McGuire denies the allegations in Paragraph 28 of the Complaint.

29. Dr. McGuire admits the allegations in Paragraph 29 of the Complaint.

30. Dr. McGuire admits that the Plan is an “individual account plan” and “defined contribution plan” as defined by Section 3(34) of ERISA, 29 U.S.C. § 1002(34). To the extent that Paragraph 30 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary.

31. Dr. McGuire admits that the Plan includes a voluntary deferral arrangement described in Section 401(k) of the Internal Revenue Code of 1986, as amended (the “Code”), 26 U.S.C. § 401(k), and that the Plan permits participants to direct the

investment of their own account balances in the Plan. Dr. McGuire admits that Paragraph 31 of the Complaint purports to describe the Plan documents, which speak for themselves.

32. Dr. McGuire admits that the assets held by the Plan during the period between December 21, 2005, and May 24, 2006, included shares of UnitedHealth common stock. Dr. McGuire otherwise denies the allegations in Paragraph 32 of the Complaint.

33. Dr. McGuire admits that Paragraph 33 of the Complaint purports to describe and partially quotes page 17 of the January 1, 2006, SPD, which speaks for itself. To the extent that Paragraph 33 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in paragraph 33 of the Complaint.

34. To the extent that Paragraph 34 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire admits that UnitedHealth is the “administrator” of the Plan within the meaning of Section 3(16)(A) of ERISA, 29 U.S.C. § 1002(16)(A), and a “plan sponsor” of the Plan within the meaning of Section 3(16)(B) of ERISA, 29 U.S.C. § 1002(16)(B). Dr. McGuire otherwise denies the allegations in Paragraph 34 of the Complaint.

35. To the extent that Paragraph 35 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 35 of the Complaint.

36. Paragraph 36 of the Complaint states a legal conclusion rather than a factual allegation, and no response is necessary.

37. Paragraph 37 of the Complaint states a legal conclusion rather than a factual allegation, and no response is necessary.

38. Dr. McGuire lacks knowledge or information sufficient to form a belief as to the truth of the allegations in the first sentence of Paragraph 38 of the Complaint. To the extent that Paragraph 38 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary.

39. To the extent that Paragraph 39 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 39 of the Complaint.

40. To the extent that Paragraph 40 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 40 of the Complaint.

41. Dr. McGuire admits that some corporations issue stock options to their employees as a form of incentive compensation, and that the term “exercise price” is sometimes used to describe the price at which such a stock option agreement allows the option holder to purchase stock from the issuer. Dr. McGuire admits that Paragraph 41 of the Complaint partially quotes and purports to describe an interview with Dr. McGuire published in the online version of *Forbes* on May 1, 2006, which speaks for itself. Dr. McGuire otherwise denies the remaining allegations in Paragraph 41 of the Complaint.

42. To the extent that Paragraph 42 describes the exercise of stock options generally, Dr. McGuire is without knowledge or information sufficient to form a belief as to the truth of those allegations. Dr. McGuire otherwise denies the allegations in Paragraph 42 of the Complaint.

43. Dr. McGuire admits that UnitedHealth granted stock options to Dr. McGuire and Mr. Hemsley during periods from 1997 through 2002.

44. Dr. McGuire admits that Paragraph 44 of the Complaint partially quotes and purports to describe a portion of UnitedHealth's Non-Employee Director Stock Option Plan, which speaks for itself. To the extent that Paragraph 44 describes the practice of granting stock options generally or at companies other than UnitedHealth, Dr. McGuire is without knowledge or information sufficient to form a belief as to the truth of those allegations.

45. Dr. McGuire denies the allegations in Paragraph 45 of the Complaint.

46. Dr. McGuire admits that Paragraph 46 of the Complaint purports to describe Dr. McGuire's 1999 employment agreement with UnitedHealth, which speaks for itself. Dr. McGuire otherwise denies the allegations in Paragraph 46 of the Complaint.

