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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

UNITED STATES OF AMERICA *ex rel.*
BENJAMIN POEHLING,

Plaintiffs,

v.

UNITEDHEALTH GROUP, INC. *et al.*,

Defendants.

CASE NO. 2:16-cv-08697-
MWF(SSx)

**JOINT STIPULATION
REGARDING VENUE
TRANSFER MOTION,
BRIEFING SCHEDULE, FIRST
TO FILE ISSUE, COMPLAINT
RESPONSE DATE, AND
COMMENCEMENT OF
DISCOVERY**

*[Filed Concurrently with
[Proposed] Order]*

Hon. Michael W. Fitzgerald

1 WHEREAS, Defendant UnitedHealth Group, Inc. and its affiliated entities
2 named as Defendants in this action (collectively, “UnitedHealth Defendants”), are
3 required to respond by July 17, 2017, pursuant to Waivers of Service of Summons
4 filed on May 25 and 30, 2017 (ECF Nos. 121 and 122), to the United States’
5 Complaint-in-Partial-Intervention and the Second Amended Complaint of *Qui Tam*
6 Plaintiff-Relator Benjamin Poehling (“Relator”) in the above-captioned action;

7 WHEREAS, the UnitedHealth Defendants seek to extend the time to
8 respond to both Complaints pending the resolution of a motion to transfer venue to
9 the United States District Court for the District of Columbia pursuant to 28 U.S.C.
10 § 1404(a), which the UnitedHealth Defendants will file on July 17, 2017;

11 WHEREAS, the United States and Poehling intend to oppose the
12 UnitedHealth Defendants’ motion to transfer venue;

13 WHEREAS, the United States and Poehling contend that if the UnitedHealth
14 Defendants intend to assert that any claim by Relator is barred by the False Claims
15 Act’s first-to-file provision, 31 U.S.C. § 3730(b)(5) and (e)(3), any such assertion
16 must be resolved before the resolution of any motion to transfer venue;

17 WHEREAS, pursuant to Local Rule 7-3, on July 7, 2017, counsel for the
18 UnitedHealth Defendants, the United States, and Relator Benjamin Poehling
19 (“Relator”) (cumulatively, “the Parties”) met and conferred about the UnitedHealth
20 Defendants’ motion to transfer and reached the agreement described below;

21 WHEREAS, the UnitedHealth Defendants stated that they will not assert
22 that the False Claims Act’s first-to-file provision, 31 U.S.C. § 3730(b)(5) and
23 (e)(3), applies to bar the claims of the Relator, as reflected in the Agreement
24 attached hereto as Exhibit 1;

25 WHEREAS, in reliance upon that statement and the Agreement attached
26 hereto as Exhibit 1, the United States and Relator agreed not to object to the
27 UnitedHealth Defendants filing the motion to transfer venue at this time, and
28 additionally agreed to an extension of time for the UnitedHealth Defendants to

1 answer or otherwise respond to the Complaints so that the UnitedHealth
2 Defendants' answers or other responsive pleadings need not be filed until after
3 resolution of the UnitedHealth Defendants' motion to transfer;

4 WHEREAS, the Parties agreed that the United States shall file its opposition
5 to the motion to transfer on or before August 28, 2017; UnitedHealth Defendants
6 shall file their reply in support of the motion to transfer on or before September 11,
7 2017; and a hearing on the motion to transfer shall be held on September 25, 2017;

8 WHEREAS, the Parties further agreed that the motion to transfer briefing
9 shall not stay any discovery proceedings, and, pursuant to Fed. R. Civ. P. 26(d)(1)
10 and 29(b), that written discovery may commence before a Rule 26(f) conference is
11 held.

12 Pursuant to Local Rule 7-1, the Parties state as follows in support of this
13 Joint Stipulation:

14 1. On March 24, 2011, Relator filed a federal False Claims Act *qui tam*
15 action against UnitedHealth Group, Inc. and WellMed Management Company, Inc.
16 in the United States District Court for the Western District of New York (ECF No.
17 1).

