

CATHERINE CORTEZ MASTO
Attorney General of the State of Nevada
ERIC WITKOSKI
Consumer Advocate and Chief Deputy Attorney General
BRIAN ARMSTRONG, Bar No. 8761
Senior Deputy Attorney General
State of Nevada, Office of the Attorney General
Bureau of Consumer Protection
555 E. Washington Ave., Suite 3900
Las Vegas, Nevada 89101
Telephone: (702) 486-3420
Fax: (702) 486-3283
Email: antitrust@ag.nv.gov
Attorneys for Plaintiff State of Nevada

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

THE STATE OF NEVADA BY ITS ATTORNEY
GENERAL CATHERINE CORTEZ MASTO

Plaintiff,

v.

UNIVERSAL HEALTH SERVICES, INC., ALAN
B. MILLER, and PSYCHIATRIC SOLUTIONS,
INC.,

Defendants.

Case No.: 2:10-cv-1984

COMPLAINT

Plaintiff State of Nevada, through its Attorney General, complains against Defendants Universal Health Services, Inc. (“UHS”), a corporation controlled by Alan B. Miller, and Defendant Psychiatric Solutions, Inc. (“PSI”) as follows:

Introduction

1. Plaintiff seeks injunctive relief in this antitrust law enforcement action to prevent Defendant UHS from acquiring the stock of Defendant PSI in violation of Section 7 of the

Clayton Act, as amended, 15 U.S.C. § 18, and the Nevada Unfair Trade Practice Act, NRS 598A *et seq.*

2. This acquisition involves the provision of Acute Inpatient Psychiatric Services in the Las Vegas Area (both defined in paragraph 11) where over 70% of Plaintiff's citizens reside. Patients requiring Acute Inpatient Psychiatric Services are typically a danger to themselves and/or others given suicidal tendencies. Given the critical nature and lack of supply to meet the demand of this life-saving service in the State of Nevada, Plaintiff carefully investigated this acquisition to understand whether it may violate antitrust laws. Plaintiff's investigation has indicated that the proposed acquisition will eliminate head-to-head competition in an already highly concentrated market, and will result in Defendants having a monopoly market share post-acquisition for Acute Inpatient Psychiatric Services in the Las Vegas Area. This, along with other factors, increases the likelihood of higher prices and/or a reduction in access to Acute Inpatient Psychiatric Services offered to consumers in the Las Vegas Area. Defendant UHS' acquisition of Defendant PSI, therefore, may substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and the Nevada Unfair Trade Practice Act, NRS 598A *et seq.*

Jurisdiction and Venue

3. This Court has subject matter jurisdiction over the federal antitrust claim pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and 28 U.S.C. §§ 1331 and 1337(a). The Court has pendent jurisdiction over the state antitrust claim because this claim is so related to the federal claim that it forms part of the same case or controversy. 28 U.S.C. § 1367.

4. Defendants are engaged in interstate commerce and in activities that substantially affect interstate commerce.

5. Venue is proper in this District under 15 U.S.C. § 22 and 28 U.S.C. § 1391(c). Defendants transact business and are found within this District.

Parties and Proposed Acquisition

6. Plaintiff State of Nevada brings this action by and through its Attorney General (a) as *parens patriae* on behalf of natural persons residing in the State of Nevada under federal antitrust law, (b) as *parens patriae* on behalf of persons residing in the State of Nevada pursuant to the Nevada Unfair Trade Practice Act, (c) in its proprietary capacity as a purchaser of Acute Inpatient Psychiatric Services for Plaintiff's employees, retirees, dependents, and other eligible natural persons, and/or (d) as the chief antitrust law enforcement agency in the State of Nevada to the extent violations of the Nevada Unfair Trade Practice Act are alleged herein.

7. Defendant Alan B. Miller is a natural person with his office and principal place of business located at 367 South Gulph Road, PO Box 51448, King of Prussia, Pennsylvania 19406-0958.

