

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS**

<b>UHS OF DELAWARE, INC.</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>Case No. _____</b>
<b>v.</b>	)	
	)	
<b>WALLS UNIVERSAL HOME HEALTH AND HOSPICE SERVICES, INC.,</b>	)	
	)	
<b>Defendant.</b>	)	

**COMPLAINT**

UHS of Delaware, Inc. (“UHS” or “Plaintiff”), through counsel, states as follows for its Complaint against Walls Universal Home Health and Hospice Services, Inc., d/b/a Universal Health Services (“Walls Universal”).

The case before this Court involves UHS and Walls Universal, which offer similar services to the same consumers in overlapping territories under identical trademarks. UHS and its predecessor-in-interest have been managing hospitals and serving patients across the country for over thirty years using the trademarks “UHS” and “Universal Health Services.” Walls Universal is a Texas corporation that offers its healthcare services to patients in Texas. With knowledge of UHS’ significant and long-standing goodwill in the “UHS” and “Universal Health Services” mark, Walls Universal

provides its services under the identical and infringing “UHS” and “Universal Health Services” marks to trade off the goodwill of UHS.

1. This is an action for trademark infringement and unfair competition arising under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.*, and Texas common law. Because Walls Universal’s infringement is ongoing and UHS has been, and is likely to continue to be, harmed by such infringement, UHS seeks injunctive relief.

### **Parties**

2. Plaintiff UHS is a Delaware corporation with its principal offices located in King of Prussia, Pennsylvania. UHS manages acute care hospitals, behavioral health facilities, and ambulatory centers across the United States and serves patients throughout the country, including patients in northern Texas. For example, UHS manages the following acute care facilities located in northern Texas: Northwest Texas Healthcare System in Amarillo, Texas, and Texoma Medical Center in Denison, Texas. UHS also manages the following behavioral health facilities within this district: The Pavilion at Northwest Texas HS, Red River Recovery Center, Milwood Hospital, The Excel Center – Arlington, The Excel Center in Lewisville, The Excel Center in Fort Worth, Timberlawn Mental Health System, Horizon Health, and Hickory Trail Hospital.

3. Walls Universal is a Texas corporation with offices located in Fort Worth, Texas. On information and belief, Walls Universal regularly conducts business within the State of Texas, including without limitation in this district. Walls Universal operates a home-health business that serves patients in the greater Fort-Worth area, including without limitation within this district.

**Jurisdiction, Controlling Law, and Venue**

4. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331 because this action arises under an Act of Congress related to trademarks.

5. This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 over all common law claims in this civil action because the common law claims are so related to claims over which this Court has original jurisdiction that the common law claims form part of the same case or controversy under Article III of the United States Constitution.

6. This Court has personal jurisdiction over Walls Universal because Walls Universal's principal place of business is located in this district and/or Walls Universal's infringement has occurred in this district.

7. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because it is a district in which Defendant is subject to personal jurisdiction.

UHS manages hospital and healthcare facilities in Texas and serves consumers within the state, including within this district. Defendant's principal place of business is within this district. Defendant also targets and serves consumers within this district. As such, this district is the situs of the subject matter of this case, where consumers are likely to be confused by Defendant's infringement, and where a substantial part of the events giving rise to UHS' claims occurred and continue to occur.

### **Factual Allegations**

#### **UHS' Services**

8. UHS is a wholly owned subsidiary of Universal Health Services, Inc., one of the nation's largest and most respected healthcare management companies, operating through UHS acute care hospitals, behavioral health facilities, and ambulatory centers across the United States, in Puerto Rico, and in the Virgin Islands. Founded in 1978, Universal Health Services, Inc.'s subsidiaries today have more than 65,000 employees.

9. Several aspects of UHS' services, hospitals, and facilities serve to distinguish them from those of UHS' competitors, and are in part responsible for UHS' superior reputation. Both UHS and its parent company, Universal Health Services, Inc., owe their success to a responsive management style and to a service philosophy that is based on integrity,

competence and compassion. Universal Health Services, Inc.'s strategy is to build or purchase healthcare properties in rapidly-growing markets and through its UHS subsidiary create a strong franchise based on such exceptional service and effective cost control.

