

ACS PRIMARY CARE PHYSICIANS
SOUTHWEST, PA, and EMERGENCY
SERVICES OF TEXAS, PA,

Plaintiffs,

v.

MOLINA HEALTHCARE, INC. and
MOLINA HEALTHCARE OF TEXAS,
INC.,

Defendants.

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IN THE DISTRICT COURT OF

HARRIS COUNTY, TEXAS

113TH JUDICIAL DISTRICT

PLAINTIFFS' FIRST AMENDED PETITION

Now come Plaintiffs, ACS Primary Care Physicians Southwest, P.A. (“ACS”) and Emergency Services of Texas, P.A. (“Emergency Services”) (collectively, the “Plaintiffs”), by and for their First Amended Petition against Defendants Molina Healthcare, Inc. (“MH”) and Molina Healthcare of Texas, Inc. (“MHT”) (collectively, “Molina”), and allege as follows:

Discovery Control Plan

1. Discovery in this cause of action will be conducted under Level Two (2) pursuant to Rule 190.3 of the Texas Rules of Civil Procedure.

Nature of the Action

2. This action arises out of a dispute concerning the rates at which Molina reimburses the Plaintiffs for the emergency medicine services they have already provided, and continue to provide, to patients with individual health insurance coverage under HMO health plans underwritten, operated, and/or administered by Molina that were purchased on the Patient Protection and Affordable Care Act (“ACA”) Exchange or Marketplace (the “Health Plans”).

Beneficiaries of Health Plans for whom Plaintiffs performed covered services that were not reimbursed correctly shall be referred to as “Patients” or “Molina Patients.” For clarity, the claims at issue in this action do not include any claims for services provided to Molina Patients with coverage under group health plans governed by the Employee Retirement Income Security Act of 1974 (“ERISA”)¹.

3. For all of the HMO claims at issue in this action, Plaintiffs were non-participating or out-of-network providers, meaning that they did not have a participating provider agreement with Molina to accept discounted rates from Molina for their services and did not agree to be bound by Molina’s reimbursement policies or rate schedules. The Plaintiffs’ reimbursement claims at issue in this action are only those non-participating claims for emergency medicine services provided to Patients covered under Health Plans² that were adjudicated as covered services and allowed as payable by Molina on or after January 1, 2016, at rates below both of the following: (1) Plaintiffs’ billed charges and (2) the “usual and customary rate” for Plaintiffs’ services (the claims at issue are collectively referred to as the “Non-Participating Claims”). All of the Non-Participating Claims are subject to Texas law governing HMOs.

4. Emergency medicine providers, including each of the Plaintiffs, are obligated by law to treat all patients that present to the emergency departments they staff, including all Molina Patients. Specifically, Plaintiffs are obligated by federal law to examine any individual presenting to the emergency department and to provide stabilizing treatment to any such

¹ Under the ACA, “individual health insurance coverage” means coverage for individuals and families purchased on the individual market and does not include “group health plans,” which are “employee welfare benefit plan[s] (as defined in section 3(1) of the Employee Retirement Income Security Act of 1974 to the extent that the plan provides medical care to employees or their dependents.” See 42 U.S.C. §§ 18111, 18204(a); 42 U.S.C. § 300gg- 91(a)(1), (b)(4)-(5).

² Neither Medicare Advantage nor managed Medicaid products are at issue in this litigation, nor are any other government-sponsored or commercial products except the Affordable Care Act Exchange, or Marketplace, products operated, insured or administered by Molina.

individual with an emergency medicine condition, regardless of the individual's insurance coverage or ability to pay.

5. For all of the Non-Participating Claims, Texas law requires Molina to reimburse Plaintiffs at the "usual and customary rate" for Plaintiffs' services in the geographic area. Molina violated its obligations to Plaintiffs under Texas law by systemically and unilaterally deciding to adjudicate the Non-Participating Claims as payable at rates substantially below the appropriate amount for the emergency medicine services provided by Plaintiffs to Molina Patients.