18 2. After transfer from the Western District of New York to the Central
19 District of California (ECF No. 50), on February 14, 2017, the United States filed a
20 Notice of Election of the United States To Intervene in Part and Decline to
21 Intervene In Part And Stipulation Re Unsealing. (ECF No. 78). The United States
22 filed a Complaint-in-Partial-Intervention against the UnitedHealth Group on May
23 16, 2017, adding several dozen additional affiliated entities as Defendants. (ECF
24 No. 114). Also on May 16, 2017, Relator filed a Second Amended Complaint
25 against the UnitedHealth Defendants. (ECF No. 117). The United States'
26 Complaint-in-Intervention and the Relator's Second Amended Complaint were
27 served on the UnitedHealth Defendants by agreed waiver of service on May 16,
28 2017.

1 3. The UnitedHealth Defendants' deadline to respond to the Complaints
2 is presently set for July 17, 2017. (ECF Nos. 121, 122). No other dates have been
3 set in this action.

4 4. The UnitedHealth Defendants intend to file a motion to transfer venue
5 to the United States District Court for the District of Columbia on July 17, 2017
6 pursuant to 28 U.S.C. § 1404(a).

7 5. The United States and Relator will oppose the UnitedHealth
8 Defendants' motion to transfer venue.

9 6. The United States and Relator contend that if Defendants intend to
10 bring a motion against Poehling under the False Claims Act's first-to-file
11 provision, 31 U.S.C. § 3730(b)(5) and (e)(3), any such motion should be resolved
12 before the resolution of any motion to transfer venue.

13 7. In light of that argument and the agreement of Relator and the *qui tam*
14 plaintiff-relator in *United States ex rel. Swoben v. Secure Horizons, et al.*, Case No.
15 CV09-5013 JFW (JEMx) (C.D. Cal.) (the "Swoben Action") concerning the scope
16 of that action and this action, as reflected in the agreement attached hereto as
17 Exhibit 1, the UnitedHealth Defendants have agreed that they will not raise, allege,
18 or argue in any action that Poehling's claims in this action are barred by the False
19 Claims Act's first-to-file rule.

20 8. The Parties have met and conferred and have agreed on the following
21 briefing schedule: the United States and Relator shall file their briefs in opposition
22 to the Motion to Transfer on or before August 28, 2017; the UnitedHealth
23 Defendants shall file their reply on or before September 11, 2017; and the hearing
24 shall be scheduled for September 25, 2017.

25 9. In reliance on the foregoing agreement by the UnitedHealth
26 Defendants, the Parties have agreed to an extension of time for the UnitedHealth
27 Defendants to answer or otherwise respond to the Complaints, such that any further
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1 motions or other responsive pleading need not be filed until after resolution of the
2 UnitedHealth Defendants' motion to transfer.

3 10. The Parties agree that the deadline for the UnitedHealth Defendants to
4 answer or otherwise respond to the Complaints will be either 20 days after the
5 Court enters an order denying the motion to transfer or 20 days after the motion to
6 transfer is granted and the case is assigned to a judge and a civil action opened in
7 the United States District Court of the District of Columbia.

8 11. The Parties have further agreed that the motion to transfer venue
9 briefing shall not stay any discovery proceedings, and, pursuant to Fed. R. Civ. P.
10 26(d)(1) and 29(b), the parties stipulate that written discovery may commence
11 before a Rule 26(f) conference is held.

12 IT IS STIPULATED AND AGREED, subject to the Court's approval, that:

13 1. The UnitedHealth Defendants shall file a motion to transfer on or
14 before July 17, 2017.

15 2. The United States shall file its opposition to the motion to transfer on
16 or before August 28, 2017.

17 3. The UnitedHealth Defendants shall file their reply in support of the
18 motion to transfer on or before September 11, 2017.

19 4. A hearing on the motion to transfer shall be scheduled for September
20 25, 2017.

