UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA *ex rel.* ANDREW SHEA, *Plaintiff,* v. eHEALTH, Inc., *et al.*, *Defendants.*	**Civil Action No. 21-cv-11777-DJC**

DEFENDANTS' CROSS MOTION FOR PROTECTIVE ORDER

Pursuant to Federal Rules of Civil Procedure 26(c) and the Local Rules of the United States District Court for the District of Massachusetts, Defendants eHealth, Inc., eHealthInsurance Services, Inc.; GoHealth, Inc.; SelectQuote, Inc.; Humana Inc.; Aetna Life Insurance Company; Aetna, Inc.; CVS Health Corp; and Elevance Health, Inc. request that the Court enter a protective order in the form attached hereto as Exhibit A to the memorandum of law in support of this cross motion.

Dated: July 29, 2026

Respectfully submitted,

/s/ Zachary R. Hafer
Zachary R. Hafer (BBO #569389)
Adam M. Katz (BBO #706834)
Timothy J. Conklin (BBO #710857)
Isabel C. McGrath (BBO #712925)
SIMPSON THACHER & BARTLETT LLP
855 Boylston Street
Boston, MA 02116
Telephone: (617) 778-9200
zachary.hafer@stblaw.com
adam.katz@stblaw.com
timothy.conklin@stblaw.com

/s/ Holly M. Conley
Enu Mainigi (*pro hac vice*)
Kenneth Brown (*pro hac vice*)
Holly M. Conley (*pro hac vice*)
Benjamin Hazelwood (*pro hac vice*)
Jeffrey G. Ho (BBO #714047)
WILLIAMS & CONNOLLY LLP
680 Maine Avenue SW
Washington, DC 20024
Telephone: (202) 434-5000
emainigi@wc.com
kbrown@wc.com

isabel.mcgrath@stblaw.com
Counsel to eHealth, Inc. and eHealthInsurance Services, Inc.

hconley@wc.com
bhazelwood@wc.com
jho@wc.com
Counsel to CVS Health Corporation, Aetna Life Insurance Company, and Aetna Inc.

/s/ Richard Westling
Richard Westling (*pro hac vice*)
PROSKAUER ROSE, LP
1001 Pennsylvania Ave., NW, Suite 600 South
Washington, DC 20004
Telephone: (202) 416-5876
rwestling@proskauer.com
Counsel to SelectQuote, Inc.

/s/ Erik W. Weibust
Erik W. Weibust (BBO #663270)
Clay Lee (*pro hac vice*)
EPSTEIN BECKER & GREEN PC
One Financial Center, Suite 1520
Boston, MA 02111
Telephone: (617) 603-1090
eweibust@ebglaw.com
clee@ebglaw.com
Counsel to SelectQuote, Inc.

/s/ Kelly Hibbert
Kelly H. Hibbert (admitted *pro hac vice*)
Emily A. Farmer (admitted *pro hac vice*)
BASS, BERRY & SIMS PLC
1201 Pennsylvania Ave., NW
Washington, DC 20004
Telephone: (202) 827-2950
Kelly.Hibbert@bassberry.com
Emily.Farmer@bassberry.com

Matthew M. Curley (admitted *pro hac vice*)
Scott D. Gallisdorfer (admitted *pro hac vice*)
Rebecca L. Guthrie (admitted *pro hac vice*)
BASS, BERRY & SIMS PLC
21 Platform Way South, Suite 3500
Nashville, TN 37203
Telephone: (615) 742-6200
Scott.Gallisdorfer@bassberry.com
MCurley@bassberry.com
Rebecca.Guthrie@bassberry.com
Counsel to Humana Inc.

/s/ Laura McLane
Laura McLane (BBO #644573)
David Gacioch (BBO #660784)
Mara Theophila (BBO #704763)
Natasha Dobrott (BBO #705287)
MCDERMOTT WILL & SCHULTE LLP
200 Clarendon Street, 58th Floor
Boston, MA 02116
Telephone: (617) 535-4410
lmclane@mcdermottlaw.com
dgacioch@ mcdermottlaw.com
mtheophila@ mcdermottlaw.com
ndobrott@ mcdermottlaw.com
Counsel to GoHealth, Inc.

/s/ Troy Barsky
Troy Barsky (*pro hac vice*)
CROWELL & MORING LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004
Telephone: (202) 624-2500
tbarsky@crowell.com

/s/ Lisa M. Noller
Lisa M. Noller (*pro hac vice*)
Patrick J. McMahon (*pro hac vice*)
Jamie Steven (BBO #705904)
FOLEY & LARDNER LLP
321 North Clark Street, Suite 3000
Chicago, Illinois 60654

Counsel to Humana Inc.

Telephone: (312) 832-4500
lnoller@foley.com
pmcmahon@foley.com
Counsel to Elevance Health, Inc.

/s/ Jonathan L. Kotlier
Jonathan L. Kotlier
Mariel T. Smith
NUTTER, MCCLENNEN & FISH, LLP
Seaport West 155 Seaport Boulevard
Boston, MA 02210
617-439-2000
Jkotlier@nutter.com
Msmith@nutter.com
Counsel to Humana Inc.

CERTIFICATE OF SERVICE

I hereby certify that that the above document was filed through the CM/ECF system and will be electronically sent to the registered participants as identified on the Notice of Electronic Filing (NEF) on this 29th day of July, 2026.

/s/ Jamie A. Steven
Jamie A. Steven

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA *ex rel.* ANDREW SHEA, *Plaintiff*, v. eHEALTH, Inc., *et al.*, *Defendants.*	)	**Civil Action No. 21-cv-11777-DJC**

DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR CROSS MOTION FOR PROTECTIVE ORDER

The parties agree there is good cause for entry of a protective order in this matter. Discovery in this False Claims Act ("FCA") action will include large volumes of confidential business and protected health information, the disclosure of which without protection would be harmful to parties and non-parties such as Medicare Advantage Plan enrollees. In addition, Defendants in this action are competitors in the healthcare insurance and insurance broker markets, which heightens the competitive sensitivity of the documents and information sought by the Government, and expected to be exchanged in discovery.[1] Defendants also previously produced confidential information during the pre-unsealing, investigative phase of this matter, which documents require continued protection.

For its part, the Government is seeking confidential treatment to protect operational information it claims bears upon the purportedly sensitive operations and analyses of the Centers

[1] Defendants Aetna Life Insurance Company, Humana Inc. and Elevance Health, Inc. ("Insurer Defendants"), as relevant here, sponsor Medicare Advantage plans that compete with each other. Aetna, Inc. and CVS Health Corporation are corporate family members of Aetna Life Insurance Company. Defendants eHealth, Inc., eHealth Insurance Services, Inc., GoHealth, Inc. and Select Quote, Inc. ("Broker Defendants") are healthcare insurance broker organizations that compete with each other. Not all Insurer Defendants have done business with all Broker Defendants.

for Medicare and Medicaid Services ("CMS"), the Office of Inspector General ("OIG"), the Office for Civil Rights ("OCR"), and the Department of Justice ("DOJ").

While the Parties agree on most of the provisions offered in the Proposed Protective Order (attached as Exhibit A), and notwithstanding numerous exchanged drafts and lengthy meet and confer conferences,[2] the Parties have reached an impasse on the four items discussed *infra* – all of which are important to protect Defendants' sensitive data and define processes for the efficient and orderly use of documents covered by the protective order, and none of which prejudice the Government.

Argument

Under Rule 26, the Court may, for good cause, issue an order "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." Fed. R. Civ. P. 26(c)(1). The order may forbid discovery, forbid "inquiry into certain matters, or limit[] the scope of disclosure or discovery." Fed. R. Civ. P. 26(c)(1)(D). Pursuant to Rule 26(c)(1)(G), the Court may issue an order "requiring that confidential . . . commercial information not be revealed or be revealed in a specified way."

Good cause is a flexible standard requiring "individualized balancing of the many interests that may be present." *Gill v. Gulfstream Park Racing Ass'n, Inc.*, 399 F.3d 391, 402 (1st Cir. 2005). "Rule 26(c) confers broad discretion on the trial court to decide when a protective order is appropriate and what degree of protection is required." *Gardner v. Cape Cod Healthcare, Inc.*, 344 F.R.D. 127, 132 (D. Mass. 2021) (quoting *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984)). The "good cause" standard merely requires "a particular factual demonstration of

[2] The Parties conferred on these issues via video conference on June 8 and July 1, 2026, and exchanged substantive written communications and/or proposals on June 12, 23, 24, July 1, 2, 7, 8, 13, 14, 15, and 21, 2026.

potential harm." *Baker v. Liggett Grp., Inc.*, 132 F.R.D. 123, 125 (D. Mass. 1990) (quoting *Anderson v. Cryovac, Inc.*, 805 F.2d 1, 7 (1st Cir. 1986)).

The FCA's Civil Investigative Demand ("CID") statute, 31 U.S.C. § 3733, provides protections for materials produced during the investigative phase of an FCA investigation. Specifically, subsection (k) exempts all documentary material, answers to interrogatories, and oral testimony provided under a CID from public disclosure under the Freedom of Information Act, 5 U.S.C. § 552, and subsection (i)(2)(C) restricts access to such materials to authorized personnel while in the Government's possession. Courts in government enforcement actions routinely enter protective orders that expressly cover materials produced in response to pre-litigation investigations. *See, e.g.*, *United States v. Anthem, Inc.*, No. 20-cv-2593 (S.D.N.Y.), ECF No. 485 at ¶ 12, Stipulation and Amended Protective Order (Apr. 27, 2026) (attached as Exhibit B) (providing "[i]nformation to be treated as 'CONFIDENTIAL' under this Order includes all materials, information and testimony labelled or otherwise designated as 'protected,' 'confidential' and/or 'proprietary' that have been produced or provided to the United States Attorney's Office . . . or Department of Justice in response to any Civil Investigative Demands or subpoenas in connection with the investigation underlying this action"); *United States ex rel. Camburn v. Novartis Pharmaceuticals Corp.*, No. 1:13-cv-3700 (S.D.N.Y.), ECF No. 61 at ¶¶ 1-2, Stipulated Confidentiality Agreement and Protective Order (Sept. 24, 2020) (attached as Exhibit C) (defining the protective order scope to include information produced or disclosed in the course of discovery "or otherwise" and expressly including materials produced in the investigation phase).

These principles of confidentiality also lead to full and transparent production, which, in turn, leads to more efficacious discovery and case progression. *See, e.g.*, *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 34 (1984) (confidentiality protections under Rule 26(c) serve the substantial governmental interest and are necessary "[b]ecause of the liberality of pretrial discovery permitted by Rule 26(b)(1)"). Notwithstanding the obvious need for a Protective Order in this case, the Government has refused Defendants' reasonable proposals on four issues critically important to safeguard Defendants' documents and information.

I. The Government Artificially Limits the Scope of Confidentiality (Paragraph 2(f)).

Defendants' Proposal	Government's Proposal
2(f) Trade secret or other confidential research, development, or commercial information	~~2(f) Trade secret or other confidential research, development, or commercial information~~

Defendants propose Paragraph 2(f) of the Proposed Protective Order define "Confidential Information" to include "[t]rade secret or other confidential research, development, or commercial information." This language is drawn directly from Federal Rule of Civil Procedure 26(c)(1)(G), which authorizes the Court to issue a protective order "requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way."

It is surprising the Government objects to this protection. Its position, as expressed in meet and confer conferences and the Parties' written correspondence, is that by including Rule 26(c)(1)(G) language in the Protective Order, Defendants will have license to over-designate documents as confidential, thereby triggering the Proposed Protective Order's sealing procedures for a disproportionate volume of material. However, many courts have interpreted this Rule 26 language,[3] and the Government itself has entered into protective orders in the District of

[3] *See, e.g.*, *Fed. Open Mkt. Comm. of Fed. Rsrv. Sys. v. Merrill*, 443 U.S. 340, 356 (1979) (observing courts have long recognized a qualified evidentiary privilege for trade secrets and other confidential commercial information); *GTE Prods. Corp. v. Gee*, 112 F.R.D. 169, 172 (D. Mass. 1986) (interpreting "trade secret or other confidential research, development or commercial information"); *Haemonetics Corp. v. Baxter Healthcare Corp.*, 593 F. Supp. 2d 298, 302 (D. Mass. 2009) (interpreting and ruling favorably on a protective order containing the same language); *ITT Electro-Optical Prods. Div. of ITT Corp. v. Elec. Tech. Corp.*, 161 F.R.D. 228, 231 (D. Mass. 1995) (same); *Ares-Serono, Inc. v. Organon Int'l B.V.*, 151 F.R.D. 215, 219 (D. Mass. 1993) (same and collecting cases).

Massachusetts where this exact language is present. *See, e.g.*, *United States v Regeneron Pharmaceuticals, Inc.*, No. 1:20-cv-11217, ECF No. 54 at ¶ 2(c), Stipulated Confidentiality Agreement and Protective Order at §2(c) (Mar. 15, 2021) (attached as Exhibit D) (defining Confidential as, *inter alia*, "[t]rade secret or other confidential research or development information, or commercial information . . . ."). Notably, the Government has referenced the *Regeneron* protective order as an exemplar in meet and confer conferences and the Parties' written correspondence for *other* provisions of the Proposed Protective Order but has not articulated a basis for opposing its Confidentiality language.

This protection is needed here because the documents already produced in the investigation phase and requested discovery in the litigation phase include the exchange of competitively sensitive information, including margin and pricing details, market analyses and strategies, customer data, compensation structures, and other sensitive internal business communications. Here, where Defendants compete directly among themselves, and without an appropriately scoped definition of confidentiality, a producing Defendant faces the risk that confidential information would be made public or shared with its competitor and thereafter used to secure a competitive advantage. This is precisely the harm Rule 26(c)(1)(G) is designed to prevent. *See supra*, fn. 3.

Moreover, the Government's concern the Rule 26(c)(1)(G) language could be applied too broadly is addressed by other provisions of the Proposed Protective Order. It includes a challenge procedure which is not in dispute, *see* Proposed Protective Order at Paragraph 5, and it permits any party to contest a confidentiality designation at any time, *see* Proposed Protective Order at Paragraph 4c. If the Government believes a particular document has been improperly designated, it may invoke this procedure and, if necessary, seek a ruling from the Court. This safeguard ensures the definition of confidentiality is not self-executing or unreviewable. In addition, the sealing procedure proposed by Defendants, discussed at Section **Error! Reference source not found.**, *infra*, provides a practical and clear framework that should allay any over-designation concerns. That is, it allows a filing party to simply contact the producing party to determine their position as to whether sealing would be required. In the event a producing party maintains the document is protected, then it would be required to support that position on the record.

II. The Government Refuses a Commonsense Data Breach Provision (Paragraph 14).

Defendants' Proposal	Government's Proposal
14. Data Breaches or Other Unauthorized Disclosures of Designated Material: In the event a party becomes aware of any data breach, security incident, or other event that results in potential unauthorized access, use, disclosure, exfiltration or copying of Confidential or Highly Confidential information in its possession by a third party (a "Breach"), that party shall promptly provide written notice within three (3) business days after discovery of the Breach to the producing party. Nothing in this provision waives any rights or remedies available to the producing party at law or in equity.	~~**14. Data Breaches or Other Unauthorized Disclosures of Designated Material:** In the event a party becomes aware of any data breach, security incident, or other event that results in potential unauthorized access, use, disclosure, exfiltration or copying of Confidential or Highly Confidential information in its possession by a third party (a "Breach"), that party shall promptly provide written notice within three (3) business days after discovery of the Breach to the producing party. Nothing in this provision waives any rights or remedies available to the producing party at law or in equity.~~

Defendants propose the Proposed Protective Order include a data breach notification provision at Paragraph 14 requiring any party that becomes aware of a data breach or security incident resulting in potential unauthorized access to Confidential or Highly Confidential information provide written notice to the producing party within three business days.

Defendants' proposal is not hypothetical or speculative. In *United States v. Anthem*, No. 20-cv-2593 (S.D.N.Y.), a False Claims Act case in which the Government is a party, a *DOJ contractor* suffered a data breach that compromised confidential materials Anthem had produced to the Government in discovery in that litigation. *See id.*, ECF No. 232 at 3-4 (attached as Exhibit E). Anthem was not notified of the breach until nearly a month after the DOJ contractor detected the breach even though the DOJ contractor notified the DOJ within 3 days of it happening. Coincidentally, the civil litigation class action arising from that breach was litigated in this district and before this Court. *See In Re Greylock McKinnon Associates Data Security Incident Litigation*, No. 1:24-cv-10797 (D. Mass.). Defendants' proposed Paragraph 14 is designed to mitigate the same plight: if a producing party's confidential information is breached, a court-ordered notification obligation requires notification to the producing party so it can take immediate steps to assess the scope of the exposure and mitigate any resulting harm. The breach in *U.S. v Anthem* informs Defendants' insistence on this provision, and the Government's categorical refusal to include any breach notification language, in the face of this concrete, recent example, is unreasonable.

In its categorical refusal to include the breach provision, the Government has contended a data breach provision is "novel" in FCA litigation in this District. First, as described above, it is not a new issue. Second, novelty is not a basis for exclusion, and while provisions like this might seem novel for the Government, they are not novel in this or other courts, nor where the Government was a party and its contractor caused the breach. *See*, *e.g.*, *Alexandria Real Estate Equities, Inc. v. DePippo*, No. 1:25-cv-10708-RGS (D. Mass., Nov. 19, 2025) (ECF No. 025 at ¶10) (attached as Exhibit F) (unauthorized disclosure notification obligation requiring immediate written notice to the Designating Party); *Ellen M. v. Horizon Blue Cross Blue Shield of New Jersey*, No. 4:25-cv-11501-MRG (D. Mass., Jan. 27, 2026) (ECF No. 037 at ¶9) (attached as Exhibit G) (unauthorized disclosure provision requiring immediate notification to the producing party); *Kashef v. BNP Paribas S.A.*, No. 1:16-cv-03228-AKH (S.D.N.Y., Nov. 18, 2024) (ECF No 591 at ¶11) (Exhibit H) (requiring written notification of breach to the government within 48 hours); *Anthem*, No. 1:20-cv-02593 (ECF No. 485 at ¶18) (requiring immediate notification of breach).

The Government also has argued the parties already have a duty to protect Confidential information, rendering the provision unnecessary. But Defendants' provision relates to timely notification of a breach of Confidential information, not the Parties' duties to protect it, which no one disputes. The Government also claims breach notification might harm remedial efforts or government investigations. This concern is entirely hypothetical. The Government has identified no basis, and none exists, for the proposition that notifying a producing party that its own documents have been compromised would interfere with any remedial effort or investigation. To the contrary, timely notification enables the producing party to assist in remediation, assess the scope of the exposure, and take steps to mitigate harm. This speculative concern cannot justify withholding from a producing party the basic information that its confidential materials have been breached.

III. The Protective Order Should Apply to Investigation Materials.

The Government has been investigating Defendants in this matter since at least 2021. During the sealed phase of the matter, it issued subpoenas and CIDs, and competitor defendants (and third parties) produced thousands of documents. The Proposed Protective Order should apply in full to documents produced during the pre-litigation investigative phase ("Investigation Materials"), just as it applies to documents produced in litigation discovery. Two sub-issues are in dispute: (a) whether Paragraph 1 of the Proposed Protective order should remove the qualifier "in response to a discovery request," which serves to exclude Investigation Materials; and (b) whether the Proposed Protective Order's inadvertent production protections of privileged materials should apply to Investigation Materials.

A. Scope of the Proposed Protective Order (Paragraph 1)

Defendants' Proposal	**Government's Proposal**

1. This Stipulated Confidentiality Agreement and Protective Order ("Order") shall govern all information produced, whether formally or informally, in or related to the above-captioned litigation ("Action").	1. This Stipulated Confidentiality Agreement and Protective Order ("Order") shall govern all information produced in response to a discovery request, whether formal~~ly~~ or informal~~ly~~, in or related to the above-captioned litigation ("Action").

The Government insists Paragraph 1 of the Proposed Protective Order limit its scope to materials produced "in response to a discovery request." Defendants propose striking that qualifier so the Order applies all materials exchanged in connection with this matter, including documents produced during the Government's investigation pursuant to CIDs, subpoenas, or voluntary productions. The Government agrees some form of protection should apply to Investigation Materials—indeed, the Government proposed "[i]nformation to be treated as Confidential under this Order includes all Previously Produced Documents labeled as 'protected,' 'confidential,' 'proprietary,' or a similar designation." The present dispute is not whether Investigation Materials should be protected, but how.

Defendants' approach is the more straightforward and administrable of the two proposals. There is no principled reason to treat Investigation Materials differently from Litigation Materials for purposes of the Proposed Protective Order's confidentiality protections. The same competitively sensitive business information—pricing data, customer information, internal strategies, and protected health information—appears in documents produced during both phases. A document does not become less confidential because it was produced in response to a CID or subpoena rather than a Rule 34 request. The Order should apply uniformly to all materials exchanged in connection with this matter, regardless of when or under what procedural mechanism they were produced.

The Government's alternative is to preserve previously applied confidentiality labels on Previously Produced Documents while excluding those materials from the remaining provisions of the Protective Order. In other words, the Government proposes that documents produced during the investigation as Confidential be treated as such under the Protective Order, but none of the other provisions and protections of the Protective Order would apply to those documents. *See* Ex. I, Declaration of Patrick McMahon at ¶ 3. This introduces unnecessary complexity, requiring the Parties and the Court to track two parallel regimes: one for Investigation Materials and one for Litigation Materials, with each potentially governed by different provisions. For example, under the Government's proposal, documents produced in the investigative phase would not be subject to the Termination provision (Paragraph 19) that requires the destruction or return of Confidential Information. This is particularly problematic since a HIPAA-Qualified Protective Order requires such a provision. *See* 45 C.F.R. § 164.512(e)(1)(v) (defining a qualified protective order to require the return or destruction of protected health information at the end of a litigation or proceeding).

