



IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

ROBIN KNIGHT, derivatively on behalf of
Nominal Defendant UNIVERSAL HEALTH
SERVICES, INC.,

Plaintiff,

-vs.-

ALAN B. MILLER, MARC D. MILLER,
STEVE G. FILTON, LAWRENCE S.
GIBBS, EILEEN C. McDONNELL,
WARREN J. NIMETZ, MARVIN G.
PEMBER, MATTHEW J. PETERSON,
MARIA SINGER, and ELLIOT J.
SUSSMAN,

Defendants,

-and-

UNIVERSAL HEALTH SERVICES, INC.,

Nominal Defendant.

C.A. No.: 2021-0581-SG

PUBLIC VERSION
Filed July 9, 2021

VERIFIED STOCKHOLDER DERIVATIVE COMPLAINT

Plaintiff, Robin Knight (“**Plaintiff**”), derivatively on behalf of Nominal Defendant Universal Health Services, Inc. (“**UHS**” or the “**Company**”), submits this Verified Stockholder Derivative Complaint against the defendants named herein for breach of fiduciary duty, waste of corporate assets, and unjust enrichment. The

allegations in this Complaint are based on Plaintiff's personal knowledge as to herself, and upon information and belief, including the investigation of counsel, the review of publicly available information, and the review of books and records produced by the Company as of the date of this Complaint in response to Plaintiff's demand under 8 *Del. C.* § 220 as to all other matters, all of which books and records are expressly incorporated into this Complaint. For the avoidance of doubt, this incorporation by reference does not change the pleading standard applicable to any motion to dismiss that may be filed in this case.

SUMMARY OF THE ACTION

1. UHS is a healthcare company controlled by its founder and his son.
2. In the early days of the Covid-19 Pandemic, the Company's stock price dropped by more than 50% from February to March 2020 before rebounding once the Families First Coronavirus Response Act ("**Phase 2**") and the Coronavirus Aid, Relief, and Economic Security Act ("**Phase 3**") – which directly benefitted the Company's business – were signed into law.
3. The controllers and other Company insiders took advantage of the temporary drop in the Company's stock price to grant and receive options to buy the Company's stock at rock bottom prices, thereby showering themselves in excessive compensation.

4. As detailed below, Defendants knew that the precipitous decline in the Company's stock price was due to the impact of Covid-19 on the markets generally and was not caused by any changes in the Company's fundamentals or business prospects. Defendants also knew that the federal government would imminently inject billions of dollars into the Company's industry. Defendants abused their discretion and opportunistically took advantage of this confluence of events to grant themselves heavily-discounted options while having every reason to know that the Company's stock price would recover imminently. In fact, the day after the options were granted, the Company's stock price jumped by 25% and within a week it had soared by 47%. In just twelve days, Defendants reaped over \$30 million in gains on the granted options.

5. The options grants were grossly unfair to the Company and its stockholders and were facilitated through an unfair process, with no stockholder vote, and resulted in the controllers and other Company insiders receiving excessive compensation at the Company's expense. Defendants are therefore liable for breach of fiduciary duty, waste of corporate assets, and unjust enrichment.

THE PARTIES

Plaintiff

6. Plaintiff Robin Knight is, and at all relevant times was, an owner and holder of UHS common stock.

The Company

7. Nominal Defendant UHS is a Delaware corporation that trades on the New York Stock Exchange under the symbol “UHS.”

8. The Company owns and operates acute care hospitals, outpatient, and behavioral health care facilities.

9. The Company acknowledged in its 2019 Form 10-K that it “derive[s] a significant portion of [its] revenue from third-party payers, including the Medicare and Medicaid programs.”¹

10. Specifically, the Company’s 2019 10-K states that UHS recognized revenue of \$1.8 billion from Medicare and \$1.2 billion from Medicaid.² Combined, this was approximately 28% of the Company’s recognized revenue for fiscal year 2019.

¹<https://www.sec.gov/Archives/edgar/data/352915/000156459020006793/0001564590-20-006793-index.htm> (2019 10-K filed December 31, 2019).

²*Id.*

11. The Company's most recent 10-K filed on February 25, 2021, for the fiscal year ended December 31, 2020, states that UHS recognized revenue of \$1.7 billion from Medicare and \$1.2 billion from Medicaid. Combined, these revenues made up approximately 25% of the Company's recognized revenue for fiscal year 2020.³

12. In fiscal year 2020, UHS directly received approximately \$417 million from Covid-19 related government programs as well as \$695 million in accelerated Medicare payments, for a total of \$1.112 billion.⁴

Alan and Marc Miller, the Company's Controllers

13. Defendant Alan B. Miller ("**Alan**") founded the Company in 1978 and has been Chairman of the Company's Board of Directors (the "**Board**") ever since. He was the Company's President until May 2009 and its CEO until January 2021. He was succeeded in those positions by his son Marc.

14. Defendant Marc D. Miller ("**Marc**") is Alan's son and has been a Company director since 2006. He replaced his father as the Company's President in May 2009. That position did not exist until Marc was appointed to it, even though

³<https://www.sec.gov/Archives/edgar/data/352915/000156459021008851/0001564590-21-008851-index.htm> (10-K filed February 25, 2021, the "**2020 10-K**").

⁴*Id.*

the Company's two divisions (Acute Care and Behavioral Health) each had their own presidents.

15. The Company concedes that at all relevant times, it was controlled by Alan and Marc (together, the “**Millers**” or “**Controllers**”). Specifically, the 2021 proxy reflects that the Millers controlled 87.6% of the Company's voting power, with Alan controlling 85% and Marc controlling 2.6%.⁵ The 2020 proxy reflects the same.⁶ The 2019 proxy reflects that the Millers controlled 84.3% of the Company's voting power, with Alan controlling 84.3% and Marc controlling 2.6%.⁷

16. Further, the Company expressly concedes that it is controlled by the Millers. As holders of a majority of the Company's Class A and Class C common stock, the Millers have the right to elect (appoint) five members of the Board under the Company's Certificate of Incorporation.⁸ The Company's 2020 annual report explains that “[s]ince a substantial majority of the [relevant] shares are controlled by Mr. Alan B. Miller and members of his family, one of whom is Marc D. Miller, our

⁵https://www.sec.gov/Archives/edgar/data/352915/000156459021017879/uhs-def14a_20210621.htm (DEF 14-A filed April 7, 2021, the “**2021 Proxy**”).

⁶https://www.sec.gov/Archives/edgar/data/0000352915/000156459020015986/uhs-def14a_20200520.htm (DEF 14-A filed April 9, 2020, the “**2020 Proxy**”).

⁷https://www.sec.gov/Archives/edgar/data/0000352915/000156459019010754/uhs-def14a_20181231.htm (DEF 14-A filed April 9, 2019).

⁸2020 10-K.