21 5. Pursuant to the Agreement Concerning the Scope of Claims attached
22 hereto as Exhibit 1 and incorporated by this reference, the UnitedHealth
23 Defendants will not raise, allege, or argue in any action or proceeding that
24 Poehling's claims in this action are barred by the False Claims Act's first-to-file
25 rule.

26 6. The deadline for UnitedHealth Defendants to respond to the
27 Government's Complaint-in-Partial-Intervention and any response to Relator's
28 Second Amended Complaint shall be extended until either 20 days after the Court

1 enters an order denying the motion to transfer or 20 days after the motion to
2 transfer is granted and the case is assigned to a judge and a civil action opened in
3 the United States District Court of the District of Columbia.

4 7. The motion to transfer venue briefing shall not stay any discovery
5 proceedings and written discovery may commence before a Rule 26(f) conference
6 is held.

7 Dated: July 14, 2017

LATHAM & WATKINS LLP
DAVID J. SCHINDLER
DANIEL MERON
ABID R. QURESHI

By /s/ David J. Schindler
David J. Schindler
Attorneys for UnitedHealth
Defendants

13 Dated: July 14, 2017

CAROL L. WALLACK
JESSICA KRIEG
JUSTIN DRAYCOTT
PAUL PERKINS
Attorneys, Civil Division
United States Department of Justice

JOHN E. LEE
Assistant United States Attorney
KATHLEEN ANN LYNCH
Assistant United States Attorney

By /s/ John E. Lee
John E. Lee
Assistant United States Attorney
Attorneys for the United States of
America

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Dated: July 14, 2017

CONSTANTINE CANNON LLP
PHILLIPS & COHEN LLP

By /s/ Jessica Moore
Jessica Moore
Attorneys for *Qui Tam* Plaintiff
Benjamin Poehling

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Attestation

I hereby attest that the other signatories listed, on whose behalf the filing is submitted, concur in the filing's content and have authorized the filing.

Dated: July 14, 2017

LATHAM & WATKINS LLP

By /s/ David J. Schindler
David J. Schindler

EXHIBIT 1

Agreement Concerning Scope of Claims

James M. Swoben (“Swoben”), Benjamin Poehling (“Poehling”), and UnitedHealth Group Incorporated, United HealthCare Services, Inc., UnitedHealthcare, Inc., UnitedHealthcare Insurance Company, UHIC Holdings, Inc., Ovations, Inc., Optum, Inc., OptumInsight, Inc., AmeriChoice of New Jersey, Inc., AmeriChoice of New York, Inc., Arizona Physicians IPA, Inc., Care Improvement Plus of Maryland, Inc., Care Improvement Plus of Texas Insurance Company, Care Improvement Plus South Central Insurance Company, Care Improvement Plus Wisconsin Insurance Company, Optum Insurance of Ohio, Inc. (f.k.a. Catamaran Insurance of Ohio, Inc.), Citrus Health Care, Inc., Health Plan of Nevada, Inc., Medica HealthCare Plans, Inc., Oxford Health Plans (CT), Inc., Oxford Health Plans (NJ), Inc., Oxford Health Plans (NY), Inc., PacifiCare Life and Health Insurance Company, PacifiCare of Arizona, Inc., PacifiCare of Colorado, Inc., PacifiCare of Nevada, Inc., Physicians Health Choice of Texas, LLC, Preferred Care Partners, Inc., Rocky Mountain Health Maintenance Organization, Incorporated, Sierra Health and Life Insurance Company, Inc., Symphonix Health Insurance, Inc., UHC of California (f.k.a. PacifiCare of California), United Health Care Ins. Co. and United New York, Unison Health Plan of Tennessee, Inc., UnitedHealthcare Benefits of Texas, Inc. (f.k.a. PacifiCare of Texas, Inc.), UnitedHealthcare Community Plan of Ohio, Inc. (f.k.a. Unison Health Plan of Ohio, Inc.), UnitedHealthcare Community Plan of Texas, L.L.C. (f.k.a. Evercare of Texas, L.L.C.), UnitedHealthcare Community Plan, Inc. (f.k.a. UnitedHealthcare of the Great Lakes Health Plan, Inc.), UnitedHealthcare Insurance Company of New York, UnitedHealthcare of Alabama, Inc., UnitedHealthcare of Arizona, Inc., UnitedHealthcare of Arkansas, Inc., UnitedHealthcare of Florida, Inc., UnitedHealthcare of Georgia, Inc., UnitedHealthcare of New England, Inc., UnitedHealthcare of New York, Inc., UnitedHealthcare of North Carolina, Inc., UnitedHealthcare of Ohio, Inc., UnitedHealthcare of Oklahoma, Inc. (f.k.a. PacifiCare of Oklahoma, Inc.), UnitedHealthcare of Oregon, Inc. (f.k.a. PacifiCare of Oregon, Inc.), UnitedHealthcare of Pennsylvania, Inc. (f.k.a. Unison Health Plan of Pennsylvania, Inc.), UnitedHealthcare of Tennessee, Inc., UnitedHealthcare of the Midlands, Inc., UnitedHealthcare of the Midwest, Inc., UnitedHealthcare of Utah, Inc., UnitedHealthcare of Washington, Inc. (f.k.a. PacifiCare of Washington, Inc.), UnitedHealthcare of Wisconsin, Inc., and UnitedHealthcare Plan of the River Valley, Inc. (collectively, the “United Defendants”), through their counsel of record in the actions entitled *United States ex rel. Swoben v. Secure Horizons, et al.*, Case No. CV09-5013 JFW (JEMx) (C.D. Cal.) (the “Swoben Action”) and *United States ex rel. Poehling v. UnitedHealth Group, Inc.*, Case No. 2:16-cv-08697 MWF (SS) (C.D. Cal.) (the “Poehling Action”), hereby agree as follows:

1. Swoben is the *Qui Tam* Plaintiff in the Swoben Action. Poehling is the *Qui Tam* Plaintiff in the Poehling Action. Each of the United Defendants is a defendant in the Swoben Action, in the Poehling Action, or in both actions. Swoben, Poehling, and the United Defendants wish to come to agreement concerning the scope of the claims to be asserted in the Swoben Action and the Poehling Action.

2. The United States has represented that the claims currently asserted by the United States in its Complaint-In-Partial-Intervention in the Swoben Action are limited to HealthCarePartners chart reviews. The United States does not hereby waive, release or forfeit any rights, claims or cause of actions of any nature against United in this or any other action or proceeding, whether now pending or which may be brought or asserted in the future.

3. As to Swoben's claims against the United Defendants, Swoben will proceed only as to the same claims that the United States has asserted against the United Defendants (or any of them) in the *Swoben* Action; *i.e.*, the scope of Swoben's case against the United Defendants will be limited to the same claims on which the United States is proceeding.

4. The agreement in ¶ 3 above pertains only to Swoben's claims against the United Defendants, and is without prejudice to any claims Mr. Swoben may have against any other party.

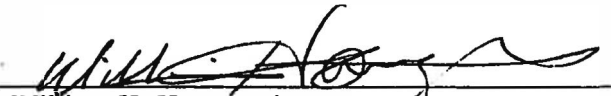
5. The agreement in ¶ 3 above is without prejudice to any claims or causes of action that the United States or any relator other than Swoben has asserted, is asserting, or may in the future assert, including the claims in the *Poehling* Action.

6. The United Defendants will not raise, allege, or argue in any action that Poehling's claims in the *Poehling* Action are barred by the False Claims Act's first-to-file provision, 31 U.S.C. § 3730(b)(5) and (e)(3).

7. The undersigned represent and warrant that they are counsel of record in the *Swoben* Action, in the *Poehling* Action, or in both actions for the parties on whose behalf they sign and that they have the authority to sign this Agreement on behalf of those parties.

