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VIA ELECTRONIC DELIVERY AND COURT FILING

The Honorable Katharine H. Parker
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 750
New York, New York 10007

Re: United States of America v. Anthem, Inc., 1:20-cv-02593-ALC-KHP

Dear Judge Parker:

We represent Defendant Anthem, Inc. (“Anthem”). Anthem writes pursuant to the Court’s September 8, 2026 Order (Dkt. 581) (“September 8, 2026 Order” or “9/8/26 Order”) to respectfully request that the Court enter an order permanently sealing the confidential information contained in Exhibits A and C to Plaintiff’s July 1, 2026 Position Statement (540-1 (“Exhibit A”) and 540-3 (“Exhibit C”)). These materials contain Anthem’s confidential business policies, competitively sensitive financial information, internal strategic data, and vendor cost structures that have never been publicly disclosed. Plaintiff takes no position on this request.¹

As the Court explained in its September 8, 2026 Order, as well as in past orders regarding the sealing of confidential information (*see* Dkts. 199, 493), when considering whether to seal a “judicial document” from the public record, the Court must first assess the weight of the presumption of public access. “The strongest presumption attaches where the documents ‘determine litigants’ substantive rights,’ and the presumption is weaker where the ‘documents play only a negligible role in the performance of Article III duties.’” 9/8/26 Order at 2 (quoting *Olson v. Major League Baseball*, 29 F.4th 59, 89-90 (2d Cir. 2022)). “[T]he weight accorded to the presumptive right to public access is lower if the document is submitted in connection with a discovery dispute or other non-dispositive motion.” *Id.* (citations omitted). Once the Court has determined the weight of the presumption of public access, it assesses whether sealing is necessary to preserve “higher values” and that the factors counseling against public access outweigh the presumption of public access. *Id.* at 3. Such higher values include the protection of competitively sensitive business information, *see Louis Vuitton Malletier S.A. v. Sunny Merch. Corp.*, 97 F. Supp. 3d 485, 511 (S.D.N.Y. 2015); *Standard Inv. Chartered, Inc. v. Fin. Indus. Regul. Auth., Ind.*, 347 F. App’x 615, 617 (2d Cir. 2009), as well as the protection of private non-party information and

¹ Plaintiff also authorized Anthem to respectfully inform the Court that Plaintiff does not seek to keep Exhibit D to Anthem’s May 15, 2026 position statement (Dkt. 512-4) under seal, which is the only document Plaintiff designated confidential that Plaintiff believes is implicated by the Court’s September 8, 2026 Order.

the avoidance of potential harm to non-parties, *see United States v. Amodeo*, 71 F.3d 1044, 1050 (2d Cir. 1995) (privacy interests of third parties “weigh[s] heavily” in balance against public right of access (citations omitted)).

Consistent with materials the Court has previously ordered sealed in this matter, Exhibit A and Exhibit C were submitted by Plaintiff to the Court in the context of a discovery dispute rather than in connection with a dispositive motion or any adjudication of the parties’ substantive rights. Further, the documents were submitted to the Court to contextualize specific discovery disputes between the parties and the substance of those documents was not itself relevant to resolving the issues before the Court. The public’s interest in such documents is therefore minimal. *See Brown v. Maxwell*, 929 F.3d 41, 49-50 (2d Cir. 2019) (presumption of public access “is lower if the document is submitted in connection with a discovery dispute or other non-dispositive motion”); *Alexander Interactive, Inc. v. Adorama, Inc.*, 2014 WL 4346174, at *2 (S.D.N.Y. Sept. 2, 2014) (“[T]he weight of the presumption is not particularly great” because “[t]he documents are not to be submitted in connection with a dispositive motion, but merely a motion to compel further discovery from a party.”).

While these documents have minimal interest to the public, they would, if unsealed, reveal sensitive Anthem and third-party information, including information that Anthem kept confidential internally. The Court has previously kept analogous documents sealed in past rulings. *See* 9/8/26 Order; *see also* Dkt. 493 (sealing sensitive commercial information of third party). As detailed in the concurrently filed Declaration of James A. Bowman (“Bowman Decl.”), Exhibits A and C implicate these same “higher values” warranting sealing, particularly where the public has minimal interest in the documents:

- Exhibit A is an email exchange among Anthem compliance staff concerning several attached drafts of Anthem policies and protocols related to compliance activities in connection with Anthem’s Medicare Risk Adjustment programs. These documents are in draft form and contain markups by various Anthem employees with compliance roles. The Anthem employees involved took contemporaneous steps to maintain the confidentiality of the document; sections of the revisions state on their face that they contain “Anthem, Inc.’s and its commonly owned and controlled affiliates’ confidential and proprietary information and/or trade secrets” that “may not be publicly disclosed or used for any other purpose without Anthem’s written consent.” This information has not been made public and its public disclosure would reveal Anthem’s internal compliance activities, procedures, and considerations to competitors and potential litigants. *See* Bowman Decl. ¶ 5, 6. It would also chill the ability of Anthem’s compliance staff to have frank conversations about proposed policies and protocols if draft documents such as these were disclosed publicly, despite attempts by that same staff to mark the documents as internal and confidential. *Id.* ¶ 6. As the Court recognized in its September 8, 2026 Order, public disclosure of internal compliance information “would undermine [Anthem’s] ability to conduct effective internal audits and self-assessments [and] chill candid internal reporting.” 9/8/26 Order at 7. That reasoning applies with equal force here.