In addition, the Government did not provide any pathway to negotiate a confidentiality agreement with Defendants during the investigation stage. During that phase, Defendants, who were each faced with the Government's requests for sensitive commercial and beneficiary information, were left to apply their own confidentiality designations without the benefit of an agreed-upon framework or court order defining the scope and terms of protection, much less any recognition of the fact that the Government was confidentially investigating multiple competing entities. The Government suggests Defendants are somehow entitled to less protection for those documents now that it has sued Defendants in open court. This bifurcation does not make sense: this matter is proceeding as contested litigation involving six market competitors exchanging competitively sensitive materials, and as such there is a compelling need for a protective order that governs all documents—including those the Government required be produced during the investigation—on uniform terms.

Moreover, as discussed above, federal courts in government enforcement actions routinely enter protective orders that expressly cover Investigation Materials alongside Litigation Materials. *See, e.g.*, *Anthem, Inc.*, No. 20-cv-2593 (ECF No. 485 at ¶ 12) (Ex. B) (defining the scope to include any materials exchanged in the pre-trial phase and expressly including materials produced in the investigation phase); *Camburn*, No. 1:13-cv-3700 (ECF No. 61 at ¶¶ 1-2) (Ex. C) (defining the protective order scope to include information produced or disclosed in the course of discovery "or otherwise" and expressly including materials produced in the investigation phase). There is no reason to depart from that practice here.

B. Inadvertent Production Protections (Paragraph 16)

Defendants' Proposal	**Government's Proposal**
16. No Waiver of Privilege or Protection. If information subject to a good faith claim of any privilege or protection (including the attorney-client privilege, work product protection, and governmental privileges such as deliberative process, investigatory files, and official privileges) is inadvertently or mistakenly produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any assertion of privilege or protection for such information as provided under applicable law, including Federal Rule of Evidence 502.	**15~~6~~. No Waiver of Privilege or Protection.** If information subject to a good faith claim of any privilege or protection (including the attorney-client privilege, work product protection, and governmental privileges such as deliberative process, investigatory files, and official privileges) is ~~inadvertently or mistakenly~~ produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any assertion of privilege or protection for such information as provided under applicable law, including Federal Rule of Evidence 502, and the provisions of Federal Rule of Evidence 502(b) shall not apply to any disclosure governed by the Order.

The Proposed Protective Order includes a provision governing the inadvertent production of privileged or work product-protected documents under Federal Rule of Evidence 502(d). Defendants propose the inadvertent-production framework apply uniformly to all materials governed by the Order, including Investigation Materials, under the standard set forth under Rule 502(b). Under this approach, any party that inadvertently produces a privileged or work product-protected document, whether during the investigation phase or in litigation discovery, may invoke the clawback procedure, and the standard for evaluating whether the privilege has been waived would be the same regardless of when or under what procedural mechanism the document was produced. Any dispute over whether a particular privilege has been waived would be resolved under the applicable law of privilege waiver on its merits.

The Government proposes a "No-Fault" clawback (i.e., no showing of inadvertence would be required), but only for documents produced during the litigation phase. The Government refuses to allow for a No-Fault clawback to apply to Investigation Materials, contending that any privilege or protection was likely waived, ostensibly due to the passage of time. The Government's argument fails for two reasons: First, the Government points to no law or authority to support its position that Defendants would have waived any privileged material that is presently unknown to them simply because Defendants produced it during the investigation period. Second, the Government's argument conflates two distinct concepts: a clawback mechanism addresses the *procedural right* to *retrieve* a produced document, whereas waiver addresses whether *the privilege itself has been forfeited*. A clawback provision does not immunize a party from a waiver challenge; it simply establishes a procedure for returning a document and preserving the status quo while the parties or the Court resolve the privilege question on the merits. The fact that documents were produced during a related investigation does not mean that privilege has been waived or that the consequences are any less severe because the production happened earlier in time.

Moreover, the Government's proposal is fundamentally unfair. Under its approach, the Government would receive an asymmetrical benefit under their proposal because all of its document productions will occur in this litigation, while Defendants would only receive a patchwork: No-Fault clawback protection for documents produced in litigation, but a requirement to show inadvertence under Rule 502(b) in the event a Defendant needs to claw back a document that was produced during the investigation. Defendants' proposal to apply the same inadvertent-production framework uniformly to all materials for all Parties is fair, workable, and consistent with the Federal Rules of Civil Procedure and Evidence.

IV. The Government Unreasonably Rejected Basic Sealing Procedures (Paragraph 11).

Defendants' Proposal	Government's Proposal
11. Filing Under Seal. A Party seeking to file another party's Confidential or Highly Confidential information may provide the producing party notice of the Confidential or Highly Confidential information that it intends to use no later than the day of filing. Unless the producing party consents to a request to file said information in the public record, the filing party shall file the information provisionally under seal in compliance with Local Rule 7.2. The producing party shall have fourteen (14) days from the day of filing in which to file a motion pursuant to Local Rule 7.2 to keep such papers under seal. If the producing party does not file such a motion within this period, the papers shall be unsealed. If the producing party moves to keep papers under seal, the papers with the designated Confidential or Highly Confidential information, or with any references to the Confidential or Highly Confidential information, will remain under seal until the Court rules on the motion to seal. Notwithstanding the foregoing, nothing in this paragraph prevents a Party from obtaining the written consent of the producing party in advance of filing to file its Confidential or Highly Confidential information in the public record. Natural persons' cell phone numbers may be redacted in public filings as an alternative to filing under seal.	**11. Filing Under Seal.** A Party seeking to file another party's Confidential or Highly Confidential information ~~may~~shall provide the producing party notice of the Confidential or Highly Confidential information ~~that~~ it intends to use ~~no later than the~~at least three (3) business days ~~of~~prior to filing. ~~Unless~~ The producing party ~~consents to a~~shall then have three (3) business days in which either to consent to the request to file said information in the public record~~, the filing party shall file the information provisionally under seal in compliance with Local Rule 7.2. The producing party shall have fourteen (14) days from the day of filing in which~~ or to file a motion pursuant to Local Rule 7.2 to keep such papers under seal~~. If the producing party does not file such a motion within this period, the papers shall be unsealed~~. If the producing party moves to keep papers under seal, the papers with the designated Confidential or Highly Confidential information under seal, or with any references to the Confidential or Highly Confidential information, will ~~remain~~be filed under seal or redacted, as appropriate, until the Court rules on the motion to seal. Notwithstanding the ~~foregoing, nothing in this paragraph prevents a Party from obtaining the written consent of the producing party in advance of filing to file its Confidential or Highly Confidential information in the public record.~~above, natural persons' cell phone numbers may be redacted

	in public filings as an alternative to filing under seal.

Defendants propose Paragraph 11 of the Proposed Protective Order establish the following procedure for filing Confidential or Highly Confidential information with the Court: (1) the filing party provides the producing party notice of the Confidential or Highly Confidential information it intends to use no later than the day of filing; (2) unless the producing party consents to public filing, the filing party files the information provisionally under seal in compliance with Local Rule 7.2; (3) the producing party has fourteen days to file a motion pursuant to Local Rule 7.2 to keep the papers under seal; (4) if no such motion is filed within the fourteen-day period, the papers are unsealed; and (5) if the producing party moves to keep the papers sealed, they remain under seal until the Court rules on the motion. The Proposed Protective Order also expressly permits the parties to obtain advance written consent from the producing party to file Confidential or Highly Confidential information in the public record, thereby avoiding the provisional sealing process altogether.

Defendants' proposal is not uncommon. Indeed, the Model Protective Orders for Magistrate Judge Boal and Magistrate Judge Levenson do not prescribe multi-day notifications ahead of filing like the Government's proposal. *See* Standing Order Re Protective Orders, M.J. Boal, (attached as Exhibit J) available at https://www.mad.uscourts.gov/boston/pdf/boal.htm (requiring the filing party to "confer with counsel for the designating party as to whether filing under seal is necessary for the particular material at issue" before filing, but does not specify any minimum advance notice period); Standing Order Regarding Motions for Leave to File Under Seal and Stipulated Protective Orders, M.J. Levenson, (attached as Exhibit K) available at https://www.mad.uscourts.gov/boston/levenson.htm (instructing parties to confer "when feasible" prior to filing, but not prescribing a minimum advance notice).

Defendants' proposed sealing procedure protects the interests of all Parties. It protects producing parties by ensuring their confidential information is not publicly disclosed before they have the opportunity to be heard. It protects filing parties by providing a clear, workable process that does not require multi-day pre-clearance of every filing and further avoids requiring a party to make exhibit decisions days before that filing's deadline. And it protects the public's interest in access to judicial proceedings by requiring every sealing request to be independently justified under Local Rule 7.2 and by automatically unsealing any material for which no motion is filed. The Court should adopt Defendants' proposed Paragraph 11.

The Government objects to this procedure, suggesting it amounts to a "blanket" sealing order prohibited by Local Rule 7.2(d). *See* Ex I, Declaration of Patrick McMahon at ¶ 3. The Government is incorrect. Local Rule 7.2(d) provides "[t]he court will not enter blanket orders that counsel for a party may at any time file material with the clerk, marked confidential, with instructions that the clerk withhold the material from public inspection." Defendants' proposal does not authorize any party to unilaterally file material under seal in perpetuity. To the contrary, it requires a producing party that wishes to maintain a seal to affirmatively move for that relief under Local Rule 7.2 within fourteen days, failing which the material automatically is unsealed. The burden of justifying the seal remains with the producing party, and the Court retains full authority to deny the motion if the producing party cannot demonstrate sealing is warranted. Far from a "blanket order," Defendants' proposal is a procedural mechanism that ensures the Court will adjudicate sealing requests on a case-by-case basis while preventing the public disclosure of confidential information during the brief period needed for the producing party to be heard.

The Government's position also is that the scope of confidentiality and the sealing procedure are inextricably linked; that is, the Government contends it cannot evaluate the sealing procedure without first resolving the confidentiality definition, because a broader definition could result in more sealed filings. *See* Ex. I, Declaration of Patrick McMahon at ¶ 4. But this conflates two distinct issues. The confidentiality definition in Paragraph 2 governs what information the parties must protect during the exchange of discovery materials and the sealing procedure in Paragraph 11 governs how the parties handle that information when it is submitted to the Court. The latter does not depend on the former because the sealing procedure includes two important and independent safeguards: (1) the filing party simply contacts the producing party to determine their position as to whether sealing would be required; if it is, then (2) the producing party must justify the seal under Local Rule 7.2. If a producing party over-designates documents as confidential, it will bear the burden of supporting that designation when it moves to seal, and the Court can deny the motion.

Conclusion

The parties agree good cause exists for a protective order in this case and even agree on much of the Proposed Protective Order's provisions. But the Government has refused Defendants' reasonable proposals on four discrete issues, each of which is supported by the text of the Federal Rules, by the practice of courts in this District and elsewhere, and by the particular circumstances of this multi-defendant False Claims Act action involving a three-year Government investigation, the unusual decision to bring a single industry-wide action against six competitors, and protected health information. Accordingly, Defendants respectfully request that the Court grant their Motion and enter the Proposed Protective Order in the form attached as Exhibit A.

Dated: July 29, 2026 Respectfully submitted,

<u>*/s/ Zachary R. Hafer*</u>
Zachary R. Hafer (BBO #569389)
Adam M. Katz (BBO #706834)
Timothy J. Conklin (BBO #710857)
Isabel C. McGrath (BBO #712925)
SIMPSON THACHER & BARTLETT LLP
855 Boylston Street
Boston, MA 02116
Telephone: (617) 778-9200
zachary.hafer@stblaw.com
adam.katz@stblaw.com
timothy.conklin@stblaw.com
isabel.mcgrath@stblaw.com
Counsel to eHealth, Inc. and eHealthInsurance Services, Inc.

<u>*/s/ Holly M. Conley*</u>
Enu Mainigi (*pro hac vice*)
Kenneth Brown (*pro hac vice*)
Holly M. Conley (*pro hac vice*)
Benjamin Hazelwood (*pro hac vice*)
Jeffrey G. Ho (BBO #714047)
WILLIAMS & CONNOLLY LLP
680 Maine Avenue SW
Washington, DC 20024
Telephone: (202) 434-5000
emainigi@wc.com
kbrown@wc.com
hconley@wc.com
bhazelwood@wc.com
jho@wc.com
Counsel to CVS Health Corporation, Aetna Life Insurance Company, and Aetna Inc.

<u>*/s/ Richard Westling*</u>
Richard Westling (*pro hac vice*)
PROSKAUER ROSE, LP
1001 Pennsylvania Ave., NW, Suite 600 South
Washington, DC 20004
Telephone: (202) 416-5876
rwestling@proskauer.com
Counsel to SelectQuote, Inc.

<u>*/s/ Erik W. Weibust*</u>
Erik W. Weibust (BBO #663270)
Clay Lee (*pro hac vice*)
EPSTEIN BECKER & GREEN PC
One Financial Center, Suite 1520
Boston, MA 02111
Telephone: (617) 603-1090
eweibust@ebglaw.com
clee@ebglaw.com
Counsel to SelectQuote, Inc.

/s/ Kelly Hibbert
Kelly H. Hibbert (admitted *pro hac vice*)
Emily A. Farmer (admitted *pro hac vice*)
BASS, BERRY & SIMS PLC
1201 Pennsylvania Ave., NW
Washington, DC 20004
Telephone: (202) 827-2950
Kelly.Hibbert@bassberry.com
Emily.Farmer@bassberry.com

Matthew M. Curley (admitted *pro hac vice*)
Scott D. Gallisdorfer (admitted *pro hac vice*)
Rebecca L. Guthrie (admitted *pro hac vice*)
BASS, BERRY & SIMS PLC
21 Platform Way South, Suite 3500
Nashville, TN 37203
Telephone: (615) 742-6200
Scott.Gallisdorfer@bassberry.com
MCurley@bassberry.com
Rebecca.Guthrie@bassberry.com
Counsel to Humana Inc.

/s/ Laura McLane
Laura McLane (BBO #644573)
David Gacioch (BBO #660784)
Mara Theophila (BBO #704763)
Natasha Dobrott (BBO #705287)
MCDERMOTT WILL & SCHULTE LLP
200 Clarendon Street, 58th Floor
Boston, MA 02116
Telephone: (617) 535-4410
lmclane@mcdermottlaw.com
dgacioch@ mcdermottlaw.com
mtheophila@ mcdermottlaw.com
ndobrott@ mcdermottlaw.com
Counsel to GoHealth, Inc.

/s/ Troy Barsky
Troy Barsky (*pro hac vice*)
CROWELL & MORING LLP
1001 Pennsylvania Ave., NW
Washington, DC 20004
Telephone: (202) 624-2500
tbarsky@crowell.com
Counsel to Humana Inc.

/s/ Lisa M. Noller
Lisa M. Noller (*pro hac vice*)
Patrick J. McMahon (*pro hac vice*)
Jamie Steven (BBO #705904)
FOLEY & LARDNER LLP
321 North Clark Street, Suite 3000
Chicago, Illinois 60654
Telephone: (312) 832-4500
lnoller@foley.com
pmcmahon@foley.com
Counsel to Elevance Health, Inc.

/s/ Jonathan L. Kotlier
Jonathan L. Kotlier
Mariel T. Smith
NUTTER, MCCLENNEN & FISH, LLP
Seaport West 155 Seaport Boulevard
Boston, MA 02210
617-439-2000
Jkotlier@nutter.com
Msmith@nutter.com
Counsel to Humana Inc.

LOCAL RULE 37.1 CERTIFICATE

I hereby certify that the provisions of Local Rule 37.1 have been complied with. On June 8 and July 1, 2026, counsel for Defendants conferred with Government's counsel via video conference to attempt to narrow the issues presented in the Motion for the Court's consideration. The parties also corresponded by email on the issues presented in the Motion on June 12, 23, 24, July 1, 2, 7, 8, 13, 14, 15, 21 and 29, 2026, but remain at an impasse on the disputed items at issue in the Motion.

/s/ Jamie A. Steven
Jamie A. Steven

CERTIFICATE OF SERVICE

I hereby certify that that the above document was filed through the CM/ECF system and will be electronically sent to the registered participants as identified on the Notice of Electronic Filing (NEF) on this 29th day of July, 2026.

/s/ Jamie A. Steven
Jamie A. Steven

Defendants' Proposal

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA *ex rel.*, ANDREW SHEA,	)	
Plaintiff,	)	
v.	)	Civil Action No. 21-cv-11777-DJC
eHEALTH, Inc., *et al.*,	)	
Defendants.	)	

[PROPOSED] STIPULATED CONFIDENTIALITY AGREEMENT
AND PROTECTIVE ORDER

The United States and Defendants eHealth, Inc., eHealthInsurance Services, Inc.; GoHealth, Inc.; SelectQuote, Inc.; Humana Inc.; CVS Health Corporation; Aetna Life Insurance Company; Aetna Inc.; and Elevance Health, Inc. (collectively, the "Parties"), by their undersigned Counsel, hereby stipulate pursuant to Federal Rules of Civil Procedure 26 and 34, subject to approval and entry by the Court, as follows:

1. This Stipulated Confidentiality Agreement and Protective Order ("Order") shall govern all information produced, formally or informally, in or related to the above-captioned litigation ("Action").

2. **Definition of Confidential Information.** The designation "Confidential" shall be limited to information that any producing party, including any third party, in good faith believes to contain:

a. "Confidential Health Information." For the purposes of this Order, "Confidential Health Information" shall mean any document or information supplied in any form, or any portion thereof, that identifies an individual in any manner and related to the past, present, or future care, services, or supplies relating to the physical or mental health or condition of such individual, the provision of health care to such individual, or the past, present, or future payment for the provision of health care to such individual. "Confidential Health Information" specifically includes "protected health information" and "individually identifiable health information" as such terms are defined by the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160, promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996. "Confidential Health Information" includes, but is not limited to, medical bills, claims forms, charge sheets, medical records, medical charts, test results, notes, dictation, invoices, itemized billing statements, remittance advice forms, explanations of benefits, checks, notices, and requests. "Confidential Health Information" also includes all notes, summaries, compilations, extracts, abstracts, or oral communications that contain, are based on, or are derived from "Confidential Health Information." "Confidential Health Information" also includes material subject to the provisions of the Privacy Act, 5 U.S.C. § 552a, or to the provisions of 45 C.F.R. Part 164. "Confidential Health Information" also includes any materials covered by the privacy laws of any individual states as applicable. In order to facilitate the production of "Confidential Health Information," a producing party may produce "Confidential Health Information" to any Party in this Action in unredacted form without such production constituting a waiver of confidentiality;

b. commercial or operational information that bears upon a Party's or a third party's competitive position or sensitive operations;

c. Personnel files of employees of a producing party;

d. "Personal Information," as that term is defined in the Massachusetts Data Security Regulation, 201 C.M.R. 17.02, except that this definition will apply to residents of any jurisdiction (not only Massachusetts), and shall include natural persons' cell phone numbers;

e. To the extent not included in the categories above, financial account numbers; and

f. Trade secret or other confidential research, development, or commercial information.

3. **Definition of Highly Confidential Information.** "Highly Confidential" information, which shall be designated "Highly Confidential – Attorneys' Eyes Only," means trade secrets or other commercial or operational information, including information related to the Medicare Advantage bid process, that any producing party, including any third party, in good faith believes to be extremely confidential and/or extremely sensitive in nature.

4. **Designation of Protected Information.** The designation of information as Confidential or Highly Confidential shall be performed in the following manner:

a. A producing party may designate produced information as Confidential by placing on or affixing to a document containing protected information the phrase "CONFIDENTIAL" on each page of the document entitled to such designation (in such manner as will not interfere with the legibility thereof). For those documents which contain Confidential Health Information, the producing party may instead use the phrase "CONFIDENTIAL – CONTAINS PHI."

b. A producing party may designate produced information as Highly Confidential by placing on or affixing to a document containing protected information the phrase "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" on each page of the document entitled to such designation (in such manner as will not interfere with the legibility thereof).

c. The Parties understand and acknowledge that documents produced to the United States prior to the entry of this Order during investigations relating to this Action, including documents produced by Defendants and third parties (together, "Previously Produced Documents"), that have been marked as confidential may or may not contain Confidential or Highly Confidential information under the terms of this Order. Information to be treated as Confidential under this Order includes all Previously Produced Documents labeled as "protected," "confidential," "proprietary," or a similar designation. Any Party may challenge the confidentiality designation of any such documents in accordance with Paragraph 5 of this Order.

d. Personal Information and financial account numbers shall be treated as Confidential, without requiring a designation by the producing party.

e. If information cannot practically be designated Confidential or Highly Confidential for whatever reason including, but not limited to, the format of the electronically stored information, the producing party shall provide written notice of the designation of the information to the receiving party.

f. Interrogatory answers or other responses to written discovery and information contained therein shall be designated as Confidential or Highly Confidential by means of a statement at the conclusion of each answer specifying the information that is Confidential or Highly Confidential contained therein, or by another method that clearly indicates which portion of the answer or information is considered Confidential or Highly Confidential.

g. A designation that information is Confidential or Highly Confidential shall constitute a representation to the Court, made in good faith, that counsel believes that the information so designated constitutes Confidential or Highly Confidential information as defined in this Order. Upon notification that a document appears to be incorrectly designated, the producing party shall review the designation and change the designation if it was made in error.

h. If a producing party inadvertently or unintentionally produces to a receiving party any Confidential or Highly Confidential information without designating it as protected pursuant to subparts (a) or (b) above, the producing party shall promptly give notice to the receiving party in writing and thereafter the receiving party shall treat the information as Confidential or Highly Confidential information. Such inadvertent or unintentional disclosure shall not be deemed a waiver in whole or in part of the producing party's claim of restriction either as to specific documents and information disclosed or on the same or related subject matter.

i. Notwithstanding any of the foregoing, information shall be deemed non-confidential material under this Order if it is already in the public domain.