Chief Executive Officer, President and a director, and they can elect a majority of our company's directors and effect or reject most actions requiring approval by stockholders without the vote of any other stockholders, there are potential conflicts of interest in overseeing the management of our company.”⁹

The Millers' Handpicked Directors

17. Defendant Lawrence S. Gibbs (“**Gibbs**”) has served as a Company director since 2011 and has been a member of the Board's compensation committee (the “**Compensation Committee**”) since 2011. On April 21, 2017, CtW Investment Group urged stockholders to withhold support for Gibbs' reelection, voicing concern over the mounting number of publicly-disclosed federal criminal and civil investigations surrounding the Company.¹⁰ Nevertheless, given the Company's controlled status, withholding votes in favor of Gibbs would be an academic exercise unless he voluntarily resigned or was directed by the Millers to vacate his position. Accordingly, Gibbs remains on the Board despite having lost the confidence of stockholders.

18. Defendant Eileen C. McDonnell (“**McDonnell**”) has served as a Company director since 2013, a member of the Compensation Committee since

⁹*Id.*

¹⁰<https://www.wsj.com/articles/ctw-investment-calls-for-governance-changes-at-universal-health-services-1490760060>.

2019, and Chair of the Compensation Committee since May 17, 2019. In addition to her role at the Company, McDonnell has been Chair and CEO of the Penn Mutual Life Insurance Company since 2011. Alan served as Trustee of Penn Mutual from 1994 to 2013 (*i.e.*, during the period that McDonnell joined the Company’s Board and was elected Chair and CEO of Penn Mutual).

19. Defendant Warren J. Nimetz (“**Nimetz**”) has served as a Company director since January 17, 2018. He is the Administrative Partner of the New York City office of the international law firm Norton Rose Fulbright where he has been a partner since 1987. Norton Rose Fulbright and its predecessor firms have a decades-long relationship as counsel to UHS. Nimetz replaced his Norton Rose Fulbright colleague Anthony Pantaleoni as a Company director. Nimetz also succeeded Pantaleoni as trustee over the Alan B. Miller 2002 Trust and provides other personal legal services to Alan, including but not limited to serving as trustee for at least ten other trusts established by Alan for the benefit of his family (three trusts referred to in the 2021 Proxy as the “2002 Trusts,” three sub-trusts referred to in the 2021 Proxy as the “2017 Sub-Trusts,” three trusts referred to in the 2021 Proxy as the “2011 Family Trusts,” and a trust referred to in the 2021 Proxy as the “2012 Family Trust.”).

20. Defendant Maria Singer (“**Singer**”) has served as a Company director since March 1, 2020. Singer is the Chief Operating Officer of investment bank Houlihan Lokey Howard Zurkin. Singer replaced longtime Company director Robert H. Hotz (“**Hotz**”), her colleague at Houlihan Lokey, after two-thirds of the Company’s 72.5 million Class B shares abstained from voting for Hotz when he stood for reelection as a Company director in 2019. Although Hotz had no opponent, he was elected anyway under the Board’s election rules which require only one vote in favor. Given the lopsided result, Hotz agreed to resign effective when his replacement was named. Hotz had been chair of the Compensation Committee and lead independent director.

21. Defendant Elliot J. Sussman (“**Sussman**”) has served as a Company director and a member of the Compensation Committee since March 21, 2018. Sussman was a trustee of Universal Health Realty Income Trust (“**UHRIT**”) until that date. Sussman was a trustee of UHRIT at the same time as Alan was its trustee, director, CEO, and President, and Marc was its trustee.

22. Alan, Marc, Gibbs, McDonnell, Nimetz, Singer and Sussman are referred to as the “**Director Defendants.**”

Officer Defendants

23. Defendant Steve G. Filton (“**Filton**”) has served as the Company’s CFO since 2003 and as an Executive Vice President since 2017.

24. Defendant Marvin G. Pember (“**Pember**”) has served as President of the Company’s Acute Care Division since 2011 and as an Executive Vice President since 2017.

25. Defendant Matthew J. Peterson (“**Peterson**”) has served as President of the Company’s Behavioral Health Division and an Executive Vice President since September 2019.

26. Filton, Pember, and Peterson are referred to as the “**Officer Defendants.**”

27. The Director Defendants and the Officer Defendants are collectively referred to as the “**Defendants.**”

SUBSTANTIVE ALLEGATIONS

Fears of Covid-19 Batter the Markets

28. From December 2019 through February 2020 – immediately before Covid-19 began to significantly affect the markets – the Company’s stock traded between \$123.74 and \$147.78 per share. During this time, analysts from Credit Suisse and Deutsche Bank respectively assigned UHS price targets of \$167 and \$165 per share.

29. By early March 2020, it was apparent that Covid-19 would have a significant effect on the equity markets.

30. On March 9, 2020, the Dow fell 2,013.76 points, a 7.5% drop. UHS stock closed at \$114.42 per share, down 9.03% from the previous day's close of \$125.97 per share.

31. On March 11, the World Health Organization declared that Covid-19 was a global pandemic.¹¹

32. On March 12, the Dow fell an additional 2,300 points, a 10% drop. UHS stock closed at \$99.80 per share, down 9.39% from the previous day's close of \$110.14 per share. UHS stock had not previously closed below \$100 per share since November 2014.

33. On March 13 (a Friday), President Trump declared Covid-19 to be a national emergency.

34. On March 16 (a Monday), UHS stock closed at \$81.70 per share, a massive drop of 22.26% from its closing price on March 13.

35. On March 18, UHS stock reached its nadir, dropping 10% to close at \$67.69 per share. UHS stock had not previously closed below \$70 since September

¹¹<https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

2013.

36. Between February 21 - March 18, 2020, UHS stock dropped 52.6%.

37. The Dow reached its lowest point on March 23, 2020, closing at 18,591, down 37% from its high on February 12.

The U.S. Government Intervenes

38. As the markets were tumbling, the federal government enacted legislation to stabilize the economy and help hospitals and health care providers like UHS fight Covid-19.

39. On March 6, 2020, President Trump signed the Coronavirus Preparedness and Response Supplemental Appropriations Act (“**Phase 1**”) into law. Phase 1 provided \$8.3 billion for vaccine development and public health funding.

40. On March 11, the Families First Coronavirus Response Act – Phase 2 – was introduced in the U.S. House of Representatives. Phase 2 provided for free coronavirus testing for all, including the uninsured. Testing would be paid by insurance and government programs and through an increase in federal Medicaid payments, a windfall to healthcare providers like UHS, which admittedly derives a significant percentage of its revenue from Medicaid payments.

41. A client bulletin drafted by defendant Nimetz’s law firm noted that Phase 2 provided for “immediate needs” and “opens the spigots of federal dollars to the

agencies to help gird them for fallout to come. However, it does not address the economic havoc that America business are experiencing.” The client bulletin stated that the “heavy lift” will be on the “third round of legislation, being debated now at the White House and in the Capitol. Stay tuned.”¹²

42. On March 13, President Trump tweeted his support for Phase 2, which reportedly had been negotiated among House Democrats and members of his administration.¹³

43. On March 14, the U.S. House of Representatives passed Phase 2.

44. While Phase 2 was working its way through Congress, legislation was already being prepared for an even bigger third relief package.