6. Molina adjudicated as covered services and allowed as payable all of the Non-Participating Claims at issue in this lawsuit, albeit at an amount less than Texas law required. Accordingly, this action concerns only the rate of payment to which Plaintiffs are entitled and not their right to receive payment. For avoidance of doubt, this action does not include any claims arising out of the denial of coverage under any Health Plan for any emergency medicine services performed for Patients.

7. In this action, the Plaintiffs seek to have Molina comply with its independent statutory and common law duties to Plaintiffs to pay their Non-Participating Claims for the emergency medicine services Plaintiffs have provided, and continue to provide, to Molina Patients at rates that are consistent with those required by Texas law.

Parties

8. Plaintiff ACS is a professional emergency medicine services group practice that staffs, inter alia, the emergency departments at Austin Surgical Hospital in Austin, Texas; Memorial Hermann Northwest Hospital in Houston, Texas; Memorial Hermann Memorial City Hospital in Houston, Texas; Memorial Hermann Southeast Hospital in Houston, Texas; Memorial Hermann Southwest Hospital in Houston, Texas; Memorial Hermann The Woodlands

Hospital in The Woodlands, Texas; Memorial Hermann Northeast Hospital in Humble, Texas; Memorial Hermann Katy Hospital in Katy, Texas; Memorial Hermann Sugar Land Hospital in Sugar Land, Texas; Huntsville Memorial Hospital in Huntsville, Texas; College Station Medical Center in College Station, Texas; Longview Regional Medical Center in Longview, Texas; Hill Regional Hospital in Hillsboro, Texas; and Weatherford Regional Medical Center in Weatherford, Texas.

9. Plaintiff Emergency Services is a professional emergency medicine services group practice that staffs the emergency departments at Baptist Hospital of Southeast Texas – Orange in Orange, Texas; Del Sol Medical Center in El Paso, Texas; Las Palmas Medical Center in El Paso, Texas; Las Palmas Del Sol Healthcare Emergency Services in El Paso, Texas; and Las Palmas Del Sol ER-West in El Paso, Texas.

10. Both ACS and Emergency Services have a principal place of business at 14100 Southwest Freeway, Suite 450, in Sugar Land, Fort Bend County, Texas.

11. On information and belief, Defendant Molina Healthcare, Inc. (“MH”) is a for-profit corporation headquartered in California and with a principal place of business in Texas at 5605 N. MacArthur Boulevard, Suite 400 in Irving, Texas. MH is responsible for paying for emergency medical services provided to the Patients. On information and belief, MH is a licensed Texas HMO. MH may be served with process by serving its registered agent Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company at 211 E. 7th Street, Suite 620, Austin, TX 78701, or wherever it may be found.

12. On information and belief, Defendant Molina Healthcare of Texas, Inc. (“MHT”) is a domestic for-profit corporation and a wholly-owned subsidiary of Defendant MH, with a principal place of business at 5605 N. MacArthur Boulevard, Suite 400 in Irving, Texas. MHT is

responsible for paying for emergency medical services provided to the Patients. On information and belief, MHT is a licensed Texas HMO. MHT may be served with process by serving its registered agent Corporation Service Company d/b/a CSC – Lawyers Incorporating Service Company at 211 E. 7th Street, Suite 620, Austin, TX 78701, or wherever it may be found.

Jurisdiction and Venue

13. This court has jurisdiction over this controversy because the damage sought are within the jurisdictional limits of this Court. Pursuant to Rule 47, the amount in controversy exceeds the sum of more than one million dollars (\$1,000,000.00), exclusive of interest, attorney's fees and costs. TEX. R. CIV. P. 47.

14. Venue is proper in Harris County, Texas, because it is the county in which a substantial part of the emergency medicine services that form the basis of the Non-Participating Claims were performed. TEX. CIV. PRAC. & REM. CODE § 15.002(a)(1).