8. Defendant UHS is controlled by Defendant Alan B. Miller and is a corporation organized, existing and doing business under and by virtue of the laws of Delaware, with its corporate headquarters located at 367 South Gulph Road, PO Box 61558, King of Prussia, Pennsylvania 19406-0958. It owns or operates 25 general medical hospitals and 102 behavioral health facilities nationwide. Defendant UHS' revenues from all of its operations totaled approximately \$5.2 billion in 2009. Defendant UHS' behavioral health facilities generated approximately \$1.3 billion in revenue (25% of total revenues) from nearly 8,000 beds and over 2 million patient days. 24% of Defendant UHS' consolidated net revenues are produced by its facilities located in the State of Nevada. It has five general medical hospitals and two behavioral health facilities in the Las Vegas Area, and accordingly is one of the largest providers of health care in this area. Defendant UHS provides Acute Inpatient Psychiatric Services, among other services, at its two Las Vegas Area behavioral health facilities: Spring Mountain Treatment Center located at 7000 W. Spring Mountain Rd., Las Vegas, Nevada 89117; and Spring Mountain Sahara located at 5640 W. Sahara Ave., Las Vegas, Nevada 89146.

9. Defendant PSI is a corporation organized, existing and doing business by virtue of the laws of Delaware, with its corporate headquarters located at 6640 Carothers Parkway, Suite 500, Franklin, Tennessee 37067. It operates 94 psychiatric facilities nationwide with approximately 11,000 beds. Defendant PSI's revenues from all of its operations totaled approximately \$1.8 billion in 2009, with its inpatient behavioral health facilities generating 93% of that revenue. Defendant PSI provides Acute Inpatient Psychiatric Services, among other services, at its two behavioral health facilities in the Las Vegas Area: Montevista Hospital located at 5900 W. Rochelle Ave., Las Vegas, Nevada 89103; and Red Rock Behavioral Health Hospital located at 5975 W. Twain Ave., Las Vegas, Nevada 89103.

10. On or about May 16, 2010, Defendants UHS and PSI entered into an agreement, whereby UHS, through a wholly-owned subsidiary, would acquire all issued and outstanding PSI voting securities and assume PSI debt. PSI would, thereafter, become a UHS wholly-owned subsidiary. The proposed acquisition is valued at \$3.1 billion.

Nature of Trade and Commerce

11. Defendants UHS and PSI are leading providers of behavioral health care services in the State of Nevada. In the Las Vegas Area, defined as the Las Vegas-Paradise, Metropolitan Statistical Area¹ consisting of Clark County, Nevada, Defendants separately offer these services, including Acute Inpatient Psychiatric Services, at their behavioral health facilities identified in paragraphs 8 and 9. Behavioral health facilities are also known as psychiatric hospitals, psychiatric units, mental health hospitals, behavioral health institutes, and behavioral health centers. Acute Inpatient Psychiatric Services means inpatient psychiatric services for the diagnosis, treatment, and care of patients deemed, due to an acute psychiatric condition, to be a threat to themselves or others or unable to perform basic life functions. Patients in need of Acute Inpatient Psychiatric Services include those who are suicidal. Acute Inpatient Psychiatric

¹ Metropolitan Statistical Areas are geographic areas defined by the U.S. Office of Management and Budget.

Services are designed to provide short-term stabilization and treatment for the patient's condition in a secure inpatient hospital environment.

12. Defendants UHS and PSI compete and promote their Acute Inpatient Psychiatric Services in the Las Vegas Area based on price, name recognition and reputation, location, range of available services, and quality of service. For instance, Defendants UHS and PSI market their services to the staff at the emergency room departments of the general medical hospitals in the Las Vegas Area, since those hospitals provide referrals of patients who need Acute Inpatient Psychiatric Services to Defendants' local facilities.

13. Defendants UHS and PSI are two of the largest providers of Acute Inpatient Psychiatric Services in the Las Vegas Area, of which there are a limited number of providers. For instance, Defendants UHS and PSI are the only providers of Acute Inpatient Psychiatric Services for insured children between the ages of 4 and 12 years old. Moreover, the behavioral health facilities operated by the State of Nevada in the Las Vegas Area generally do not serve insured patients, and accordingly do not compete with Defendants UHS and PSI for insured patients. Nor do Defendants UHS and PSI generally admit indigent patients into their behavioral health facilities in the Las Vegas Area.