45. On March 16, Senate Minority Leader Charles Schumer told CNBC that he would put forth a plan for a third bill with at least \$750 billion in Covid-19 relief.¹⁴

46. The same day, the well-connected federal relations practice group at the Barnes & Thornburg law firm circulated an alert stating in relevant part that:

¹² <https://www.nortonrosefulbright.com/en/knowledge/publications/dd78f420/us-congress-pursues-mitigating-impact-of-covid-19-with-families-first-coronavirus-response-act>

¹³ See <https://www.cnn.com/2020/03/13/politics/coronavirus-relief-congress/index.html>

¹⁴ <https://www.cnbc.com/2020/03/16/chuck-schumer-to-propose-750-billion-coronavirus-response-bill.html>

“Congress has started to draft a third bill to focus on the adverse economic effects of the coronavirus.... This bill is expected to provide targeted economic relief through grants, loans, tax incentives, or tax credits to affected industries from coast to coast.”¹⁵

47. On March 17, the National Review published the Barnes & Thornberg alert verbatim as an article, widely broadcasting that a third relief bill was on the way.¹⁶

48. The same day, CNBC confirmed that President Trump was seeking an even larger relief package, quoting him as saying “We’re going big – We want to go big, go solid.”¹⁷ “We will need multiple rounds of money for everyone,” the *Washington Post* quoted a former Federal Reserve economist who “has been talking to lawmakers about a \$1.5 trillion stimulus” for the third round.¹⁸

49. It was thus apparent on March 17 that a third, even larger stimulus package including relief for the healthcare industry was imminent. As NPR reported

¹⁵<https://btlaw.com/insights/alerts/2020/emergency-federal-funding-measures-approved-to-aid-covid19-pandemic> (emphasis added).

¹⁶<https://www.natlawreview.com/article/emergency-federal-funding-measures-approved-to-aid-covid-19-pandemic>

¹⁷<https://www.cnbc.com/2020/03/17/mnuchin-says-trump-administration-is-looking-to-get-cash-to-americans-immediately.html>

¹⁸<https://www.washingtonpost.com/business/2020/03/17/checks-virus/>

that day:¹⁹

The Trump administration is asking Congress for roughly \$1 trillion in new economic relief as lawmakers begin work on the next [third] phase of coronavirus relief efforts.

Treasury Secretary Steven Mnuchin told reporters that he worked with the president on the economic package.... “Americans need cash now, and the president wants to get cash now. And I mean now, in the next two weeks.” ...

Senate Majority Leader Mitch McConnell... is calling for any new aid package to meet three criteria: assist individuals and families with financial challenges, secure the country’s economy and economic foundation, and ***ready the health care system and support medical professionals.***

“We’re going to work here in warp speed for the Senate, which almost never does anything quickly,” McConnell told reporters on Tuesday. “These are not ordinary times, this is not an ordinary situation, so it requires extraordinary measures.” ...

The top Senate Republican also committed to the Senate remaining in session to pass broader relief.

“It is my intention that the Senate will not adjourn until we have passed significant and bold new steps, above and beyond what the House passed, to help our strong nation and our strong underlying economy weather this storm,” McConnell said.... The next steps entail providing financial aid to individuals, shoring up small business and ***protecting the health care system.***

Senate Minority Leader Chuck Schumer, D-N.Y., jump-started specifics for a comprehensive new plan, proposing a \$750 billion to raise funding for unemployment insurance, ***coronavirus***

¹⁹<https://www.npr.org/2020/03/17/816822215/congress-weighs-new-massive-wave-of-emergency-funding-to-address-coronavirus> (emphasis added).

treatment and emergency child care assistance. The plan also includes student loan and housing payment assistance, aid to small businesses and *expansion of hospital and treatment capacity....*

“We need big, bold, immediate federal action to deal with the crisis. The kinds of targeted measures we are putting together will mainline money into the economy and directly into the hands of families that need it most,” Schumer said on the Senate floor in outlining the plans. *“Importantly, this proposal will ensure that our medical professionals have the resources — including physical space and equipment — they need to provide treatment and keep Americans safe.”*

50. Politico.com further confirmed that a third round of stimulus was forthcoming, reporting on March 17:²⁰

SOMETIMES -- and it's not often -- members of Congress decide to go big and move quickly with a breakneck speed that's hard to fathom. That may be happening right now with the **PHASE THREE** stimulus. ...

HERE'S WHAT WE KNOW AS OF 6 A.M. EASTERN: Treasury Secretary **STEVEN MNUCHIN** and the **TRUMP ADMINISTRATION** are eager to inject hundreds of billions of dollars into the American economy right now, and they want Congress to move with alacrity.

MNUCHIN is expected to return to the Capitol today asking for a **PHASE THREE** package of **\$850 BILLION** or more, according to multiple sources involved in assembling this deal. As a point of comparison, the Joint Committee on Taxation said the paid leave provision in **PHASE TWO** cost \$100 billion.... The **TRUMP ADMINISTRATION** does not give a lick about

²⁰<https://www.politico.com/newsletters/playbook/2020/03/17/congress-shifts-into-overdrive-488604> (emphasis original).

the price tag at this point. It just wants action, and fast.

THE HOUSE IS OUT until the Senate moves. If the Senate clears the package this week, we have to imagine the House will come back to pass it at some point soon. They have to give their members 24 hours' notice before bringing them back to D.C.

BUT FIRST the Senate will have to pass **PHASE TWO**....

51. Senate Majority Leader Mitch McConnell told Republican Senators on March 17 to “gag and vote for” Phase 2 because Congress needed to rise above “our normal partisanship.”²¹ Given President Trump’s earlier endorsement, its passage in the House of Representatives, and now Leader McConnell’s directive to his majority caucus to vote for it, it was apparent by March 17, 2020 that Phase 2 would imminently become law.²²

52. On March 18, Phase 2 passed the U.S. Senate and was signed into law by President Trump, who also stated that he would invoke the Defense Production Act to direct private firms to produce critical goods in response to the Covid-19 crisis. The government’s attention then turned to passing Phase 3, as widely reported earlier.²³

²¹<https://www.cnn.com/2020/03/18/coronavirus-updates-senate-passes-paid-leave-relief-bill.html>

²²See <https://www.cnn.com/2020/03/18/coronavirus-updates-senate-passes-paid-leave-relief-bill.html>

²³<https://www.npr.org/2020/03/18/817737690/senate-passes-coronavirus-emergency-aid-sending-plan-to-president>

53. The highly anticipated Coronavirus Aid, Relief, and Economic Security Act – Phase 3 – was signed into law by President Trump on March 27, 2020. At \$2.2 trillion, Phase 3 was the single most expensive single spending bill ever enacted in American history. Among other things, Phase 3 allocated \$100 billion to hospitals, physicians, and other health care providers. From March 27 through July 31, 2020, the Company received approximately \$389 million in government stimulus funding under Phase 3.²⁴ Phase 3 also expanded the Medicare Accelerated and Advance Payment Program which accelerated payments to acute care hospitals. The hospitals would pay this back by not being paid for future Medicare services provided, in essence acting as a zero-interest short-term loan. In the second quarter of 2020, UHS received approximately \$375 million in Medicare accelerated payments.²⁵

54. On April 24, 2020, Congress enacted the Paycheck Protection Program and Healthcare Enhancement Act, providing an additional \$484 billion including funding for hospitals, healthcare providers and coronavirus testing provided for in Phase 3, as well as reimbursement to hospitals and healthcare providers for Covid-19 related expenses and lost revenue.