Facts

15. Each of the Plaintiffs is an emergency medicine group practice that staffs the emergency department at one or more licensed hospitals or other licensed health care facilities 24 hours-a-day and seven days per week, and provides emergency medical care and related services to Molina Patients, among others, presenting to those emergency departments.

16. Each of the Plaintiffs is obligated by federal law to examine any individual presenting to the emergency department, including all Molina Patients, and to provide stabilizing treatment to any such individual with an emergency medicine condition, regardless of the individual's insurance coverage or ability to pay.

17. Each of the Plaintiffs has provided and continues to provide professional emergency medicine services to Molina Patients.

18. On information and belief, both Molina defendants are licensed as HMOs in Texas and are managed care organizations that insure, underwrite, operate and administer Health Plans in Texas.

19. In exchange for premiums and/or fees or other compensation, Molina pays for health care services rendered to Molina Patients, including the emergency medicine services Plaintiffs have provided and continue to provide to Molina Patients.

20. The Molina defendants, as Texas-licensed HMOs, must comply with the requirements of Texas law with respect to Molina's reimbursement of non-network claims for emergency care submitted by health care providers, including the Plaintiffs, as set forth in Texas Insurance Code § 1271.155(a) (HMO must pay for emergency care performed by non-network physicians at the "usual and customary rate or at an agreed rate"). *See* also 28 Texas Administrative Code § 11.204(20). In Texas, Molina is required to hold its member harmless by paying up to full billed charges for a claim. *See* 28 T.A.C. § 11.1611(d).

21. The Molina defendants, as entities engaged in the business of insurance, must comply with the requirements of Texas law with respect to Molina's timely adjudication and reimbursement of Molina Patients' claims. Specifically, Molina must "attempt in good faith to effectuate a prompt, fair and equitable settlement of . . . a claim with respect to which [its] liability has become reasonably clear." Tex. Ins. Code § 541.060(a)(2). Additionally, Molina is required to conduct a reasonable investigation with respect to a claim prior to refusing to pay a claim and/or refusing to fully pay a claim. Tex. Ins. Code § 541.060(a)(7).

22. The Plaintiffs have billed Molina directly for the Non-Participating Claims arising from Plaintiffs' treatment of Molina Patients. Molina Patients are responsible for payment of any amounts not paid by Molina on the Non-Participating Claims.

23. The Molina Patients who received treatment from Plaintiffs have assigned their benefits to Plaintiffs, who stand in the shoes of the Molina Patients with respect to their claims against Molina.

24. Molina adjudicated all of the Non-Participating Claims as involving medically necessary, covered services and determined the Non-Participating Claims to be payable, albeit at rates less than what Texas law requires.

25. Upon Molina's adjudication of the Non-Participating claims as involving medically necessary, covered services and its determination that the Non-Participating Claims were payable, Molina's liability to pay those claims at the rates required by Texas law became reasonably clear.

26. For the Non-Participating Claims, Molina was required to reimburse Plaintiffs in one of three ways: at the "usual and customary rate," "at an agreed rate," or by holding the member harmless up to the billed charge.

27. Molina had not expressly agreed with the Plaintiffs to pay any of the Non-Participating Claims at a specific rate, and therefore Molina was required, and impliedly agreed, to comply with Texas Insurance Code § 1271.155(a) by paying Plaintiffs their billed charges or the "usual and customary rate" in their geographic area for the emergency medicine services provided to Molina Patients. Molina was also required, and impliedly agreed, to comply with Texas Administrative Code § 11.1611(d) by paying Plaintiffs up to their billed charges to hold their member harmless.

28. Plaintiffs billed Molina for the Non-Participating Claims based on Molina's obligations under Texas law and Molina's implied agreement to reimburse Plaintiffs for those

services at rates that complied with Texas law; i.e., at a minimum, at the “usual and customary rate” in the geographic area where the services were provided.

29. In violation of Texas law and in breach of the parties’ implied agreement, Molina has paid Plaintiffs for their treatment of Molina Patients at rates substantially less than both Plaintiffs’ billed charges and the “usual and customary rate” in Plaintiffs’ geographic area.