5. **Right to Challenge Designation.** Nothing in this Order shall be construed in any way as a finding that information designated Confidential or Highly Confidential actually is Confidential or Highly Confidential information or that it necessarily should be sealed, redacted, or otherwise prevented from public access. If a Party to this Order disagrees, in full or in part, with a producing party's designation of Confidential or Highly Confidential information, such Party may notify the producing party in writing stating the basis for its disagreement, and the parties shall confer in good faith as to the designation of the Confidential or Highly Confidential information. If the parties are unable to reach agreement on the proper designation of the Confidential or Highly Confidential information, either party may move to re-classify Confidential or Highly Confidential information pursuant to the terms of this Order, with the material retaining its Confidential or Highly Confidential Status until the disagreement is resolved (whether by the Parties or by the Court).

6. **Access to Confidential Information.** Information designated Confidential may be disclosed only to the following persons:

a. The Court;

b. The Parties' outside counsel and in-house counsel;

c. Non-attorney employees of a Party who are responsible for making decisions regarding the course of the Action and, if a Party is a natural person, the Party;

d. Experts or consultants retained by the Parties; provided, however, that prior to the disclosure of Confidential information to any such expert or consultant, counsel for the Party making the disclosure shall deliver a copy of this Order to such person, shall explain its terms to such person, and shall secure the signature of such person on a statement in the form attached hereto as Exhibit A;

e. Stenographic and video reporters engaged in proceedings incident to this matter;

f. Discovery consultants, processors and vendors, outside document copying services, document coding or computerization services, demonstrative exhibit vendors and jury consultants; provided, however, that prior to the disclosure of a producing party's Confidential information to a representative for any such persons, counsel for the Party making the disclosure shall deliver a copy of this Order to the representative, shall explain its terms to the representative, and shall secure the signature of the representative on a statement in the form attached hereto as Exhibit A;

g. Associated personnel of any person within categories (a) through (f) for whom access to Confidential information is necessary to assist such persons in the Action, including any Court personnel assisting the Court, litigation assistants, paralegals, secretarial or other clerical personnel, and principals and employees of the firm with which consultants or experts are associated;

h. Any person known to have created or received the Confidential information outside of discovery;

i. During depositions and preparation for depositions, any deponent and the deponent's counsel;

j. Law enforcement personnel, including United States Department of Justice Attorneys, United States Attorneys, their authorized subordinates, agents, investigators, attorneys, or other staff employed by other federal agencies assisting with this Action, and contractors engaged in the purposes of assisting the same with this Action;

k. Any private mediators utilized in this Action; and

l. Such other persons as the Parties mutually agree upon in writing and in advance of access by such persons; provided, however, that prior to the disclosure of Confidential information to any such persons, counsel for the Party making the disclosure shall deliver a copy of this Order to such person, shall explain its terms to such person, and shall secure the signature of such person on a statement in the form attached hereto as Exhibit A.

7. Access to Highly Confidential Information. Information designated Highly Confidential may be disclosed only to the following persons:

a. The Court;

b. The Parties' outside counsel;

c. Experts or consultants retained by the Parties; provided, however, that prior to the disclosure of Highly Confidential information to any such expert or consultant, counsel for the Party making the disclosure shall deliver a copy of this Order to such person, shall explain its terms to such person, and shall secure the signature of such person on a statement in the form attached hereto as Exhibit A;

d. Stenographic and video reporters engaged in proceedings incident to this Action;

e. Discovery consultants, processors and vendors, outside document copying services, document coding or computerization services, demonstrative exhibit vendors and jury consultants; provided, however, that prior to the disclosure of a producing party's Highly Confidential information to any such persons, counsel for the party making the disclosure shall deliver a copy of this Order to a representative for any such person, shall explain its terms to the representative, and shall secure the signature of the representative on a statement in the form attached hereto as Exhibit A;

f. Associated personnel of any person within categories (a) through (b) and (d) through (f) for whom access to Highly Confidential information is necessary to assist such persons in the action, including any Court personnel assisting the Court, litigation assistants, paralegals, secretarial or other clerical personnel, and principals and employees of the firm with which consultants or experts are associated;

g. Any person known to have created or received the Highly Confidential information outside of discovery;

h. Law enforcement personnel, including United States Department of Justice Attorneys, United States Attorneys, their authorized subordinates, agents, investigators, attorneys, or other staff employed by other federal agencies assisting with this Action, and contractors engaged in the purposes of assisting the same with this Action; and

i. Any private mediators utilized in this Action provided that each is first advised of the terms of this Order and his or her obligation under the Order to keep the Highly Confidential information protected.

8. **<u>Use of Confidential or Highly Confidential Information</u>.** Information designated as Confidential or Highly Confidential may be used solely for purposes of pretrial preparation and proceedings in this Action, trial of this Action, and any appellate proceedings in this Action. Such

Confidential or Highly Confidential information shall be used for no other purpose unless and until agreed to in writing by the Parties or authorized by order of the Court. No person who receives any Confidential or Highly Confidential information shall disclose it to any person for any purpose other than for pretrial preparation and proceedings in this Action.

9. Limitations. Nothing contained in this Order shall abrogate any legal obligation of any party to disclose upon appropriate request to any state, any agency or department of the United States, or any division of any such agency or department, Confidential or Highly Confidential information relating to any potential violation of law or regulation, or relating to any matter within that agency's jurisdiction, nor shall anything contained in this Order abrogate any legal right to use any such Confidential or Highly Confidential information by a federal agency in any proceeding relating to any potential violation of law or regulation, or relating to any matter within that agency's jurisdiction. Nor shall anything contained in this Order abrogate any legal obligation of any party to disclose any document or information as required by law, or to Congress pursuant to a Congressional request. If another court or an administrative agency requests, subpoenas, or orders production of Confidential or Highly Confidential information from a Party that has obtained that information under the terms of this Order, the Party shall notify the producing party of such subpoena or other process so that the producing party has the opportunity to contest the request to protect its Confidential or Highly Confidential information through appropriate legal means. Such notification must include a copy of the request, subpoena, or court order.

10. Transcripts. During any deposition in which Confidential or Highly Confidential information is discussed, counsel for any Party or third party may: (a) designate, on the record, the portions of the transcript that will contain Confidential or Highly Confidential information, in which case the portions of the deposition so designated on the record shall be treated as Confidential or Highly Confidential information, respectively, and placed in a separately bound volume; or

(b) designate in writing to counsel for all Parties, within thirty (30) days of the transcript's delivery, the transcript portions which are to be treated as Confidential or Highly Confidential information. All deposition transcripts will be considered as Confidential information until the notice set forth above or until the expiration of thirty (30) days from the transcript's delivery.

11. **<u>Filing Under Seal</u>.** A Party seeking to file another party's Confidential or Highly Confidential information may provide the producing party notice of the Confidential or Highly Confidential information that it intends to use no later than the day of filing. Unless the producing party consents to a request to file said information in the public record, the filing party shall file the information provisionally under seal in compliance with Local Rule 7.2. The producing party shall have fourteen (14) days from the day of filing in which to file a motion pursuant to Local Rule 7.2 to keep such papers under seal. If the producing party does not file such a motion within this period, the papers shall be unsealed. If the producing party moves to keep papers under seal, the papers with the designated Confidential or Highly Confidential information, or with any references to the Confidential or Highly Confidential information, will remain under seal until the Court rules on the motion to seal. Notwithstanding the foregoing, nothing in this paragraph prevents a Party from obtaining the written consent of the producing party in advance of filing to file its Confidential or Highly Confidential information in the public record. Natural persons' cell phone numbers may be redacted in public filings as an alternative to filing under seal.

12. **<u>Use of Confidential or Highly Confidential Information in Open Court</u>.** Confidential or Highly Confidential information may be used or offered into evidence by any Party ("Disclosing Party") at trial or any hearing held in open court associated with this Action, provided that: (i) prior to the use of any such Confidential or Highly Confidential information at trial or any hearing, counsel for the Disclosing Party shall meet and confer in good faith with the producing party, together with any other Party who has expressed interest in participating in such meet and confer, to discuss ways to redact the Designated Material so that the material may be offered or otherwise used by any Party, in accordance with the provisions of the Federal Rules and the Federal Rules of Evidence , and (ii) if the Parties are unable to resolve a dispute related to such Designated Material, reasonable advance notice shall be given to permit the producing party to request additional protections or relief from the Court. Within ten (10) days of the Parties' exchange of exhibit lists, the producing party shall review the designation and determine whether it wishes to de-designate the material.

13. Use of Confidential or Highly Confidential Material with Artificial Intelligence. Any party that receives designated Confidential or Highly Confidential documents shall not load, import, submit, or otherwise transfer the designated Confidential or Highly Confidential documents to a publicly accessible Large Language Model ("LLM") or Artificial Intelligence ("AI") platform, nor may any party utilize any non-public LLM or AI platforms where the designated Confidential or Highly Confidential documents may be used to train public models or otherwise made accessible to other users of the LLM or AI platform not authorized to receive such materials. For avoidance of doubt, any output or result generated by a permissible generative artificial intelligence tool that contains, reflects, incorporates, or is derived from Confidential or Highly Confidential Information will be deemed attorney work product. The attorney-work-product protections set forth in this Paragraph include any prompts, queries, instructions, inputs, outputs, logs, model or tool settings, and similar materials created by or for a Party, its counsel, any litigation support vendor or consultant, or any Expert in connection with this Action, including such materials used in connection with the work of any Expert. Nothing in this Paragraph limits any disclosure required by Rule 26(a)(2) or the Court's authority to order disclosure for good cause.

14. Data Breaches or Other Unauthorized Disclosures of Designated Material: In the event a party becomes aware of any data breach, security incident, or other event that results in potential unauthorized access, use, disclosure, exfiltration or copying of Confidential or Highly Confidential information in its possession by a third party (a "Breach"), that party shall promptly provide written notice within three (3) business days after discovery of the Breach to the producing party. Nothing in this provision waives any rights or remedies available to the producing party at law or in equity.

15. **Modification Permitted.** Nothing in this Order shall prevent any Party from seeking modification of this Order or from objecting to discovery that it believes to be otherwise improper.

16. **No Waiver of Privilege or Protection.** If information subject to a good faith claim of any privilege or protection (including the attorney-client privilege, work product protection, and governmental privileges such as deliberative process, investigatory files, and official privileges)[1] is inadvertently or mistakenly produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any assertion of privilege or protection for such information as provided under applicable law, including Federal Rule of Evidence 502.

a. If a producing party has inadvertently or mistakenly produced information subject to an assertion of protection or privilege, the producing party shall, based on the time of the discovery of the production, promptly make a written request for the return of such information. The information for which a claim of inadvertent production is made (including any analyses, memoranda or notes which were internally generated based upon such inadvertently-produced information), as well as all copies, shall be either destroyed, sequestered, or returned immediately to the producing party. Following notice by the producing party, the receiving party: (i) must not use or disclose the potentially privileged or protected material until any dispute over the privilege or protection is resolved by the Court; and (ii) must take reasonable steps to retrieve the potentially privileged or protected material if the Party disclosed it before being notified. The burden of

[1] The listing of these privileges is without prejudice to any party's argument that such privilege should not be recognized, either in general or as applied to specific documents in this case.

persuasion shall be on the Party asserting the claim of privilege or other protection to show that the information is privileged or otherwise protected.

b. If a receiving party discovers a document, or part thereof, produced by another party that it believes may be privileged or otherwise protected, the receiving party shall promptly notify the producing party. The producing party shall then follow the procedures outlined above in paragraph 16.a. Material is not presumed to be privileged or protected and the receiving party is not obligated to perform the notification requirements of this paragraph solely because material contains a legend such as "attorney-client privilege," "attorney work product," "privileged," "deliberative process privilege," or another similar privilege assertion in the header, footer, signature block, or elsewhere in the material and does not contain any other indicia of privilege.

17. **Third-Party Information**. Discovery in this proceeding may involve disclosure by a third party of Confidential information. At the option of a third party, such information may be produced subject to the provisions of this Order and, in that event, shall provide the third party with all of the rights and obligations of a Party as created by this Order with respect to Confidential information produced by such third party in connection with the discovery and pre-trial phase of this action.

18. **Qualified Protective Order**. This Order is intended to and shall constitute a qualified protective order pursuant to 45 C.F.R. § 164.512(e)(1)(v).

19. **Termination**. Within 60 days of the final non-appealable order terminating this action, all documents designated by a producing Party as "Confidential" or "Highly Confidential," all copies of such documents, and all extracts and/or data taken from such documents with the exception of any archived materials and attorney work product with embedded Confidential or Highly Confidential material shall be destroyed or returned to the producing party. Attorneys may retain a set of pleadings and documents filed with the Court, written discovery or other pleadings served by either Party on the other Party, all transcripts, all correspondence, all consultant or expert reports, all work product generated in connection with the action, and any materials subject to a pending Freedom of Information Act request or a statutory, regulatory, or court-ordered retention obligation. All Confidential or Highly Confidential information retained for any reason will continue to be subject to this Order.

20. **Term**. This Order survives termination of this Action and remains in full force and effect unless modified by further order or by written stipulation of the Parties filed by the Court.

21. **Miscellaneous.**

a. Nothing in this Order shall prevent a Party or third party from any use of its own Confidential or Highly Confidential information, although a document may lose confidential status if made public by the Party or third party formerly claiming confidentiality.

b. The Parties may agree to waive any provision of this Order, provided such waiver is made in writing.

c. Proper notice under this Order, when required, shall be effected by letter or email.

22. **Counterparts.** This Order may be signed in counterpart, and each such counterpart shall be deemed an original.

23. **Jurisdiction.** This Order is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Order is the United States District Court for the District of Massachusetts. For purposes of construing this Order, this Order shall be deemed to have been drafted by all Parties to this Order and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

24. **Entire Agreement.** This Order constitutes the entire agreement of the Parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

STIPULATED BY:

For Plaintiff United States:

/s/______________________________________
U.S. Attorney's Office
One Courthouse Way, Suite 9200
Boston, MA 02210

For [Defendants]:

/s/____
FIRM NAME

APPROVED AND SO ORDERED this

_ day of__________________ , 2026.

BY THE COURT:

____
Hon. Denise J. Casper
United States District Judge

EXHIBIT A

CERTIFICATION REGARDING CONFIDENTIAL INFORMATION

I hereby acknowledge that I, ___________________________________[NAME], ____ [POSITION AND EMPLOYER], have read and understand the terms and restrictions of the Stipulated Confidentiality Agreement and Protective Order ("Order") filed in the Proceeding *United States ex rel. Shea v. eHealth, Inc. et al.*, No. 21-cv-11777-DJC (D. Mass.). I have been given a copy of the Order; I agree to be bound by its terms with respect to any Confidential or Highly Confidential information supplied to me in connection with the Proceeding.

I understand that the information designated as Confidential or Highly Confidential in this Proceeding, including any notes or other records that may be made regarding any such information, shall not be disclosed to anyone except as expressly permitted by the Order. I will not copy or use, except solely for the purposes of this Proceeding, any Confidential or Highly Confidential information obtained pursuant to this Order, except as provided therein or otherwise ordered by the Court in the Proceeding.

I further understand that I am to retain all copies of all Confidential or Highly Confidential information provided to me in the Proceeding in a secure manner, and that all copies of such materials are to remain in my personal custody until termination of my participation in this Proceeding, whereupon the copies of such materials will be destroyed or returned to counsel who provided me with such materials.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of ______, 20__, at __________________.

Dated:_______________________________ By:___________________________________
Signature

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

United States of America,

Plaintiff(s),

against

Anthem, Inc.

Defendant(s).

20 CIV 2593 (ALC) (KHP)

STIPULATION AND AMENDED PROTECTIVE ORDER

WHEREAS, the Parties having agreed to the following terms of confidentiality, and the Court having found that good cause exists for the issuance of an appropriately tailored confidentiality order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, it is hereby

ORDERED that the following restrictions and procedures shall apply to the information, data, and documents (collectively "Discovery Material") exchanged by each party or non-party (each a "Producing Person") or to any other party or non-party (each a "Receiving Person") in connection with the pre-trial phase of the above captioned action ("Action").

This Stipulated Protective Order ("Protective Order") is agreed upon by the United States of America ("Plaintiff") and Anthem, Inc. ("Defendant" together with Plaintiff, the "Parties" and each individually a "Party"). The terms herein are binding on the Parties and any other persons or entities, including non-Parties, who become bound by this Protective Order by signifying their assent through execution of Exhibit A hereto.

1. Pursuant to 5 U.S.C. § 552a(b)(11), this Protective Order authorizes the United States to produce information that otherwise would be prohibited from disclosure under the Privacy Act (5 U.S.C. § 552a) without presenting Privacy Act objections to this Court for a decision regarding disclosure. To the extent the Privacy Act allows the disclosure of information pursuant to court order, this Protective Order constitutes such a court order and authorizes the disclosure of that information.

2. Furthermore, this Protective Order authorizes the disclosure of information protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic and

Clinical Health Act ("HITECH Act"), including all applicable regulations and guidance issued by the Secretary of the United States Department of Health and Human Services (collectively "HIPAA Rules"), including specifically 42 C.F.R. Part 2 and 45 C.F.R. §§ 164.512(e)(1)(ii)(B), 164.512(e)(1)(v), as well as all state laws and regulations regarding the privacy and security of personal information (collectively with the HIPAA Rules, "Privacy and Security Rules"). This Protective Order constitutes a Qualified Protective Order, as that term is defined in the Privacy and Security Rules.

3. Nothing in the preceding two paragraphs shall require production of information that is prohibited from disclosure (even with the entry of this Protective Order) by other applicable privileges, statutes, regulations, or authorities.

4. A Producing Person may designate any document or information, in whole or in part, as confidential if the Producing Party determines, in good faith, that such designation is necessary to protect the interests of the client in information that is proprietary, a trade secret or otherwise sensitive non-public information. Information and documents designated by a party as confidential will be stamped "CONFIDENTIAL" or "SUBJECT TO PROTECTIVE ORDER".

5. A Producing Person may also designate Discovery Material as "ATTORNEYS' EYES ONLY" if such Discovery Material contains sensitive government information or financial and/or commercially sensitive data such as trade secrets, pricing proposals, projections, financial projections or modeling, profit and sales figures, or similar categories of documents that are so sensitive that the Producing Person believes in good faith (or, with respect to documents received from another person, has been reasonably advised by such other person) that disclosure of such Discovery Material to persons other than those listed in Paragraph 8 would create a substantial risk of economic injury or other harm that could not be avoided by less restrictive means.

5.a. The Government may designate documents as "OUTSIDE COUNSEL ONLY" if such documents (i) were produced by the Government in *United States of America ex rel. Poehling v. United Health Group, Inc.*, No. 16 Civ. 8697 (FMO) (C.D. Cal.) with such a designation and reproduced in this case, and (ii) contain particularly sensitive government information or financial and/or commercially sensitive data such as trade secrets, pricing proposals, projections, financial projections or modeling, profit and sales figures, bid models, or similar categories of documents that are so sensitive that the Government believes in good faith (or, with respect to documents received from another person, has been reasonably advised by such other person) that these materials are exceptionally confidential and/or sensitive in nature.

6. The parties should meet and confer if there is a dispute regarding the designation of any Discovery Material as "CONFIDENTIAL", "SUBJECT TO PROTECTIVE ORDER", "ATTORNEYS' EYES ONLY," or "OUTSIDE COUNSEL ONLY" (collectively "Protected Information").

7. All documents designated as "CONFIDENTIAL" or "SUBJECT TO PROTECTIVE ORDER" shall not be disclosed to any person, except:

   a. The requesting party and counsel, including in-house counsel and government agency counsel;
   b. Employees and litigation support vendors of such counsel assigned to and necessary to assist in the litigation;
   c. Consultants or experts assisting in the prosecution or defense of the matter, to the extent deemed necessary by counsel;
   d. Any deponent or witness who was noticed for a deposition, or is on a witness list for hearing or trial, and counsel for any such person, at or in preparation for his or her noticed deposition, hearing, or trial testimony where such Protected Information is determined by counsel in good faith to be necessary to the anticipated subject matter of testimony. The persons identified in this paragraph will not be permitted to retain copies of such Protected Information and the Party taking the deposition will use best efforts to secure the witness's agreement in the form provided as Exhibit A;
   e. The Court (including the mediator, or other person having access to any Protected Information by virtue of his or her position with the Court); and
   f. Court reporters, videographers, and their companies necessary to facilitate the depositions of witnesses.
   g. Any other person or entity to whom disclosure is reasonably necessary for the prosecution or defense of this Action based on a good faith determination by the Receiving Party, and who has signed the form provided as Exhibit A hereto.

8. Documents marked "ATTORNEYS' EYES ONLY" may only be disclosed to outside counsel for the Parties, up to four in-house counsel of Defendant's who have been disclosed to Plaintiff and whose current and reasonably foreseeable future primary job duties do not involve Defendant's competitive decision-making, and the persons delineated in Paragraph 7 (b), (c), (d), and (e) above. For avoidance of doubt, documents labeled "ATTORNEYS' EYES ONLY" may, in the case of the United States, be disclosed to officials, attorneys, and employees of the Department of Justice or the Department of Health and Human Services to whom it is reasonably necessary to disclose the information for the litigation of

this action, provided that each is advised of the terms of this Protective Order and their obligation under the Protective Order to keep the Protected Information confidential and the United States secures the official, attorney, or employee's agreement to be bound by this Protective Order by signing the agreement in the form of Exhibit A, attached hereto.

