UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA *ex rel.* ANDREW SHEA, Plaintiff, v. eHEALTH, INC., et al., Defendants.	No. 21-cv-11777-DJC Hon. Denise J. Casper

JOINT STATEMENT

In accordance with Federal Rules of Civil Procedure ("Rules") 16 and 26, and Local Rules 16.1 and 16.3, the parties submit the following Joint Statement:

1. **Proposed Schedule.** The parties propose the following schedule and, below, set forth separately the items on which they differ and indicate briefly the nature of that difference:[1]

EVENT	GOVERNMENT'S PROPOSED DATE	DEFENDANTS' PROPOSED DATE
Initial Disclosure under Rule 26(a)(1)(i)	May 21, 2026	May 21, 2026
Initial Disclosure under Rule 26(a)(1)(ii), (iii), (iv)	June 5, 2026	June 5, 2026
Deadline for seeking leave to amend the pleadings or add new parties, except where good cause is shown	N/A	June 19, 2026
Deadline to Assert Advice of Counsel Defense	July 30, 2026	N/A

[1] The United States makes its proposal without the benefit of seeing the Defendants' Answers, which puts the United States at a disadvantage not contemplated by the Local or Federal Rules. *See* Defs.' Mot. to Extend Answer Deadlines, Dkt. No. 151; Order, Dkt. No. 153 (granting extension of Answer deadline until May 22). Defendants note that the Court has already ruled on this issue and the United States already has the benefit of a three-year, pre-complaint investigation, during which it took a significant amount of discovery from Defendants.

Deadline to Assert Advice of Counsel Defense, Deliberative Process, Investigatory Files, or Official Privileges	N/A	September 30, 2026
Close of Fact Discovery	May 26, 2027	May 26, 2027
Designation of Experts and Disclosure of Expert Reports (simultaneous exchange)	July 15, 2027 (50 days)	August 9, 2027 (75 days)
Responsive Expert Reports (simultaneous exchange)	September 13, 2027 (60 days)	October 8, 2027 (60 days)
Rebuttal Expert Reports	N/A	November 19, 2027
Close of Expert Discovery	November 12, 2027 (60 days)	January 21, 2028
Deadline for Filing Dispositive Motions	January 11, 2028 (60 days from close of expert discovery)	April 7, 2028 (77 days from close of expert discovery)
Oppositions to Dispositive Motions	March 10, 2028 (59 days)	June 7, 2028 (61 days)
Replies to Dispositive Motions	April 10, 2028 (31 days)	July 10, 2028 (33 days)

Deadline for Asserting Advice of Counsel, Deliberative Process, Investigatory Files, or Official Privileges:

Government's Position: The Government proposes a deadline for assertion of an advice-of-counsel defense, including any permutation of that defense (e.g., "presence" or "involvement" of counsel), that is sufficiently early to allow fact discovery into previously privileged materials. With the Government having filed its Complaint-in-Intervention more than a year ago, Dkt. No. 41, after a three-year investigation, Defendants have had ample time to determine whether they intend to invoke any advice-of-counsel defense. Should a Defendant assert that defense, the Defendant will have to produce once-privileged materials, the United States will need to review those materials, propound discovery requests related to the defense, and interview or depose relevant witnesses, potentially including lawyers. To perform these tasks while not extending the pretrial schedule, a Defendant must assert this defense with ample time before the agreed May 26,

2027, close of fact discovery. As recently as last year, Judge Saris approved a similar deadline in a complex False Claims Act case. *See* Order, Dkt. No. 216 adopting Dkt. No. 205, *United States ex rel. Nunnelly v. Regeneron Pharms., Inc.*, No. 20-cv-11401-PBS (July 7, 2025).

There is an obvious difference between asserting a privilege or protection and choosing to make an advice-of-counsel defense that waives privilege. The Government proposes that all privileges, by all parties, should be asserted in the normal course, and declines to endorse any deadline to invoke any privilege or protection prior to the end of document discovery. Although this issue is not before the Court at this time, the Government did not waive any of its privileges or place its deliberative or investigative material at issue by bringing this case. The Government expects to invoke appropriate, supported privileges and protections, as it routinely does in any False Claims Act litigation.