### **UHS' Marks**

10. UHS owns the rights to various marks in connection with the services provided by UHS' hospitals and facilities. Universal Health Services, Inc. was the original owner of the registered trademarks at issue, and has since assigned all right, title, and interest in the trademarks, together with the goodwill of the business symbolized by the trademarks, to UHS.

11. First, UHS owns a federal registration for the word mark "UHS", for use in connection with International Class 35 "hospital management services" and International Class 42 "hospital services," United States Patent and Trademark Office ("USPTO") Reg. No. 1,696,433 ("the '433 Registration"), which issued on June 23, 1992. The '433 Registration is registered on the Principal Register, with dates of first use and first use in interstate commerce for "hospital management services" and "hospital services" of October 1979. The application filing date for the '433 Registration is May 20, 1991. The '433 Registration is valid, subsisting, and incontestable. A true and accurate copy of the Certificate of USPTO Reg.

No. 1,696,433 is attached hereto as Exhibit A.

12. Second, UHS owns a federal registration for the stylized mark “UHS”, for use in connection with International Class 35 “hospital management services” and International Class 42 “hospital services,” USPTO Reg. No. 2,741,663 (“the ‘663 Registration”), which issued on July 29, 2003. The ‘663 Registration is registered on the Principal Register, with dates of first use and first use in interstate commerce for “hospital management services” and “hospital services” of October 1979. The application filing date for the ‘663 Registration is October 7, 2002. The ‘663 Registration is valid, subsisting, and incontestable. A true and accurate copy of the Certificate of USPTO Reg. No. 2,741,663 is attached hereto as Exhibit B.

13. Third, UHS owns a federal registration for the word mark “UNIVERSAL HEALTH SERVICES”, for use in connection with International Class 35 “hospital management services; health care utilization and review services; and health care referral services,” USPTO Reg. No. 1,985,345 (“the ‘345 Registration”), which issued on April 16, 1996. The ‘345 Registration is registered on the Principal Register, with dates of first use and first use in interstate commerce of 1979. The application filing date for the ‘345 Registration is April 25, 1995. The ‘345 Registration is valid,

subsisting, and incontestable. A true and accurate copy of the Certificate of USPTO Reg. No. 1,985,345 is attached hereto as Exhibit C. A true and accurate copy of the USPTO Renewal Acceptance Notice for USPTO Reg. No. 1,985,345 is attached hereto as Exhibit D.

14. UHS also owns other federal trademark registrations and applications incorporating the terms “UHS” and/or “UNIVERSAL HEALTH” in connection with hospital and/or healthcare-related services.

15. At all times relevant to this Complaint, UHS, or its predecessor-in-interest, has used, and continues to use, the respective marks represented by the ‘433 Registration, the ‘663 Registration, and the ‘345 Registration (collectively, the “UHS Marks”) in connection with the services set forth above to advertise, market, offer to sell, and sell such services in interstate commerce.

16. UHS prominently displays the UHS Marks on Universal Health Services, Inc.’s corporate website, [www.uhsinc.com](http://www.uhsinc.com), on numerous websites of UHS’ hospitals and facilities located throughout the United States, in television and radio commercials, print media, newspapers, trade journals, magazines, and in signs, banners, and numerous promotional materials. Additionally, “UHS” is the stock symbol for Universal Health Services, Inc., which has been publicly traded on the New York Stock Exchange since

1991 and prior to that was publicly traded on NASDAQ since 1981.

17. UHS manages several hospital and other healthcare facilities within the State of Texas, including without limitation The Pavilion at Northwest Texas HS, Northwest Texas Surgery Center, Northwest Texas Healthcare System, Red River Recovery Center, Milwood Hospital, The Excel Center – Arlington, The Excel Center in Lewisville, The Excel Center in Fort Worth, Timberlawn Mental Health System, Horizon Health, and Hickory Trail Hospital in this district, and Texoma Medical Center in nearby Denison, Texas.

18. UHS currently provides home health services using the UHS Marks at UHS' Texoma Medical Center facility and other facilities in Texas.

19. Over the course of more than thirty years, UHS and its predecessor-in-interest have invested great time, effort, and resources in the development of the distinctive and well known series of UHS Marks, such that its unique services have become widely recognized as emanating from UHS and as maintaining only the highest quality standards.

