

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

URIEL PHARMACY HEALTH AND WELFARE
PLAN; and URIEL PHARMACY, INC., on their own
behalf and on behalf of all others similarly situated,

Plaintiffs,

v.

ADVOCATE AURORA HEALTH, INC. and
AURORA HEALTH CARE, INC.,

Defendants.

Case No. 2:22-cv-00610

PATRICK SHAW, DEBRA SHAW, and HALEY
SHAW, on their own behalf and on behalf of all others
similarly situated,

Plaintiffs,

v.

ADVOCATE AURORA HEALTH, INC. and
AURORA HEALTH CARE, INC.,

Defendants.

Case No. 2:24-cv-00157

**NON-PARTY UNITEDHEALTHCARE, INC.’S RESPONSE IN SUPPORT OF
MOTIONS TO RESTRICT**

Pursuant to General L.R. 79(d) and the Order Regarding Confidentiality (ECF No. 57, *Uriel*; ECF No. 26, *Shaw*), Non-Party UnitedHealthcare, Inc. (“United”) submits this Response in Support of Motions to Restrict. This Response pertains to three Motions to Restrict on the *Uriel* and *Shaw* dockets. On the *Uriel* docket, this includes ECF No. 231, Defendants’ Motion to File Under Restricted Access. On the *Shaw* docket, this includes ECF No. 139, Defendants’ Motion to

File Under Restricted Access, and ECF No. 141, Plaintiffs' Motion to File Under Restricted Access.

The documents and testimony which United seeks to maintain under restricted access have been narrowly tailored to include only those which contain United's confidential business information, trade secrets, and/or references thereto. For the reasons set forth below, United respectfully requests that the Court grant the Motions to Restrict with respect to the exhibits and restriction requests summarized in Charts A and B.

I. SUMMARY OF MATERIALS TO BE RESTRICTED

Materials which United provided to the parties pursuant to the Court-approved Protective Order (ECF No. 66, *Uriel*; ECF No. 25, *Shaw*) were used as exhibits in support of several filings on both the *Uriel* and *Shaw* dockets and were preliminarily filed under restricted access.

These filings include: (1) Defendants' Opposition to Plaintiffs' Motion for Class Certification¹, (2) Defendants' Opposition to Plaintiffs' Motion to Exclude Opinions Offered by Mr. Jonathan Orszag², (3) Plaintiffs' Opposition to Defendants' Motion to Exclude the Opinions of Louis F. Rossiter³, and (4) Plaintiffs' Memorandum in Response to Defendants' Motion to Exclude the Expert Testimony of Mark Wernicke.⁴

United identifies the confidential materials and restriction requests pertaining to these various Motions to Restrict in the charts below. United also notes that the documents at Chart A.2. and B.2. (which are the same item) and B.3. have previously been filed under restricted access and

¹ ECF No. 233, *Uriel*; ECF No. 142, *Shaw*.

² ECF No. 234, *Uriel*; ECF No. 143, *Shaw*.

³ ECF No. 145, *Shaw*.

⁴ ECF No. 151, *Shaw*.

were discussed in United’s Responses in Support of Motions to Restrict. *See* ECF No. 224, *Uriel*; ECF No. 127, *Shaw*.

CHART A: Motions to File Under Restricted Access in Support of Defendants’ Oppositions (ECF No. 231, <i>Uriel</i>; ECF No. 139, <i>Shaw</i>)	
Document	Restriction Request
1. Johnson Palmer Opposition Declaration, Ex. 31 – Excerpt of the deposition transcript of United’s 30(b)(6) witness, Joanne Beck	Redact from 175:1 to 175:2; 175:15 to 176:14; 177:4 to 177:11; 184:2 to 192:25; 249:16 to 250:8.
2. Johnson Palmer Opposition Declaration, Ex. 42 – Donovan Wackman Declaration	Redact Paragraphs 3 through 6.

CHART B: Motion to File Under Restricted Access in Support of Plaintiffs’ Oppositions (ECF No. 141, <i>Shaw</i>)	
Document	Restriction Request
1. Wernicke Opp.⁵ Ex. D – Supplemental Declaration of Donovan Wackman	Redact Paragraphs 3 through 11.
2. Reference to MTEW/MTER⁶ Ex. 34 – Donovan Wackman Declaration	Redact Paragraphs 3 through 6.
3. Reference to Ex. N to MTEO⁷ – Excerpt of the deposition transcript of United’s 30(b)(6) witness, Joanne Beck	Redact from 254:12 to 256:14.

⁵ As defined in the Motion to File Under Restricted Access, this is Plaintiffs’ Opposition to Defendants’ Motion to Exclude the Expert Testimony of Mark Wernicke (“Wernicke Opp,” ECF No. 147, *Shaw*).

⁶ As defined in the Motion to File Under Restricted Access, these are Defendants’ Motions to Exclude the Expert Testimony of Mark Wernicke (“MTEW,” ECF No. 113, *Shaw*) and Motion to Exclude the Opinions of Louis F. Rossiter, Ph.D (“MTER,” ECF No. 109, *Shaw*).

⁷ As defined in the Motion to File Under Restricted Access, this is Plaintiffs’ Motion to Exclude Portions of Mr. Orszag’s Opinions (“MTEO,” ECF No. 116, *Shaw*).

As set forth in the Motions to Restrict, United met and conferred with the parties to this action in a good faith attempt to limit the scope of the documents subject to sealing under this Motion pursuant to General Local Rule 79(d)(4). United understands that no party opposes continued restricted treatment.