8.a. Documents marked "OUTSIDE COUNSEL ONLY" may only be disclosed to outside counsel for the Parties; and the persons delineated in Paragraph 7 (b), (c), (d), and (e) above. For avoidance of doubt, documents labeled "OUTSIDE COUNSEL ONLY" may, in the case of the United States, be disclosed to officials, attorneys, and employees of the Department of Justice or the Department of Health and Human Services to whom it is reasonably necessary to disclose the information for the litigation of this action, provided that each is advised of the terms of this Protective Order and their obligation under the Protective Order to keep the Protected Information confidential and the United States secures the official, attorney, or employee's agreement to be bound by this Protective Order by signing the agreement in the form of Exhibit A, attached hereto. The "OUTSIDE COUNSEL ONLY" designation is limited to documents that were produced by the Government in *United States of America ex rel. Poehling v. United Health Group, Inc.,* No. 16 Civ. 8697 (FMO) (C.D. Cal.) with such a designation and reproduced in this case.

9. The Protected Information disclosed will be held and used by the person receiving such information solely for use in connection with this Action.

10. In the event a party challenges another Party's designation, counsel shall make a good faith effort to resolve the dispute, and in the absence of a resolution, the challenging party may seek resolution by the Court. Nothing in this Protective Order constitutes an admission by any party that Protected Information disclosed in this case is relevant or admissible. Each party reserves the right to object to the use or admissibility of the Protected Information.

11. Responses to Requests for Admission and Interrogatories shall be deemed protected under this Order if the response starts with "This response is designated" and includes a confidentiality designation described in this Order.

12. Information to be treated as "CONFIDENTIAL" under this Order includes all materials, information and testimony labelled or otherwise designated as "protected," "confidential" and/or "proprietary" that have been produced or provided to the United States Attorney's Office for the Southern District of New York or Department of Justice in response to any Civil Investigative Demands or subpoenas in connection with the investigation underlying this action.

13. Prior to disclosing or displaying the Protected Information to any person delineated in Paragraph 7(c), (d), and (g) the Receiving Person must:

   a. Inform the person of the confidential nature of the information or documents;
   b. Inform the person that this Court has enjoined the use of the information or documents by him/her for any purpose other than this Action and has enjoined the disclosure of the information or documents to any other person; and
   c. Require each such person to sign an agreement to be bound by this Protective Order by signing the agreement in the form of Exhibit A, attached hereto.

14. When Discovery Material is elicited during a deposition, persons not entitled to receive such information under the terms of this Order shall be excluded from the portion of the deposition so designated. Counsel for any Party may designate any portion of any deposition as “CONFIDENTIAL,” “SUBJECT TO PROTECTIVE ORDER”, or “ATTORNEYS’ EYES ONLY” or both by stating so orally on the record and requesting that the relevant portion(s) of testimony be so designated, or providing written notice within thirty (30) days of the receipt by the Party or non-Party of the transcript from the court reporter that the relevant portion(s) of such transcript is so designated. Any “OUTSIDE COUNSEL ONLY” designation pursuant to this paragraph 14 shall be limited to testimony regarding documents that were produced by the Government in *United States of America ex rel. Poehling v. United Health Group, Inc.,* No. 16 Civ. 8697 (FMO) (C.D. Cal.) with such a designation and reproduced in this case. If a deponent is represented by independent counsel at a deposition, that counsel may designate any portion of their client’s testimony under the same as counsel for a Party as set forth in this paragraph. Such designation and notice shall be made in writing to the court reporter, with copies to all other counsel, identifying the portion(s) of the transcript that is so designated, and directing the court reporter to treat the transcript as provided herein. Until expiration of the 30-day period, as applicable, following receipt of the transcript by the Parties or non-Parties, all deposition transcripts in their entirety shall be considered and treated as though it was designated ATTORNEYS’ EYES ONLY unless otherwise agreed on the record at the deposition. If any deposition testimony is designated as confidential, the court reporter shall affix the appropriate legend on the face of the transcript (or on the face of the storage of any audio or video recordings) and shall indicate in a prominent place the specific pages and/or exhibits that have been so designated. Nothing in this paragraph shall preclude the witness from reviewing their deposition transcript.

15. In advance of a hearing in this matter, the Parties agree to confer in good faith to reach an agreement regarding the appropriate protections in the event a Party seeks to use Protected Information at a hearing. Nothing in this Order shall limit a Party's ability to use its own Discovery Material or Protected Information, however designated, at a hearing in this Action or in any other proceeding, subject to the Court's determination of the admissibility of the Discovery Material or Protected Information.

16. The disclosure of a document or information without designating it as "CONFIDENTIAL", "SUBJECT TO PROTECTIVE ORDER", "ATTORNEYS' EYES ONLY," or "OUTSIDE COUNSEL ONLY" shall not constitute a waiver of the right to designate such document or information as Protected Information. The Producing Person may later correct the error by notifying the Receiving Person in writing and providing a replacement document with the proper designation. If so designated, the document or information shall thenceforth be treated as Protected Information subject to all the terms of this Protective Order.

17. In the event of a disclosure by a Receiving Person of Protected Information to persons or entities not authorized by this Order to receive such Protected Information, whether by inadvertence or otherwise, the Receiving Person making the unauthorized disclosure shall, upon learning of the disclosure: (i) immediately notify the person or entity to whom the disclosure was made that the disclosure contains Protected Information subject to this Order and request the recipient to execute the agreement at Exhibit A; (ii) make reasonable efforts to recover the disclosed Protected Information as well as preclude further dissemination or use by the person or entity to whom the disclosure was made; and (iii) notify the Producing Person of the identity of the person or entity to whom the disclosure was made, the circumstances surrounding the disclosure, and the steps taken to recover the disclosed Protected Information and ensure against further dissemination or use thereof.

To the extent FRE 502(d) is applicable, the parties shall have the maximum protection under the Rule.

18. Any Personally Identifying Information ("PII") (e.g., social security numbers, financial account numbers, passwords, and information that may be used for identity theft) exchanged in discovery shall be maintained by the Receiving Person in a manner that is secure and confidential and shared only with authorized individuals in a secure manner. The Producing Person may specify the minimal level of protection expected in the storage and transfer of its information. In the event the person who received PII experiences a data breach, it shall immediately notify the producing party of same and cooperate with the producing party to address and remedy the breach. Nothing herein

shall preclude the Producing Person from asserting legal claims or constitute a waiver of legal rights and defenses in the event of litigation arising out of the receiving party's failure to appropriately protect PII from unauthorized disclosure.

19. The production of privileged or work- product protected documents or communications, electronically stored information ("ESI") or information, whether inadvertent or otherwise, shall not constitute a waiver of the privilege or protection from discovery in this case or in any other federal or state proceeding. This Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d). The provisions of Federal Rule of Evidence 502(b) do not apply. In the event that a Party asserts that it failed to designate any production materials or other information as privileged or work product materials, it shall promptly notify all Parties to whom such privileged material was produced or disclosed of the Producing Person's intent to assert a claim of privilege or work product over such materials. Upon such notice, if the Receiving Person intends to challenge the designation of the document(s) as privileged material, it shall promptly sequester all copies of the document(s), pending Court resolution of the challenge. Following notice by the Producing Person, the Receiving Person: (i) must not use or disclose the privileged material until the claim is resolved; and (ii) must take reasonable steps to retrieve the privileged material if the Party disclosed it before being notified. The burden of persuasion shall be on the Party asserting the claim of privilege or other protection to show that the information is privileged or otherwise protected. Nothing contained herein is intended to or shall serve to limit a party's right to conduct a review of documents, ESI or information (including metadata) for relevance, responsiveness and/or segregation of privileged and/or protected information before production.

20. Notwithstanding the designation of information as "CONFIDENTIAL", "SUBJECT TO PROTECTIVE ORDER", "ATTORNEYS' EYES ONLY," or "OUTSIDE COUNSEL ONLY," in discovery, there is no presumption that such information shall be filed with the Court under seal. Where a Party seeks to utilize Protected Information in Court filings, it must provide the designating Party reasonable notice of the Court filing. Without written permission from the designating Party or a Court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Designated Material and must seek to file the portions containing such Designated Material under seal in compliance with applicable Court rules and procedures and give the Designating Party reasonable opportunity to move the Court to maintain such Designated Material under seal. The parties shall follow the Court's procedures

with respect to filing under seal.

21. The provisions of this Order shall continue with respect to any Protected Information until expressly released by the Producing Party and shall survive the conclusion of this Action. At the conclusion of litigation, Protected Information and any copies thereof shall be promptly (and in no event later than 30 days after entry of final judgment no longer subject to further appeal) returned to the producing party or certified as destroyed, except that: (1) the parties' counsel shall be permitted to retain their working files, and (2) a Receiving Person may retain Protected Information that is auto-archived or otherwise "backed up" on electronic management and communications systems or servers, or as may be required for regulatory recordkeeping purposes; on the condition that those files will remain protected and counsel's retention of such attorney work product is in compliance with the Privacy and Security Rules. For Protected Information, if a Receiving Person chooses to take all commercially reasonable steps to destroy, rather than return, documents in accordance with this Paragraph, that Receiving Person shall, if requested, verify such destruction in writing to counsel for the Producing Person. For purposes of this Order, the "conclusion of this Action" shall be deemed to be the latter of (i) full settlement of all claims; (ii) final judgment herein after the completion and exhaustion of all appeals, re-hearings, remands, trials, and reviews, if any, of this proceeding (excluding any time period under which the Court has supervision or oversight over any relief issued through a consent decree or any non-preliminary injunction issued by the Court); or (iii) the expiration of all time limits under federal law for the filing of or application for all appeals, rehearings, remands, trials, or reviews of this proceeding, including the time limits for the filing of any motions or applications for extension of time pursuant to applicable law. Any time period under which the Court has supervision or oversight over any relief issued through a consent decree or any non-preliminary injunction issued by the Court will be considered after the conclusion of this proceeding. Notwithstanding anything in this Paragraph, to the extent that the information in the Protected Information remains confidential, the terms of this Order shall remain binding. For avoidance of doubt, attorneys for the United States may maintain copies of any Protected Information in their case files, as well as copies of any notes or summaries containing such Protected Information, subject to the Federal Records Act, 44 U.S.C. § 3101 *et seq.*

22. Nothing herein shall preclude the Parties from disclosing material designated to be Protected Information if otherwise required by law or pursuant to a valid subpoena. If such a request is received, the Receiving Person shall give notice to the Producing Person of any such requirement or request within seven (7) days of receiving any such request or requirement so that the Producing Person may seek a protective order or other appropriate remedy, unless notification would

be improper under the circumstances in which the request was received.

23. Nothing contained in this Protective Order shall prevent or in any way limit or impair the right of the United States of America (the "United States") to disclose to any agency or department of the United States, or any division of any such agency or department, Protected Information relating to any potential violation of law or regulation, or relating to any matter within that agency's jurisdiction, nor shall anything contained in this Protective Order prevent or in any way limit or impair the use of any such Protected Information by an agency in any proceeding relating to any potential violation of law or regulation, or relating to any matter within that agency's jurisdiction; provided, however, that the agency or department shall be advised of the terms of this Protective Order and maintain the confidentiality of the Protected Information in a manner consistent with the terms of this Protective Order. Nor shall anything contained in this Protective Order prevent or in any way limit or impair the use by Defendant of any Protected Information, so designated by the United States, in submissions to the Centers for Medicare and Medicaid Services ("CMS") or other relevant constituent offices or agencies of the United States Department of Health and Human Services (with CMS, the "HHS Entities") in connection with the Notice of Intermediate Sanctions issued to Defendant by CMS on February 27, 2026, provided that Defendant maintains the confidentiality of the Protected Information in any such matter or proceeding in a manner consistent with the terms of this Protective Order and shall not disclose the Protected Information to any other person or entity (other than the HHS Entities) except as provided by the terms of this Protective Order. Nothing in this paragraph constitutes a determination that any Protected Information provided by Anthem to CMS is part of any administrative record, relevant, admissible, usable, or non-privileged in connection with any administrative proceeding or any other litigation. This paragraph of the amended protective order, and any subsequent submissions by Anthem to CMS of documents designated by the United States in this litigation, shall not be considered a waiver of any privilege by the Government or any of its agencies, including the deliberative process privilege.

24. Nothing contained in this Protective Order shall prevent or in any way limit or impair the right of the United States to provide Protected Information to a Congressional entity; provided, however, that the United States shall notify the Congressional entity requesting the documents that the Protected Information has been produced pursuant to this Protective Order and shall, if there are no objections interposed by the Congressional entity requesting the documents, use reasonable efforts to notify the producing party or nonparty of the Congressional entity's request and the United States' response thereto.

25. Nothing contained in this Protective Order shall prevent the United States from producing Protected Information to the extent required by the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552. In the event that the United States determines that Protected Information is required to be produced under FOIA, the United States shall provide the producing party with written notifications at least ten days prior to the production of such Protected Information.

SO STIPULATED AND AGREED.

FOR THE UNITED STATES:

By: */s/ Charles Jacob*

PIERRE ARMAND
PETER ARONOFF
RACHAEL DOUD
HARRY FIDLER
ADAM GITLIN
CHARLES JACOB
DANA WALSH KUMAR
Assistant United States Attorneys
86 Chambers Street, 3rd Floor
New York, New York 10007
Tel.: (212) 637-2734

Dated: April 27, 2026

Dated: April 27, 2026

Respectfully submitted,

By: /s/ James A. Bowman

JAMES A. BOWMAN, *Pro Hac Vice*
ADAM LEVINE, *Pro Hac Vice*
HANNAH E. DUNHAM, *Pro Hac Vice*
SHELBY A. CUMMINGS, *Pro Hac Vice*
O'MELVENY & MYERS LLP
400 South Hope Street, 18th Floor
Los Angeles, California 90071
Telephone: (213) 430-6000
Facsimile: (213) 430-6407
jbowman@omm.com
alevine@omm.com
hdunham@omm.com
scummings@omm.com

K. LEE BLALACK, II, *Pro Hac Vice*
ANWAR GRAVES, *Pro Hac Vice*
WILLIAM BUFFALOE, *Pro Hac Vice*
BRIAN D. BOYLE
BENJAMIN D. SINGER
RAHUL KOHLI *Pro Hac Vice*
O'MELVENY & MYERS LLP
1625 Eye Street, N.W.
Washington, D.C. 20006
Telephone: (202) 383-5300
Facsimile: (202) 383-5414
lblalack@omm.com
agraves@omm.com
wbuffaloe@omm.com
bboyle@omm.com
bsinger@omm.com
rkohli@omm.com

DAVID DEATON, *Pro Hac Vice*
O'MELVENY & MYERS LLP
Two Embarcadero Center, 28th Floor
San Francisco, California 94111
Telephone: (949) 823-6900
Facsimile: (949) 823-6994
ddeaton@omm.com

CHRISTOPHER P. BURKE, *Pro Hac Vice*

O'MELVENY & MYERS LLP
1301 Avenue of the Americas, Suite 1700
New York, New York 10019
Telephone: (212) 326-2000
Facsimile: (212) 326-2061
cburke@omm.com

JOHN MARTIN, *Pro Hac Vice*
HEYWARD BONYATA, *Pro Hac Vice*
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street, 17th Floor
Columbia, South Carolina 29201
Telephone: (803) 255-9655
john.martin@nelsonmullins.com
heyward.bonyata@nelsonmullins.com

Attorneys for Defendant Anthem, Inc.

SO ORDERED.

Katharine H Parker
____
KATHARINE H. PARKER, U.S.M.J.

Dated: New York, New York
April 27, 2026

<u>Exhibit A - Agreement</u>

I have been informed by counsel that certain documents or information to be disclosed to me in connection with the matter entitled have been designated as CONFIDENTIAL, SUBJECT TO PROTECTIVE ORDER, ATTORNEYS EYES ONLY, or “OUTSIDE COUNSEL ONLY.” I have been informed that any such documents or information labeled “CONFIDENTIAL,” “SUBJECT TO PROTECTIVE ORDER,” “ATTORNEYS’ EYES ONLY,” or “OUTSIDE COUNSEL ONLY” are confidential by Order of the Court.

I hereby agree that I will not disclose any information contained in such documents to any other person. I further agree not to use any such information for any purpose other than this litigation.

DATED:

____

Signed in the presence of:

____

(Attorney)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA; the States of CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, FLORIDA, GEORGIA, HAWAII, ILLINOIS, INDIANA, IOWA, LOUISIANA, MASSACHUSETTS, MICHIGAN, MINNESOTA, MONTANA, NEVADA, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, OKLAHOMA, RHODE ISLAND, TENNESSEE, TEXAS, VIRGINIA, WASHINGTON and WISCONSIN; the DISTRICT OF COLUMBIA, THE CITY OF CHICAGO and THE CITY OF NEW YORK; *ex rel*., STEVEN M. CAMBURN Plaintiffs and Relator, vs. NOVARTIS PHARMACEUTICALS CORPORATION, Defendant.	**No. 13 Civ. 3700 (KMW)** **STIPULATED CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER**

THE HONORABLE GABRIEL W. GORENSTEIN, UNITED STATES MAGISTRATE JUDGE:

WHEREAS, all of the parties to this action (collectively, the "Parties" and each individually, a "Party") request that this Court issue a protective order pursuant to Federal Rule of Civil Procedure 26(c) to protect the confidentiality of nonpublic and competitively sensitive information that they may need to disclose in connection with discovery in this action or that they may otherwise produce or disclose to the opposing Party;

WHEREAS, the Parties, through their counsel, as evidenced by their signatures below, agree to the following terms; and

WHEREAS, this Court finds that good cause exists for issuance of an appropriately tailored confidentiality order governing the pretrial phase of this action;

IT IS HEREBY ORDERED that the Parties to this action, their respective officers, agents, servants, employees, and attorneys, any other person in active concert or participation with any of the foregoing, and all other persons with actual notice of this Order will adhere to the following terms, upon pain of contempt:

1. With respect to "Discovery Material" (*i.e.*, information of any kind produced or disclosed in the course of discovery or otherwise in this action) that a person has designated as "Confidential" pursuant to this Order, no person subject to this Order may disclose such Confidential Discovery Material to anyone else except as expressly permitted hereunder:

2. The Party or person producing or disclosing Discovery Material (each, "Producing Party") may designate as Confidential only the portion of such material that it reasonably and in good faith believes consists of:

(a) previously non-disclosed[1] financial information (including without limitation profitability reports or estimates, percentage fees, design fees, royalty rates, minimum guarantee payments, sales reports, and sale margins);

(b) previously non-disclosed material relating to ownership or control of any non-public company;

(c) previously non-disclosed business plans, product-development information, or marketing plans;

---

[1] For purposes of this protective order, previously non-disclosed information includes information disclosed under seal or pursuant to a protective order.

(d) previously non-disclosed information related to formulas, patterns, programs, plans, devices, methods, techniques, or processes used for the preparing, manufacturing, or processing of pharmaceutical or biological products;

(e) any information protected from disclosure by applicable trade secrets law, including the Uniform Trade Secrets Act (adapted by the vast majority of states) and the Defend Trade Secrets Act (18 U.S.C. § 1839);

(f) health care information subject to protection under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Privacy Rule, 45 C.F.R. §§ 160 and 164, and/or other applicable state or federal law concerning confidential health information;

(g) personal data subject to protection under the General Data Protection Regulation (GDPR) and/or other applicable foreign national data protection laws;

(h) a trade secret or other confidential research, development or information;

(i) any information of a personal or intimate nature regarding any individual; or

(j) any other category of information given confidential status by this Court after the date of this Order.

Information to be treated as "Confidential" under this order includes all materials labeled as confidential that have been produced to the United States Attorney's Office for the Southern District of New York in response to any Civil Investigative Demand or subpoenas in connection with the investigation related to this action.

3. With respect to the Confidential portion of any Discovery Material other than deposition transcripts and exhibits, the Producing Party or its counsel may designate such portion as "Confidential" by: (a) stamping or otherwise clearly marking as "Confidential" the protected portion in a manner that will not interfere with legibility or audibility; and (b) producing for future public use another copy of said Discovery Material with the confidential information redacted.

4. A Producing Party or its counsel may designate deposition exhibits or portions of deposition transcripts as Confidential Discovery Material either by: (a) indicating on the record during the deposition that a question calls for Confidential information, in which case the reporter will bind the transcript of the designated testimony in a separate volume and mark it as "Confidential Information Governed by Protective Order;" or (b) notifying the reporter and all counsel of record, in writing, within 30 days after a deposition has concluded, of the specific pages and lines of the transcript that are to be designated "Confidential," in which case all counsel receiving the transcript will be responsible for marking the copies of the designated transcript in their possession or under their control as directed by the Producing Party or that person's counsel. During the 30-day period following a deposition, all Parties will treat the entire deposition transcript as if it had been designated Confidential.

5. If at any time before the termination of this action a Producing Party realizes that it should have designated as Confidential some portion(s) of Discovery Material that it previously produced without limitation, the Producing Party may so designate such material by notifying all Parties in writing. Thereafter, all persons subject to this Order will treat such designated portion(s) of the Discovery Material as Confidential.

6. Nothing contained in this Order will be construed as: (a) a waiver by a Party or person of its right to object to any discovery request; (b) a waiver of any privilege or protection; or (c) a ruling regarding the admissibility at trial of any document, testimony, or other evidence.

7. Where a Producing Party has designated Discovery Material as Confidential, other persons subject to this Order may disclose such information only to the following persons:

(a) the Parties to this action, their insurers and their external auditors;

(b) counsel retained specifically for this action, including any paralegal, clerical, or other assistant that such outside counsel employs and assigns to this matter;

(c) outside vendors or service providers (such as copy-service providers and document-management consultants) that counsel hire and assign to this matter;

(d) any mediator or arbitrator that the Parties engage in this matter or that this Court appoints, provided such person has first executed a Non-Disclosure Agreement in the form annexed as Exhibit A hereto;

(e) as to any document, its author, its addressee, and any other person indicated on the face of the document as having received a copy;

(f) any witness who counsel for a Party in good faith believes may be called to testify at trial or deposition in this action, provided such person does not retain any copies of Discovery Material designated as “Confidential” and has first executed a Non-Disclosure Agreement in the form annexed as Exhibit A hereto;

(g) any person a Party retains to serve as an expert witness or otherwise provide specialized advice to counsel in connection with this action, provided such person has first executed a Non-Disclosure Agreement in the form annexed as Exhibit A hereto;

(h) stenographers engaged to transcribe depositions the Parties conduct in this action; and

(i) this Court, including any appellate court, its support personnel, and court reporters.