47. Dr. McGuire admits that Paragraph 47 of the Complaint partially quotes his 1999 employment agreement with UnitedHealth, which speaks for itself.

48. Dr. McGuire admits the existence of public filings made by UnitedHealth with the SEC and of UnitedHealth's shareholder-approved stock option plans, which

speak for themselves. Dr. McGuire otherwise denies the allegations in Paragraph 48 of the Complaint.

49. Dr. McGuire admits that UnitedHealth granted options to Dr. McGuire and Mr. Hemsley at various times between 1997 and 2002. Dr. McGuire relies on those documents to speak for themselves. Dr. McGuire admits that UnitedHealth's stock traded on the New York Stock Exchange between 1997 and 2002, and the price at which it traded at any time during that period is public information that speaks for itself. Dr. McGuire otherwise is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 49 of the Complaint.

50. Dr. McGuire denies the allegations in Paragraph 50 of the Complaint.

51. Dr. McGuire admits that Plaintiffs purport to describe an article from *The Wall Street Journal* published on March 18, 2006, which speaks for itself. Dr. McGuire otherwise denies the allegations in Paragraph 51 of the Complaint.

52. Dr. McGuire denies the allegations in Paragraph 52 of the Complaint.

53. Dr. McGuire denies the allegations in Paragraph 53 of the Complaint.

54. Dr. McGuire admits the existence of certain of the transactions referred to in Paragraph 54 of the Complaint. As for the specific date and elements of each such transactions, Dr. McGuire relies, upon information and belief, on the statement of changes in beneficial ownership that was filed with the SEC.

55. Dr. McGuire lacks knowledge or information sufficient to form a belief as to the truth of the Paragraph 55 of the Complaint.

56. Dr. McGuire denies the allegations in Paragraph 56 of the Complaint.

57. Dr. McGuire relies upon the Code to speak for itself rather than on Plaintiffs' characterization thereof. Dr. McGuire otherwise lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 57 of the Complaint.

58. Dr. McGuire admits that on March 6, 2007, UnitedHealth filed restated financial statements for 2006 and prior years, which speak for themselves. Dr. McGuire otherwise denies the allegations in Paragraph 58 of the Complaint.

59. Dr. McGuire admits that the Sarbanes-Oxley Act of 2002 changed the law relating to stock option grants, but relies upon that Act to speak for itself rather than on Plaintiffs' characterization thereof. Dr. McGuire admits that Company has complied with that Act since its effective date. Dr. McGuire admits that the Company did not backdate option grants made after 2002 and denies all remaining allegations in Paragraph 59 of the Complaint.

60. Dr. McGuire admits that during the period between December 21, 2005 and May 24, 2006, (i) UnitedHealth issued and filed with the SEC statements or reports, including an annual report on SEC Form 10K and a Proxy Statement for the Annual Meeting of Shareholders to be held on May 2, 2006, and (ii) statements concerning the acquisition or ownership of UnitedHealth stock were filed with the SEC by or for certain "reporting persons" with respect to the Company for purposes of Section 16(a) of the Securities Exchange Act of 1934. Dr. McGuire relies upon these SEC filings to speak for themselves rather than on Plaintiffs' characterization thereof. Dr. McGuire otherwise denies all remaining allegations in Paragraph 60 of the Complaint.

61. Dr. McGuire admits that on March 18, 2006, *The Wall Street Journal* published an article entitled “The Perfect Payday,” which speaks for itself. Dr. McGuire otherwise denies the allegations in Paragraph 61 of the Complaint.

62. Dr. McGuire admits that UnitedHealth issued and filed on SEC Schedule 14A a proxy statement that described a company communication with the SEC and the formation, by the UnitedHealth’s Board of Directors, of a Committee to review the UnitedHealth’s stock option grant practices, which speaks for itself. Dr. McGuire otherwise denies the allegations in Paragraph 62 of the Complaint.