30. In violation of Texas law, Molina has failed to attempt in good faith to effectuate a prompt, fair, and equitable settlement of the Non-Participating Claims and instead has adjudicated and paid the Non-Participating Claims at rates substantially less than both Plaintiffs’ billed charges and the “usual and customary rate” in Plaintiffs’ geographic area.

31. In violation of its legal duties to Plaintiffs, Molina has and continues to adjudicate the Non-Participating Claims as payable at rates substantially below both the Plaintiffs’ billed charges and the “usual and customary rate” for the emergency medical services provided by Plaintiffs to Molina Patients. In violation of Texas law and in breach of the parties’ implied agreement, Molina has engaged in a scheme to unilaterally set its own artificially low reimbursement rates for emergency medicine services provided to Molina Patients by out-of-network providers, including Plaintiffs.

32. Molina’s refusal to pay the Plaintiffs the legally required reimbursement rates on the Non-Participating Claims for the emergency medicine services they have provided to Molina Patients has caused and continues to cause the Plaintiffs to suffer damages. For the Non-Participating Claims, Molina has failed to pay Plaintiffs the appropriate amount, which is up to Plaintiffs’ billed charges, for each claim asserted in this case. As a result of Molina’s knowing violations of the Texas Insurance Code, Plaintiffs are entitled to multiple damages, plus interest, costs, and attorney’s fees.

33. Molina continues to underpay the Plaintiffs' Non-Participating Claims for the medically necessary, covered services they render to Molina Patients, and Plaintiffs require a declaration establishing the appropriate reimbursement rates to be paid in order to avoid undergoing further harm.

34. Specifically, Plaintiffs seek a determination that: (1) Molina has an obligation to pay Plaintiffs' Non-Participating Claims at the appropriate amount, which is up to Plaintiffs' billed charges; and (2) the rates Molina has paid on the Non-Participating Claims are in violation of its obligations to Plaintiffs under Texas law.

COUNT I

Violation of Texas Insurance Code § 1271.155(a)³

35. Plaintiffs re-allege and restate paragraphs 1 through 34 above as if they were fully set forth herein.

36. Plaintiffs have provided, and continue to provide, emergency care as out-of-network providers to Molina Patients. All of the Non-Participating Claims seek reimbursement for such services.

37. At all material times, Plaintiffs have appropriately billed Molina seeking reimbursement for the Non-Participating Claims.

38. At all material times, Molina has adjudicated all of the Non-Participating Claims at issue as involving medically necessary, covered services and determined the Non-Participating Claims to be payable, albeit at rates less than what Texas law requires.

³ Plaintiffs understand the Court has dismissed the 1271.155 claim from the case. It is included herein so Plaintiffs do not waive the claim for appellate purposes.

39. Molina, a Texas-licensed HMO, must comply with the requirements of Texas law with respect to Molina's reimbursement of claims for emergency care performed by non-network providers, including the Plaintiffs.

40. Under Texas law, Molina "shall pay for emergency care performed by non-network physicians or providers at the usual and customary rate or at an agreed rate." Texas Insurance Code. § 1271.155(a).

41. Indeed, under 28 Texas Administrative Code § 11.204(20), Molina must provide with its application for a Certificate of Authority "documentation demonstrating that [Molina] will pay for emergency care services performed by non-network physicians or providers at the negotiated or usual and customary rate . . ."

42. Molina has not expressly agreed with the Plaintiffs to a specific rate at which Molina would pay any of the Non-Participating Claims.

43. Under Texas Insurance Code § 1271.155(a), Molina was required to pay Plaintiffs either their billed charges or the "usual and customary rate" in their geographic area for the emergency medicine services provided to Molina Patients.

44. In violation of Texas Insurance Code § 1271.155(a), Molina has and continues to adjudicate the Non-Participating Claims as payable at rates substantially below both the Plaintiffs' billed charges and the "usual and customary rate" for the emergency medical services provided by Plaintiffs to Molina Patients.