²⁴https://www.sec.gov/ix?doc=/Archives/edgar/data/352915/000156459020038367/uhs-10q_20200630.htm#ITEM_2_MANAGEMENT_DISCUSSION_ANALYSIS_FI

²⁵*Id.*

55. As described in greater detail above, increased spending on Medicare and Medicaid are highly material to UHS. Thanks to the hundreds of billions of dollars in government stimulus under Phase 2 and Phase 3, the Company's cash ballooned from \$61.268 million as of December 31, 2019 to \$539.622 million on June 30, 2020.²⁶

Alan's Lobbying Activities

56. Throughout 2020, Alan served as a director of the Federation of American Hospitals ("FAH"), a national lobbying group of over 1,000 for-profit hospitals and health systems including UHS. In the first quarter of 2020 alone, FAH spent \$640,000 lobbying Congress to pass Phase 2 and Phase 3.²⁷

57. On March 16, 2020, FAH sent a letter to House and Senate leaders advocating for funding and programs for hospitals and post-acute care providers to respond to Covid-19.

58. FAH stated in its letter to Congress that "[a]s Congress turns its attention to the next legislative package to respond to COVID-19 [*i.e.*, Phase 3], we recommend the inclusion of several vital provisions that will help ensure hospitals are fully

²⁶*Id.*

²⁷<https://disclosurespreview.house.gov/ld/ldxmlrelease/2020/Q1/301167254.xml>

prepared and equipped to respond to the coronavirus pandemic.”²⁸

59. FAH specifically recommended that “Congress should provide financial resources that ensure the stability and continuity of a healthy workforce and hospital operations.”²⁹

60. FAH further recommended that “Congress take additional steps to ensure that there are no disruptions in care for patients being treated for COVID-19 with health coverage provided through Medicare, Medicaid, and CHIP.”³⁰

61. In other words, FAH was urging Congress to inject government funding into the healthcare system in response to Covid-19 – to the benefit of its members including UHS. As described above, the provisions sought by FAH were ultimately included in Phase 3.

Defendants Knew, or Should have Known, that the Company’s Low Stock Price was Set to Recover Imminently

62. Defendants also knew, or should have known, that the Company’s depressed stock price in mid-March 2020 was the result of the general drop in the equity markets at the early stages of the Covid-19 pandemic and did not represent any

²⁸https://www.fah.org/fah-ee2-uploads/website/documents/031620_-_FAH_COVID-19_Letter_to_Congress_-_FINAL.pdf

²⁹*Id.*

³⁰*Id.*

change in the Company’s fundamentals, business prospects or to the real value of the Company.

63. Filton acknowledged this on March 12, 2020 when he responded to questions from analysts at the Barclays Healthcare Conference.³¹ Asked whether the Company would continue its share repurchase plan in 2020 at the same “run rate” as 2019, Filton replied that the planned \$800 million buyback for 2020 was established “a month or 2 ago as we thought about 2020 as... a normal year.”³² Acknowledging that “things have changed dramatically” as a result of Covid-19, he nevertheless remained bullish on the Company’s prospects, stating:

We, I think, have a point of view right now that the earnings power of our business has changed very little in the last month or 6 weeks even though our market valuation has declined dramatically, along with so many others.³³

64. With respect to the Company’s stock price – which closed that day (March 12, 2020) at \$99.80 per share – Filton said:

[We] certainly view the current situation as a buying opportunity. But also, we acknowledge that this is a pretty uncertain period. So we’ll continue to evaluate how this plays out. But yes... we certainly put that number [\$800

³¹See <https://www.capitaliq.com/CIQDotNet/Transcripts/Detail.aspx?keyDevId=658349047&companyId=36040>.

³²*Id.*

³³*Id.* (emphasis added).

million for stock buybacks in 2020] out there as a run rate in kind of a normal environment and with an acknowledgment now a month or so later that... there's a lot of things other than normal. **But I think in our minds, if anything, it has created more of a buying opportunity for us.**³⁴

65. Filton's acknowledgement that the stock was undervalued and presented a buying opportunity at \$99.80 a share was shared by analysts following UHS. For example, on March 12 – the same day as Filton touted the stock as a buying opportunity at \$99.80 a share – Wolfe Research set a year-end 2020 price target of \$127 using a model that incorporated the effects of Covid-19.³⁵

66. Defendants thus knew that UHS was a “buy” at \$99.80 a share. Defendants also knew, or should have known, that the Company's share price was poised to recover imminently due to the massive federal stimulus directed at healthcare providers such as UHS. In connection with his lobbying efforts on behalf of FAH, Alan was likely well aware of the timing and extent of federal grants and relief UHS could reasonably expect. A tanking stock market and a forthcoming infusion of billions of dollars of government money flowing into the healthcare sector presented Defendants with a unique opportunity to grab massive amounts of options

³⁴ *Id.* (emphasis added).

³⁵ In fact, UHS stock closed at \$137.50 on December 31, 2020.

on the cheap. And that is what they did.

The March 18, 2020 Meeting of the Compensation Committee

67. On March 17, 2020, the Company's stock closed at \$80.76.

68. On March 18, 2020, [REDACTED]

[REDACTED]

[REDACTED]

69. [REDACTED]

[REDACTED]

[REDACTED]

70. [REDACTED]

[REDACTED]

[REDACTED]

71. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

72. Despite the stock falling, the Compensation Committee granted a combined 1,011,137 options to the Board (including the Millers) and the Officer

Defendants at strike prices of either the closing price on that day (\$67.69) or the closing price plus 10% (\$74.46), as reflected in the following table:³⁶

Name	Position	Options Granted*	Strike Price
Alan	Chairman, CEO	295,000	\$67.69
		349,399	\$74.46
	*RSUs	14,774	-
Marc	President, Director	50,000	\$67.69
		59,220	\$74.46
Filton	EVP and CFO	35,000	\$67.69
		41,454	\$74.46
Gibbs	Director	10,000	\$67.69
McDonnell	Director	10,000	\$67.69
Nimetz	Director	10,000	\$67.69
Pember	EVP	35,000	\$67.69
		41,454	\$74.46
Peterson	EVP	25,000	\$67.69
		29,610	\$74.46
Singer	Director	10,000	\$67.69
Sussman	Director	10,000	\$67.69
Total Options and RSUs Granted:		1,011,137	-

73. The option/RSU awards granted by the Compensation Committee on March 18, 2020 (the “**March 2020 Awards**”) were granted at the nadir of the Company’s stock price while the members of the Compensation Committee and the recipients of the options all knew, or should have known, that the Company’s bargain share price was due to the overall market decline attributable to Covid-19, that the then-current trading price did not reflect the Company fundamentals and business

³⁶https://www.sec.gov/Archives/edgar/data/0000352915/000156459021017879/uhs-def14a_20210621.htm (Schedule 14A dated April 8, 2021); <https://www.sec.gov/cgi-bin/browse-edgar?action=getcompany&CIK=0000352915&type=&dateb=&owner=include&start=40&count=40> (Forms 4 filed March 20, 2020).

prospects, and that UHS stock was poised to soar imminently in light of the massive government stimulus underway.