63. Dr. McGuire admits that UnitedHealth’s stock traded on the New York Stock Exchange between April 6, 2001 and April 11, 2006. The public record of the price at which UnitedHealth’s stock traded during that period speaks for itself. Dr. McGuire otherwise denies the allegations in Paragraph 63 of the Complaint.

64. Dr. McGuire admits that Paragraph 64 of the Complaint partially quotes a press release issued by UnitedHealth on April 26, 2006, which speaks for itself. Dr. McGuire otherwise denies the allegations in Paragraph 64 of the Complaint.

65. Dr. McGuire admits that UnitedHealth filed a quarterly report on SEC Form 10-Q in May 2006, which speaks for itself. Dr. McGuire otherwise denies the allegations in Paragraph 65 of the Complaint.

66. Dr. McGuire admits that Paragraph 66 of the Complaint partially quotes from an article titled “UnitedHealth may have to restate results due to options,” published by the *Associated Press* on May 11, 2006, which speaks for itself.

67. Dr. McGuire admits that UnitedHealth issued a press release dated May 17, 2006, which speaks for itself. Dr. McGuire otherwise denies the remaining allegations in Paragraph 67 of the Complaint.

68. Dr. McGuire admits that UnitedHealth's stock traded on the New York Stock Exchange on and before May 24, 2006 and that the price at which the stock traded during that period is publicly available and speaks for itself. Dr. McGuire otherwise denies the allegations in Paragraph 68 of the Complaint.

69. Dr. McGuire admits that Fitch Ratings ("Fitch") provides public ratings on UnitedHealth and its debt instruments. Dr. McGuire relies upon Fitch's ratings and related announcements to speak for themselves rather than on Plaintiffs' characterization thereof. Dr. McGuire otherwise denies the allegations in Paragraph 69 of the Complaint.

70. Dr. McGuire admits that Paragraph 70 purports to describe the WilmerHale report, which speaks for itself. Dr. McGuire otherwise denies the allegations in Paragraph 70 of the Complaint.

71. Dr. McGuire admits that Paragraph 71 of the Complaint partially quotes from an article published by *The Wall Street Journal* in October 2006 under the title "McGuire Faces Pressure to Leave at UnitedHealth – Probe Finds Some Options Were Manipulated; Board Plan[s] to Meet Sunday," which speaks for itself.

72. Dr. McGuire admits that Paragraph 72 of the Complaint partially quotes from an article published by the *St Paul Pioneer Press* on October 16, 2006 under the title "Stock Scandal Claims McGuire," which speaks for itself.

73. Dr. McGuire admits that Paragraph 73 of the Complaint partially quotes from an article published by *The StarTribune.com* on October 16, 2006 reported under the title, “McGuire Linked to Compensation Committee Member,” which speaks for itself.

74. Dr. McGuire admits that Paragraph 74 of the Complaint partially quotes from an article published by *The Wall Street Journal* on October 16, 2006, under the title, “CEO to Leave Under Pressure At UnitedHealth-Hemsley to Succeed McGuire As Options Scandal Claims Highest-Profile Casualty Yet,” which speaks for itself.

75. Dr. McGuire admits that Paragraph 75 of the Complaint partially quotes from an article published by *The New York Times* on October 16, 2006, under the title, “Chief Executive at Health Insurer Is Forced Out in Options Inquiry,” which speaks for itself.

76. Dr. McGuire admits that Paragraph 76 of the Complaint partially quotes from an article published by *The New York Times* on October 17, 2006, under the title, “Old Options Still Haunt An Insurer,” which speaks for itself.

77. Dr. McGuire admits that Paragraph 77 of the Complaint partially quotes from an article published by *The Wall Street Journal* on October 17, 2006, under the title, “UnitedHealth’s McGuire Could Leave with \$1.1 Billion,” which speaks for itself.

78. Dr. McGuire admits that Paragraph 78 of the Complaint partially quotes from an article published by *The Wall Street Journal* on October 20, 2006, under the title, “How Did UnitedHealth’s McGuire Get Same Options Twice?,” which speaks for itself.