20. As of the date of the filing of this Complaint, UHS is actively expanding both its facilities and its use of the UHS Marks in connection with the advertising, marketing, offering to sell, and sale of hospital and healthcare-related services throughout the United States, including within



Texas.

21. The UHS Marks, when used in connection with healthcare-related services, indicate to members of the purchasing public that the services being offered originate from and are provided by UHS only, and no other person or entity.

22. UHS has extensively used the UHS Marks to identify and distinguish its services from those of its competitors, such that the UHS Marks represent and possess significant goodwill, which is of great monetary and reputational value to UHS.

23. Because of UHS' significant expenditure of time, effort, and money in the marketing, advertising, and promotion of the UHS Marks, these marks have developed and now possess strong secondary meaning to consumers of hospital and healthcare-related services, such that the consuming public identifies them as indicating services of distinctively high quality originating only from UHS.

#### **Defendant's Infringing Conduct**

24. Defendant advertises, markets, offers to sell, and sells home healthcare, hospice, and other healthcare-related services under marks that are confusingly similar to the UHS Marks. On information and belief, these home healthcare, hospice, and other healthcare-related services are sold in

the same types of distribution channels as the services sold by UHS under the UHS Marks.

25. Defendant advertises and sells healthcare-related services to the same classes of consumers as those who purchase UHS' services. By example and not limitation, Walls Universal provides home healthcare services to consumers in the Dallas - Fort Worth Metroplex and surrounding areas that are nearly identical to those provided by UHS within the same geographic region.

26. UHS has rights in the mark "UHS" that are superior to Defendant's rights.

27. On information and belief, Defendant was aware of UHS' federal registrations for and rights in and to the UHS Marks when Defendant commenced use of the mark "UHS". UHS and its predecessor-in-interest, though counsel, has communicated with Defendant regarding Defendant's use of UHS' trademarks. During such communications, UHS identified its marks and used the acronym "UHS" to identify itself, Plaintiff UHS.

28. Defendant has advertised, marketed, offered to sell, and/or sold home healthcare, hospice, and other healthcare-related services under the mark "UHS".

29. Defendant has used the mark "UHS" to advertise, market, offer

to sell, and/or sell services that are identical to the services offered by UHS under its UHS Marks. For example, UHS provides home healthcare services at its Texoma Medical Center facility located in Denison, Texas.

30. Defendant has used the mark “UHS” to advertise its services via the website [www.universalhealth.com](http://www.universalhealth.com) (the “Website”), which is owned and operated by Walls Universal. For example, a series of screenshots of the Website depicting Walls Universal’s use of the mark “UHS” to advertise Defendant’s home healthcare, hospice, and other healthcare-related services are attached hereto as Exhibits E – G.

31. Only after UHS’ demands that Defendant cease its use of the UHS Marks did Defendant take down certain uses of “UHS” from its Website. However, to date Defendant still maintains pages at its Website using “UHS” to identify Defendant’s business. *See* Exhibit G, screenshot of Website, at <http://universalhealth.com/wp-content/uploads/2010/11/Hospice-Honors-Agency-Press-Release.pdf>, captured on September 20, 2013.

32. UHS has rights in the mark “UNIVERSAL HEALTH SERVICES” that are superior to Defendant’s rights.

33. Defendant advertises, markets, offers to sell, and/or sells home healthcare, hospice, and other healthcare-related services under the mark “UNIVERSAL HEALTH SERVICES”.

34. Defendant uses the mark “UNIVERSAL HEALTH SERVICES” to advertise, market, offer to sell, and/or sell services that are nearly identical to the services offered by UHS under its UHS marks.

35. Defendant uses the mark “UNIVERSAL HEALTH SERVICES” to advertise its services and via the Website. For example, a series of screenshots of the Website depicting Walls Universal’s use of the mark “UNIVERSAL HEALTH SERVICES” to advertise Defendant’s home health care, hospice, and other healthcare-related services are attached hereto as Exhibits E – H.

