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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

UNITEDHEALTH GROUP, INC. *et al.*,

Defendants.

CASE NO. CV 16-08697 MWF (SSx)

Assigned to Hon. Michael W. Fitzgerald

UNITED'S NOTICE OF MOTION AND MOTION TO TRANSFER; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF

[*Declarations of Daniel Meron and Karen Erickson and [Proposed] Order filed concurrently herewith*]

Hearing Date: September 25, 2017
Hearing Time: 10:00 a.m.
Ctrm: 5A

TO THE COURT, ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that, on September 25, 2017 at 10:00 a.m., or as soon thereafter as the parties may be heard, in Courtroom 5A of the United States District Court, Central District of California, located at 350 W. 1st Street, Los Angeles, California 90012, Honorable Michael W. Fitzgerald presiding, Defendants UnitedHealth Group, Inc., United Healthcare Services, Inc., United Healthcare, 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, "United") will, and hereby do, move the Court for a transfer of venue to the United States District Court for the District of Columbia pursuant to 28 U.S.C. § 1404 (the "Motion").

This Motion is and will be made on the grounds that the District of Columbia is both a proper venue and a more convenient and just venue. More specifically, United moves to transfer venue to the United States District Court for the District of Columbia on the grounds that (1) the Plaintiff's choice of forum is irrelevant here, because all agree the Western District of New York is not a convenient venue for this suit, (2) transfer would allow this case to be coordinated with United's Administrative Procedure Act suit pending in the District of Columbia, (3) the convenience of potential witnesses weighs in favor of a transfer, (4) the ease of access to sources of proof weighs in favor of transfer, (5) the relevant contacts with the District of Columbia weigh in favor of transfer, and (6) the remaining factors are neutral.

This Motion is based upon the accompanying Memorandum of Points and Authorities, the Declarations of Daniel Meron and Karen Erickson filed concurrently herewith, the pleadings and other papers on file herein, and such argument and evidence as may be presented in connection with the hearing of this Motion.

This Motion is made following the conference of counsel pursuant to L.R. 7-3, which took place on July 7, 2017.

Dated: July 17, 2017

LATHAM & WATKINS LLP

DAVID J. SCHINDLER
DANIEL MERON
ABID R. QURESHI

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

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INTRODUCTION

This lawsuit has no real connection to this District. In 2011, a *qui tam* relator filed it in the Western District of New York, where it remained for more than five years. The case was moved here in November 2016 not because emerging facts revealed some strong nexus to California, but rather because the Department of Justice (DOJ) sought to take advantage of a new Ninth Circuit ruling by filing an *ex parte* motion to transfer the case here. Judge Walter already has observed that "[t]he transfer of *Poehling* to the Central District of California occurred *ex parte* and without UnitedHealth's input, which this circuit strongly disfavors." Statement of Decision Denying the United States of America's Motion to Consolidate 8, *United States ex rel. Swoben v. Scan Health Plan*, No. 09-cv-05013-JFW (April 27, 2017), ECF No. 295 ("*Swoben* Consolidation Decision"). Indeed, DOJ's transfer motion shows why *ex* parte proceedings are disfavored: It misleadingly presented the Western District of New York with a binary decision between that district and this one, strategically failing to disclose that a lawsuit addressing the central issues in this case already was pending in the District of Columbia.

Based on a full review of *all* the pertinent facts, this Court should now transfer this case to the United States District Court for the District of Columbia. This case has, as Judge Walter put it, "minimal connections to the Central District of California." *Id.* It was initiated by a Minnesota relator, and alleges that policy decisions made in Minnesota by a Minnesota-based company, which were the subject of extensive communications with federal officials in the Washington, D.C. metropolitan area, caused attestations signed in Minnesota and submitted to a D.C.-area agency to be false. And the ordinary weight accorded to a plaintiff's choice of forum is wholly absent in a case originally filed in New York and transferred here *ex parte* five years later in pursuit of new legal precedent that an intervening party believed to be favorable to its interests.