79. Dr. McGuire admits that Paragraph 79 of the Complaint partially quotes from an article published by *The Wall Street Journal* on November 9, 2006, under the title, “UnitedHealth Executives Forfeit \$390 Million in Options,” which speaks for itself.

80. Dr. McGuire is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 80 of the Complaint.

81. Dr. McGuire admits that Paragraph 81 of the Complaint partially quotes from an article published by *The Wall Street Journal* on December 7, 2006, under the title, “How a Giant Insurer Decided to Oust Hugely Successful CEO,” which speaks for itself.

82. Dr. McGuire denies the allegation in the first sentence of Paragraph 82 of the Complaint. Dr. McGuire admits that on March 6, 2007, UnitedHealth filed restated financial statements for 2006 and prior years, and returned to current status in its filings with the SEC. Dr. McGuire otherwise denies the allegations in Paragraph 82 of the Complaint.

83. Dr. McGuire admits that Paragraph 83 partially quotes and purport to describe an article published by the online version of *The Wall Street Journal* on April 19, 2007, which speaks for itself. Dr. McGuire otherwise denies the allegations in Paragraph 83 of the Complaint.

84. Dr. McGuire denies the allegations in Paragraph 84 of the Complaint.

85. Dr. McGuire incorporates by reference his answers to Paragraphs 1 to 84 of the Complaint.

86. Paragraph 86 of the Complaint states a legal conclusion rather than a factual allegation, and no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 86 of the Complaint.

87. Dr. McGuire denies the allegations in Paragraph 87 of the Complaint.

88. Dr. McGuire denies the allegations in Paragraph 88 of the Complaint.

89. Dr. McGuire denies the allegations in Paragraph 89 of the Complaint.

90. To the extent that Paragraph 90 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 90 of the Complaint.

91. To the extent that Paragraph 91 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 91 of the Complaint.

92. To the extent that Paragraph 92 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 92 of the Complaint.

93. Dr. McGuire incorporates by reference his answers to Paragraphs 1 to 92 of the Complaint.

94. To the extent that Paragraph 94 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 94 of the Complaint.

95. To the extent that Paragraph 95 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 95 of the Complaint.

96. Dr. McGuire denies the allegations in Paragraph 96 of the Complaint.

97. To the extent that Paragraph 97 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 97 of the Complaint.

98. Dr. McGuire denies the allegations in Paragraph 98 of the Complaint.

99. Dr. McGuire denies the allegations in Paragraph 99 of the Complaint.

100. Dr. McGuire admits that UnitedHealth is a named fiduciary of the Plan for purposes of Section 402(a) of ERISA, 29 U.S.C. § 1102(a). To the extent that Paragraph 100 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 100 of the Complaint.

101. Dr. McGuire denies the allegations in Paragraph 101 of the Complaint.

102. To the extent that Paragraph 102 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 102 of the Complaint.

103. To the extent that Paragraph 103 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 103 of the Complaint.

104. To the extent that Paragraph 104 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire denies the allegations in Paragraph 104 of the Complaint.

105. Dr. McGuire incorporates by reference his answers to Paragraphs 1 to 104 of the Complaint.

106. Dr. McGuire admits that UnitedHealth is a named fiduciary of the Plan for purposes of Section 402(a) of ERISA, 29 U.S.C. § 1102(a). Dr. McGuire otherwise denies the allegations in Paragraph 106 of the Complaint.

107. Dr. McGuire admits that Paragraph 107 of the Complaint purports to describe a fiduciary's responsibilities under the Plan, which speaks for itself. To the extent that Paragraph 107 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 107 of the Complaint.

108. To the extent that Paragraph 108 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 108 of the Complaint.

109. To the extent that Paragraph 109 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 109 of the Complaint.

110. To the extent that Paragraph 110 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire denies the allegations in Paragraph 110 of the Complaint.