36. Defendant has advertised, marketed, offered for sale, and sold services that infringe one or more of the UHS Marks to consumers in the Dallas – Fort Worth and surrounding geographic territory. A screenshot from the Website demonstrates Walls Universal’s advertising as a healthcare provider that serves consumers in “the Dallas – Fort Worth Metorplex and surrounding areas.” *See* Exhibit E.

37. Defendant’s administrator and owner, Ms. Kathy Walls, has promoted herself as affiliated with Plaintiff UHS through her public profile page at LinkedIn Corporation’s social media website, www.linkedin.com, listing herself as the “owner” of “Universal Health Services, Public Company: 10,001+ employees; UHS; Hospital & Health Care Industry.”

See Exhibit I, screenshot of social media page at [www.linkedin.com](http://www.linkedin.com).

38. UHS' parent company and predecessor-in-interest is a public company with over 10,000 employees.

39. In contrast, Walls Universal is not a public company and does not have 10,000 employees.

40. Only after UHS' demands that Defendant remove this misrepresentation from Ms. Walls' public profile page was this explicit reference to UHS and its predecessor-in-interest eventually taken down.

41. UHS and its predecessor-in-interest, through counsel, have sent several letters to Defendant advising Defendant of their rights to the UHS Marks and demanding in good faith that Defendant cease and desist its infringing use of the UHS Marks.

42. Although Defendant has modified certain of its use of the "UHS" mark, Defendant's use of the UHS Marks continues and will likely increase unless permanently enjoined by this Court.

43. As a result of Defendant's conduct, and because of continued confusion among the marks, UHS has suffered irreparable harm in addition to damages.

**COUNT I**

**(UHS word mark – Infringement under 15 U.S.C. § 1114)**

44. Plaintiff repeats and realleges, as if fully set forth herein, each

and every allegation contained in the foregoing paragraphs.

45. This claim arises under 15 U.S.C. § 1114 for willful and deliberate infringement of the UHS mark set forth in the '433 Registration (the "UHS Word Mark").

46. The UHS Word Mark set forth in the '433 Registration is a valid, protectable, and enforceable mark.

47. The UHS Word Mark set forth in the '433 Registration has become incontestable under 15 U.S.C. § 1065.

48. Plaintiff has rights in its UHS Word Mark set forth in the '433 Registration that are superior to any rights Defendant may have in the identical "UHS" mark, which is used in connection with identical, similar, and/or related services.

49. Consumers associate the UHS Word Mark set forth in the '433 Registration with Plaintiff as the single source of the services provided under that mark.

50. Plaintiff has not given Defendant consent, permission, or license to use the UHS Word Mark.

51. Defendant's use of the UHS Word Mark has created and does create a likelihood of confusion, mistake, or deception among consumers with Plaintiff's UHS Word Mark.

52. UHS and its predecessor-in-interest, though counsel, communicated with Defendant regarding Defendant's use of UHS' trademarks. During such communications, UHS identified its marks and used the acronym "UHS" to identify itself, Plaintiff UHS.

53. Defendant knew, or should have known by the exercise of reasonable care, that its use of the UHS Word Mark in connection with home healthcare, hospice, and other healthcare-related services would cause confusion, mistake, or deception among consumers with Plaintiff's UHS Word Mark.

54. On information and belief, Defendant knew of Plaintiff's federally registered UHS Word Mark, and intended to trade off and did trade off, and intend to trade off and will trade off the extensive goodwill built up by Plaintiff in its UHS Word Mark.

55. To date, Defendant refuses to agree to cease using the infringing "UHS" mark, in violation of Plaintiff's rights to the exclusive use of its UHS Word Mark.

56. Defendant's wrongful acts alleged herein violated Plaintiff's rights under 15 U.S.C. § 1114(a), and, on information and belief, have been deliberate, willful, and in disregard of Plaintiff's rights.

57. Defendant's wrongful acts alleged herein have permitted and/or

will permit Walls Universal to earn substantial revenues and profits on the strength of Plaintiff's UHS Word Mark.

58. By reason of Defendant's wrongful acts alleged herein, Plaintiff has suffered and is continuing to suffer damage to its business, trade, reputation, and goodwill as a result of the erroneous perception that the services of Defendant are affiliated with, sponsored by, approved by, or originate from Plaintiff.