45. Molina's violation of Texas Insurance Code § 1271.155(a) with respect to the Non-Participating Claims has caused and continues to cause the Plaintiffs to suffer damages in an amount equal to the difference between the amounts allowed as payable by Molina and the

lesser of Plaintiffs' charges and the "usual and customary rate" for professional emergency medicine services in the same geographic area, plus the Plaintiffs' loss of use of that money.

46. Plaintiffs are entitled to monetary damages from Molina in an amount exceeding \$1,500,000 to compensate them for Molina's violation of Texas Insurance Code § 1271.155(a), plus interest and attorney's fees.

COUNT II

Violation of Texas Insurance Code § 541.060(a)

47. Plaintiffs re-allege and restate paragraphs 1 through 46 above as if they were fully set forth herein.

48. Plaintiffs have provided, and continue to provide, emergency care as non-network providers to Molina Patients. All of the Non-Participating Claims seek reimbursement for such services.

49. At all material times, Plaintiffs have appropriately billed Molina seeking reimbursement for the Non-Participating Claims.

50. At all material times, Molina has adjudicated all of the Non-Participating Claims as involving medically necessary, covered services and determined the Non-Participating Claims to be payable, albeit at rates less than what Texas law requires.

51. Molina, an entity engaged in the business of insurance in Texas, must comply with the requirements of Texas law with respect to Molina's prompt and fair reimbursement of Molina Members' insurance claims.

52. Under Texas law, "[i]t is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to engage in . . . unfair settlement practices with respect to a claim by an insured or beneficiary." Texas Ins. Code § 541.060(a). "[F]ailing to

attempt in good faith to effectuate a prompt, fair, and equitable settlement of . . . a claim with respect to which the insurer's liability has become reasonably clear" is an unfair claims settlement practice. Tex. Ins. Code § 541.060(a)(2)(A). Another prohibited unfair settlement practice is "refusing to pay a claim without conducting a reasonable investigation with respect to the claim." Tex. Ins. Code 541.060(a)(7).

53. Upon Molina's adjudication of the Non-Participating Claims as involving medically necessary, covered services and its determination that the Non-Participating Claims are payable, albeit payable at a rate Molina unilaterally decided, Molina's liability for the Non-Participating Claims became reasonably clear.

54. Molina knowingly engaged in unfair claims settlement practices, and therefore engaged in unfair or deceptive acts in violation of Texas law, by adjudicating and paying the Non-Participating Claims at rates substantially below those required by Texas law when its liability to pay the amounts required by Texas law was reasonably clear. Molina also knowingly engaged in unfair claims settlement practices when it refused to fully compensate Plaintiffs without conducting a reasonable investigation as to the requirements of Texas law regarding the rates to be paid for Non-Participating Claims.

55. Texas law affords a private right of action to a person who sustains actual damages caused by an unfair or deceptive act or practice in the business of insurance as enumerated in Tex. Ins. Code § 541.060. See Tex. Ins. Code § 541.151(1).

56. Molina Patients are responsible for payment of any amounts not paid by Molina on the Non-Participating Claims. Molina Patients have therefore suffered and continue to suffer actual damages as a result of Plaintiffs' knowing underpayment of benefits owed to Patients

under the Health Plans for the Non-Participating Claims, in violation of Tex. Ins. Code § 541.060.

57. Molina Patients have assigned their Health Plan benefits covering the emergency medicine services provided for all of the Non-Participating Claims to Plaintiffs and have assigned to Plaintiffs their claims against Molina for underpayments.

58. In regard to the Section 541.060(a)(2)(A) claim, on September 15, 2017, Plaintiffs sent Molina a written notice of Molina's unfair claims settlement practices in violation of Tex. Ins. Code § 541.060. Molina did not respond to this letter with a reasonable offer of settlement.