II. LEGAL STANDARD

“General Local Rule 79(d) governs procedures for motions to restrict.” *Hydrite Chem. Co. v. Archangel Inc.*, No. 22-CV-266-PP, 2022 WL 16924542, at *1 (E.D. Wis. Nov. 14, 2022) (quoting *Ramos v. Cont'l Auto. Sys., Inc.*, No. 18-cv-1900-pp, 2020 WL 8617482, at *1 (E.D. Wis. Sept. 3, 2020)). Pursuant to this rule, “Any motion to restrict access or seal must be supported by sufficient facts demonstrating good cause for withholding the document or material from the public record.” General L.R. 79(d)(3). When the documents or materials sought to be restricted have been designated confidential by someone other than the filing party, “the party who wishes to preserve confidentiality is the nonmovant, then that party must file a response to the motion in which good cause is shown.” See Order Regarding Confidentiality (ECF No. 57, *Uriel*; ECF No. 26, *Shaw*). Good cause is established when the party “show[s] that the material reveals a trade secret or other information that may be withheld from the public record.” *Id.*

“Documents containing highly sensitive pricing information, sales figures, sales dollar amounts, profit and loss data, and other financial records not normally made known to the public may be properly filed under seal.” *Formax Inc. v. Alkar-Rapidpak-MP Equip., Inc.*, No. 11-C-0298, 2014 WL 792086, at *3 (E.D. Wis. Feb. 25, 2014). Moreover, sealing or restricting access “may be necessary where public disclosure of the information would effectively afford ‘other firms an unearned competitive advantage—unearned because the issue of public disclosure arises from the adventitious circumstance of the [document]’s having become caught up in litigation and as a

result having become filed in court.” *Id.* (quoting *SmithKline Beecham Corp. v. Pentech Pharms., Inc.*, 261 F. Supp. 2d 1002, 1008 (N.D. Ill. 2003)).

Even notwithstanding a showing of good cause, a court may also restrict access to documents when they are not particularly “relevant to the issues decided” by the court. *Uriel Pharmacy Health & Welfare Plan v. Advoc. Aurora Health, Inc.*, 348 F.R.D. 329, 342 (E.D. Wis. 2025). *See also Shekar v. Accurate Background, Inc.*, 428 F. Supp. 3d 9, 19 (E.D. Wis. 2019 (“Nonetheless, the documents themselves were irrelevant to my decision on the motion for class certification, and I did not review them. For this reason, they may remain restricted.”)).

III. STATEMENT IN SUPPORT OF RESTRICTING

United respectfully submits that the exhibits in Charts A and B should remain under restricted access for several reasons. First, United is a non-party to this litigation and it is unlikely that any of its materials are central to the issues before the Court. To the extent the materials are not necessarily or directly “relevant to the issues decided” in the underlying motions for class certification and motions to exclude testimony, they may properly remain under restricted access. *See Uriel*, 348 F.R.D. at 343. *See also Love v. Med. Coll. of Wisconsin*, No. 15-C-0650, 2020 WL 13199737, at *1 (E.D. Wis. June 29, 2020) (holding that certain documents “did not form the basis of my resolution of the parties’ motions . . . and may remain restricted”).

Second, upon meeting and conferring, all parties who have submitted United’s materials support their continued restriction. With respect to the United materials used in Defendants’ underlying motions, Defendants have agreed that they “contain references to, and discussions of, confidential business information such as sensitive, non-public, contracting terms and details of contract negotiations” and therefore “support the continued restricted access of these materials.” *See* ECF No. 232 at 9, *Uriel*; ECF No. 140 at 9, *Shaw*. Plaintiffs also support the continued

restriction of United materials used in their underlying motions despite having objected or taken no position as to the continued restriction of other documents. *See* ECF No. 141, *Shaw*. Thus, while merely referencing the Protective Order may be an insufficient basis for continued restriction, the fact that all sophisticated parties in this matter support continued restriction of this non-public business information substantiates United's position that good cause exists here.

Third, the exhibits contain United's confidential and sensitive business information which, if released to the public, would cause competitive harm. The two excerpts of the deposition transcript of United's 30(b)(6) witness, Joanne Beck (Chart A.1. and B.3.) detail the extent that United has entered into certain confidential contractual terms during its negotiations with certain health systems. If made public, competitors as well as other health care providers with whom United negotiates would obtain previously undisclosed knowledge of United's contract terms and related negotiating positions/strategy. Maintaining restricted access is therefore proper. *See, e.g., Hydrite*, 2022 WL 16924542, at *2 (restricting access to documents "where public disclosure would give other firms a competitive advantage").

The Donovan Wackman Declaration (Chart A.2. and B.2.) and the Supplemental Declaration of Donovan Wackman (Chart B.1.) contain specific information pertaining to how United sets prices for premiums on the insurance products it offers. The narrowly tailored redactions in each consist of testimony from a United representative describing the factors and considerations that United internally takes into account when setting its premiums. These exhibits contain the type of information which United regularly and intentionally keeps confidential to avoid providing competitors with an unearned advantage. Such information should not be publicly revealed to the harm of United (and the benefit of United's competitors) simply because United was compelled to respond by subpoena for such information in this action.

For the reasons set forth above, good cause indeed exists to support the continued restriction of these documents.

IV. CONCLUSION

For the foregoing reasons, United respectfully requests that this Court grant the Motions to Restrict at ECF No. 231 (*Uriel*) and ECF Nos. 139 and 141 (*Shaw*) with respect to the exhibits in Charts A-B of this Response and the corresponding restriction requests.

Dated: August 24, 2026

/s/ Judith A. Zahid

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