59. As a result of Defendant's wrongful acts alleged herein, Plaintiff has suffered and is continuing to suffer irreparable injury. Plaintiff cannot be adequately compensated for these injuries by damages alone, and Plaintiff has no adequate remedy at law for Defendant's infringement of its rights. Plaintiff is entitled to permanent injunctive relief, as well as attorneys' fees.

## **COUNT II**

### **(UHS word mark – Federal unfair competition under 15 U.S.C. § 1125(a) and common law)**

60. Plaintiff repeats and realleges, as if fully set forth herein, each and every allegation contained in the foregoing paragraphs.

61. This claim arises under 15 U.S.C. § 1125(a) for willful and deliberate unfair competition, including false designation of origin and palming off, and under Texas common law.



62. Plaintiff's UHS Word Mark is valid and enforceable, and has attained secondary meaning.

63. Defendant's use of the "UHS" mark has created and does create a likelihood of confusion, mistake, or deception with Plaintiff's UHS Word Mark.

64. Defendant has infringed, and continues to infringe, the UHS Word Mark in interstate commerce, which use by Defendant tends to falsely describe and represent a false designation of origin with Plaintiff, and which tends to palm off Defendant's services as affiliated with, sponsored by, approved by, or originating from Plaintiff, and which tends to palm off Defendant's services as affiliated with, sponsored by, approved by, or originating from Plaintiff.

65. Defendant's acts demonstrate its intent both to palm off its services as affiliated with, sponsored by, or originating from Plaintiff, and to trade off the goodwill in Plaintiff's UHS Word Mark.

66. Defendant's wrongful acts alleged herein violate Texas common law, and Plaintiff's rights protected thereunder, and, on information and belief, have been deliberate, willful, and in disregard of Plaintiff's rights.

67. Defendant's wrongful acts alleged herein constitute unfair

competition under 15 U.S.C. § 1125(a), and Plaintiff has been and will continue to be damaged by such unfair competition, suffering injury to its business, trade, reputation, and goodwill.

68. Defendant's unfair competition, false designation of origin, and palming off have been willful, deliberate, and intentional, and will no doubt resume and/or continue unless enjoined by this Court.

**COUNT III**  
**(Stylized UHS mark - Infringement under 15 U.S.C. § 1114)**

69. Plaintiff repeats and realleges, as if fully set forth herein, each and every allegation contained in the foregoing paragraphs.

70. This claim arises under 15 U.S.C. § 1114 for infringement of the stylized UHS mark set forth in the '663 Registration (the "Stylized UHS Mark")

71. The Stylized UHS Mark set forth in the '663 Registration is a valid, protectable, and enforceable mark.

72. The Stylized UHS Mark set forth in the '663 Registration has become incontestable under 15 U.S.C. § 1065.

73. Plaintiff has rights in its Stylized UHS Mark set forth in the '663 Registration that are superior to any rights Defendant may have in the nearly identical "UHS" mark, which is used in connection with identical, similar, and/or related services.

74. Consumers associate the Stylized UHS Mark set forth in the '663 Registration with Plaintiff as the single source of the services provided under that mark.

75. Plaintiff has not given Defendant consent, permission, or license to use the Stylized UHS Mark.

76. Defendant's use of the "UHS" mark has created and does create a likelihood of confusion, mistake, or deception among consumers with Plaintiff's Stylized UHS Mark.

77. To date, Defendant has not ceased using and has refused to agree to cease using the infringing "UHS" mark in violation of Plaintiff's rights to the exclusive use of its Stylized UHS Mark.

78. Defendant's wrongful acts alleged herein violated Plaintiff's rights under 15 U.S.C. § 1114(a).

79. Defendant's wrongful acts alleged herein have permitted and/or will permit Defendant to earn substantial revenues and profits on the strength of Plaintiff's Stylized UHS Mark.

80. By reason of Defendant's wrongful acts alleged herein, Plaintiff has suffered and is continuing to suffer damage to its business, trade, reputation, and goodwill as a result of the erroneous perception that the services of Defendant are affiliated with, sponsored by, approved by, or

originate from Plaintiff.