a. **First**, Filton boasted at the Barclay's Healthcare Conference on March 12, 2020 that the temporarily low stock price (closing that day at \$99.80 a share) was "a buying opportunity" for the Company's stock buyback plan. If Filton knew that UHS was a buy at \$99.80, then it was an even better buy at \$67.69 – the March 18 closing share price at which the March 2020 Awards were granted. And if Filton believed that it was in the Company's best interest to "buy" shares at \$99.80, it cannot be in the Company best interests to "sell" shares at \$67.69 – which is exactly what Defendants did with the March 2020 Awards.

b. **Second**, Filton further boasted at the Barclay's Healthcare Conference on March 12, 2020 that the Company's fundamentals and business prospects – "the earnings power of our business" – remained substantially the same despite the temporary decline in the Company's market valuation, "along with so many others."

c. **Third**, analysts following the Company had set a year-end target price of \$127 incorporating the effects of Covid-19 – over 87% greater than the market close on March 18, which set the option strike price for the March 2020 Awards.

d. **Fourth**, Alan was actively lobbying the federal government for billions of dollars in federal aid that would inure to the benefit of the Company and therefore knew or had reason to know of the timing and extent of federal grants and relief UHS could reasonably expect.

e. **Fifth**, Phase 2 – which directly benefitted the Company’s business – was set to be passed by the Senate and signed into law by President Trump later the same day as the March 2020 Awards were granted; and

f. **Sixth**, relief legislation providing for billions if not trillions of dollars in additional Phase 3 relief inuring to the benefit of UHS and its business was being drafted and would soon be enacted into law.

74. The day after the Compensation Committee granted the March 2020 Awards (*i.e.*, March 19, 2020), the Company’s stock rebounded sharply, closing at \$84.84 per share – a one-day increase of 25%.

75. On March 30, 2020 – a Monday and the first trading day after Phase 3 was signed into law by President Trump on March 27 – the Company’s stock closed at \$100.13 per share on news of Phase 3. This was 47% above the March 18 grant price of \$67.69.

76. The value of the March 2020 Awards skyrocketed. In the 12 days between March 18 – 30, 2020, Alan’s gains were \$18,538,872; his son Marc’s

gains were \$3,142,177; Filton and Pember each gained \$2,199,524; Peterson gained \$2,571,088; and each of Gibbs, McDonnell, Nimetz, Singer and Sussman gained \$324,000. In only twelve days, Defendants' windfall from the March 2020 Awards was a total of approximately **\$30,271,185**.

77. Reflecting their true value upon the passage of Phase 2 and Phase 3, the March 2020 Awards resulted in Defendants receiving excessive compensation relative to their counterparts in the Company's self-selected peer group.³⁷ [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] total direct compensation ("TDC"), which consists of cash paid plus the present value of long-term incentives (i.e., stock and options awards). [REDACTED]

78. The following table shows the 2020 CEO and director TDC for the Company and its self-selected peer group reflecting the intrinsic value of the options in the March 2020 Awards plus the value of the RSUs as of the market close on March 30, 2020 (\$100.13 per share), the first trading day after Phase 3 was signed into law:

³⁷ See 2020 Proxy at 39-40.

Company	Market Cap ³⁸	Revenue ³⁹	2020 Avg. Director Equity Comp.	2020 Avg. Director TDC ⁴⁰	2020 CEO Equity Comp. ⁴¹	2020 CEO TDC
Acadia Healthcare Co., Inc.	\$4,473	\$2,090	\$180,005	\$434,468	\$2,789,779	\$5,124,947
Brookdale Senior Living, Inc.	\$812	\$3,023	\$79,386	\$209,036	\$4,939,153	\$7,080,139
Community Health Sys., Inc.	\$855	\$11,789	\$170,000	\$266,854	\$1,929,375	\$7,841,375
DaVita, Inc.	\$13,149	\$11,551	\$209,558	\$353,186	\$13,699,392	\$18,228,026
Encompass Health Corp.	\$8,222	\$4,644	\$161,951	\$326,867	\$4,750,225	\$6,837,302
Genesis Healthcare, Inc.	\$54	\$3,906	-	\$303,429	-	\$6,094,297
HCA Healthcare, Inc.	\$55,649	\$51,533	\$174,906	\$213,969	\$13,082,198	\$17,944,905
Henry Schein, Inc.	\$9,546	\$10,119	\$175,000	\$293,012	\$3,438,000	\$6,067,427
Lab. Corp. of Am. H'ldgs	\$19,826	\$13,979	\$179,955	\$304,955	\$9,864,802	\$14,302,302
Molina Healthcare, Inc.	\$12,612	\$18,375	\$219,849	\$381,590	\$13,749,987	\$17,740,987
Quest Diagnostics Inc.	\$16,060	\$9,437	\$171,531	\$291,021	\$9,779,903	\$13,887,595
Select Medical H'ldgs Corp.	\$3,728	\$5,532	\$161,900	\$268,071	\$4,047,500	\$7,530,000
Tenet Healthcare Corp.	\$4,213	\$17,640	\$180,558	\$313,289	\$10,000,021	\$16,268,386
UHS	\$11,684	\$11,559	\$324,400	\$407,287	\$20,018,191	\$22,464,664
Peer Mean	-	-	\$158,815	\$304,442	\$7,082,333	\$11,149,822

³⁸ In millions, as of December 31, 2020.

³⁹ In millions, for fiscal year 2020.

⁴⁰ Excluding directors who resigned or were appointed in calendar year 2020.

⁴¹ Total dollar value of stock and option awards as of grant date except UHS, which is valued at intrinsic value as of March 30, 2020.

Peer Median	-	-	\$174,906	\$303,429	\$4,939,153	\$7,841,375
UHS Percentile in Peer Grp.	64%	59%	100%	96%	100%	100%

79. As set forth in the table above, the Company’s 2020 market capitalization and revenue were at the 64th and 59th percentile in its peer group, respectively. Based on the closing price of the Company’s stock on the first trading day after the passage of Phase 3 (\$100.13 per share), the Board’s TDC was at the 96th percentile of the Company’s peer group. The Board’s equity compensation was the highest of any company in its peer group. Alan’s TDC was the highest of anyone in the Company’s peer group, *over twice* the mean and *almost three times* the median. The intrinsic value of Alan’s options and the value of his RSUs alone amounts to \$20,018,191 (over 89%) of his TDC. The equity component of Alan’s 2020 compensation is *almost three times* the mean and *over four times* the median.

80. Even calculating the intrinsic value of the March 2020 Awards at \$99.80 per share – which defendant Filton raved was a “buying opportunity” – the Board’s TDC would be at the 95th percentile of the Company’s peer group and Alan’s TDC would still be the highest of anyone in the Company’s peer group.

81. This compensation is excessive on its face.

FIDUCIARY DUTIES

82. At all relevant times, as directors and officers of the Company, each of the Defendants owed UHS and its stockholders fiduciary obligations of trust, loyalty,

good faith, due care and candor, and was required to use his or her utmost ability to control and manage UHS in a fair, just, honest, and equitable manner. At all relevant times, Defendants were required to act in furtherance of the best interests of UHS and its stockholders to benefit all stockholders equally and not in furtherance of their personal interests or benefit.

83. At all relevant times, each of the Defendants owed UHS and its stockholders the fiduciary duty to exercise good faith and diligence in the administration of the Company's affairs and in the use and preservation of its property and assets.