***Defendants' Position*:** Defendants propose that the Court should pair any deadline for asserting an advice-of-counsel defense with a deadline for the Government to assert and log any materials—if any—it plans to withhold on the grounds of "deliberative process," "investigatory files," or "official privileges." Defendants doubt that these are viable bases for withholding any materials in this case—including because the Government has placed any such matters at issue by filing this lawsuit—but the Government has recently suggested it may rely on them in a draft version of a proposed ESI Protocol. The same efficiencies the Government asserts would arise from an early advice-of-counsel deadline would result from an early deadline for asserting deliberative process, investigatory files, and official privileges. In Defendants' counsel's experience, the Government often withholds a wide swath of material on these bases in False Claims Act litigation, resulting in multiple rounds of motions to compel and production of significant additional documents. To ensure that all of that can be completed enough in advance

of depositions to meet the May 26, 2027 fact-discovery deadline, the Government should be held to the same early deadline it proposes applying to Defendants. Defendants submit that September 30, 2026, is a reasonable deadline for all such matters, but resist the Government's effort to impose a one-sided obligation on Defendants (regarding advice of counsel) while reserving to the Government the ability to wait until the end of fact discovery even to make any "deliberative process," "investigatory files," or "official privileges" assertion.

Amendment of the Pleadings and Joinder:

Government's Position: The Government does not believe the Joint Statement is the appropriate place for proposals concerning amendment of pleadings and joinder. Though the Government recognizes that the Court's scheduling order "[f]ollowing the conference" may include such deadlines or "general time frameworks" under Local Rule 16.1(f), the Court should apply the "general time framework[]" under the Federal Rules for amendment and joinder. *See, e.g.*, Fed. R. Civ. P. 15(a)(2) ("The court should freely give leave when justice so requires.").

Defendants' Position: Defendants propose a deadline of June 19, 2026, for seeking leave to amend the pleadings or add new parties. Such a deadline is in accordance with Local Rule 16.1(f)(1) and (10) and is appropriate given that the Government engaged in a three-year pre-complaint investigation before filing its Complaint.

Rebuttal Expert Reports:

Government's Position: The Government believes that each party's expert needs can be satisfied by two rounds of expert reports. A sur-rebuttal to responsive reports (that were submitted to rebut original reports) is not necessary. A third round of expert reports may significantly increase the parties' expenses and delay trial. While the Government acknowledges the complex nature of this case, the United States' proposal acknowledges as much by allowing each party to

submit two rounds of expert reports; compare this to this Court's model scheduling order, which contemplates each party disclosing only one round of expert reports.

Defendants' Position: Defendants propose that a deadline for the exchange of any rebuttal expert reports is appropriate, given that the proposed schedule contemplates the simultaneous disclosure by the parties of (1) affirmative experts and then (2) responsive expert reports. To the extent a party discloses a new opinion or new expert on the responsive-report deadline, the opposing party is entitled to rebut that opinion or expert, and it is more efficient to include that deadline in the expert discovery schedule than allow ad hoc rebuttal reports under a more compressed schedule.

2. **Limitations on Discovery.**

A. **Depositions.** The parties agree that the Local Rule limitation of 10 depositions "for each side" may be insufficient here. *See* Local Rule 26.1(c).

1. **Limits, *Government's Position*:** The Government proposes that, in addition to depositions under Rule 30(b)(6), the Government may obtain 15 total depositions of any current or former employees of any defendant and 5 depositions of third parties. The Government reserves the right to seek leave of Court under Rules 26 and 30 for additional depositions if the need arises based on future document productions or other discovery or for other good cause shown. The Government disputes Defendants' characterization of the Rule 26(f) conference.