8. Before disclosing any Confidential Discovery Material to any person referred to in subparagraphs 7(d), 7(f), or 7(g) above, counsel must provide a copy of this Order to such person, who must sign a Non-Disclosure Agreement in the form annexed as Exhibit A hereto stating that he or she has read this Order and agrees to be bound by its terms. Said counsel must retain each signed Non-Disclosure Agreement, hold it in escrow, and produce it to opposing counsel either before such person is permitted to testify (at deposition or trial) or at the conclusion of the case, whichever comes first.

9. This Order binds the Parties and certain others to treat as Confidential any Discovery Materials so classified. The Court has not, however, made any finding regarding the confidentiality of any Discovery Materials, and retains full discretion to determine whether to afford confidential treatment to any Discovery Material designated as Confidential hereunder. All persons are placed on notice that the Court is unlikely to seal or otherwise afford confidential

treatment to any Discovery Material introduced into evidence at trial, even if such material has previously been sealed or designated as Confidential.

10. The Parties shall fully comply with Rule 5 of Judge Wood's Individual Rules of Practice regarding the electronic filing under seal in civil/miscellaneous cases. Motions or Letter Motions for approval of sealed or redacted filings, including the proposed sealed document(s), must be filed electronically through the court's ECF system in conformity with the Court's standing order, 19-mc-00583, and ECF Rules & Instructions, Section 6. The motion must be filed in public view, must explain the particular reasons for seeking to file that information under seal and should not include confidential information sought to be filed under seal. Supporting papers must be separately filed electronically and may be filed under seal or redacted only to the extent necessary to safeguard information sought to be filed under seal. The proposed sealed document must be contemporaneously filed under seal in the ECF system and electronically related to the motion. Where the motion seeks approval to redact information from a document that is to be publicly filed, the filing party shall: (a) publicly file the document with the proposed redactions, and (b) electronically file under seal a copy of the unredacted document with the redactions highlighted. Both documents must be electronically filed through the ECF system and related to the motion.

11. To be approved, any redaction or sealing of a court filing must be narrowly tailored to serve whatever purpose justifies the redaction or sealing and must be otherwise consistent with the presumption in favor of public access to judicial documents. *See*, *e.g.*, *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006). In general, the parties' consent or the fact that information is subject to a confidentiality agreement between litigants is not, by itself, a valid basis to overcome the presumption in favor of public access to

judicial documents. *See*, *e.g.*, *In re Gen. Motors LLC Ignition Switch Litig.*, No. 14-MD-2543(JMF), 2015 WL 4750774, at *4 (S.D.N.Y. Aug. 11, 2015). The party seeking leave to file sealed or redacted materials should meet and confer with any opposing parties (or third parties seeking confidential treatment of the information, if any) in advance to narrow the scope of the request. When a party seeks leave to file sealed or redacted materials on the ground that an opposing party or third party has requested it, that party shall notify the opposing party or third party that it must file, within three days, a letter explaining the need to seal or redact the materials. Any party unable to comply with the requirement for electronic filing under seal through the ECF system, or who has reason to believe that a particular document should not be electronically filed, must move for leave of the Court to file in the traditional manner, on paper.

12. In filing Confidential Discovery Material with this Court, or filing portions of any pleadings, motions, or other papers that disclose such Confidential Discovery Material ("Confidential Court Submission"), to the extent that they are permitted to file any such materials under seal, the Parties shall publicly file a redacted copy of the Confidential Court Submission via the Electronic Case Filing System. The Parties shall also file an unredacted copy of the Confidential Court Submission under seal with the Clerk of this Court, and the Parties shall serve this Court and opposing counsel with unredacted courtesy copies of the Confidential Court Submission.

13. Any Party who objects to any designation of confidentiality may at any time before the trial of this action serve upon counsel for the Producing Party a written notice stating with particularity the grounds of the objection. If the Parties cannot reach agreement promptly, counsel for all affected Parties will address their dispute to this Court in accordance with paragraph 2.B of Judge Gorenstein's Individual Practices.

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14. Any Party who requests additional limits on disclosure (such as "attorneys' eyes only" in extraordinary circumstances), may at any time before the trial of this action serve upon counsel for the recipient Parties a written notice stating with particularity the grounds of the request. If the Parties cannot reach agreement promptly, counsel for all affected Parties will address their dispute to this Court in accordance with paragraph 2.B of Judge Gorenstein's Court's Individual Rules of Practice in Civil Cases.

15. Recipients of Confidential Discovery Material under this Order may use such material solely for the prosecution and defense of this action and any appeals thereto, and not for any other purpose or in any other litigation proceeding. Nothing contained in this Order, however, will affect or restrict the rights of any Party with respect to its own documents or information produced in this action.

16. Nothing in this Order will prevent any Party from producing any Confidential Discovery Material in its possession in response to a lawful subpoena or other compulsory process, or if required to produce by law or by any government agency having jurisdiction, provided that such Party gives written notice to the Producing Party as soon as reasonably possible, and if permitted by the time allowed under the request, at least 10 days before any disclosure. Upon receiving such notice, the Producing Party will bear the burden to oppose compliance with the subpoena, other compulsory process, or other legal notice if the Producing Party deems it appropriate to do so.

17. Each person who has access to Discovery Material designated as Confidential pursuant to this Order must take all due precautions to prevent the unauthorized or inadvertent disclosure of such material.

18. In the event of a disclosure of any Confidential Discovery Material to a person not authorized to have had such disclosure made to him or her under this Order, and in the event the party responsible for having made or allowed such disclosure becomes aware of such disclosure, that party shall immediately inform counsel for the Producing Party whose Confidential Discovery Material has thus been disclosed of all relevant information concerning the nature and circumstances of such disclosure. The responsible party also shall take all reasonable measures promptly to retrieve the Confidential Discovery Material and to ensure that there is no further or greater unauthorized disclosure of the Confidential Discovery Material.

19. If a Producing Party believes that it has, for any reason, inadvertently disclosed documents, testimony, information and/or things protected from disclosure under the attorney-client privilege, work-product protection or any other legal privilege or immunity protecting such information from discovery, or the Receiving Party discovers such disclosure, the disclosure, pursuant to Fed. R. Evid. 502(d) shall not be deemed a waiver—in this litigation or in any other proceeding, including in Federal, State, arbitral, foreign, or other proceedings—of the applicable privilege or protection.

Upon such discovery, by either the Producing Party or the Receiving Party, prompt written notice identifying such materials shall be provided to the non-discovering party. The Receiving Party shall immediately return to the Producing Party, or destroy, all summaries or copies of such documents, testimony, information and/or things, shall provide a certification of counsel that all such disclosed materials (including copies or summaries of such material) have been returned or completely destroyed and shall not use such items for any purpose until further order of the Court.

In all events, such return or destruction and certification must occur within five (5) business days of the receipt of the request. Within fifteen (15) business days of the notification that the disclosed materials have been returned or destroyed, the Producing Party shall produce a privilege log with respect to the disclosed materials. Alleged privileged documents shall remain protected against disclosure and use during the pendency of any dispute over their status. Nothing in this Stipulation and Order shall affect any Party's right to withhold from disclosure documents or information that are privileged or otherwise protected from disclosure.

20. Within 60 days of the final disposition of this action—including all appeals—all recipients of Confidential Discovery Material must either return it—including all copies thereof—to the Producing Party, or, upon permission of the Producing Party, destroy such material—including all copies thereof. In either event, by the 60-day deadline, the recipient must certify its return or destruction by submitting a written certification to the Producing Party that affirms that it has not retained any copies, abstracts, compilations, summaries, or other forms of reproducing or capturing any of the Confidential Discovery Material. Notwithstanding this provision, the attorneys that the Parties have specifically retained for this action may retain an archival copy of all pleadings, motion papers, transcripts, expert reports, legal memoranda, correspondence, or attorney work product, even if such materials contain Confidential Discovery Material. Any such archival copies that contain or constitute Confidential Discovery Material remain subject to this Order. This paragraph does not apply to the Court.

21. This Order will survive the termination of the litigation and will continue to be binding upon all persons subject to this Order to whom Confidential Discovery Material is produced or disclosed.

22. This Court will retain jurisdiction over all persons subject to this Order to the extent necessary to enforce any obligations arising hereunder or to impose sanctions for any contempt thereof.

RESPECTFULLY SUBMITTED, SO STIPULATED AND AGREED.

Dated: September 24, 2020

SHEPHERD, FINKELMAN, MILLER & SHAH, LLP /s/ Laurie Rubinow James E. Miller Laurie Rubinow (LR6637) 65 Main Street Chester, CT 06412 Tel: (860) 526-1100 Fax: (866) 300-7367 Email: lrubinow@sfmslaw.com jmiller@sfmslaw.com ***Attorneys for Plaintiff-Relator***	CRAVATH, SWAINE & MOORE LLP /s/ Benjamin Gruenstein Evan R. Chesler Benjamin Gruenstein Damaris Hernandez Worldwide Plaza 825 Eighth Avenue New York, NY 10019 Tel: (212) 474-1000 Email: echesler@cravath.com bgruenstein@cravath.com dhernandez@cravath.com ***Attorneys for Defendant***

IT IS SO ORDERED.

Dated: September 24, 2020
New York, New York

Gabriel W. Gorenstein

Gabriel W. Gorenstein
United States Magistrate Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA; the States of CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, FLORIDA, GEORGIA, HAWAII, ILLINOIS, INDIANA, IOWA, LOUISIANA, MASSACHUSETTS, MICHIGAN, MINNESOTA, MONTANA, NEVADA, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH CAROLINA, OKLAHOMA, RHODE ISLAND, TENNESSEE, TEXAS, VIRGINIA, WASHINGTON and WISCONSIN; the DISTRICT OF COLUMBIA, THE CITY OF CHICAGO and THE CITY OF NEW YORK; *ex rel*., STEVEN M. CAMBURN Plaintiffs and Relator, vs. NOVARTIS PHARMACEUTICALS CORPORATION, Defendant.	**No. 13 Civ. 3700 (KMW)** **<u>NON-DISCLOSURE AGREEMENT</u>**

I, ____________________________________, acknowledge that I have read and understand the Protective Order in this action governing the non-disclosure of those portions of Discovery Material that have been designated as Confidential. I agree that I will not disclose such Confidential Discovery Material to anyone other than for purposes of this litigation and that at the conclusion of the litigation I will return all discovery information to the Party or attorney from whom I received it. By acknowledging these obligations under the Protective Order, I understand that I am submitting myself to the jurisdiction of the United States District Court for the Southern District of New York for the purpose of any issue or dispute arising hereunder and that my willful violation of any term of the Protective Order could subject me to punishment for contempt of Court.

____
Name:

Date:

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, Plaintiff, v. REGENERON PHARMACEUTICALS, INC., Defendant.	)	Civil Action No. 1:20-cv-11217-FDS

STIPULATED
CONFIDENTIALITY AGREEMENT AND PROTECTIVE ORDER

The Parties, by their undersigned Counsel, hereby stipulate pursuant to Federal Rules of Civil Procedure 26 and 34, subject to approval and entry by the Court, as follows:

1. This Order shall govern all information produced in response to a discovery request, whether formal or informal, in or related to the above-captioned litigation.

2. **Definition of Confidential Information.** The designation "Confidential" shall be limited to information that any producing party, including any third party, in good faith, believes to contain:

   a. Pricing data governed by the confidentiality provisions of the Social Security Act, 42 U.S.C. § 1396r-8(b)(3)(D), or any applicable state law;

   b. "Confidential Health Information." For the purposes of this protective order, "Confidential Health Information" shall mean any document or information supplied in any form, or any portion thereof, that identifies an individual in any manner and related to the past, present, or future care, services, or supplies relating to the physical or mental health or condition of such individual, the provision of health care to such individual, or the past, present, or future payment for the provision of health care to such individual.

ocument property name.

"Confidential Health Information" specifically includes "protected health information" and "individually identifiable health information" as such terms are defined by the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160, promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996. "Confidential Health Information" includes, but is not limited to, medical bills, claims forms, charge sheets, medical records, medical charts, test results, notes, dictation, invoices, itemized billing statements, remittance advice forms, explanations of benefits, checks, notices, and requests. "Confidential Health Information" also includes all notes, summaries, compilations, extracts, abstracts, or oral communications that contain, are based on, or are derived from "Confidential Health Information." "Confidential Health Information" also includes material subject to the provisions of the Privacy Act, 5 U.S.C. § 552a, or to the provisions of 45 C.F.R. Part 164. "Confidential Health Information" also includes any materials covered by the privacy laws of any individual states as applicable. In order to facilitate the production of "Confidential Health Information", the parties may produce "Confidential Health Information" to any party in this litigation in unredacted form without such production constituting a waiver of confidentiality;

c. Trade secret or other confidential research or development information, or commercial information that bears upon a Party's or third-party's competitive position;

d. Personnel files of employees of any of the Parties or third parties;

e. "Personal Information," as that term is defined in the Massachusetts Data Security Regulation, 201 C.M.R. 17.02, except that this definition will apply to residents of any jurisdiction (not only Massachusetts), and shall include natural persons' cell phone numbers; and

f. To the extent not included in the categories above, financial account numbers.

3. **<u>Designation of Confidential Information</u>.** The designation of information as Confidential shall be performed in the following manner:

a. A Party or Third Party may designate information provided as Confidential by placing on or affixing to a document containing protected information the phrase "CONFIDENTIAL" on each page of the document entitled to such designation (in such manner as will not interfere with the legibility thereof). Information dated January 1, 2015 or later produced and designated by a party as Confidential prior to the filing of the United States' Complaint shall be treated as presumptively Confidential information under this Protective Order unless and until the designating party re-reviews and agrees to de-designate the document. Information dated December 31, 2014 or earlier produced and designated as Confidential prior to the filing of the United States' Complaint shall not be treated as Confidential under the terms of this Protective Order after May 30, 2021 unless and until the designating party specifically re-designates the information as Confidential after the party signs this Order. This subsection does not limit Regeneron's ability to invoke Section 3(e) of this Order in the event Regeneron inadvertently does not re-designate a document containing Confidential information by May 30, 2021.

b. If information cannot practically be designated Confidential for whatever reason including, but not limited to, the format of the electronically stored information, the producing party shall provide written notice of the designation of the information to the receiving party.

c. Interrogatory answers or other responses to written discovery and information contained therein shall be designated as Confidential by means of a statement at the conclusion of each answer specifying the information that is Confidential contained therein, or by another method that clearly indicates which portion of the answer or information is considered Confidential, and by placing the legend referenced in subpart (a) above on the front of any set of interrogatory answers containing such information.

d. A designation that information is Confidential shall constitute a representation to the Court, made in good faith, that counsel believes that the information so designated constitutes Confidential information as defined in this Order. Upon notification that a document appears to be incorrectly designated, the producing party shall review the designation and change the designation if it was made in error.

e. If a producing party inadvertently or unintentionally produces to a receiving party any Confidential information without designating it as protected pursuant to paragraph 3(a), 3(b) or 3(c), the producing party shall promptly give notice to the receiving party in writing and thereafter the receiving party shall treat the information as Confidential information. Such inadvertent or unintentional disclosure shall not be deemed a waiver in whole or in part of the producing party's claim of restriction either as to specific documents and information disclosed or on the same or related subject matter.

4. **Right to Challenge Designation.** Nothing in this Order shall be construed in any way as a finding that information designated Confidential actually is Confidential information. If a party to this Order disagrees, in full or in part, with a producing party's designation of Confidential information, such party may notify the producing party in writing stating the basis for its disagreement, and the parties shall confer in good faith as to the designation of the Confidential information. If the parties are unable to reach agreement on the proper designation of the Confidential information, either party may move to re-classify Confidential information pursuant to the terms of this Order.

5. **<u>Access to Confidential Information</u>.** Information designated Confidential may be disclosed only to the following persons:

a. The Court;

b. The parties' outside counsel and in-house counsel;

c. Non-attorney employees at Regeneron responsible for making decisions regarding the course of the litigation;

d. Experts or consultants retained by the parties; provided, however, that prior to the disclosure of Confidential materials to any such expert or consultant, counsel for the party making the disclosure shall deliver a copy of this Order to such person, shall explain its terms to such person, and shall secure the signature of such person on a statement in the form attached hereto as Exhibit A;

e. Stenographic and video reporters engaged in proceedings incident to this matter;

f. Discovery consultants, processors and vendors, outside document copying services, document coding or computerization services, demonstrative exhibit vendors and jury consultants; provided, however, that prior to the disclosure of Confidential materials to any such persons, counsel for the party making the disclosure shall deliver a copy of this Order to such person, shall explain its terms to such person, and shall secure the signature of such person on a statement in the form attached hereto as Exhibit A;

g. Associated personnel of any person within categories (a) through (e) for whom access to Confidential information is necessary to assist such persons in the action, including any Court personnel assisting the Court, litigation assistants, paralegals, secretarial or other clerical personnel, stenographers or other persons involved in taking or transcribing testimony in this action, and principals and employees of the firm with which consultants or experts are associated;

h. Any person known to have created or received Confidential information outside of discovery;

i. During depositions and preparation for depositions, any deponent and the deponent's counsel, if any; provided, however, that prior to the disclosure of Confidential materials to any such persons, counsel for the party making the disclosure shall deliver a copy of this Order to such person, shall explain its terms to such person, and shall secure the signature of such person on a statement in the form attached hereto as Exhibit A;

j. Law enforcement personnel, including United States Department of Justice Attorneys, United States Attorneys, their authorized subordinates, and contractors engaged in the purposes of assisting the same with this matter;

k. Any private mediators utilized in this matter; and

l. Such other persons as the parties mutually agree upon in writing and in advance of access by such persons; provided, however, that prior to the disclosure of Confidential materials to any such persons, counsel for the party making the disclosure shall deliver a copy of this Order to such person, shall explain its terms to such person, and shall secure the signature of such person on a statement in the form attached hereto as Exhibit A.

6. **Use of Confidential Information.** Information designated Confidential may be used solely for purposes of pretrial preparation and proceedings in this action, trial of this action, and any appellate proceedings in this action. Such Confidential information shall be used for no other purpose unless and until agreed to in writing by all parties to this action or authorized by order of

the Court. No person who receives any Confidential information shall disclose it to any person for any purpose other than for pretrial preparation and proceedings in this action.

7. **Limitations.** Nothing contained in this Order shall abrogate any legal obligation of any party to disclose upon appropriate request to any state, any agency or department of the United States, or any division of any such agency or department, Confidential information relating to any potential violation of law or regulation, or relating to any matter within that agency's jurisdiction, nor shall anything contained in this Order abrogate any legal right to use any such Confidential information by a federal agency in any proceeding relating to any potential violation of law or regulation, or relating to any matter within that agency's jurisdiction. Nor shall anything contained in this Order abrogate any legal obligation of any party to disclose any document or information as required by law, or to Congress pursuant to a Congressional request. If another court or an administrative agency requests, subpoenas, or orders production of Confidential information from a party that has obtained those materials under the terms of this Order, the party shall promptly notify the producing party of such subpoena or other process so that the producing party has the opportunity to contest the request to protect its Confidential information through appropriate legal means. Such notification must include a copy of the request, subpoena, or court order.

8. **Transcripts.** During any deposition in which Confidential information is discussed, counsel for any party or third party may: (a) designate, on the record, the portions of the transcript that will contain Confidential information, in which case the portions of the deposition so designated on the record shall be treated as Confidential information, respectively, and placed in a separately bound volume; or (b) designate in writing to counsel for all parties, within fourteen (14) days of the transcript's delivery, the transcript portions which are to be treated as Confidential information. All deposition transcripts will be considered as Confidential information until the notice set forth above or until the expiration of fourteen (14) days from the transcript's delivery.

9. **Filing Under Seal.** A party seeking to file another party's Confidential discovery material shall provide the producing party notice of the Confidential discovery material it intends to use at least three (3) days prior to filing. The producing party shall then have three (3) days in which either to consent to the request to file said information in the public record or to file a motion pursuant to Local Rule 7.2 to keep such papers under seal. If the producing party moves to keep papers under seal, the papers with the designated Confidential information under seal, or with any references to the Confidential information, will be filed under seal or redacted, as appropriate, until the Court rules on the motion to seal. Notwithstanding the above, natural persons' cell phone numbers may be redacted in public filings as an alternative to filing under seal.

10. **Use of Confidential Information at Trial.** Within 10 days of the parties' exchange of exhibit lists, the producing party shall review the designation and determine whether it wishes to de-designate the material.

11. **Modification Permitted.** Nothing in this Order shall prevent any party from seeking modification of this Order or from objecting to discovery that it believes to be otherwise improper.

12. **Inadvertent or Mistaken Productions Shall Not Waive Privilege Or Protection.** If information subject to a claim of attorney-client privilege or work product protection or any other privilege or protection is inadvertently or mistakenly produced, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of privilege or protection for such information as provided under applicable law, including Federal Rule of Evidence 502. If a producing party has inadvertently or mistakenly produced information subject to a claim of protection or privilege, and if the producing party makes a written request for the return of such information, the information for which a claim of inadvertent production is made (including any analyses, memoranda or notes which were internally generated based upon such inadvertently-produced information), as well as all copies, shall be either destroyed or returned

immediately to the producing party, even if the receiving party disputes the claim of privilege. If the receiving party disputes the producing party's assertion of privilege, the producing party must submit the potentially privileged information to the Court for review *in camera*.

13. **Non-Party Information**. Discovery in this proceeding may involve disclosure by a non-party of Confidential information. At the option of a non-party, such information may be produced subject to the provisions of this Protective Order and, in that event, shall provide the non-party with all of the rights and obligations of a party as created by this Protective Order with respect to Confidential information produced by such non-party in connection with the discovery and pre-trial phase of this action.