59. As a result of Molina's violations of Tex. Ins. Code § 541.060, Plaintiffs, as assignees for Molina Patients, are entitled to monetary damages from Molina in an amount that is the difference between the amount Molina paid for emergency services the Plaintiffs rendered to their members and the appropriate amount they should have paid, plus court costs and attorneys' fees.. Tex. Ins. Code § 541.152(a). As a result of Molina's knowing violation of Tex. Ins. Code § 541.060, Plaintiffs are entitled to judgment in an amount up to three times their actual damages, plus interest at the statutory rate and attorney's fees.

COUNT III

Breach of Implied-in-Fact Contract

60. Plaintiffs re-allege and restate paragraphs 1 through 59 above as if they were fully set forth herein.

61. At all material times, Plaintiffs were obligated under federal law to provide emergency medicine services to all patients presenting at the emergency departments they staff, including Molina Patients.

62. At all material times, Molina knew that Plaintiffs were non-network emergency medicine groups that provided emergency medicine services to Patients. On information and belief, Molina was aware that Plaintiffs were required by law to continue to treat all Molina Patients presenting to them, regardless of the level of reimbursement Molina paid Plaintiffs for those services.

63. From January 1, 2016 to the present, Plaintiffs have undertaken to provide emergency medicine services to Molina Patients, and Molina has undertaken to pay for such services provided to Molina Patients in accordance with Texas law.

64. With respect to the Non-Participating Claims, Plaintiffs have fulfilled their obligations under the parties' implied agreement by providing emergency care to Molina Patients.

65. Under Texas law, Molina is required to pay for emergency care performed by non-network physicians or provides are the appropriate rate, which is up to Plaintiffs billed charges.

66. With respect to the Non-Participating Claims at issue, Molina was aware that Plaintiffs were entitled to and expected to be paid at rates in accordance with the standards established under Texas law.

67. On information and belief, Molina did not instruct Molina Patients to not seek treatment in the emergency departments staffed by the Plaintiffs.

68. With respect to the Non-Participating Claims at issue, Plaintiffs have appropriately billed Molina for the Non-Participating Claims arising from the emergency care Plaintiffs render to Molina Patients, based on Molina's implied agreement to reimburse Plaintiffs for those services at rates that complied with Texas law.

69. With respect to the Non-Participating Claims at issue, Molina did not reject those claims and instruct the Plaintiffs to instead bill the Molina Patients.

70. With respect to the Non-Participating Claims at issue, Molina accepted Plaintiffs' bills for the emergency care Plaintiffs have provided and continue to provide to Molina Patients.

71. With respect to the Non-Participating Claims at issue, Molina has consistently adjudicated the claims, determined that they are appropriate to reimburse, and paid the Plaintiffs directly for those claims, albeit at amounts less than that required by Texas law.

72. By assuming responsibility for paying for the emergency medical services provided to Molina Patients, Molina is both obligated under Texas law, and has impliedly agreed, to reimburse Plaintiffs at rates in accordance with the standards established by Texas law.

73. At all material times, the Plaintiffs were not parties to express participation agreements with Molina and did not agree to accept discounted rates from Molina or to be bound by Molina's reimbursement policies or rate schedules with respect to any of the Non-Participating Claims for emergency medical services Plaintiffs rendered to Molina Patients.

74. Through the parties' conduct and respective undertaking of obligations concerning emergency medicine services provided by Plaintiffs to Molina Patients, the parties implicitly agreed, and Plaintiffs had a reasonable expectation and understanding, that Molina would reimburse Plaintiffs for Non-Participating Claims at rates in accordance with the standards established under Texas law.

75. Molina, in issuing payment on the Non-Participating Claims to the Plaintiffs in an amount less than the Plaintiffs' charges for their services rendered to Molina Patients, represented to the Plaintiffs and agreed that the rates Molina would pay were, at a minimum,

equivalent to the “usual and customary rate” for emergency medicine services in the geographic area where they were provided.

76. In breach of its implied contract with the Plaintiffs, Molina has and continues to systemically adjudicate the Non-Participating Claims at rates substantially below both Plaintiffs’ charges and “usual and customary rate” for the professional emergency medicine services provided by Plaintiffs to Molina Patients in the geographic area.