84. Because of their positions of control and authority as directors and/or officers of the Company, Defendants exercised control over the wrongful acts complained of herein.

85. In discharging their duties, Defendants must exercise reasonable and prudent supervision over the management, policies, practices, and controls of the Company's financial affairs. Among other things, Defendants must conduct themselves with complete loyalty to the Company, avoid wasting the Company's assets, and never enrich themselves at the Company's expense.

86. As officers and/or directors of UHS, Defendants were at all relevant times bound by the Company's Code of Business Conduct and Corporate Standards

(the “**Code of Standards**”).⁴² The Code of Standards requires that all employees, officers, and directors:

1. **Shall perform their duties in good faith** and to the best of their ability.

3. **Shall not obtain any improper personal benefit by virtue of his or her employment with UHS, shall not misuse company assets or use corporate information or opportunities for personal gain....**

87. Defendants were also at all relevant times also bound by the UHS Code of Conduct and Ethics (the “**Code of Conduct**”),⁴³ which provides that:

[E]ach employee, officer and director of the Company is individually responsible for understanding and complying with this Code, and all other Company policies.

1. **Compliance with Laws, Rules and Regulations**

You must respect and abide by all applicable laws, rules and regulations. Although you are not expected to know the details of all applicable laws, rules and regulations, you are expected to seek advice in accordance with guidelines described in Section 13 of this Code.

3. **Conflicts of Interest**

⁴²<https://ir.uhsinc.com/code-business-conduct-and-corporate-standards> (emphasis added).

⁴³<https://ir.uhsinc.com/uhs-code-conduct-and-ethics> (emphasis added).

A “conflict of interest” occurs when your private interest interferes, or has the potential to interfere, in any way with the interests of the Company. A conflict situation can arise when you take actions or have interests that may make it difficult to perform your Company work objectively and effectively. Conflicts of interest may also arise when you receive improper personal benefit, from the Company or otherwise, as a result of your employment or other position with the Company.

You should avoid any relationship or financial interest which gives rise to an actual or potential conflict of interest between the Company and you. Any activity which even appears to present a conflict of interest should be avoided or terminated unless, after disclosure to the appropriate level of management, it is determined that the activity is not harmful to the Company or otherwise improper.

4. Company Opportunities

You are prohibited from taking for yourself personally opportunities that are discovered through the use of Company property, information or position. **You may not use Company property, information or position for personal gain...**You owe a duty to the Company to advance its legitimate interests when the opportunity to do so arises.

88. As officers, Defendants Filton, Pember, and Peterson are further bound

by the UHS Code of Ethics for Senior Financial Officers (the “**Code of Ethics**”).⁴⁴ This code requires senior financial officers to perform their duties in an “honest and ethical” manner, including ethically handling a conflict of interest between personal gain and the Company’s gain. The officers “should conduct themselves and their activities on behalf of the Company[.]”

89. As members of the Compensation Committee, Defendants Gibbs, McDonnell, and Sussman are further bound by the Compensation Committee Charter,⁴⁵ which provides for the following additional duties and responsibilities for committee members:

1. Review and approve the Company’s goals and objectives relevant to the compensation of the Chief Executive Officer and the Company’s other executive officers;
2. **Evaluate the performance of the CEO and of the Company’s other executive officers** in accordance with policies and principles established by the Committee from time to time, including the Company’s goals and objectives relevant to the compensation of the CEO and the other executive officers;

4. **Review and determine the form and amount of compensation of the non-management members**

⁴⁴<https://ir.uhsinc.com/uhs-code-ethics-senior-financial-officers> (emphasis added).

⁴⁵<https://ir.uhsinc.com/compensation-committee-charter> (emphasis added).

of the Board, including cash, equity-based awards and other compensation, including benefits, in accordance with guidelines and general principles established by the Committee from time to time;

5. Administer, and make recommendations to the Board with respect to, incentive-compensation plans and equity-based plans, including the Executive Incentive Plan, establish and verify annual performance targets and criteria for the granting of options to the Company's officers and other employees, review and approve the granting of options in accordance with such criteria and determine potential bonus amounts[.]

DEFENDANTS' BREACH OF FIDUCIARY DUTY

90. As members of the Compensation Committee, defendants Gibbs, McDonnell and Sussman breached their fiduciary duty and the Compensation Committee Charter by issuing the March 2020 Awards despite knowing that the March 2020 Awards did not reflect the Company's true value, fundamentals and business prospects. Accordingly, it should have been apparent to defendants Gibbs, McDonnell and Sussman that the March 2020 Awards were at a discount to the true value of the Company's stock. In approving the March 2020 Awards, Gibbs, McDonnell and Sussman further breached their fiduciary duty and the Compensation Committee Charter by failing to consider: (i) the unique economic and market conditions that prevailed at the time; (ii) the impact those factors would have on the ultimate value of the March 2020 Awards; (iii) whether to postpone the issuance of

the March 2020 Awards to a time when market conditions stabilized so that they would be able to properly assess the value of the March 2020 Awards; and (iv) adjusting the number of options/RSUs granted, the exercise price or vesting schedule so that the recipients would not receive a windfall.

91. Each of the Defendants breached their fiduciary duty, the Code of Conduct and the Code of Standards by accepting and entering into option agreements for the March 2020 Awards despite knowing that the March 2020 Awards did not reflect the Company's true value, fundamentals and business prospects. Accordingly, it should have been apparent to Defendants that the March 2020 Awards were at a discount to the true value of the Company's stock.

92. The Officer Defendants breached the Code of Ethics applicable to senior financial officers by accepting and entering into option agreements for the March 2020 Awards despite knowing that the March 2020 Awards did not reflect the Company's true value, fundamentals and business prospects. Accordingly, it should have been apparent to the Officer Defendants that the March 2020 Awards were at a discount to the true value of the Company's stock.

93. Each of the Defendants thus obtained an "improper personal benefit by virtue [their] employment with UHS."⁴⁶ When a "private interest interfere[d]" with

⁴⁶ See Code of Standards, ¶ 86, *supra*.

the “interest of the Company[,]” Defendants put their private interests first through the grant and acceptance of the March 2020 Awards.⁴⁷ Moreover, the Officer Defendants “use[d their] position for personal gain.”⁴⁸

94. The foregoing misconduct was unjustifiable and constituted a breach of the Defendants’ fiduciary and other duties as officers and directors of UHS. The foregoing misconduct was not, and could not have been, an exercise of good faith business judgment. Rather, it was intended to, and did, unduly benefit Defendants at the expense of the Company because it afforded them a financial benefit at the expense of the Company in the form of artificially low strike prices on the March 2020 Awards.

95. UHS has been damaged as a proximate result of Defendants’ misconduct.

THE MARCH 2020 AWARDS WERE NOT ENTIRELY FAIR

96. Because UHS is a controlled company, transactions involving the Controllers are subject to entire fairness review. Transactions in which directors decide their own compensation are subject to entire fairness review. The March 2020 Awards are therefore subject to entire fairness review.

⁴⁷ See Code of Conduct, ¶ 87 *supra*.

⁴⁸ See Code of Ethics, ¶ 88 *supra*.

The March 2020 Awards Were Issued Through an Unfair Process

97. The process approving the March 2020 Awards was unfair because there was no shareholder vote concerning the March 2020 Awards.