14. **Termination**. Except for any documents that Regeneron produced to the United States prior to January 1, 2021, within 60 days of the termination of this action, including any appeals, each party shall either destroy or return to the opposing party all documents designated by the opposing party as "Confidential," and all copies of such documents, and shall destroy all extracts and/or data taken from such documents with the exception of any archived materials and attorney work product with embedded Confidential material. Attorneys may retain a set of pleadings and documents filed with the Court, written discovery or other pleadings served by either party on the other party, all transcripts, all correspondence, all consultant or expert reports, and all work product generated in connection with the action. Counsel will make reasonable efforts to identify and destroy emails and other correspondence that transmitted Confidential material but will not be required to restore and search archived material. All Confidential information retained for any reason will continue to be subject to this Order. Each party shall provide a certification as to such return or destruction within the 60-day period.

15. **Term**. This Order survives termination of this litigation and remains in full force and effect unless modified by further order or by written stipulation of the parties filed by the Court.

16. **Miscellaneous.**

a. Nothing in this Order shall prevent a party from any use of its own Confidential information.

b. The parties may agree to waive any provision of this Order, provided such waiver is made in writing.

c. Proper notice under this Order, when required, shall be effected or email.

17. **Counterparts.** This Order may be signed in counterpart, and each such counterpart shall be deemed an original.

18. **Entire Agreement.** This Order constitutes the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

STIPULATED BY:

For Plaintiff United States:

*/s/ David Lazarus (with permission)*__________________
U.S. Attorney's Office
One Courthouse Way, Suite 9200
Boston, MA 02210

For Defendant Regeneron Pharmaceuticals, Inc.:

/s/ *Richard Scheff*________________________________
Armstrong Teasdale LLP
2005 Market St., 29th Floor
Philadelphia, PA 19103

APPROVED AND SO ORDERED this

15th_ day of__March____________ , 2021.

BY THE COURT:

_/s/ F. Dennis Saylor IV____

Hon. F. Dennis Saylor
United States District Judge

EXHIBIT A

CERTIFICATION REGARDING CONFIDENTIAL INFORMATION

I hereby acknowledge that I, ________________________________[NAME], ____ [POSITION AND EMPLOYER], am about to receive Confidential information supplied in connection with the Proceeding, No. 1:20-cv-11217-FDS. I certify that I understand that the Confidential information is provided to me subject to the terms and restrictions of the Protective Order filed in this Proceeding. I have been given a copy of the Protective Order; I have read it, and I agree to be bound by its terms.

I understand that the information designated as "Confidential" in this Proceeding, including any notes or other records that may be made regarding any such information, shall not be disclosed to anyone except as expressly permitted by the Protective Order. I will not copy or use, except solely for the purposes of this Proceeding, any Confidential information obtained pursuant to this Protective Order, except as provided therein or otherwise ordered by the Court in the Proceeding.

I further understand that I am to retain all copies of all Confidential information provided to me in the Proceeding in a secure manner, and that all copies of such materials are to remain in my personal custody until termination of my participation in this Proceeding, whereupon the copies of such materials will be returned to counsel who provided me with such materials.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this _____ day of ______, 20__, at __________________.

Dated:______________________________ By:___________________________________
Signature

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

-against-

ANTHEM, INC.,

Defendant.

20-CV-2593 (ALC) (KHP)

ORDER

KATHARINE H. PARKER, United States Magistrate Judge:

This case, brought by the U.S. government against Anthem, Inc. ("Anthem") pursuant to the False Claims Act ("FCA"), asserts that Anthem knowingly disregarded its duty to ensure the accuracy of certain information it submitted to the Centers for Medicare and Medicaid Services ("CMS"), a part of the U.S. Department of Health and Human Services ("HHS"), resulting in it being paid more than it was entitled to for its insurance programs for Medicare recipients.

A core part of the information to be exchanged in this case is the protected health information of Anthem's members (i.e., patient's medical information and records). At issue is the level of security needed to protect the health data that is turned over to the government in discovery and who should pay for the costs of that security.[1] The government has proposed a robust set of protections for the data including that the data will be housed on a bespoke platform, not connected to the internet, accessible by only ten individuals—all of whom are U.S. citizens who have been subject to a criminal background check. The system does not allow for

[1] The parties do not dispute the level of protection being provided for other types of information produced in discovery and each side is bearing the costs of protecting the other information each receives (e.g., security in place to protect emails reviewed and produced on a review platform such as Relativity).

transfer of data; rather, the only way to transfer data is encrypted physical storage initiated by one of three authorized persons. Additionally, all data is encrypted at the file level and would remain encrypted if it were somehow removed from the platform. The security system proposed by the government is HITRUST-certified.[2] The monthly cost already being incurred by the government for this level of security is about $5,000/month.

Anthem agrees that the platform has many protections in place but states that it needs additional protections—most that would come into play in the event of a future data breach—which will cost an additional $4,300/month. The specific additional protections sought include tracking and logging of all activity on the platform, not just tracking and logging data moving in or out of the system; monitoring of internal activity logs; certain data loss prevention controls to mitigate potential security gaps in transfer protocols; and certain measures to address security vulnerabilities exploited in the Microsoft "Midnight Blizzard" cyber-attack. *See* ECF 216-1, Declaration of Chandrasekhar Nagasundaram Vice President, Technology-Cybersecurity for Anthem. Anthem contends the additional measures it is seeking are consistent with industry standards and with applicable regulatory guidance.

The issue of data security in discovery and how costs should be allocated for same is one that does not appear to have been addressed in any other court decision.

Under the federal rules, there is a presumption that the responding party bears the expense of complying with and responding to discovery requests and of preserving its own

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[2] HITRUST stands for Health Information Trust Alliance—an organization governed by representatives from the healthcare industry that provides a certifiable framework to help healthcare organizations and their providers protect sensitive health information in keeping with legal/regulatory requirements.

information for litigation. *Oppenheimer Fund Inc. v. Sanders*, 437 U.S. 340, 358 (1978). Who should bear the cost of maintaining the security of data turned over in litigation is a slightly different question. It is typical for Courts to issue protective orders governing discovery, but those orders do not usually address secure storage of data or who bears the costs of protecting electronically stored information produced in discovery. Rather, those orders typically describe the process for designating information confidential, challenges to designations, individuals authorized access to confidential information, and the return or destruction of information at the conclusion of the litigation.

> Nonetheless, the undersigned's model protective order includes the following:
>
> "Any Personally Identifying Information ("PII") (e.g., social security numbers, financial account numbers, passwords, and information that may be used for identity theft) exchanged in discovery shall be maintained by the receiving party in a manner that is secure and confidential and shared only with authorized individuals in a secure manner. The producing party may specify the minimal level of protection expected in the storage and transfer of its information. In the event the party who received PII experiences a data breach, it shall immediately notify the producing party of same and cooperate with the producing party to address and remedy the breach. Nothing herein shall preclude the producing party from asserting legal claims or constitute a waiver of legal rights and defenses in the event of litigation arising out of the receiving party's failure to appropriately protect PII from unauthorized disclosure."

Accordingly, the protective order in this case contains this language and allows the producing party to specify the minimum level of security expected. *See* ECF No. 96. It does not address cost-shifting in the event the receiving party disputes the level of protection specified by the producing party.

The Court is mindful of the increasing data security risks faced by law firms and entities in litigation.[3] In 2022, the American Bar Association reported that 27% of law firms reported having experienced a security breach.[4] IBM Security issued a report in 2023 indicating that the average cost of a data breach is more than $4 million. IBM Security, "Cost of a Data Breach Report 2023." https://www.ibm.com/reports/data-breach (last visited June 11, 2024). And, indeed, there already has been a data breach in this case. Specifically, one of the government's vendors experienced a ransomware attack that compromised some of Anthem's data, resulting in the vendor having to send notice to impacted individuals, pay for two-years of credit monitoring, and a lawsuit. ECF No. 96 ¶3. Accordingly, Anthem is rightfully concerned about the protection of its data in this case. Further, HHS has recognized that healthcare information is frequently a target of cyberattacks and care must be taken to protect health information.[5]

Federal Rule of Civil Procedure 26(c)(1)(B) grants the court discretion to allocate expenses for disclosure or discovery upon a showing of "good cause." The Court in *Zubulake v. UBS Warburg LLC*, 217 F.R.D. 309, 323 (S.D.N.Y. 2003), set forth various factors to aid courts in analyzing which party should bear the cost of electronic discovery. Those factors include: 1) "the extent to which the request is specifically tailored to discover the relevant information"; 2) "the availability of such information from other sources"; 3) "the total cost of production, compared to the amount in controversy"; 4) "the total cost of production, compared to the

[3] https://nysba.org/hackers-working-for-lucrative-cyber-attack-industry-see-law-firms-as-rich-targets/ (last visited June 11, 2024)

[4] https://www.americanbar.org/groups/law_practice/resources/tech-report/2022/cybersecurity/ (last visited June 11, 2024)

[5] www.aspr.hhs.gov/cyber/documents/Healthcare.Sector.Cybersecurity, Introduction to the Strategy of the U.S. Department of Health and Human Services ("HHS") (last visited June 11, 2024).

resources available to each party”; 5) “the relative ability of each party to control costs and its incentive to do so”; 6) “the importance of the issues at stake in the litigation”; and 7) “the relative benefits to the parties of obtaining information.” 217 F.R.D. 322. These factors were developed over twenty years ago in the infancy of electronic discovery and before 2006 amendments to the Rules designed to address issues raised by difficulties in “locating, retrieving, and providing discovery of some electronically stored information.” Advisory Committee Notes, 2006 Amendment to Rule 26(b)(2). Thus, these factors are informative, but are not all directly relevant to the question of whether a producing party who wishes a certain level of data security be provided for data produced in discovery can require the receiving party to bear the full cost of such data security protections for the duration of the litigation until the data is destroyed or returned.[6]

In most cases, the receiving party will bear the costs of maintaining the security of data and the risk of a data breach, as each side will receive data and will need to protect that data pursuant to the terms of any protective order and the level of security and costs will be similar for both sides. Additionally, there are strong financial and reputational incentives for parties and their lawyers to ensure the security of the data they receive in discovery. Nevertheless, there may be some instances when it is appropriate to shift certain costs of data security.

[6] Courts have referenced these factors in determining cost shifting in similar contexts, however. See, e.g., *IME Watchdog, Inc. v. Gelardi*, 22 Civ. 1023, 2022 WL 2316137 (E.D.N.Y. June 28, 2022)(finding *Zubulake* factors were consistent with finding that the parties should share the cost of forensic examination of electronic devices); *In the Matter of the Complaint of Specialist LLC*, 16 Civ. 5010, 16 Civ. 2515, 16 Civ. 3353, 16 Civ. 3579, 16 Civ. 4643, 16 Civ. 7001, 2016 WL 6884919 (recognizing the party possessing information normally must bear the expense of preserving it for litigation but nevertheless shifting costs of preservation of physical evidence – a ship – and noting that *Zubulake* factors, while not necessarily directly applicable, were consistent with shifting costs).

Further, there may be different levels of security needed for different types of information produced in a litigation.

After careful consideration, the Court has identified the following, non-exclusive factors as relevant to determining whether there is good cause to shift all or a portion of costs of data security measures from the receiving party to the producing party: 1) the nature of the information to be protected and risks and costs associated with unauthorized disclosure of such information; 2) the reasonableness of the security measures requested by the producing party (which can include an evaluation of the degree of risk mitigated by the security requested relative to less costly security measures); 3) the cost of the data security requested relative to the overall costs of discovery and amount in controversy; and 4) relative ability of the parties to pay the costs of the security requested by the producing party. These factors are not necessarily entitled to the same weight in every case and should be balanced based on the particulars of each case.

As to factor one, the information sought to be protected here is medical information and related personally identifying information about individuals who are not parties to this litigation. This type of information is often the subject of cyber attacks, and includes deeply personal details about the non-parties included in the data set. This data has already been the subject of a cyber attack in this case, meaning that it is a high risk target of future cyber attacks. The costs associated with compromise of this information are high because of the number of people who could be affected by a security breach. Further, the costs associated with addressing a large security breach are in the millions of dollars. Given these risks, and particularly given the previous breach, Anthem's concern for the security of the data is reasonable and this factor weighs against shifting the costs of that security to Anthem.

As to factor two, the security requested by Anthem is the security requested of all of its vendors and thus not unusual nor newly calculated to cause hardship to the Plaintiff. On the other hand, the system proposed by the government is already secure and takes into account health industry standards for protection of information. Additionally, unlike with Anthem's regular vendors, the information will not be accessible via the internet, is encrypted and will be accessible to only 10 people. It is not clear how much additional risk will be mitigated from the additional measures proposed by Anthem. Ultimately, the only technical opinion offered by the parties is from Anthem's head of Cybersecurity Threat Management, whose declaration identifies specific vulnerabilities in the government's proposal. The Court can not rely on the representations of lawyers for the government to conclude that their proposed safeguards are sufficient. Therefore, this factor also weighs against shifting the costs of data security to Anthem.

As to factor three, the cost of the additional data security measures is about $60,000 per year, which would nearly double the Governments data-hosting and security costs. At the same time, the Government is alleging that Anthem unlawfully obtained and retained millions of dollars in payments. ECF No. 26-1. Therefore, the annual costs of the additional security measures are a rounding error relative to the entire amount in controversy, and this factor also weighs against shifting the costs of data security to Anthem.

As to factor four, both sides have an ability to pay the cost of the additional security, but they are not equally resourced. Anthem has retained a global law firm to defend this action, O'Melveny, whose associates regularly bill at rates about $500/hour, and whose partners bill at rates exceeding $1000/hour. *See e.g., Mogan v. Sacks, Ricketts & Case LLP*, 2022 WL 1458518, at *2 (N.D. Cal. May 9, 2022)(listing rates charged by O'Melveny counsel and partners.) It generates billions of dollars in revenues and has significant resources to defend this action. The Department of Justice also is well-resourced, but the Court is mindful that it is financed by tax dollars and pursuing this case to recover public funds it asserts were overpaid to Anthem. Nevertheless, the disparity in resources and source of those resources is not so great, especially in light of the total cost of litigation and amount in controversy, as to raise concerns that the producing party (Anthem) is seeking to make prosecuting the case against it financially untenable. On the whole, this factor weighs sightly in favor of shifting the costs of data security to Anthem, but not as strongly as in a situation where there is a greater financial disparity between the parties.

After considering all of these factors, the Court finds that the additional security measures requested by Anthem are proportionate to the nature of the information sought to be protected, reasonable in light of the only evidence provided on the level of security required, and proportionate to the total amount in controversy and the overall costs of litigation. While Anthem is slightly better positioned to absorb these additional costs, that factor alone does not outweigh the others particularly where there has already been a data breach due to the requesting party's prior insufficient protections. Accordingly, the government has not shown good cause to shift the burden to Anthem to pay for the additional security requested.

CONCLUSION

For the reasons set forth above, Plaintiff shall implement the additional security measures requested by Anthem and bear the cost of the additional security measures. However, this decision is without prejudice to a renewed motion under Rule 26 to shift the costs of this enhanced security if Defendant engages in conduct that unreasonably extends discovery so as to increase the costs to Plaintiff. *See e.g., Est. of Shaw v. Marcus*, 2017 WL 825317, at *6 (S.D.N.Y. Mar. 1, 2017)(noting discovery-related misconduct was relevant to analysis of whether discovery cost-shifting was appropriate). It is also without prejudice as to any rights the government may have as a prevailing party to recover costs.

SO ORDERED.

New York, New York
June 12, 2024

Katharine H Parker

Katharine H. Parker
U.S. Magistrate Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ALEXANDRIA REAL ESTATE EQUITIES, INC., *Plaintiff,* v. WILLIAM DEPIPPO, *Defendant.*	Case No. 1:25-cv-10708-RGS

PROTECTIVE ORDER

Pursuant to Federal Rule of Civil Procedure 26(c), Plaintiff Alexandria Real Estate Equities, Inc. ("Alexandria," "ARE," or the "Company") and Defendant William DePippo ("DePippo"), by and through their respective counsel, hereby stipulate to and petition the Court to enter the following Stipulated Protective Order ("Stipulated Protective Order" or "Order"):

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, personal, trade secret, and/or commercially sensitive information for which special protection from public disclosure and from use for any purpose other than litigating this Action may be warranted. The Parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles.

2. DEFINITIONS

2.1 Action: The above-captioned action titled *Alexandria Real Estate Equities, Inc. v. DePippo*, Case No. 1:25-cv-10708-RGS, in the U.S. District Court for the District of Massachusetts, including any appeal thereof.

2.2 Challenging Party: A Party or Non-Party that challenges the designation of information or items under this Order.

2.3 "CONFIDENTIAL" information: Non-public product, business, customer, employee, financial, marketing, pricing, sales, personal, proprietary, or technical information, the disclosure of which the Producing Party believes, in good faith, may risk harm to an individual or to the business or the competitive position of the Producing Party.

2.4 Counsel (without qualifier): Outside Counsel of Record and In-House Counsel, as well as their respective support staff.

2.5 Designating Party: A Party or Non-Party that produces and designates Litigation Material as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

2.6 Litigation Material: All items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this Action.

2.7 Expert: A person with specialized knowledge or experience in a matter pertinent to this Action who (1) has been retained by a Party or its Counsel to serve as an expert witness or as a consultant in this Action; (2) is not a current employee of a Party or of a Party's competitor in the real estate industry; and (3) at the time of retention, is not anticipated to become an employee of a Party or of a Party's competitor in the real estate industry.

2.8 Final Disposition: The later of (1) dismissal of all claims and defenses in this Action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all appeals, re-hearings, remands, trials, or reviews of this Action, including the time limits for filing any motions or applications for extension of time pursuant to applicable law.

2.9 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information: Sensitive non-public information, including trade secrets, the disclosure of which to another Party or Non-Party would create a substantial risk of serious harm to the Producing Party.

2.10 In-House Counsel: Attorneys who are employees of a Party to this Action. In-House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.11 Non-Party: Any natural person, partnership, corporation, association, or other legal entity not named as a Party.

2.12 Outside Counsel of Record: Attorneys who are not employees of a Party but are retained to represent or advise a Party and have appeared in this Action on behalf of that Party or are affiliated with a law firm which has appeared on behalf of that Party.

2.13 Party: Any Party to this Action, including all of its officers, directors, employees, consultants, and retained experts (and their respective support staffs).

2.14 Producing Party: A Party or Non-Party that produces Litigation Material in this Action.

2.15 Professional Vendors: Persons or entities that provide contract document review or other litigation support services (*e.g.*, photocopying; videotaping; translating; preparing exhibits or demonstrations; and organizing, storing, or retrieving data in any form or medium) who are subject to confidentiality obligations to the Receiving Party consistent with those set forth in this Order, including their employees and subcontractors.

2.16 Protected Material: Any Litigation Material that is designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

2.17 Receiving Party: A Party that receives Litigation Material from a Producing Party.

3. SCOPE

The protections conferred by this Stipulated Protective Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that might reveal Protected Material.

However, the protections conferred by this Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party.

Any use of Protected Material at trial of this Action shall be governed by a separate agreement or order.

4. DURATION

Even after Final Disposition of this Action, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise directs.

5. DESIGNATING PROTECTED MATERIAL

5.1 Manner and Timing of Designations. Except as otherwise provided in this Order, or as otherwise stipulated or ordered, Litigation Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) for information in documentary form (*e.g.*, paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL," or, as applicable, "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" to each document that contains Protected Material.

A Party or Non-Party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced. During the inspection and before the designation, all the material made available for inspection shall be deemed "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." After the inspecting Party has identified the documents it wants copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the "CONFIDENTIAL" or, as applicable, "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" legend to each document that contains Protected Material.

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Designating Party, (i) on the record at the deposition, hearing, or other proceeding, or (ii) by written notice within thirty (30) calendar days of receipt of the deposition transcript, designate the whole transcript or portions of the transcript (including exhibits) as "CONFIDENTIAL" or, as applicable, "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES

ONLY,". Only those portions of the testimony that are appropriately designated for protection shall be covered by the provisions of this Stipulated Protective Order.

Parties shall give the other Parties notice if they reasonably expect a deposition, hearing, or other proceeding to include Protected Material so that the other Parties can ensure that only authorized individuals are present at those proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its designation as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

Transcripts containing Protected Material shall have an obvious legend on the title page that the transcript contains Protected Material and indicate the appropriate designation(s). The Designating Party shall inform the court reporter of these requirements. Any transcript that is prepared before the expiration of a 30-day period for written notice of designation shall be treated during that period as if it had been designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall be treated only as actually designated.

(c) for documents produced electronically in native format, such electronic files and documents, shall be designated for protection under this Order by the Designating Party by including the confidentiality designation on the placeholder sheet for each file, or shall use any other reasonable method for so designating Protected Materials produced in electronic format. When electronic files or documents are printed for use at deposition, in a court proceeding, or for provision in printed form to an Expert, the Party printing the electronic files or documents shall include the confidentiality designation placeholder sheet for each file.

(d) for information produced in some form other than documentary form and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend "CONFIDENTIAL" or, as applicable, "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

(e) In the event that DePippo produces to Alexandria any of Alexandria's own documents or information, Alexandria shall be permitted to disclose such documents or information to any of the categories of recipients in Paragraph 7.2, even if DePippo designated such documents or information as "HIGHLY CONFIDENTIAL – ATTORNEY'S EYES ONLY." Alexandria shall also have the right to designate such production (or portions thereof) as "CONFIDENTIAL" (if produced by DePippo without a "CONFIDENTIAL" designation) or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" (if produced by DePippo with a "CONFIDENTIAL" designation or with no designation) pursuant to Paragraph 5.1. In such circumstances, Alexandria will be deemed the Designating Party under this Order.