77. Each of the Plaintiffs has performed all obligations under its implied contract with Molina concerning emergency medicine services to be performed for Patients.

78. At all material times, all conditions precedent have occurred that were necessary for Molina to perform its obligation under its implied contract to pay Plaintiffs for the Non-Participating Claims, at an appropriate amount, which includes up to Plaintiffs’ billed charges, for Plaintiffs’ services in the geographic area.

79. Plaintiffs did not agree that the lower reimbursement rates paid by Molina were reasonable or sufficient to compensate Plaintiffs for the emergency medicine services provided to Molina Patients.

80. As a result of Molina’s breach of the implied contract to pay Plaintiffs for the Non-Participating Claims at the rates required by Texas law, Plaintiffs have suffered injury and are entitled to monetary damages from Molina to compensate them for that injury.

81. Plaintiffs have suffered damages in an amount equal to the difference between the amounts allowed as payable by Molina and appropriate amount, which includes up to Plaintiffs’ billed charges.

COUNT IV

Unjust Enrichment/Breach of Implied-in-Law Contract

82. Plaintiffs re-allege and restate paragraphs 1 through 81 above as if they were fully set forth herein.

83. Plaintiffs conferred a benefit upon Molina by providing valuable emergency medicine services to Molina Patients for which Molina was responsible for payment. In exchange for premiums and other forms of compensation, Molina owes Molina Patients an obligation to pay Plaintiffs for the covered medical services Patients receive from Plaintiffs. Molina derives a benefit from the Plaintiffs' provision of emergency medicine services to Patients, because it is through Plaintiffs' provision of those services that Molina fulfills its obligations to Molina Patients.

84. There is no dispute that all of the emergency medicine services at issue in the Non-Participating Claims were covered, because Molina already adjudicated and allowed them as payable, albeit at an amount less than required by Texas law.

85. Molina voluntarily accepted, retained and enjoyed, and continues to accept, retain and enjoy, the benefits conferred upon it by Plaintiffs, knowing that Plaintiffs expected to be paid for the Non-Participating Claims at rates in accordance with the standards established under Texas law.

86. Molina has been unjustly enriched by its failure and refusal to pay Plaintiffs for the Non-Participating Claims at rates in accordance with the standards established under Texas law for the emergency medicine services Plaintiffs provided to Molina Patients. Molina has unjustly enriched itself by withholding from Plaintiffs monies that, consistent with the standards established under Texas law, Molina should have paid to Plaintiffs.

87. Under the circumstances set forth above, it is unjust and inequitable for Molina to retain the benefit they received without paying the value of that benefit; i.e., by paying the Plaintiffs for the Non-Participating Claims at the reasonable value of the services in accordance with the standards established under Texas law, including the doctrine of *quantum meruit*.

88. Plaintiffs seek compensatory damages, as permitted by Texas law, in an amount which will continue to accrue through the date of trial as a result of Molina's continuing unjust enrichment, equal to the difference between the amount Molina allowed as payable for the emergency medicine services Plaintiffs provided to Molina Patients and the rates due in accordance with the standards established under Texas law.

COUNT V

Declaratory Judgment – Tex. Civ. Prac. & Rem. Code § 37.001 et seq.⁴

89. Plaintiffs re-allege and restate paragraphs 1 through 88 above as if they were fully set forth herein.

90. This is an action for declaratory relief and actual damages pursuant to Tex. Civ. Prac. & Rem. Code § 37.001 et seq.

91. A bona fide and justiciable controversy exists that involves the Plaintiffs' substantial legal interests.

92. All adverse parties are presently before the Court.

93. A judicial declaration is necessary to resolve the parties' respective rights and obligations concerning the rate of payment for Plaintiffs' services.

94. Plaintiffs will suffer actual harm if this Court does not resolve this controversy by issuance of a declaratory judgment.