2. **Limits, *Defendants' Position*:** Defendants propose that each side

may notice up to fifteen depositions, including any Rule 30(b)(6) depositions. The Government has the benefit of a three-year, pre-complaint investigation, while Defendants have not yet been able to take any discovery. The Government provides no justification for doubling the presumptive deposition limit from Rule 30, and its effort to exempt Rule 30(b)(6) depositions would grant it another nine depositions if it were to notice each Defendant separately. Defendants nevertheless propose a compromise of 15 depositions, without the arbitrary exclusion of Rule 30(b)(6) depositions. During the parties' Rule 26(f) conference, the Government represented that it expected the Defendants would not need more than 10 depositions of Government witnesses and suggested the same may be true of the Government. Fifteen depositions per side—inclusive of Rule 30(b)(6) depositions—is a reasonable compromise. Defendants reserve the right to seek leave of Court under Rules 26 and 30 for additional depositions if the need arises based on future document productions or other discovery or for other good cause shown.

3. **Deposition Duration:** The parties agree to the following procedure to address circumstances where a party believes that the default durational limitation of "1 day of 7 hours" may not allow for a deposition that "fairly examine[s] the deponent." Fed. R. Civ. P. 30(d)(1).

    a. If a party believes that the default Rule 30(d)(1) limitation

("1 day of 7 hours") should be modified, the party shall meet and confer with the other parties in an effort to reach an agreement.

b. If the parties agree and the witness consents, a longer deposition can take place pursuant to their agreement without further action by the Court.

c. If the parties are unable to reach agreement, or the witness will not consent, the parties (and, as appropriate, the witness) will submit letter filings to the Court, setting forth their position regarding the proposed extended deposition limit. Any such letter shall be no more than 2 single-spaced pages.

d. After reviewing the parties' positions and, if appropriate, holding a conference, the Court shall determine whether the default Rule 30(d)(1) durational limit will apply and, if not, what alternative limitation will apply to the deposition.

B. **Requests for Admission and Interrogatories.**

Government's Position: The Government proposes that:

1. The Government may serve: 8 common interrogatories and 8 common requests for admission to the Defendant Brokers (eHealth, Inc., eHealthInsurance Services, Inc., SelectQuote, Inc., and GoHealth, Inc.); 8 common interrogatories and 8 common requests for admission to the Defendant Insurers (Aetna Inc., Aetna Life Insurance Company, CVS Health Corporation, Elevance Health,

Inc., and Humana Inc.); and 3 individual interrogatories and 3 individual requests for admission to each Defendant.

2. The Defendant Brokers may together serve: 8 common interrogatories and 8 common requests for admission to the Government; the Defendant Insurers may together serve 8 common interrogatories and 8 common requests for admission to the Government, and each Defendant may serve 3 individual interrogatories and 3 individual requests for admission to the Government. Additional requests for admission and interrogatories shall require the Court's permission. Defendants' position would allow 225 requests for admission and 225 interrogatories by Defendants to the Government, likely to be hugely duplicative. It is unclear to the Government, even after meeting and conferring, whether Defendants' position is that the Government would have only 25 of each to spread across all nine Defendants, or whether Defendants propose that the Government have 225 interrogatories and requests for admission. *See* Rule 33(a)(1) ("a party may serve *on any other party* no more than 25 written interrogatories" (emphasis added)); *but see* Local Rule 26.1(c) (standard limitation of 25 interrogatories and 25 interrogatories "per side").

Defendants' Position: Defendants propose that each party may serve up to 25 requests for admission and 25 interrogatories. That is the exact count of interrogatories provided for by the Federal Rules. *See* Fed. R. Civ. P.

33(a)(1) (providing each "party" up to 25 interrogatories to "serve on any other party" in total).

C. **Requests for Production.** The parties agree that the Local Rule limitation of "2 separate sets of requests for production" "for each side" may be insufficient here. *See* Local Rule 26.1(c).

1. ***Government's Position:*** The Government proposes: The Government may serve 2 sets of common requests for production, totaling up to 25 requests, to the Defendant Insurers; 2 sets of common requests for production, totaling up to 25 requests, to the Defendant Brokers; and 1 separate set, of 10 requests or fewer each, to each Defendant. The Defendant Brokers may serve 2 common sets of requests for production, totaling up to 25 requests, to the Government. The Defendant Insurers may serve 2 common sets of requests for production, totaling up to 25 requests, to the Government. Each Defendant may serve 1 separate set, of 5 requests or fewer each, to the Government. Additional requests for production shall require the Court's permission. Defendants' proposal would allow *27 separate sets* of requests for production to the Government of up to *450 in requests* in total, despite the Local Rule typically limiting to "2 separate sets" "for each side" of litigation. Local Rule 26.1(c); *see* Rule 34(a) (allowing requests "on any other party").