81. As a result of Defendant's wrongful acts alleged herein, Plaintiff has suffered and is continuing to suffer irreparable injury. Plaintiff cannot be adequately compensated for these injuries by damages alone, and Plaintiff has no adequate remedy at law for Defendant's infringement of its rights. Plaintiff is entitled to permanent injunctive relief, as well as attorneys' fees.

**COUNT IV**

**(Stylized UHS Mark – Federal unfair competition under 15 U.S.C. § 1125(a) and common law)**

82. Plaintiff repeats and realleges, as if fully set forth herein, each and every allegation contained in the foregoing paragraphs.

83. This claim arises under 15 U.S.C. § 1125(a) for unfair competition, including false designation of origin and palming off, and under Texas common law.

84. The Stylized UHS Mark is valid and enforceable, and has attained secondary meaning.

85. Defendant's use of the "UHS" mark has created and does create a likelihood of confusion, mistake, or deception with Plaintiff's Stylized UHS Mark.

86. Defendant has infringed, and continues to infringe, the Stylized

UHS Mark in interstate commerce, which use by Defendant tends to falsely describe and represent a false designation of origin with Plaintiff, and which tends to palm off Defendant's services as affiliated with, sponsored by, approved by, or originating from Plaintiff, and which tends to palm off Defendant's services as affiliated with, sponsored by, approved by, or originating from Plaintiff.

87. Defendant's acts demonstrate its intent both to palm off its services as affiliated with, sponsored by, or originating from Plaintiff, and to trade off the goodwill in Plaintiff's Stylized UHS Mark.

88. Defendant's wrongful acts alleged herein constitute unfair competition under 15 U.S.C. § 1125(a), and Plaintiff has been and will continue to be damaged by such unfair competition, suffering injury to its business, trade, reputation, and goodwill.

89. Defendant's wrongful acts alleged herein violate Texas common law, and Plaintiff's rights protected thereunder.

90. Defendant's unfair competition, false designation of origin will no doubt continue unless enjoined by this Court.

**COUNT V**  
**(UNIVERSAL HEALTH SERVICES word mark - Infringement under  
15 U.S.C. § 1114)**

91. Plaintiff repeats and realleges, as if fully set forth herein, each

and every allegation contained in the foregoing paragraphs.

92. This claim arises under 15 U.S.C. § 1114 for infringement of the UNIVERSAL HEALTH SERVICES word mark set forth in the '345 Registration (the "UNIVERSAL HEALTH SERVICES Mark")

93. The UNIVERSAL HEALTH SERVICES Mark set forth in the '345 Registration is a valid, protectable, and enforceable mark.

94. The UNIVERSAL HEALTH SERVICES Mark set forth in the '345 Registration has become incontestable under 15 U.S.C. § 1065.

95. Plaintiff has rights in its UNIVERSAL HEALTH SERVICES Mark set forth in the '345 Registration that are superior to any rights Defendant may have in the identical UNIVERSAL HEALTH SERVICES mark, which is used in connection with identical, similar, and/or related services.

96. Consumers associate the UNIVERSAL HEALTH SERVICES Mark set forth in the '345 Registration with Plaintiff as the single source of the services provided under that mark.

97. Plaintiff has not given Defendant consent, permission, or license to use the UNIVERSAL HEALTH SERVICES Mark.

98. Defendant's use of the "UNIVERSAL HEALTH SERVICES" mark creates a likelihood of confusion, mistake, or deception among

consumers with Plaintiff's UNIVERSAL HEALTH SERVICES Mark.

99. To date, Defendant has not ceased using the infringing "UNIVERSAL HEALTH SERVICES" mark in violation of Plaintiff's rights to the exclusive use of its UNIVERSAL HEALTH SERVICES Mark.

100. Defendant's wrongful acts alleged herein violated Plaintiff's rights under 15 U.S.C. § 1114(a).

101. Defendant's wrongful acts alleged herein have permitted and/or will permit Defendant to earn substantial revenues and profits on the strength of Plaintiff's UNIVERSAL HEALTH SERVICES Mark.

102. By reason of Defendant's wrongful acts alleged herein, Plaintiff has suffered and is continuing to suffer damage to its business, trade, reputation, and goodwill as a result of the erroneous perception that the services of Defendant are affiliated with, sponsored by, approved by, or originate from Plaintiff.