98. The process approving the March 2020 Awards was further unfair because the three members of the Compensation Committee – defendants Gibbs, McDonnell and Sussman – were beholden to the Controllers for their positions on the Board. As such, defendants Gibbs, McDonnell and Sussman’s decision to issue artificially low-priced options to the Controllers cemented their positions on the Board.

The March 2020 Awards Were Issued at an Unfair Price

99. The strike prices of the options underlying the March 2020 Awards were unfair to the Company because they are too low relative to the real value of the Company’s stock at the time of issuance. The strike prices (\$67.69 and \$74.46) are well below the closing price on March 12, 2020 – \$99.80 per share – which Defendant Filton insisted at the Barclay’s Healthcare Conference was a “buying opportunity.” Accordingly, it was unfair to the Company to award options at a significant discount to an admitted “buying opportunity.”

100. The strike prices of the options underlying the March 2020 Awards were further unfair to the Company in light of the temporary discount to the

Company's stock price because of Covid-19 related uncertainty causing volatility in the market having nothing to do with the Company's fundamentals and business prospects, which was known to the Defendants.

101. The March 2020 Awards were further unfair to the Company because they excessively compensated Alan and the Board relative to their peers, as set forth in greater detail above.

The March 2020 Awards Reflect a Quid Pro Quo

102. The Compensation Committee was amenable to approving the manifestly unfair March 2020 Awards because its three members – Gibbs, McDonnell and Sussman – each depended on the controllers for their position on the Board. Approving the March 2020 Awards allowed the three members of the Compensation Committee to further cement their positions and stay in the controllers' good graces.

103. The quid pro quo was further evidenced by Gibbs, McDonnell and Sussman receiving lucrative options in exchange for supporting the Millers' massive windfall under the March 2020 Awards.

DEMAND FUTILITY

104. Plaintiff repeats and re-alleges each and every allegation above as though fully set forth herein.

105. Plaintiff brings this action derivatively and in the right and for the benefit of UHS to redress Defendants' breaches of fiduciary duties and other misconduct.

106. Plaintiff is a stockholder of UHS, was a stockholder of UHS at the time of the wrongdoing alleged herein and has been a stockholder of UHS continuously since that time.

107. Plaintiff will adequately and fairly represent the interests of UHS in enforcing and prosecuting its rights.

108. As a result of the facts set forth herein, Plaintiff has not made any demand on the Board to institute this action against the Board. Such a demand would be a futile and useless act because the Board is incapable of making an independent and disinterested decision to institute and vigorously prosecute this action.

109. At the time Plaintiff commenced this derivative action, the Board consisted of seven directors, namely: **(i)** Alan, **(ii)** Marc, **(iii)** Gibbs, **(iv)** McDonnell, **(v)** Nimetz, **(vi)** Singer, and **(vii)** Sussman, three of whom (Gibbs, McDonnell, and Sussman) are members of the Compensation Committee.

110. Demand upon the Board is futile as follows:

i. **Alan** received the improper March 2020 Awards despite knowing that the March 2020 Awards were issued at strike prices that did not reflect the real value of the Company. He was unjustly enriched by his receipt of 644,399 options at an artificially low strike price. As of July 2, 2021, Alan gained \$51,409,665 from his March 2020 Awards, approximately 388% of his total compensation from the Company in fiscal year 2020. The foregoing is a breach of the duty of loyalty and is so egregious on its face that it cannot be the product of business judgment. As such, he has a substantial likelihood of liability in this action. The Company also concedes in the 2021 Proxy that it does not consider Alan to be independent. He is the founder of the Company, has been a director since 1978 and personally controls a supermajority of the Company's voting interest. Moreover,

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As such, Alan is incapable of assessing whether to pursue the claims herein with disinterested independence.

ii. **Marc** received the improper March 2020 Awards despite

knowing that the March 2020 Awards were issued at strike prices that did not reflect the real value of the Company. He was unjustly enriched considering his receipt of 109,220 options at an artificially low strike price. As of July 2, 2021, Marc has gained \$8,713,490 from his March 2020 Awards, approximately 371% of his total compensation from the Company in fiscal year 2020. The foregoing is a breach of the duty of loyalty and so egregious on its face that it cannot be the product of business judgment. As such, he has a substantial likelihood of liability in this action. The Company also concedes in the March 2021 Proxy that it does not consider Marc to be independent. He is the son of the Company's founder, with whom he controls a supermajority of the Company's voting interests as a control group. Furthermore, Marc took over his father's place as a director on the board of FAH starting in January 2021. As such, Marc is incapable of assessing whether to pursue the claims herein with disinterested independence.

iii. **Gibbs** granted and received the improper March 2020 Awards despite knowing that the March 2020 Awards were issued at strike prices that did not reflect the real value of the Company. Gibbs included himself in the improper March 2020 Awards and was therefore unjustly enriched in light of his receipt of 10,000 options at an artificially low price. As of July 2, 2021, Gibbs has gained \$834,500 from his March 2020 Awards, approximately 359% of his total

compensation from the Company in fiscal 2020. The foregoing is a breach of the duty of loyalty and so egregious on its face that it cannot be the product of business judgment. As such, he has a substantial likelihood of liability in this action. Further, Gibbs is beholden to the Controllers for his position on the Board, particularly given the fact that he has lost the confidence of the Company's stockholders as reflected in CtW Investment Group's urging stockholders to withhold support for Gibbs' reelection in 2017. He also awarded options to the Defendants, including himself, pursuant to a self-interested transaction subject to entire fairness review, which was not the product of a valid exercise of business judgment and wasted the Company's assets, for which he faces a substantial likelihood of liability. Accordingly, Gibbs is incapable of independently and disinterestedly considering a demand to prosecute this action.

iv. **McDonnell** granted and received the improper March 2020 Awards despite knowing that the March 2020 Awards were issued at strike prices that did not reflect the real value of the Company. McDonnell included herself in the improper March 2020 Awards and was therefore unjustly enriched in light of her receipt of 10,000 options at an artificially low price. As of July 2, 2021, McDonnell has gained \$834,500 from her March 2020 Awards, approximately 340% of her total compensation from the Company in fiscal 2020. The foregoing is a breach of the

duty of loyalty and so egregious on its face that it cannot be the product of business judgment. As such, she has a substantial likelihood of liability in this action. Further, McDonnell is beholden to the Controllers for her position on the Board and has had an additional business relationship with Alan via their positions at the Penn Mutual Life Insurance Company. She awarded options to the Defendants, including herself, pursuant to a self-interested transaction subject to entire fairness review, which was not the product of a valid exercise of business judgment, and wasted the Company's assets, for which she faces a substantial likelihood of liability. Accordingly, McDonnell is incapable of independently and disinterestedly considering a demand to prosecute this action.

v. **Nimetz** received the improper March 2020 Awards despite knowing that the March 2020 Awards were issued at strike prices that did not reflect the real value of the Company. [REDACTED]