5.2 Restrictions on DePippo's Ability to Review ARE Documents. DePippo may have ARE documents in his possession, custody, or control, including documents in the possession of DataMine pursuant to the Forensic Review Protocol, ECF No. 6-1, that have not yet been designated under this Order as they have not yet been produced to ARE. DePippo may not review any such documents that he knows or should know contain ARE information (for the avoidance of doubt, even where such documents are responsive to discovery requests from ARE). Review of such documents shall be conducted by DePippo's Outside Counsel of Record. However, DePippo may review any such ARE documents that are ultimately produced in discovery, except that any such documents designated as "HIGHLY CONFIDENTIAL – ATTORNEY'S EYES

ONLY" may be reviewed by DePippo solely in compliance with the procedures set forth in Paragraph 7.3(b) below.

5.3 Inadvertent Failures to Designate. An inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon correction of a designation, and until any challenge to a corrected designation is decided, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

5.4 Designation of Entire Documents. If any page of a document produced in response to discovery requests contains Protected Material, the Producing Party may designate the entire document for protection hereunder.

5.5 Withdrawal of Designations. If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection, that Designating Party must promptly notify all other Parties that it is withdrawing the mistaken designation.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Any such challenge shall comply with Sections 6.2 and 6.3 herein. A Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. The Parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice-to-voice dialogue; other forms of communication are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet-and-confer process first or establishes that the Designating Party is unwilling to participate in the meet-and-confer process in a timely manner.

6.3 Judicial Intervention. [Disputed Provision – Please see parties' respective proposals in Joint Motion for Entry of Proposed Protective Order].

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. During the pendency of any challenge, all Parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the Court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this Action only for prosecuting, defending, or attempting to settle this Action. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. Upon Final Disposition, a Receiving Party must comply with the provisions of Section 13 below.

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any Protected Material designated "CONFIDENTIAL" only to:

(a) the Receiving Party's Outside Counsel of Record in this action, as well as Professional Vendors of the Receiving Party to whom it is reasonably necessary to disclose the information for this Action;

(b) the Receiving Party itself, including officers, directors, and employees (including In-House Counsel), if any, to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(d) the Court and its personnel, including any Court reporter or videographer transcribing or recording testimony, whether at a deposition, hearing or trial;

(e) any mediator who is assigned to hear this matter, and his or her staff, subject to their agreement to maintain confidentiality to the same degree as required by this Stipulated Protective Order, and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(f) professional jury or trial consultants, and mock jurors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(g) during their depositions, witnesses in the Action to whom disclosure is reasonably necessary and who, prior to or at the beginning of the deposition, have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court; and

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(h) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

7.3 <u>Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or Items</u>. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" only to:

(a) the Receiving Party's Counsel (including In-House Counsel who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A)), as well as Professional Vendors of the Receiving Party to whom it is reasonably necessary to disclose the information for this Action;

(b) in the case of Alexandria information that is so designated (whether it is designated (1) by Alexandria, or (2) by Mr. DePippo, to the extent Mr. DePippo produces such information—which Mr. DePippo's Outside Counsel of Record believes to be reasonably necessary to discuss with Mr. DePippo for purposes of this litigation—to William DePippo, provided that (1) he shall not use, disclose, or discuss the "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information with anyone or for any purpose except with his Outside Counsel of Record for purposes of this litigation, (2) he shall review "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information only in the immediate presence of his Outside Counsel of Record, and (3) he shall not retain any copies (digital or hard copy) of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information;

(c) Experts (as defined in this Order) of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), and (3) as to whom the procedures set forth in Section 7.4 have been followed;

(d) the Court and its personnel, including any Court reporter or videographer transcribing or recording testimony, whether at a deposition, hearing, or trial;

(e) any mediator who is assigned to hear this matter, and his or her staff, subject to their agreement to maintain confidentiality to the same degree as required by this Stipulated Protective Order, and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(f) professional jury or trial consultants, and mock jurors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information;

(h) [Disputed Provision – Please see parties' respective proposals in Joint Motion for Entry of Proposed Protective Order].

7.4 [Disputed Provision – Please see parties' respective proposals in Joint Motion for Entry of Proposed Protective Order].

7.5 Legal Advice Based on Protected Material. Nothing in this Stipulated Protective Order shall be construed to prevent Counsel from advising their clients with respect to this case based in whole or in part upon Protected Materials, provided Counsel does not disclose the Protected Material itself except as provided in this Order.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this Action as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY," that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this Action before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

The terms of this Order are applicable to information produced by a Non-Party in this action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY." Such information produced by Non-Parties in connection with this Action is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protection.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

11. PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain Litigation Material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). The production of privileged or work-product protected documents, ESI, or information, whether inadvertent or otherwise, is not a waiver of the privilege or protection from discovery in this case or in any other federal or state proceeding. This Order shall be interpreted to provide the maximum protection allowed by Federal Rule of Evidence 502(d). Subject to Section 5.2 above concerning certain restrictions on DePippo's review of ARE documents, nothing contained herein is intended to or shall serve to limit a Party's right to conduct a review of documents, ESI, or information (including metadata) for relevance, responsiveness, and/or segregation of privileged and/or protected information before production. The provisions of Federal Rule of Evidence 502(b) do not apply.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this Action any Protected Material. A Party that seeks to file under seal any Protected Material must comply with Local Rule 7.2. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. These procedures for filing Protected Material with the Court shall apply only to pretrial proceedings. If necessary, the Parties shall propose to the Court procedures for the filing of Protected Material with regard to trial.

13. FINAL DISPOSITION

Within sixty (60) days after the Final Disposition of this Action, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries, or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Outside Counsel of Record are entitled to retain any copies of their own data that is produced in discovery or received through forensic analysis and any archival copy of all pleadings; motion papers; deposition, hearing, and trial transcripts; legal memoranda; correspondence; deposition, hearing, and trial exhibits; Expert reports; attorney work product; and Expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Paragraph 4.

SO ORDERED:

Dated: 11-19-25

Richard G. Stearns
The Honorable Richard G. Stearns
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ELLEN M. and G.M., **Plaintiffs,** **v.** **HORIZON BLUE CROSS BLUE SHIELD OF NEW JERSEY; SANOFI US and SANOFI-AVENTIS U.S. LLC GROUP HEALTH & WELFARE PLAN,** **Defendants.**	**Civil Action No. 4:25-cv-11501-MRG**

AGREED PROTECTIVE ORDER

For good cause shown under Fed. R. Civ. P. 26(c), the Court Defendants Horizon Blue Cross Blue Shield of New Jersey ("Horizon"), Sanofi US ("Sanofi"), and the Sanofi-Aventis U.S. LLC Group Health & Welfare Plan (the "Plan") (collectively "Defendants") and Plaintiffs Ellen M. and G.M. ("Plaintiffs") (together with Defendants, the "Parties") Joint Motion for Entry of an Agreed Protective Order and enters the following Protective Order:

WHEREAS, Defendants and Plaintiffs Ellen M. and G.M. ("Plaintiffs," and together with Defendants, the "Parties" and each individually, a "Party") request that this Court issue this Stipulated Confidentiality Agreement and Protective Order (hereafter, "Order") pursuant to Federal Rule of Civil Procedure 26(c) to facilitate the voluntary exchange of documents and protect the confidentiality of nonpublic and competitively sensitive business or private health or personal information that they may need to disclose in connection with discovery in this action;

WHEREAS, the Parties, through counsel, agree to the following terms; and

WHEREAS, this Court finds that good cause exists for issuance of this Order;

IT IS HEREBY ORDERED that the Parties, their respective officers, agents, servants, employees, and attorneys, any other person in active concert or participation with any of the foregoing, and all other persons with actual notice of this Order will adhere to the following terms:

Scope of Protection

1. This Order shall govern all information adduced in this action, including but not limited to discovery requests, any documents or materials produced in response to discovery requests, deposition and trial testimony (whether based upon oral examination or written questions), and any other information that a producing party may designate in connection with this action (collectively referred to as "Discovery Material").

2. This Order shall apply to the Parties, their representatives, agents, experts, and consultants, as well as all non-parties from whom discovery may be sought.

4. In the event that a Party seeks discovery from a non-party to this action, the Parties and/or the non-party may invoke the terms of this Order with respect to any Discovery Material to be provided by the non-party.

3. This Order authorizes the disclosure of information protected by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), including all applicable regulations and guidance issued by the Secretary of the United States Department of Health and Human Services (collectively "HIPAA Rules"), including specifically 42 C.F.R. Part 2 and 45 C.F.R. §§ 164.512(e)(1)(ii)(B), 164.512(e)(1)(v), as well as all state laws and regulations regarding the privacy and security of personal information (collectively with the HIPAA Rules, "Privacy and Security Rules"). This Order constitutes a Qualified Protective Order, as that term is defined in the Privacy and Security Rules.

Confidentiality

4. *Confidential Information.* "Confidential Information" means information in written, oral, electronic, graphic, pictorial, audiovisual, or other form, whether it be a document, information contained in a document, information revealed during a deposition, information revealed in a request and/ or response to an interrogatory or request for admission, or any other form of evidence or discovery contemplated under Part 5 of the Federal Rules which (1) is designated as "Confidential" by the producing party, and (2) which, in the good faith belief of the producing party contains (i) private health or personal information protected from disclosure under HIPAA and/or any other state or federal legislation, (ii) financial or tax information, (iii) confidential or proprietary research, development, design, construction, commercial, or business information that would not normally be revealed to the public, and/or (iv) trade secrets. In designating information as Confidential Information, the producing party shall make such a designation only as to the material or portion of the Discovery Material that the producing party, in good faith, believes contains Confidential Information. All Discovery Material that is designated "Confidential" shall be used for purposes of this action and for no other purposes, except as set forth within this Order.

5. *Material That Is Not Confidential.* Discovery Material will not be deemed "Confidential," and producing party shall use reasonable efforts to ensure that Discovery Material is not designated as such, if the content or substance thereof is at the time of production or disclosure, or subsequently becomes, through no wrongful act or failure to act on the part of the receiving party, generally available to the relevant public through publication or otherwise.

6. *Attorney's Eyes-Only Information.* "Attorney's Eyes Only Information" refers to any Discovery Material that may be designated as "Confidential" as that term is defined in

Paragraph 4 and is of the most sensitive nature and believed to be unknown to the public and the opposing party and which, if disclosed, would adversely affect the producing party's legitimate business interests and/or provide a competitor with significant technical or unfair business advantages. The designation of Discovery Material as "Attorney's Eyes Only" shall be the rare exception and not the rule.

7. *Process of Designation.* All Confidential Information or Attorney's Eyes-Only Information must be designated in the following manner, as applicable:

a. *Documents.* Documents designated as "Confidential" or "Attorney's Eyes Only" shall be so identified by the producing party marking each page of the document as "Confidential" or "Attorney's Eyes Only," or by issuing some other conspicuous notice identifying the material as "Confidential" or "Attorney's Eyes Only" (such as by letter setting forth the bates numbers or ranges or otherwise describing with particularity the documents to be treated as "Confidential" or "Attorney's Eyes Only"). If a receiving party wishes to designate documents produced by another party as "Confidential" or "Attorney's Eyes Only," the receiving party shall have a reasonable opportunity to request that the party who has control of the documents at issue make such designation.

b. *Designation of Other Discovery Material.* Discovery Material designated as "Confidential" or "Attorney's Eyes Only" that is not in documentary or other tangible form, or that cannot conveniently be labeled, shall be designated by the producing party in a writing provided to the receiving party at the time of production.

c. *Testimony or Deposition.* Testimony or information disclosed at a deposition may be designated as "Confidential" or "Attorney's Eyes Only" by indicating on the record at the deposition the specific testimony which shall be designated "Confidential" or "Attorney's Eyes Only." Alternatively, deposition testimony may be designated as "Confidential" or "Attorney's Eyes Only" by so advising the other parties in writing of the portions of the transcript that shall be treated as "Confidential" or "Attorney's Eyes Only" within 15 days after the deposition transcript is prepared. Until the end of this 15-day period (or until an earlier designation is made by counsel) the entire deposition shall be treated as if designated "Confidential."

8. *Inadvertent Production Without Designation.* If a party, through inadvertence, produces any Discovery Material that the party believes should be designated "Confidential" or "Attorney's Eyes Only" without labeling or marking or otherwise designating it as such in accordance with the provisions of this Order ("Misdesignated Material"), such production shall not be deemed a waiver of the producing party's later claim that such Misdesignated Material should be designated "Confidential" or "Attorney's Eyes Only." The producing party may give written notice to the receiving party that the Misdesignated Material is designated "Confidential" or "Attorney's Eyes Only" and should be treated as such in accordance with the provisions of this Order. The receiving party must treat the Misdesignated Material as "Confidential" or "Attorney's Eyes Only" from the date such notice is received, unless the receiving party can demonstrate that the Misdesignated Material does not qualify as "Confidential" or "Attorney's Eyes Only" under paragraphs 4 and 6 of this Order. Prior to the receipt of such notice, disclosure of Misdesignated Material to persons not authorized to receive Confidential Information or Attorney's Eyes-Only Information, shall not be deemed a violation of this Order, nor shall it cause such information,

otherwise "Confidential" or "Attorney's Eyes Only" under this Order, to no longer qualify for such designation. Upon the producing party's identification of Misdesignated Material to the receiving party, arrangements will be made for the destruction of the Misdesignated Material or for the return to the producing party of all copies of the Misdesignated Material and for the substitution, where appropriate, of properly designated copies of Discovery Material. Upon receipt of replacement copies of the Misdesignated Material with the proper designation, the receiving party shall take all reasonable steps to return or destroy all previously produced copies of the Misdesignated Material. If requested by the producing party, a receiving party shall verify in writing that it has taken all reasonable steps to return or destroy Misdesignated Material.

9. *Unauthorized Disclosure of Confidential Information or Attorney's Eyes-Only Information.* In the event of a disclosure by a receiving party of Confidential Information and/or Attorney's Eyes Only Information to persons or entities not authorized by this Order to receive such information, the receiving party making the unauthorized disclosure shall, upon learning of the disclosure: (i) immediately notify the person or entity to whom the disclosure was made that the disclosure contains Confidential Information and/or Attorney's Eyes Only Information subject to this Order; (ii) immediately make reasonable efforts to recover the disclosed Confidential Information and/or Attorney's Eyes Only Information as well as preclude further dissemination or use by the person or entity to whom the disclosure was made; and (iii) immediately notify the producing party of the identity of the person or entity to whom the disclosure was made, the circumstances surrounding the disclosure, and the steps taken to recover the disclosed Confidential Information and/or Attorney's Eyes Only Information and ensure against further dissemination or use thereof. Disclosure of Confidential Information and/or Attorney's Eyes-Only Information

other than in accordance with the terms of this Order may subject the disclosing person to such sanctions and remedies as the Court may deem appropriate.

10. *Permitted Disclosure of Confidential Information.* Counsel and others shall not disclose or permit the disclosure of Confidential Information under this Order to any other person or entity, except in the following circumstances:

a. Disclosure may be made to employees of counsel who have direct functional responsibility for assisting in the preparation and trial of this action or any related appeal, including paralegal, secretarial, and clerical employees. Any employee to whom disclosure is made shall be advised of, and shall become subject to, the terms of this Order;

b. Disclosure may be made to consultants or experts employed by counsel to assist in the preparation and trial of this action or any related appeal, but any such consultants or experts to whom Confidential Information is disclosed must agree in writing to be bound by the terms of this Order;

c. Disclosure may be made to employees of the parties to the extent required for assisting in the preparation and trial of this action or any related appeal;

d. Disclosure may be made to the Court and court personnel (including the court having jurisdiction over any appeal) and jurors in connection with this action, provided that, if the disclosure is made as part of a court filing, the Confidential Information shall be filed under seal or appropriately redacted;

e. Disclosure may be made to court reporters used in connection with this action, as necessary for bona fide purposes related to this action;

f. Disclosure may be made to any person who wrote, possessed, viewed or received a copy of information designated "Confidential" before it was furnished in this action;

g. Disclosure may be made to any mediators and employees of such mediators who are actively engaged in assisting the mediators in connection with this action;

h. Disclosure may be made to employees of copying, microfilming, document imaging, facsimile, and other services engaged to reproduce Discovery Material in connection with this action; and

i. Disclosure may be made to trial or hearing witnesses or deponents in the course of this action as necessary for bona fide purposes related to the witness's or deponent's testimony, and after the person to whom such disclosure is made has been informed of the Order and has agreed in writing to be bound by it.

11. *Permitted Disclosure of Attorney's Eyes-Only Information.* Counsel and others shall not disclose or permit the disclosure of Attorney's Eyes Only Information under this Order to any other person or entity, except in the following circumstances:

a. Disclosure may be made to the Court and court personnel (including the court having jurisdiction over any appeal) in connection with this action, provided that, if the disclosure is made as part of a court filing, the Attorneys Eyes Only Information shall be filed under seal or appropriately redacted;

b. Disclosure may be made to court reporters used in connection with this action, as necessary for bona fide purposes related to this action;

c. Disclosure may be made to any person who (1) prepared, possessed, or received the Attorney's Eyes Only Information or a copy thereof before it was furnished in this action; or (2) was present or participated in a meeting or discussion of the Attorney's Eyes Only Information before it was furnished in this action;

d. Disclosure may be made to any mediators and employees of such mediators who are actively engaged in assisting the mediators in connection with this action; and

e. Disclosure may be made to employees of copying, microfilming, document imaging, facsimile, and other services engaged to reproduce Discovery Material in connection with this action.

12. Any person having access to Discovery Material designated "Confidential" or "Attorney's Eyes Only" under this Order, including consultants and experts, shall not make copies, extracts, summaries, or descriptions of such Discovery Material or any portion thereof, except as necessary for the preparation and trial of this action.

13. *Challenges to Designations.* The parties shall have the right to dispute the "Confidential" or "Attorneys' Eyes Only" designation claimed by any other party or non-party in accordance with this Order. If a receiving party believes that any documents or materials have been inappropriately designated by a producing party, the receiving party shall confer in good faith with counsel for the producing party. As part of that conferral, the producing party must assess whether redaction is a viable alternative to complete nondisclosure. If the parties are unable to resolve the matter informally, either party may file the appropriate motion seeking relief from the Court. Regardless of which party files the motion, the party seeking to prevent the disclosure bears the burden of establishing good cause for non-disclosure. Information claimed to be "Confidential" or "Attorney's Eyes Only" that is subject to a dispute as to proper designation shall, until further order of the Court, be treated in accordance with the provisions of this Order pursuant to its designation as "Confidential" and/or "Attorney's Eyes Only." In this circumstance, a

producing party's designation of the Discovery Material shall be controlling unless otherwise determined by the Court. In the event a motion to challenge a producing party's designation of Discovery Material as "Confidential" or "Attorney's Eyes Only" is pursued, it and the accompanying materials shall be filed under seal, and the confidentiality of such information shall remain protected until the Court shall order otherwise. The parties shall attempt to resolve any such challenge by agreement prior to filing such a motion. A party is not obligated to challenge the propriety of any "Confidential" or "Attorney's Eye's Only" designation at the time of production or, in the case of Misdesignated Material, at the time of designation, and failure to do so shall not preclude a subsequent challenge thereto or constitute an admission that such designation was proper.

14. *Limited Use.* Use of Confidential Information and/or Attorney's Eyes-Only Information produced in this action shall be limited to this action.

15. *Trial Procedures*. A determination as to when and what special procedures, if any, are necessary for handling Discovery Material designated "Confidential" or "Attorney's Eyes Only" subject to this Order at trial shall be deferred until a trial date has been set in this case. Nothing contained in this Order, however, shall preclude either party from attempting to use any Discovery Material designated "Confidential" or "Attorney's Eyes Only" as evidence should this matter proceed to trial, subject to any confidentiality protections that the Court may direct. Notwithstanding, the exhibits, whether in a hearing or at trial, labeled "Confidential" or "Attorney's Eyes Only" shall not be required to be in an envelope unless explicitly agreed by the parties or ordered by the Court.

16. *Return of Confidential Information.* Within 60 days following the conclusion of this action (including any appeals, if applicable), all copies of Discovery Material designated

"Confidential" or "Attorney's Eyes Only" will be destroyed or returned to the party or non-party who produced them. Counsel for each party shall, if requested by the other party, provide a certificate or other writing confirming compliance with the foregoing provision. In addition, any copies of such of Discovery Material designated "Confidential" or "Attorney's Eyes Only" that are offered or admitted into evidence during this action will be maintained under seal in the Court file or returned to the producing party. Counsel for each party shall be entitled to retain all pleadings, motion papers, discovery responses (other than the other party's produced documents designated "Confidential" or "Attorney's Eyes Only"), deposition transcripts, legal memoranda, correspondence, and work product.

17. *No Waiver or Obligation to Object to Production.* Nothing contained in this Order shall be construed to require production of Confidential Information or Attorney's Eyes-Only Information which is privileged or otherwise protected from discovery or which is not responsive to a discovery request. In addition, nothing contained in this Order shall be construed as a waiver by any party of its right to object to the subject matter of any discovery request, nor as a waiver by any party of its obligation to fulfill its discovery obligations under the Federal Rules. The entry of this Order shall not be construed as an agreement by any party to produce any documents or to supply any information and shall not constitute an admission that any such documents that may exist are relevant or material in any way to the issues raised in the pending action or admissible in such action, nor as a waiver of any applicable privilege.

Additional Provisions

18. This Order shall survive the final conclusion of the action, and this Court retains jurisdiction of the parties hereto indefinitely as to any dispute between any of them regarding improper use of Discovery Material pursuant to this Order.

19. This Order is without prejudice to the right of any party, or an interested non-party, to seek relief from the Court, upon good cause shown, from any of the restrictions provided above or to impose additional limitations or restrictions on the disclosure of any Discovery Material produced. Any producing party shall have the right to waive all or part of the protections hereunder.

SO STIPULATED AND AGREED.