111. To the extent that Paragraph 111 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 111 of the Complaint.

112. To the extent that Paragraph 112 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 112 of the Complaint.

113. Dr. McGuire denies the allegations in Paragraph 113 of the Complaint.

114. To the extent that Paragraph 114 of the Complaint states a legal conclusion rather than a factual allegation, no response is necessary. Dr. McGuire otherwise denies the allegations in Paragraph 114 of the Complaint. Further responding to the allegations of the Complaint, Dr. McGuire denies each and every allegation not affirmatively admitted or otherwise answered by him. Dr. McGuire further denies (i) that Plaintiffs are entitled to a jury trial, and (ii) that Plaintiffs, the alleged class, or the Plan are entitled to the relief requested by the Complaint or to any relief whatsoever from Dr. McGuire.

#### FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim against Dr. McGuire for which relief can be granted.

#### SECOND AFFIRMATIVE DEFENSE

Plaintiff Sascha Linn and numerous other participants in the Plan have released any claims as alleged in the Complaint. As a result, some or all of the claims in the Complaint are barred under the doctrines of release and accord and satisfaction.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs lack standing to pursue some or all of their claims, including to the extent they seek recovery for losses to themselves and other individual participants in the Plan under section 502(a)(2) of ERISA, 29 U.S.C. § 1132(a)(2).

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs failed to exhaust internal Plan remedies.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs cannot rebut the presumption of prudence afforded to a fiduciary who invests in company stock.

SIXTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred under principles of laches, waiver and estoppel.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred to the extent they have failed to mitigate any losses.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for damages and other monetary relief for losses to themselves and other Plan participants individually are unavailable under section 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3).

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the applicable statute of limitations to the extent they seek relief with respect to acts or omissions occurring more than three years before this action was commenced.

TENTH AFFIRMATIVE DEFENSE

Neither the Plan, nor Plaintiffs, nor anyone else, suffered a loss as a result of the ERISA fiduciary actions or inactions alleged in the Complaint.

ELEVENTH AFFIRMATIVE DEFENSE

The losses alleged by Plaintiffs, if any, did not result from anything Dr. McGuire did in his alleged capacity as a fiduciary of the Plan.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs and Plan participants exercised independent control over their investment elections in the Plan, including their decision to continue holding a portion of their account balance in the Plan's UHG ESOP Stock Fund. As a result, Plaintiffs' claims are barred under section 404(c) of ERISA, 29 U.S.C. § 1104(c).

THIRTEENTH AFFIRMATIVE DEFENSE

Any loss to the Plan or its participants and beneficiaries as a result of the continued holding of UnitedHealth Stock in the UHG ESOP Stock Fund was due to the acts or omissions of persons or entities over whom Dr. McGuire had no responsibility or control, including Plaintiffs and individual Plan participants, who exercised discretionary

authority with respect to their individual accounts under the Plan and/or their management or disposition of the Plan's assets.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims for damages and other relief for losses alleged to have resulted from misrepresentations or failures to disclose are barred to the extent that Plaintiffs and other Plan participants and beneficiaries did not in fact rely upon such alleged misrepresentations or failures to disclose.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred to the extent they allege duties inconsistent with applicable laws and regulations.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred to the extent they claim losses, damages or other relief on account of acts or omissions that are non-fiduciary in nature, including acts or omissions that are ministerial in nature or that are settlor functions under ERISA.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims against Dr. McGuire are barred to the extent he was acting within the scope of his employment or otherwise solely as the agent for another person.

**WHEREFORE**, Dr. McGuire requests relief as follows:

- A. That the Court dismiss the Complaint and enter judgment against Plaintiffs and for Dr. McGuire on all counts of the Complaint;

- B. That reasonable attorney fees and costs incurred by Dr. McGuire be awarded;
- C. For such other legal and equitable relief as may be just and proper.

Dated this 14th day of April, 2008,

**FLYNN | GASKINS | BENNETT LLP**

/s/Steve W. Gaskins

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