2. ***Defendants' Position:*** Defendants propose that each party may

serve up to 3 sets (up to 50 total) of requests for production. Additional sets of requests for production shall require the Court's permission. Defendants' proposal is necessary given the complexity of the case and the volume of relevant information in the Government's own possession, given the government has placed the knowledge, awareness, and understanding of government agencies at issue by filing this lawsuit. The Government's proposal also provides for a convoluted set of limits that risk unnecessary, collateral litigation over the interpretation of a scheduling order that would distract from the litigation of the case.

3. The parties are negotiating both a proposed ESI protocol (including a process for claiming privilege under Rule 26(b)(5)) and a stipulated proposed protective order to govern the treatment of confidential discovery, which will be submitted to this Court.

3. **Local Rule 16.1(d)(3) Certifications.** The undersigned attorneys and parties state that they have conferred with a view towards establishing a budget for the costs of this litigation including various alternative courses of the litigation, and to discuss the potential for resolution of this litigation through alternative dispute resolution programs.

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/s/ Holly M. Conley Holly M. Conley (*pro hac vice*) (full signature below)	*/s/ Sara Goldfarb* VP & Senior Legal Counsel, Aetna Litigation Aetna, Inc

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/s/ Richard Westling Richard Westling (*pro hac vice*) (full signature below) *Counsel to SelectQuote, Inc.*	*/s/ Al Boulware* General Counsel and Corporate Secretary SelectQuote, Inc.
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4. **Magistrate Judge.** At this time, the parties advise that they do not consent to trial by Magistrate Judge. *See* Local Rule 16.1(b)(3).

5. **Alternative Dispute Resolution.** The Parties do not believe the case is ripe for mediation or other alternate dispute resolution. *See id.* 16.1(d)(3)(B). The Parties do not request referral to a settlement conference at this time. *See id.* 16.4.

6. **Concise Summary Regarding Liability and Relief Sought (ECF No. 148).**

Government's Statement. The Government alleged in its complaint that: Defendants made or presented, or caused to be made or presented, claims for payment to the United States that resulted from violations of the Anti-Kickback Statute ("AKS") (Count I) and that falsely represented compliance with material statutory, regulatory, or contractual requirements (including the AKS) (Count II); all Defendants except Elevance knowingly presented or caused to be presented materially false or fraudulent claims that falsely represented compliance with material statutory, regulatory, or contractual requirements (i.e., non-discrimination provisions) (Count III); all Defendants knowingly made, used, or caused to be made or used, false records or statements material to false or fraudulent claims by false representations of compliance with applicable statutory, regulatory, and contractual requirements (including the AKS) (Count IV); all Defendants except Elevance knowingly made, used, or caused to be made or used, false records or statements material to false or fraudulent claims by false representations of compliance with applicable statutory, regulatory, and contractual requirements (non-discrimination provisions) (Count V); all Defendants conspired to violate applicable statutes, regulations, and Defendant Insurers' contracts with the United States concerning compliance with the AKS, and thus to violate the False Claims Act ("FCA") (Count VI); and all Defendants except Elevance conspired to violate applicable statutes, regulations, and Defendant Insurers' contracts with the United States concerning discrimination against Medicare beneficiaries with disabilities, and thus to violate the FCA (Count VII). Under the FCA, the United States is entitled to recover three times the amount of damages which it sustained because of Defendants' violations of the statute and statutory penalties for each instance in which a Defendant either submitted a false claim or caused a false claim to be submitted to the United States. 31 U.S.C. § 3729(a)(1).

Defendants' Statement: All Defendants deny the allegations alleged by the Government in all remaining counts of the Complaint in Intervention ("Complaint," Dkt. 41.) The business practices described in the Complaint are lawful, executed pursuant to CMS regulations, and not violations of the AKS or the FCA. The Government is not entitled to damages.

Dated: May 19, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served upon all counsel of record via ECF on May 19, 2026.

/s/ Kelly H. Hibbert

Dated: May 19, 2026