103. As a result of Defendant's wrongful acts alleged herein, Plaintiff has suffered and is continuing to suffer irreparable injury. Plaintiff cannot be adequately compensated for these injuries by damages alone, and Plaintiff has no adequate remedy at law for Defendant's infringement of its rights. Plaintiff is entitled to permanent injunctive relief, as well as attorneys' fees.

**COUNT VI**

**(UNIVERSAL HEALTH SERVICES word mark – Federal unfair competition under 15 U.S.C. § 1125(a) and common law)**

104. Plaintiff repeats and realleges, as if fully set forth herein, each and every allegation contained in the foregoing paragraphs.

105. This claim arises under 15 U.S.C. § 1125(a) for unfair competition, including false designation of origin and palming off, and under Texas common law.

106. The UNIVERSAL HEALTH SERVICES Mark is valid and enforceable, and has attained secondary meaning.

107. Defendant's use of the "UNIVERSAL HEALTH SERVICES" mark creates a likelihood of confusion, mistake, or deception with Plaintiff's UNIVERSAL HEALTH SERVICES Mark.

108. Defendant has infringed, and continues to infringe, the UNIVERSAL HEALTH SERVICES Mark in interstate commerce, which use by Defendant tends to falsely describe and represent a false designation of origin with Plaintiff, and which tends to palm off Defendant's services as affiliated with, sponsored by, approved by, or originating from Plaintiff, and which tends to palm off Defendant's services as affiliated with, sponsored by, approved by, or originating from Plaintiff.

109. Defendant's acts demonstrate its intent both to palm off its



services as affiliated with, sponsored by, or originating from Plaintiff, and to trade off the goodwill in Plaintiff's UNIVERSAL HEALTH SERVICES Mark.

110. Defendant's wrongful acts alleged herein constitute unfair competition under 15 U.S.C. § 1125(a), and Plaintiff has been and will continue to be damaged by such unfair competition, suffering injury to its business, trade, reputation, and goodwill.

111. Defendant's wrongful acts alleged herein violate Texas common law, and Plaintiff's rights protected thereunder.

112. Defendant's unfair competition, false designation of origin, and palming off will no doubt continue unless enjoined by this Court.

#### **COUNT VII**

**(In the alternative - Declaratory relief under 28 U.S.C. § 2201)**

113. Plaintiff repeats and realleges, as if fully set forth herein, each and every allegation contained in the foregoing paragraphs.

114. Plaintiff pleads Count VII in the alternative to Counts I – VI.

115. This claim arises under the Lanham Act, 15 U.S.C. §§ 1051 *et seq.* and 28 U.S.C. § 2201 for declaratory relief as to the parties' respective rights in the UHS Marks.

116. In response to Defendant's actions, counsel for UHS issued demand letters to Walls Universal. Counsel for Walls Universal responded

that it has certain rights to use of the UHS Marks.

117. The parties dispute whether Defendant possesses any rights to use the UHS Marks in connection with healthcare-related services in United States interstate commerce.

118. Plaintiff has filed the present action alleging that Defendant's infringing use of the UHS Marks creates a likelihood of confusion with Plaintiff's prior use of the UHS Marks. Thus, an actual and justiciable controversy exists between the parties that is ripe for adjudication.

119. An order of this Court will resolve this actual controversy by determining the rights and obligations of the parties as to use of the UHS Marks in connection with healthcare-related services in United States interstate commerce.

120. A declaration by this Court of the parties' respective rights and obligations as to the UHS Marks will serve to guide the future conduct of the parties with respect to the assertion, defense, and settlement of trademark infringement claims, and will further serve to prevent confusion among consumers of hospital and healthcare-related services and the public in general.

121. Therefore, declaratory relief is proper under 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure, and Plaintiff is entitled

to a declaration that, among the parties, Defendant has no right to use the UHS Marks in connection with healthcare-related services in the United States, or in the alternative it has exceeded any rights it has.

**DEMAND FOR JURY TRIAL**

122. Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, demand is hereby made for trial by jury on all issues triable to a jury.