Dated: _____

JULY 14, 2017


William K. Hanagami
THE HANAGAMI LAW FIRM
A Professional Corporation

Abram J. Zinberg
THE ZINBERG LAW FIRM
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Counsel for James M. Swoben

Dated: _____

Jessica Moore
CONSTANTINE CANNON LLP

Stephen Hasegawa
PHILLIPS & COHEN LLP

Counsel for Benjamin Poehling

3. As to Swoben's claims against the United Defendants, Swoben will proceed only as to the same claims that the United States has asserted against the United Defendants (or any of them) in the *Swoben* Action; *i.e.*, the scope of Swoben's case against the United Defendants will be limited to the same claims on which the United States is proceeding.

4. The agreement in ¶ 3 above pertains only to Swoben's claims against the United Defendants, and is without prejudice to any claims Mr. Swoben may have against any other party.

5. The agreement in ¶ 3 above is without prejudice to any claims or causes of action that the United States or any relator other than Swoben has asserted, is asserting, or may in the future assert, including the claims in the *Poehling* Action.

6. The United Defendants will not raise, allege, or argue in any action that Poehling's claims in the *Poehling* Action are barred by the False Claims Act's first-to-file provision, 31 U.S.C. § 3730(b)(5) and (e)(3).

7. The undersigned represent and warrant that they are counsel of record in the *Swoben* Action, in the *Poehling* Action, or in both actions for the parties on whose behalf they sign and that they have the authority to sign this Agreement on behalf of those parties.

Dated: _____

William K. Hanagami
THE HANAGAMI LAW FIRM
A Professional Corporation

Abram J. Zinberg
THE ZINBERG LAW FIRM
A Professional Corporation

Counsel for James M. Swoben

Dated: 7/14/17

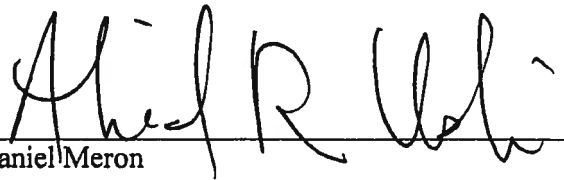
Jessica Moore
CONSTANTINE CANNON LLP

Stephen Hasegawa
PHILLIPS & COHEN LLP

Counsel for Benjamin Poehling

Dated: _____

07/14/17

A handwritten signature in black ink, appearing to read 'Abid R. Qureshi', written over a horizontal line.

Daniel Meron

Abid R. Qureshi

David Schindler

LATHAM & WATKINS LLP

Counsel for the United Defendants

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Attorneys for UnitedHealth Defendants

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BENJAMIN POEHLING,

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CASE NO. 2:16-cv-08697-
MWF(SSx)

**[PROPOSED] ORDER
GRANTING JOINT
STIPULATION REGARDING
VENUE TRANSFER MOTION,
BRIEFING SCHEDULE, FIRST
TO FILE ISSUE, COMPLAINT
RESPONSE DATE, AND
COMMENCEMENT OF
DISCOVERY**

*[Filed Concurrently with Joint
Stipulation to Extend Time to
Respond]*

Hon. Michael W. Fitzgerald

Pursuant to stipulation of the parties, and good cause appearing, IT IS
HEREBY ORDERED AS FOLLOWS:

1. Defendants shall file a motion to transfer on or before July 17, 2017. The United States' opposition is due on August 28, 2017, and the Defendants' reply in support of the motion is due on September 11, 2017. The motion shall be scheduled to be heard on September 25, 2017, at 10:00 a.m.
2. Pursuant to agreement between the UnitedHealth Defendants and the Relator, the UnitedHealth Defendants will not raise, allege, or argue in any action or proceeding that Poehling's claims in this action are barred by the False Claims Act's first-to-file rule.
3. The Defendants' response to the Second Amended Complaint and the Complaint-in-Intervention shall be due either 20 days after the Court enters an order denying the motion to transfer or 20 days after the motion to transfer is granted and the case is assigned to a judge and a civil action opened in the United States District Court for the District of Columbia.
4. Pending the resolution of the UnitedHealth Defendants' motion to transfer venue, the parties may engage in written discovery (document requests and interrogatories) and may do so before a Rule 26(f) conference.

IT IS ORDERED.

Dated: _____

UNITED STATES DISTRICT JUDGE