⁴ Plaintiffs understand the Court has dismissed the Declaratory Judgment claim from the case. It is included herein so Plaintiffs do not waive the claim for appellate purposes.

95. To prevent the need for a separate action enforcing Plaintiffs' rights, Plaintiffs seek a declaration from this Court stating that Molina must pay Plaintiffs going forward for their Non-Participating Claims for the emergency medicine services their professionals render to Molina Patients at the appropriate rate, which includes up to Plaintiffs' billed charges.

WHEREFORE, Plaintiffs pray that this Court:

For the Non-Participating Claims for emergency medicine services rendered to Patients, enter judgments against Molina and for each Plaintiff pursuant to Counts I in an amount representing the difference between the amounts allowed as payable by Molina and Plaintiff's charges, or the "usual and customary rate," for similar services in the same geographic area, as determined by the finder of fact, plus interest;

For the Non-Participating Claims for emergency medicine services rendered to Patients, enter judgments against Molina and for each Plaintiff pursuant to Count II and III in an amount representing the difference between the amounts allowed as payable by Molina and the appropriate amount, which includes up to Plaintiffs' billed charges, as determined by the finder of fact, trebled, plus interest and reasonable attorney's fees;

Alternatively, for the Non-Participating Claims for emergency medicine services rendered to Patients, enter judgments against Molina and for each Plaintiff pursuant to Count IV in an amount representing the difference between the amounts allowed as payable by Molina and the reasonable value of the services in accordance with the standards established under Texas law, including the doctrine of *quantum meruit*, as determined by the finder of fact, plus interest;

Decree pursuant to Count V that that Molina must pay Plaintiffs going forward for their Non-Participating Claims for the emergency medicine services their professionals render to

Molina Patients at the appropriate amount, up to Plaintiffs' billed charges, which Defendants should have paid on these claims; and,

Award attorney's fees, costs, interest and all other relief as this Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury of all issues so triable.

Respectfully submitted,

**AHMAD, ZAVITSANOS, ANAIPAKOS
ALAVI & MENSING, P.C.**

/s/ John Zavitsanos

John Zavitsanos
State Bar No. 22251650
jzavitsanos@azalaw.com

Jane Robinson
State Bar No. 24062970
jrobinson@azalaw.com

Sammy Ford IV
State Bar No. 24061331
sford@azalaw.com

Michael Killingsworth
State Bar No. 24110089
mkillingsworth@azalaw.com
1221 McKinney Street, Suite 2500
Houston, Texas 77010

T: 713-655-1101
F: 713-655-0062

**ATTORNEYS FOR PLAINTIFF
ACS PRIMARY CARE PHYSICIANS
SOUTHWEST, PA**

Collin D. Kennedy
Texas State Bar No. 24012952
cdk@hanshawkenedy.com
HANSHAW KENNEDY HAFEN, LLP
1415 Legacy Drive, Suite 350
Frisco, Texas, 75034

T: 972-731-6500
F: 972-731-6555

**ATTORNEYS FOR PLAINTIFF
EMERGENCY SERVICES OF TEXAS, PA**

CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2020, a true and correct copy of the foregoing document was served electronically through the electronic filing manager to all counsel of record in accordance with Texas Rules of Civil Procedure 21 and 21a as follows:

Christopher M. LaVigne
Brennwyn B. Romano
GREENBERG TRAUIG LLP
2200 Ross Avenue, Suite 5200
Dallas, Texas 75201

Alan W. Hersh
Craig Alan Duewall
Dale Wainwright
Erik M. Weber
GREENBERG TRAUIG LLP
300 West 6th Street, Suite 2050
Austin, Texas 78701

Craig Smyser
Karima G. Maloney
Justin M. Waggoner
SMYSER KAPLAN & VESELKA, L.L.P.
717 Texas Avenue, Suite 2800
Houston, Texas 77002-2761

*Attorneys for Defendants Molina Healthcare, Inc.
and Molina Healthcare of Texas, Inc.*

/s/ John Zavitsanos _____
John Zavitsanos