**REQUEST FOR RELIEF**

WHEREFORE, UHS prays for the following relief:

- a. Judgment for UHS on its cause of action against Defendant for infringement of the UHS Word Mark under 15 U.S.C. § 1114;
- b. Judgment for UHS on its cause of action against Defendant for unfair competition regarding the UHS Word Mark under 15 U.S.C. § 1125(a);
- c. Judgment for UHS on its cause of action against Defendants for infringement of the Stylized UHS Mark under 15 U.S.C. § 1114;
- d. Judgment for UHS on its cause of action against Defendants for unfair competition regarding the Stylized UHS Mark under 15 U.S.C. § 1125(a);
- e. Judgment for UHS on its cause of action against Defendant for infringement of the UNIVERSAL HEALTH SERVICES Mark under 15

U.S.C. § 1114;

f. Judgment for UHS on its cause of action against Defendant for unfair competition regarding the UNIVERSAL HEALTH SERVICES Mark under 15 U.S.C. § 1125(a);

g. Injunctive relief against Defendant, its owners, officers, directors, agents, and employees and all those in active concert or participation with Defendant, including its manufacturers, distributors, and other business partners who receive actual notice of the judgment by personal service or otherwise, as follows:

- i. from further commercial use of the UHS Marks, either alone or in combination with other words, names, or symbols; on or in connection with the advertising, marketing, offering for sale, and sale of healthcare-related services, including without limitation use of the marks “UHS” and “UNIVERSAL HEALTH SERVICES” identified in this Complaint;
- ii. from performing or committing any other acts falsely representing Defendant’s services, or which are likely to cause confusion or mistake in the mind of the purchasing public, or lead purchasers or the trade to believe that

Defendant's services come from or are the services of UHS, or are somehow sponsored by, associated with, affiliated with, or connected with UHS, or that there is some relation, association, affiliation, or connection between UHS and Defendant;

- iii. from passing off, or inducing or enabling others to sell or pass off, Defendant's services as those of UHS; and
- iv. from otherwise unfairly competing with UHS, and from any other acts which discourage, dilute, or destroy the public's recognition of the UHS Marks; and
- v. from further use of the Internet domain name www.universalhealth.com and any and all domain names incorporating the terms "UHS", "UNIVERSAL HEALTH", "UNIVERSAL HEALTH SERVICES" or any confusingly similar variation thereof, and order Defendant to transfer any and all such domain names owned or controlled by Defendant to UHS; and
- vi. that upon final judgment, if in favor of UHS, this Court issue a Writ to the United States Marshall that directs the Marshall to seize and impound all of Defendant's

advertising materials used to infringe the UHS Marks, and that all of these items be destroyed.

h. An award of actual, multiple, exemplary, enhanced, and/or punitive damages, plus interest, and an accounting of and disgorgement of Defendant's profits, for Defendant's violations of 15 U.S.C. §§ 1114, 1125(a), and Texas common law;

i. In the alternative, UHS prays that this Court declare:

- i. That, as among the parties, UHS has priority in the UHS Marks in connection with healthcare-related services in the United States;
- ii. That, as among the parties, Defendant has no right to use the UHS Marks in connection with healthcare-related services in the United States;
- iii. That Defendant must immediately cease and desist from any and all uses of the UHS Marks in connection with healthcare-related services in the United States;
- iv. To the extent that this Court determines that, as against UHS, Defendant does have certain limited rights to use the UHS Marks in connection with healthcare-related services in the United States:

1. That Defendant's use of the UHS Marks has expanded beyond the limited scope and territory within which they have such rights;
  2. That Defendant's use of the UHS Marks on the Internet is an expansion beyond the limited scope and territory within which it has rights to use the UHS Marks;
  3. That Defendant must immediately cease and desist from any and all uses of the UHS Marks beyond the limited scope and territory within which they have rights to use the UHS Marks; and
  4. That upon UHS' entry into any geographic territory within which Defendant uses the UHS Marks beyond the limited scope and territory within which it has rights to use the UHS Marks, Defendant must immediately cease and desist from any and all uses of the UHS Marks in connection with healthcare-related services within that territory.
- j. An award of interest, including pre- and post-judgment interest,

and costs of this action, together with UHS' attorneys' fees; and

k. Such other and further relief as this Court deems just and proper.

Respectfully submitted, this the 20th day of September, 2013.

UHS OF DELAWARE, INC.

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