- Exhibit C contains sensitive internal communications regarding Anthem’s financial and strategic planning for its Medicare Risk Adjustment programs. The document includes specific revenue figures, return-on-investment targets, vendor costs, and competitive strategy discussions, including for programs and business units with no relevance to this litigation. Bowman Decl. ¶ 7. It includes specific program return-on-investment assessments, enterprise-wide revenue goals, revenue targets for regional programs not at issue in this litigation, and other strategic objectives. *Id.* This is the type of “internal financial and strategic information, including revenue forecasts and targets, competitive bidding strategies, [and] market assessments” that the Court ordered sealed, *see* 9/8/26 Order at 5, and that, if disclosed, could allow competitors to reverse-engineer Anthem’s bidding and pricing strategies for Medicare Advantage programs—the competitive intelligence that sealing is designed to protect. Bowman Decl. ¶ 7. Further, the document also reveals Anthem’s cost structure with its third-party vendor, Verscend. The Court previously recognized that such third-party vendor pricing information warrants sealing because “public disclosure could reveal information regarding Anthem’s and [the vendor’s] negotiating positions, pricing practices, and contractual expectations that is not otherwise publicly available,” and could “place a party or nonparty at a competitive disadvantage.” *Id.* at 4-5. Public disclosure would provide Anthem’s competitors insight into Anthem’s financial expectations, vendor relationships, cost structures, and strategic planning—information that is not publicly available and that could place Anthem at a competitive disadvantage. *See Louis Vuitton Malletier S.A.*, 97 F. Supp. 3d at 511.

Additionally, as the Court found in its September 8, 2026 Order, sealing of these exhibits is narrowly tailored to the interests at stake. The exhibits “consist almost exclusively of material concerning the privacy interest Anthem is asserting, and any non-confidential information contained within them is incidental and would provide little, if any, independent value to the public in understanding the issues presented or the manner in which the Court has exercised its Article III functions.” 9/8/26 Order at 5. Given the above, there is a strong basis to seal these materials permanently, and Anthem respectfully requests that the Court maintain the seal on Exhibits A and C.

Anthem thanks the Court for its consideration of this request.



Dated: September 18, 2026

Respectfully submitted,

By: /s/ James A. Bowman

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANTHEM, INC.,

Defendant.

Case No. 1:20-cv-02593-ALC-KHP

**DECLARATION OF JAMES A.
BOWMAN IN SUPPORT OF
DEFENDANT ANTHEM, INC.'S
LETTER MOTION TO SEAL
CONFIDENTIAL
INFORMATION**

I, James A. Bowman, declare and state as follows:

1. I am a lawyer at O'Melveny & Myers, LLP and am counsel for Elevance Health, Inc. ("Elevance Health"), formerly known as Anthem, Inc. ("Anthem"), in this matter. For purposes of this declaration, I refer to the company as "Anthem."

2. I am licensed to practice law in California and have been admitted *pro hac vice* in this District in connection with this matter. I submit this declaration in support of Anthem's Letter Motion to Seal Exhibits A and C to Plaintiff's July 1, 2026 Position Statement (Dkt. 540-1 and Dkt. 540-3). I have personal knowledge of the facts set forth herein and, if called to testify, could and would do so competently.

3. Through my representation of Anthem in this case, I have personal knowledge of Anthem's practices regarding the protection of confidential, proprietary, and competitively sensitive business information.

4. In this case, Anthem, Plaintiff, and third parties have designated certain documents and materials produced in discovery as "Confidential" and "Attorneys' Eyes Only" pursuant to the applicable Protective Order. Where these documents have been designated by

Anthem, these designations reflect Anthem's determination that the information contained in these materials is of a commercially sensitive and proprietary nature, the disclosure of which would cause injury to Anthem.

5. Exhibits A and C contain commercially sensitive material and details about Anthem's internal compliance operations, including draft internal policies and protocols. Anthem has treated this information as confidential, has never made it publicly available, and would not ordinarily disclose it outside the company.

6. **Exhibit A (Internal Compliance Policy Materials).** Exhibit A (ANTHEM_SDNY_00187140) consists of emails between members of Anthem's compliance team attaching and discussing a draft internal policy on data validation for Anthem's Medicare Risk Adjustment programs. The attached draft policies and protocols include comments and edits from Anthem employees responsible for compliance matters. To my understanding, those employees took steps at the time to protect the document's confidentiality; portions of it are expressly labeled as containing Anthem's "confidential and proprietary information and/or trade secrets" that may not be disclosed or used without Anthem's consent. Anthem has not made this material available to the public. If disclosed, the document would expose Anthem's internal draft policies, protocols and compliance activities, and internal deliberations about such activities—all of which could be exploited by competitors or future litigants. Disclosure could also discourage Anthem employees from engaging in candid written discussions about compliance matters, knowing that their preliminary views on draft policies and protocols could later become public.

7. **Exhibit C (Internal Financial and Strategic Documents).** Exhibit C (ANTHEM_SDNY_00094536) is a chain of internal emails in which Anthem employees discuss

the company's financial goals and strategic direction for its Medicare Risk Adjustment programs. The emails contain specific financial figures that Anthem has not disclosed publicly, including revenue objectives, regional revenue allocations, program-level return-on-investment data, and spending on third-party vendor services from Verscend (also known as Verisk). The communications also reflect internal strategic discussions about Anthem's risk adjustment activities. Much of this information concerns business lines and regional operations unrelated to the allegations in this litigation. If made public, the document could give Anthem's competitors a window into the company's cost structure, vendor pricing, revenue expectations, and internal strategic thinking—commercially valuable information that is not otherwise available and that would put Anthem at a competitive disadvantage.

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

EXECUTED on September 18, 2026 in Goleta, California

By: 
James A. Bowman