[REDACTED] He was unjustly enriched in light of his receipt of 10,000 options at an artificially low price. As of July 2, 2021, Nimetz has gained \$834,500 from his March 2020 Awards, approximately 390% of his total compensation from the Company in fiscal 2020. The foregoing is a breach of the duty of loyalty and so egregious on its face that it cannot be the product of business judgment. As such, he

has a substantial likelihood of liability in this action. Additionally, the Company concedes in the 2021 Proxy that it does not consider Nimetz to be independent. Nimetz is beholden to the Controllers for his position on the Board. Further, Nimetz has been a Partner at Norton Rose Fulbright since 1987, which the Company has used for decades as outside corporate counsel and which provides personal legal services to Alan. Nimetz is also the trustee of at least eleven (11) trusts for the benefit of Alan and his family. As such, Nimetz is incapable of assessing whether to pursue the claims herein with disinterested independence.

vi. **Singer** received the improper March 2020 Awards despite knowing that the March 2020 Awards were issued at strike prices that did not reflect the real value of the Company. Singer was unjustly enriched considering her receipt of 10,000 options at an artificially low price. As of July 2, 2021, Singer has gained \$834,500 from her March 2020 Awards, approximately 387% of her total compensation from the Company in fiscal 2020. The foregoing is a breach of the duty of loyalty and so egregious on its face that it cannot be the product of business judgment and for which she faces a substantial likelihood of liability in this action. Further, Singer is beholden to the Controllers for her position on the Board. As such, she is incapable of assessing whether to pursue the claims herein with disinterested independence.

vii. **Sussman** granted and approved the improper March 2020 Awards despite knowing that the March 2020 Awards were issued at strike prices that did not reflect the real value of the Company. Sussman was unjustly enriched considering his receipt of 10,000 options at an artificially low price. As of July 2, 2021, Sussman has gained \$834,500 from his March 2020 Awards, approximately 351% of his total compensation from the Company in fiscal 2020. The foregoing is a breach of the duty of loyalty and so egregious on its face that it cannot be the product of business judgment. As such, he has a substantial likelihood of liability in this action. Further, Sussman is beholden to the Controllers for his position on the Board and has an outside business relationship with Alan and Marc via their positions at UHRIT. Sussman awarded options to the Company's directors and certain officers, including himself, pursuant to a self-interested transaction subject to entire fairness review, which was not the product of a valid exercise of business judgment, wasted the Company's assets, and for which he faces a substantial likelihood of liability. Accordingly, Sussman is incapable of assessing whether to pursue the claims herein with disinterested independence.

111. As described above, the entire Board engaged in affirmative misconduct which is not protected by the business judgment rule and subjects all of the directors to a substantial likelihood of liability for breaching their fiduciary duties

of good faith, loyalty, and candor.

112. The entire Board is interested due to their receipt of the grants in question. Moreover, the entire Board owes their positions as directors to Alan and Marc as the Controllers.

113. Accordingly, there is reason to doubt that a majority of the Board can disinterestedly consider a demand to prosecute this action.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

Against Defendants Gibbs, McDonnell, and Sussman for Breach of Fiduciary Duty for Granting the March 2020 Awards

114. Plaintiff repeats and re-alleges each and every allegation above as though fully set forth herein.

115. Defendants Gibbs, McDonnell, and Sussman, as Company directors and members of the Compensation Committee, owe UHS the fiduciary duties of good faith, loyalty and candor, and, in furtherance of those duties, and are required to act in the best interests of UHS. They also owe a duty to place the interests of the Company before personal interests.

116. Defendants Gibbs, McDonnell, and Sussman authorized and granted the March 2020 Awards to themselves, Alan, Marc, Nimetz, Singer, Filton, Pember, and Peterson. Defendants Gibbs, McDonnell, and Sussman intentionally authorized

and approved the grants despite knowing that the March 2020 Awards were issued at strike prices that did not reflect the real value of the Company.

117. Defendants Gibbs, McDonnell and Sussman's actions were not a good faith exercise of business judgment to protect and promote UHS's corporate interests, but rather to create a personal gain for themselves, Alan, Marc, Nimetz, Singer, Filton, Pember, and Peterson at the expense of UHS and its stockholders.

118. As a direct and proximate result of the failure of defendants Gibbs, McDonnell, and Sussman to perform their fiduciary obligations, UHS has sustained and will continue to sustain significant damages. As a result of the misconduct alleged herein, these defendants are liable to UHS.

SECOND CAUSE OF ACTION

Against Defendants Gibbs, McDonnell, and Sussman for Waste of Corporate Assets for Granting the March 2020 Awards

119. Plaintiff repeats and re-alleges each and every allegation above as though fully set forth herein.

120. Defendants Gibbs, McDonnell, and Sussman, as members of the Compensation Committee, have a duty to review and approve the compensation paid to the Company's officers and directors and to place the interests of the Company before personal interests. By granting the March 2020 Awards, defendants Gibbs, McDonnell, and Sussman, without any valid corporate purpose, caused UHS to

waste valuable corporate assets solely for the financial gain of themselves, Alan, Marc, Nimetz, Singer, Filton, Pember and Peterson.

121. As a result of the waste of corporate assets, defendants Gibbs, McDonnell, and Sussman are liable to the Company.

THIRD CAUSE OF ACTION

Against all Defendants for Breach of Fiduciary Duty for Accepting the March 2020 Awards

122. Plaintiff repeats and re-alleges each and every allegation above as though fully set forth herein.

123. As directors and/or officers of UHS, Defendants owe UHS the fiduciary duties of good faith, loyalty, and candor, and are required to act in the best interests of the Company and its stockholders, and to place the interests of the Company before personal interests.

124. Defendants all breached their fiduciary duties by accepting the March 2020 Awards despite knowing that the March 2020 Awards were issued at strike prices that did not reflect the real value of the Company.

125. As a direct and proximate result of Defendants' breaches of fiduciary duty, UHS has sustained damages.

FOURTH CAUSE OF ACTION

Against all Defendants for Unjust Enrichment for Accepting the March 2020 Awards

126. Plaintiff repeats and re-alleges each and every allegation above as though fully set forth herein.

127. Defendants each received improper awards as alleged herein, thus damaging the Company.

128. It would be unconscionable and against the fundamental principles of justice, equity, and good conscience for Defendants to retain the March 2020 Awards under the circumstances set forth above.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment as follows:

- A. Awarding the Company the amount of damages it sustained as a result of the Defendants' breaches of fiduciary duties, waste of corporate assets and unjust enrichment that the Company may sustain in connection with the March 2020 Awards;
- B. Ordering rescission of the March 2020 Awards;
- C. Ordering Defendants to disgorge the March 2020 Awards, as well as any proceeds that the Defendants have derived therefrom;
- D. Granting appropriate equitable relief to remedy the misconduct

alleged herein;

E. Awarding Plaintiff the costs and disbursements of this action, including reasonable attorneys' fees, accountants' and experts' fees, costs, and expenses; and

F. Granting such other and further relief as the Court deems just and proper.

ASHBY & GEDDES, P.A.

/s/ Tiffany Geyer Lydon

Stephen E. Jenkins (#2152)
Tiffany Geyer Lydon (#3950)
500 Delaware Avenue, 8th Floor
Wilmington, DE 19801
(302) 654-1888

Attorneys for Plaintiff

LEVI & KORSINSKY, LLP

Gregory M. Nespole
Daniel Tepper
Correy Kamin
Ryan C. Messina
55 Broadway, 10th Floor
New York, NY 10006
(212) 363-7500

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