14. Consumers, which include patients and third party payers, generally view Defendants UHS and PSI as their first and second choices for Acute Inpatient Psychiatric Services in the Las Vegas Area. In addition to them being the only providers of Acute Inpatient Psychiatric Services for insured children, Defendants UHS and PSI are also the closest substitutes of Acute Inpatient Psychiatric Services for insured seniors that do not also require serious medical care. Defendants' behavioral health facilities are also within close proximity of each other (all within a 3 mile radius), are of a similar condition, and have similar bed counts for patients in need of Acute Inpatient Psychiatric Services.

15. In the Las Vegas Area, patients typically seek health care close to their homes or workplaces, as this is where they can practicably turn for such care. This includes Acute Inpatient Psychiatric Services given the time-sensitive and emergency nature of the service.

Relevant Market

16. The relevant product market within the meaning of Section 7 of the Clayton Act and the Nevada Unfair Trade Practice Act is Acute Inpatient Psychiatric Services, as defined in paragraph 11.

17. The relevant geographic market within the meaning of Section 7 of the Clayton Act and the Nevada Unfair Trade Practice Act is no greater than the Las Vegas Area, as defined in paragraph 11.

18. Accordingly, the relevant market within the meaning of Section 7 of the Clayton Act and the Nevada Unfair Trade Practice Act is Acute Inpatient Psychiatric Services in the Las Vegas Area.

Market Concentration and Anticompetitive Effects

19. The relevant market is highly concentrated, and would become significantly more concentrated as a result of the proposed acquisition as measured by the Herfindahl Hirschman Index (“HHI”).²

² “HHI” means the Herfindahl Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30%, 30%, 20%, and 20%, the HHI is 2600 $((30 \times 30) + (30 \times 30) + (20 \times 20) + (20 \times 20) = 2600)$. The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of small firms. Markets in which HHI is in excess of 2500 points are considered to be highly concentrated. See Horizontal Merger Guidelines authored by the U.S. Department of Justice and Federal Trade Commission, ¶ 5.3 (issued August 19, 2010). Transactions that increase the HHI by more than 200 points in highly concentrated markets are presumed to be likely to enhance market power. *Id.*

20. Post-acquisition, Defendant UHS would have a market share of about 70.2% based on bed counts in the Las Vegas Area for Acute Inpatient Psychiatric Services. The acquisition would increase the HHI by 2463 points from 2918 to 5381, leaving only three meaningful competitors.

21. The acquisition, if consummated, may substantially lessen competition for Acute Inpatient Psychiatric Services in the Las Vegas Area, in the following ways, among others:

- a. By eliminating substantial and close competition between Defendants UHS and PSI;
- b. By increasing the likelihood that Defendant UHS will unilaterally exercise market power; and/or
- c. By increasing the likelihood of, or facilitating, coordinated interaction between or among participants in the relevant market.

These factors, which would not exist but for the acquisition, increase the likelihood of an increase in prices in the relevant market, and/or a decrease in the availability of services to consumers in this market.

Entry Conditions

22. Entry into the relevant market would not be timely, likely, or sufficient to prevent the anticompetitive effects of the acquisition. Significant entry barriers include the time and cost associated with constructing or expanding a behavioral health facility that provides Acute Inpatient Psychiatric Services, as well as the need to satisfy regulatory and licensing requirements that govern the facility's services.

Violations Alleged

23. The preceding paragraphs are incorporated as if set forth herein.

24. Defendant UHS' proposed acquisition of Defendant PSI's stock may substantially lessen competition in the sale and provision of Acute Inpatient Psychiatric Services in the Las Vegas Area in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and the Nevada Unfair Trade Practice Act, NRS 598A *et seq.*, specifically NRS 598A.060(1)(f).

Requested Relief

Accordingly, Plaintiff State of Nevada, requests that this Court:

1. Adjudge Defendant UHS' proposed acquisition of Defendant PSI's stock violates Section 7 of the Clayton Act, 15 U.S.C. § 18;
2. Adjudge Defendant UHS' proposed acquisition of Defendant PSI's stock violates the Nevada Unfair Trade Practice Act, NRS 598A *et seq.*, specifically NRS 598A.060(1)(f);
3. Permanently enjoin and restrain Defendants from carrying out the agreement between UHS and PSI, dated May 16, 2010, or from entering into or carrying out any agreement, understanding, or plan by which Defendant UHS would merge with or acquire Defendant PSI, its capital stock, or any of its assets;
4. Award Plaintiff the maximum civil penalties allowed by NRS 598A.170;
5. Award Plaintiff its reasonable attorneys fees and costs of this action; and
6. All other relief as this Court may deem just and proper.