Dated: January 20, 2026

HORIZON BLUE CROSS BLUE SHIELD OF NEW JERSEY, SANOFI US, and SANOFI-AVENTIS U.S. LLC GROUP HEALTH & WELFARE PLAN

By: */s/ Danni L. Shanel*
Danni L. Shanel, Esq.
TROUTMAN PEPPER LOCKE LLP
111 Huntington Avenue, 9th Floor
Boston, MA 02199-7613
Telephone: (617) 204-5138
danni.shanel@troutman.com
Attorneys for Defendants Horizon Blue Cross Blue Shield of New Jersey, Sanofi US, and Sanofi-Aventis U.S. LLC Group Health & Welfare Plan

ELLEN M. AND G.M.

By: */s/ Brian S. King*
Brian S. King, admitted pro hac vice
BRIAN S. KING, P.C.
420 East South Temple, Suite 420
Salt Lake City, UT 84111
Telephone: (801) 532-1739
Facsimile: (801) 532-1936
brian@briansking.com
Attorney for Plaintiffs

/s/ Margaret R. Guzman

SO ORDERED.
DATED: January 27, 2026

Margaret R. Guzman
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ENTESAR OSMAN KASHEF, *et al.*,

Plaintiffs,

v.

BNP PARIBAS S.A., and BNP PARIBAS US WHOLESALE HOLDINGS, CORP.,

Defendants.

No. 1:16-cv-03228-AKH

Hon. Alvin K. Hellerstein

~~[PROPOSED]~~ PROTECTIVE ORDER GRANTING PLAINTIFFS' MOTION TO COMPEL AND GOVERNING PRODUCTION AND USE OF PRODUCED DATA

Upon consideration of Plaintiffs' Motion to Compel Compliance with Subpoenas *duces tecum* (ECF No. 564, the "Motion"), **IT IS HEREBY ORDERED** that the Motion is **GRANTED in part** and that the United States Department of Homeland Security (herein, "the Government") is compelled to produce the last known names, addresses, and contact information, if available, of potential class members, as maintained electronically in the ordinary course of business in the United States Citizen and Immigration Services' Central Index System.

Production shall be made in compliance with the following terms and specifications.

IT IS ORDERED THAT:

I. <u>Production of Government Data.</u>

1. **Identification of the Government Data and Production.** The Government shall produce the last known names, addresses, and contact information, if available, of potential class members, individuals who have ever been or currently are asylees and refugees in the United States, available in the United States Citizen and Immigration Services' Central Index System (the "CIS 2 database"). The Government will identify potential class members by country of birth or

country of citizenship of Sudan, who entered the United States after November 4, 1997, and who had a class of admission ("COA") in their case history of Refugee or Asylee, or associated COAs.

2. The Government shall only produce last known names, addresses, and contact information, if available, of potential class members (the "Government Data"), as maintained in the ordinary course of business in the CIS 2 database. The Government Data is to be produced in an encrypted native Excel file format, with the following columns separated out where possible[1]:

(i) Last Name;

(ii) Middle Name;

(iii) First Name;

(iv) Address Number and Street Name;

(v) Apartment Number;

(vi) City;

(vii) State;

(viii) Zip Code;

(ix) Phone number;

(x) Email address.

3. **Production Recipient.** The Government Data shall only be produced to Epiq Class Action and Claims Solutions, Inc. ("Epiq" or the "Recipient"), the court-appointed notice administrator,[2] courtesy of Stephen Donaldson, Program Director (stephen.donaldson@epiqglobal.com). The Government Data shall also be provided *ex parte* under seal to the Court and shall be accessible only by the Court and Epiq, but not the parties. The

[1] The Government will provide all data points requested if available in the CIS 2 database. Where a column for a field is empty in the Excel file, the Recipient should assume that the Government does not have the data to share.

[2] In a contemporaneous order, Epiq is named as the class notice administrator in this litigation.

Government Data shall not be produced to Plaintiffs or Defendants in this litigation, unless ordered otherwise by the Court.

4. **Production date and format.** The Government Data shall be produced to the Recipient by December 6, 2024, via a secure encrypted electronic file transfer or file sharing system (*e.g.,* Secure File Transfer Protocol (SFTP site), Encrypted email, etc.).

5. **Limitations:** Nothing in this Order shall be interpreted to require disclosure of any other data contained in the CIS 2 database or any other database or source available to the Government.

II. Protective Order.

6. **Protected Material.** The Government Data, at a minimum as it relates to refugees and asylees, is protected Highly Confidential material. The obligations imposed herein shall remain in effect until and unless the Court orders otherwise.

7. **Access to and Use of the Government Data.** Unless otherwise ordered by the Court or permitted in writing by the Government, the Recipient must protect the confidentiality of the Government Data, and may not disclose or use the Government Data, or a subpart of the Government Data, for any purpose whatsoever, except as provided below, and only as necessary for the Recipient's work as appointed notice administrator in this litigation, as described in the accompanying Supplemental Declaration of Cameron R. Azari Regarding Noticing and Potential Class Member Data dated November 12, 2024:

(i) To effectuate direct notice to potential class members by mail, by email, or by text message, as approved, ordered, and supervised by the Court;

(ii) To update or verify the Government Data using sophisticated tools and third-party services, in compliance with industry standards and strict privacy protections;

(iii) To anonymize the data and create heat maps from this data for purposes of identifying geographic areas where potential class members are localized, for purposes of notice; and

(iv) To anonymize the data and create general statistics and reports, to inform both the Court and the parties during the pendency of the notice process.

8. At Epiq, the Government Data may only be accessed by the following individuals:

(i) **Stephen Donaldson**, Program Director ;

(ii) **Amanda Sternberg**, Director, Client Services Programs ;

(iii) **Jonathan Edwards**, Client Services Project Manager;

(iv) **Stephen Walker**, Client Services Associate Project Manager ;

(v) **Jackie Womack**, Client Services Associate Project Manager;

(vi) A limited number of required IT professionals, who have separate Windows Authentication credentials, logging, and monitoring than database users and who do not access individual data records but rather manage and monitor the environment, including server hardware, infrastructure, and licensing;

(vii) Any other person to whom the Government agrees in writing, or any other person to whom the Court orders access.

9. The individuals listed in Paragraph 8 above (each a "Receiving Individual") must have read a copy of this Order and have signed the "Agreement to be Bound" attached as Exhibit A hereto before receiving access to the Government Data. Copies of each such signed Agreement to be Bound shall be maintained by Epiq for one year following the final termination of this litigation, including any appeals, and shall be made available to the Court or the Government if requested.

10. The Government Data must be stored and maintained by the Recipient in a secure and safe manner that ensures that access is limited only to the persons authorized under this Order. The Recipient will use the centrally-managed antivirus software, Microsoft Defender, across the organization providing real time blocking and alerting, and adhere to stringent standards for security expected for protecting highly confidential data in the industry. The Recipient shall

exercise at least the same standard of due and proper care with respect to the storage, custody, use, and/or dissemination of the Government Data as is exercised by the Recipient with respect to its own proprietary information.

11. If the Recipient discovers a breach of security, including any actual or suspected unauthorized access, relating to the Government Data, the Recipient shall: (1) promptly (i.e., within forty-eight hours of discovery) provide written notice by email and overnight delivery to the Government (c/o Assistant United States Attorney Jeffrey Oestericher, U.S. Attorney's Office for the Southern District of New York, 86 Chambers Street, 3rd Floor, New York, NY 10007; jeffrey.oestericher@usdoj.gov) and the Court of such breach; (2) immediately investigate and make prompt reasonable efforts to remediate the effects of the breach; (3) provide sufficient information about the breach that the Government and the Court can reasonably ascertain the size and scope of the breach; and (4) promptly take all necessary and appropriate steps to prevent a further breach. In any event, the Recipient shall promptly take all necessary and appropriate corrective action to terminate the unauthorized access.

12. **Final Disposition.** After termination of the litigation, the provisions of this Order shall continue to be binding, except with respect to any information that becomes a matter of public record.

13. Unless otherwise ordered by the Court or agreed in writing by the Government, within thirty (30) days of the final termination of the litigation by dismissal, judgment, or settlement, including any appeals, the Recipient and each Receiving Individual must permanently destroy all of the Government Data in its possession. The Recipient must submit a written certification to the Government within five business days following the thirty-day deadline that avers under penalty of perjury that the Government Data was permanently destroyed and that the

Recipient and the Receiving Individuals have not retained any copies of or other forms of reproducing or capturing any of the Government Data.

14. **Violations of Order.** In the event that any person or entity should violate the terms of this Order, the Government may apply to the Court to obtain relief or the Court may grant relief *sua sponte*. This Court shall have jurisdiction over the Recipient and any other person or entity subject to the terms of this Order for enforcement of the provisions of this Order, including following the termination of the litigation.

III. Miscellanious.

15. **Obligation to Meet and Confer.** Class Counsel and the Government shall meet and confer in an attempt to resolve any issues that arise in the implementation of this Order, prior to bringing the dispute to the Court unless exigent circumstances dictate otherwise.

16. **Modification**: This Order, and incorporated Exhibit A, may be modified by written agreement of Class Counsel and the Government, or by the Court.

IT IS SO ORDERED.

Dated: Nov. 18, 2024

Hon. Alvin K. Hellerstein
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA *ex rel.* ANDREW SHEA, *Plaintiff*, v. eHEALTH, Inc., *et al.*, *Defendants.*	**Civil Action No. 21-cv-11777-DJC**

DECLARATION OF PATRICK MCMAHON IN SUPPORT OF DEFENDANTS' MOTION FOR PROTECTIVE ORDER

I, Patrick McMahon, hereby declare as follows:

1. I am a Partner in the law firm of Foley and Lardner and am counsel for Defendant Elevance Health, Inc. in this matter. The information contained in this declaration is based on my own personal knowledge.

2. I make this declaration in support of Defendants' Motion for Protective Order.

3. On June 24, 2026, David Miller, counsel for the Government, wrote in email that Plaintiffs' sealing proposal "seems to violate Local Rule 7.2(d)."

4. On July 14, 2026, Mr. Miller wrote in email that the Government's "evaluation of the sealing procedure is linked to the scope of confidentiality, because the latter category will affect how much material (and, likely, how many filings) would be sealed or redacted."

5. On July 21, 2026, Mr. Miller, stated in email that the Government's position "is not that every provision of the protective order should apply to documents produced during the Government's investigation, defined in our draft as 'Previously Produced' documents. The specific provision about 'Previously Produced' documents as well as related provisions (e.g., parties' handling of "Confidential" material) address this material." Mr. Miller stated the documents produced by Defendants during the investigation marked as confidential may

be treated as Confidential under the Protective Order, but other provisions of the protective order, e.g., the No Fault Clawback, should not apply retroactively to documents produced during the investigation.

* * * *

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: July 29, 2026

Respectfully submitted,

<u>/s/ Patrick J. McMahon</u>
Patrick J. McMahon (*pro hac vice*)
FOLEY & LARDNER LLP
321 North Clark Street, Suite 3000
Chicago, Illinois 60654
Telephone: (312) 832-4500
pmcmahon@foley.com
Counsel to Elevance Health, Inc.

CERTIFICATE OF SERVICE

I hereby certify that that the above document was filed through the CM/ECF system and will be electronically sent to the registered participants as identified on the Notice of Electronic Filing (NEF) on this 29h day of July, 2026.

/s/ Jamie A. Steven

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

STANDING ORDER RE: MOTIONS FOR STIPULATED PROTECTIVE ORDERS

September 20, 2021

Boal, M.J.

In cases where confidential information will be exchanged, any proposed stipulated protective order must contain the following provision:

> Any party desiring or intending to file with the Court any Confidential Information or any motion, brief, letter, transcript or other paper containing or describing any Confidential Information, shall do so only after filing and obtaining the Court's ruling on a motion for impoundment pursuant to L.R. 7.2. The parties' confidentiality designations do not bind the Court. Therefore, a party seeking to file any document under seal must have good cause for asserting confidentiality beyond a mere designation of confidentiality under this order.
>
> If a party is seeking to file a document containing its own Confidential Information, it must provide specific reasons for the request. Before filing material designated by another party as confidential, counsel for the party intending to file the Confidential Information shall confer with counsel for the designating party as to whether filing under seal is necessary for the particular material at issue. If the parties so agree, Confidential Information not filed under seal will continue to be protected by the protective order. Otherwise, the filing party shall file a motion to seal and the designating party must file a statement supporting the request to seal within two weeks of the filing of the motion to seal. The parties shall file in the public docket redacted versions of any proposed sealed filings. The parties shall also simultaneously submit unredacted courtesy copies of any proposed sealed filings to the Clerk's Office, clearly marked NOT FOR DOCKETING – COURTESY COPY – SEALED FILING.

In addition, the parties are encouraged to use this Court's model protective order, which is attached to this Order.

SO ORDERED.

/s/ Jennifer C. Boal
JENNIFER C. BOAL
U.S. MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Plaintiff,	Civil Action No.___________
v.	
Defendant.	

PROTECTIVE ORDER

Upon consideration of the Parties' Joint Motion for a Stipulated Protective Order, it is hereby ORDERED that:

1. Any party or non-party producing or receiving information in the course of discovery in this action (hereinafter, the "Litigation") may designate such information as "Confidential" if and to the extent necessary to protect privacy interests.

   a. Written information and/or "documents" as defined under the Federal Rules of Civil Procedure and corresponding case law, produced by the either party or any nonparty, may be designated "Confidential" by marking them conspicuously with the term "CONFIDENTIAL."

   b. All documents obtained from third parties by subpoena will be shared promptly with the opposing party.

   c. Deposition testimony may be designated "Confidential" by designating the portion of the transcript of the deposition that reflects the testimony within fifteen (15) days after counsel's receipt of the transcript.

2. Access to information designated "Confidential" pursuant to section 1 above (hereinafter, "Confidential Information") shall be limited to:

a. Counsel for the Parties, including in-house counsel and employees and agents of such counsel who are required to assist in the conduct of the Litigation;

b. The parties themselves, including any officers, directors, employees or agents of the parties who have a reasonable need of access to the information in connection with the prosecution and/or defense of this Action;

c. Outside independent persons (i.e., persons not currently or formerly employed by, consulting with, or otherwise associated with any party) who are retained to furnish technical or expert services, and/or to give testimony in this Action;

d. The Court and court employees, court reporters and stenographic reporters, jurors and all persons necessary to the conduct of judicial hearings or the trial of the Litigation; and

e. Any other person whom counsel collectively agree in writing or whom the Court directs may review the Confidential Information.

3. Any party or non-party may voluntarily disclose to others without restriction any information designated by that party or non-party as Confidential Information, although a document may lose its confidential status if it is made public.

4. Each person appropriately designated pursuant to paragraph 2(c) to receive Confidential Information shall execute an agreement to be bound by this Order in the form attached as Exhibit A.

5. By agreeing that a party may designate information as "Confidential" for purposes of the Litigation, the non-designating party is not entering into a binding admission as

to the confidentiality of said information. If any party believes that a designation of any information as "Confidential" is inappropriate, the party may object to such designation and the Parties shall work together in good faith to resolve their disagreement regarding the appropriate designation of the information. If efforts to resolve the disagreement are unsuccessful, the matter shall be resolved by the Court and the party seeking the designation shall have the burden of demonstrating its necessity. However, the information at issue shall be treated as "Confidential" and subject to all of the restrictions of this protective order unless and until the parties agree or the Court orders otherwise.

6. Any party desiring or intending to file with the Court any Confidential Information or any motion, brief, letter, transcript or other paper containing or describing any Confidential Information, shall do so only after filing and obtaining the Court's ruling on a motion for impoundment pursuant to L.R. 7.2. The Parties' confidentiality designations do not bind the Court. Therefore, a party seeking to file any document under seal must have good cause for asserting confidentiality beyond a mere designation of confidentiality under this order.

7. If a party is seeking to file a document containing its own Confidential Information, it must provide specific reasons for the request. Before filing material designated by another party as confidential, counsel for the party intending to file the Confidential Information shall confer with counsel for the designating party as to whether filing under seal is necessary for the particular material at issue. If the parties so agree, Confidential Information not filed under seal will continue to be protected by this order. Otherwise, the filing party shall file a motion to seal and the designating party must file a statement supporting the request to seal within two weeks of the filing of the motion to seal. The parties shall file in the public docket redacted versions of any proposed sealed filings. The parties shall also simultaneously submit

unredacted courtesy copies of any proposed sealed filings to the Clerk's Office, clearly marked NOT FOR DOCKETING – COURTESY COPY – SEALED FILING.

8. Confidential Information exchanged in the course of the Litigation (not including information that is publicly available) shall be used by the party or parties to whom the information is produced solely for the pursuit or defense of the Litigation.

9. If any party is subject to contractual or other obligations not to produce or disclose documents or information requested by another party in this Litigation, the parties shall confer in good faith to try to agree on a solution that accommodates the discovery needs of the requesting party and the contractual or other obligations of the non-requesting party. If the parties are unable to agree on such a solution, any party may, by appropriate motion, request that the issue be resolved by the Court.

10. Nothing herein shall be deemed to waive any applicable privilege or work product protection, or to affect the ability of a party to seek relief for an inadvertent disclosure of material protected by privilege or work product protection.

11. All provisions of this order restricting the communication or use of Confidential Information shall continue to be binding after the conclusion of the Litigation, unless otherwise agreed or ordered. Any party to this Protective Order may apply to this Court for modification of this order.

12. Within thirty (30) days of the conclusion of this Litigation, including but not limited to the latest of settlement, arbitration, judgment, and all rights of appeal being exhausted, Confidential Information and any copies thereof shall be returned to the producing party or certified as destroyed, except that the Parties' counsel shall be permitted to retain their working files on the condition that those files will remain protected.

Entered as an order of the Court this ___ day of _______, ___.

JENNIFER C. BOAL
UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

I have read and I understand the terms of the Protective Order dated ________________, filed in Case No. _________, pending in the United States District Court for the District of Massachusetts. I agree to comply with and be bound by the provisions of the Protective Order. I understand that any violation of the Protective Order may subject me to sanctions by the Court.

I shall not divulge any documents, or copies of documents, designated "Confidential" obtained pursuant to such Protective Order, or the contents of such documents, to any person other than those specifically authorized by the Protective Order. I shall not copy or use such documents except for the purposes of this Action and pursuant to the terms of the Protective Order.

As soon as practical, but no later than 30 days after final termination of this Action, I shall return to the attorney from whom I have received them, any documents in my possession designated "Confidential", and all copies, excerpts, summaries, notes, digests, abstracts, and indices relating to such documents.

I submit myself to the jurisdiction of the United States District Court for the District of Massachusetts for the purpose of enforcing or otherwise providing relief relating to the Protective Order.

Date: ____________

[SIGNATURE]________________________
[PRINTED NAME]
[ADDRESS]

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

STANDING ORDER REGARDING MOTIONS FOR LEAVE TO FILE UNDER SEAL AND STIPULATED PROTECTIVE ORDERS

LEVENSON, M.J.

Generally, the Court DENIES motions to seal memoranda and attachments in their entirety on the ground that a presumption of openness governs court filings. The Court is guided in this regard by First Circuit precedent and by Local Rules 7.2 and 83.6.11.[1] Because the public has a "presumptive" right of access to judicial documents, *United States v. Kravetz*, 706 F.3d 47, 59 (1st Cir. 2013), "'only the most compelling reasons can justify non-disclosure of judicial records' that come within the scope of the common-law right of access." *Id*. (quoting *In re Providence Journal Co*., 293 F.3d 1, 10 (1st Cir. 2002)).

For truly confidential matters, a party may request to file a document under seal and publicly file a redacted copy. A party seeking leave to file under seal has the burden to show that sealing is justified by "compelling reasons" that outweigh the public's presumptive right of access. To justify sealing, a party must make a particular factual demonstration of potential harm. *See id.* at 60. Mere conclusory statements will not suffice. *See id*.

Any party that wishes for the Court to consider information without disclosing that information to the public shall publicly file a redacted version of the document as an attachment to a motion to file the unredacted document under seal. The motion to file under seal shall be supported by an affidavit explaining the need for the sealing. The affidavit shall identify each redaction by page number and set forth the justification for each redaction. The motion shall

[1] Although Local Rule 7.2 refers to a "motion to impound," I will use the more common term and refer to a "motion to file under seal."

comply with Local Rule 7.2 and shall describe generally (1) the material or information sought to be filed under seal (without disclosing the substance of the material in question); (2) the requested duration of the sealing; and (3) the legal grounds for the sealing and its duration. Any party or non-party may file an opposition to a motion to file under seal within seven days of the motion's filing. The result of the Court's decision on a motion to file under seal will be public. If the Court grants a motion to file under seal, the moving party shall, within seven days, (1) file the unredacted filing under seal, (2) file the redacted version on the public docket, and (3) serve a copy of the unredacted version upon all parties.[2]

A party seeking leave to file under seal has the burden to justify the sealing. Mere agreement of the parties to designate discovery materials as confidential is not, by itself, justification. Likewise, the mere entry of a discovery order limiting disclosure of discovery materials is not, by itself, justification. The attorney for the party seeking to file material under seal shall be responsible for ensuring that there are appropriate legal grounds for withholding such material from the public. When the party seeking protection is not the party filing the document, the parties shall—when feasible—confer prior to any party filing the document on the public docket.

In the event that the filing party has been unable to confer with opposing parties in a meaningful way before the filing of a document containing confidential information, or if the filing party and non-filing parties disagree as to whether a motion to file under seal is justified, the filing party should contact the Deputy Clerk. In most circumstances, the Court will set a conference with the parties to review the proposed redactions.

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[2] If the Court denies a motion to file under seal, the next steps will be set forth in the Court's order.

At any time, on its own motion or upon motion of a party or non-party, the Court may require a party to show cause for continued sealing of material filed under seal.

SO ORDERED,

/s/ Paul G. Levenson
Paul G. Levenson
U.S. MAGISTRATE JUDGE

Dated: August 6, 2025