Dated: November 15, 2010

Respectfully submitted,

PLAINTIFF STATE OF NEVADA

CATHERINE CORTEZ MASTO, Attorney General of the State of Nevada
ERIC WITKOSKI, Consumer Advocate and Chief Deputy Attorney General

/s/ Brian Armstrong

BRIAN ARMSTRONG
Senior Deputy Attorney General
Bureau of Consumer Protection

CERTIFICATE OF SERVICE

I hereby certify that on November 15, 2010, I caused a true and complete copy of Plaintiff's Complaint to be served on the following counsel of record via electronic mail (as previously stipulated) and through the Case Management/Electronic Case Files (CM/ECF) system (to the extent counsel has registered with the CM/ECF for this action).

CATHERINE CORTEZ MASTO, Attorney General
ERIC WITKOSKI, Consumer Advocate and
Chief Deputy Attorney General

By: /s/ Brian Armstrong
BRIAN ARMSTRONG
Senior Deputy Attorney General
Bureau of Consumer Protection

Recipients:

Attorney(s) for Defendants Universal Health Services, Inc. and Alan B. Miller

Peter T. Barbur
Cravath Swaine & Moore LLP
Worldwide Plaza
825 Eighth Ave.
New York, New York 10019-7475
Telephone: (212) 474-1000
Fax: (212) 474-3700
Email: pbarbur@cravath.com

Attorney(s) for Defendant Psychiatric Solutions, Inc.

Kenneth Prince
kprince@shearman.com
Lisl Dunlop
ldunlop@shearman.com
Shearman & Sterling LLP
599 Lexington Ave.
New York, New York 10022
Telephone: (212) 848-4000
Fax: (212) 848-7179

JS 44 (Rev. 12/07)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

<p>I. (a) PLAINTIFFS The State of Nevada by its Attorney General Catherine Cortez Masto</p> <p>(b) County of Residence of First Listed Plaintiff <u>Clark</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) See Attached</p>	<p>DEFENDANTS Universal Health Services, Inc., Alan B. Miller, and Psychiatric Solutions, Inc.</p> <p>County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known) See Attached</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <table style="width:100%;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:10%;"><input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business In This State</td> <td style="width:10%;"><input type="checkbox"/> 4</td> <td style="width:10%;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. NATURE OF SUIT (Place an "X" in One Box Only)					
CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 400 State Reapportionment <input checked="" type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multidistrict Litigation
 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

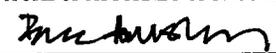
Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity):
15 U.S.C. 18 (Section 7 of Clayton Act, as amended)

Brief description of cause:

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 **DEMAND \$** _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: November 15, 2010 SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

Civil Cover Sheet Attachment

Attorneys for Plaintiff

CATHERINE CORTEZ MASTO
Attorney General of the State of Nevada
ERIC WITKOSKI
Consumer Advocate and Chief Deputy Attorney General
BRIAN ARMSTRONG
Senior Deputy Attorney General
State of Nevada, Office of the Attorney General
Bureau of Consumer Protection
555 E. Washington Ave., Suite 3900
Las Vegas, Nevada 89101
Telephone: (702) 486-3420
Fax: (702) 486-3283
Email: antitrust@ag.nv.gov

Attorney(s) for Defendants Universal Health Services, Inc. and Alan B. Miller

Peter T. Barbur
Cravath Swaine & Moore LLP
Worldwide Plaza
825 Eighth Ave.
New York, New York 10019-7475
Telephone: (212) 474-1000
Fax: (212) 474-3700
Email: pbarbur@cravath.com

Attorney(s) for Defendant Psychiatric Solutions, Inc.

Kenneth Prince
kprince@shearman.com
Lisl Dunlop
ldunlop@shearman.com
Shearman & Sterling LLP
599 Lexington Ave.
New York, New York 10022
Telephone: (212) 848-4000
Fax: (212) 848-7179