By contrast, this case has strong connections to Washington, D.C. For one, if it is transferred there, it may be coordinated with a case in which the arguments are (in DOJ's own words) "identical" to "central" arguments that will be raised in this case. U. S. Mot. to Stay 1-2, *UnitedHealthcare Ins. Co. v. Price*, No. 16-cv-157 (D.D.C. April 14, 2017), ECF No. 28 ("*Price*, Mot. to Stay"). Beyond that, far more key witnesses, including former government officials, are located in the D.C. metropolitan area than in this District. The same is true for evidentiary materials, given that the agencies whose regulations and healthcare programs are at issue here are based in the D.C. area. And even for those witnesses who are based elsewhere (primarily in Minnesota), travel to Washington, D.C. would be more convenient than travel to Los Angeles.

All of the pertinent factors thus weigh heavily in favor of transfer.

BACKGROUND

This case concerns the scope of the obligations of Medicare Advantage ("MA") plans like United. DOJ generally alleges in its Complaint-in-Intervention ("Complaint") that United failed to take certain steps to verify the diagnostic data submitted to it by third-party healthcare providers before passing that data along to the government for use in making payment determinations. United disagrees that the MA regulating agency, the Centers for Medicare and Medicaid Services ("CMS"), has imposed, or may lawfully impose, the obligations that DOJ now says exist.

In January 2016, well before this case arrived here and DOJ intervened in it, United filed an Administrative Procedure Act ("APA") suit in the District of Columbia challenging the validity of a regulation that purports to require similar verification efforts. *See, e.g.*, Compl. ¶ 4, *UnitedHealthcare Ins. Co. v. Price*, No. 16-cv-157 (D.D.C. Jan. 29, 2016). United argues there—as it will in this case—that imposing data verification requirements on MA plans without imposing the

same verification requirements on the government's own collection of data systematically undercompensates MA plans in violation of the governing statute.

The two cases thus will turn in large measure on this shared question about how Congress designed the MA Program. The Court need not, of course, resolve that underlying question in order to decide this transfer motion. But that common question illustrates what this case is really about and how it overlaps (and should be coordinated) with the APA case already pending in the District of Columbia.

The MA program gives Medicare beneficiaries the option of obtaining all of their Medicare benefits from private insurers, known as MA plans, instead of from CMS. *See* 42 U.S.C. § 1395w-21 *et seq.* MA plans agree to insure the health costs of Medicare beneficiaries in return for set ("capitated") per-member-per-month payments from CMS. The capitated amounts initially are based on the estimated per-member-per-month revenue the MA plan needs to provide coverage to an *average* traditional Medicare beneficiary. *Id.* § 1395w-24(a). But CMS then modifies those payment amounts through a "risk adjustment" process, which is based on "the relative health of a plan's enrollees compared with that of the average Medicare beneficiary." DOJ Amicus Br. 5-6, *Swoben*, No. 13-56746 (9th Cir. April 18, 2016), ("DOJ *Swoben Amicus* Br.") ECF No. 68. This process accounts for the fact that while the initial capitated figure is based on the anticipated cost of insuring an *average* CMS beneficiary, some beneficiaries are sicker and present a risk of higher-than-average healthcare expenditures, while others are healthier and are expected to have lower-than-average healthcare costs. Because an MA plan's membership will not precisely match the makeup of the traditional Medicare program, Congress has determined that its payments should be risk adjusted to reflect whether its members are likely to be more or less expensive to insure than the average Medicare beneficiary. *See* 42 U.S.C. § 1395w-23(a)(1)(C)(i).

To ensure the adjustments accurately account for an MA plan's "expected healthcare expenditures," DOJ *Swoben Amicus* Br. at 6, the statute requires CMS to compare the health status of an MA plan's beneficiaries with that of traditional Medicare beneficiaries on an "apples-to-apples" basis—in the words of the statute, the risk adjustment model must "ensure actuarial equivalence" between MA plans and traditional Medicare, 42 U.S.C. § 1395w-23(a)(1)(C)(i).

United and DOJ disagree about what, exactly, that "actuarial equivalence" requirement means, and resolving that question will be a central issue in both this case and the APA case now pending in the District of Columbia. *See infra* at 12-13. All agree, though, that CMS relies on diagnostic codes that are recorded by physicians and other medical providers following treatment of Medicare beneficiaries, and then submitted to either CMS (in the case of traditional Medicare) or the MA plan (for MA plan members). CMS and MA plans compile these codes for their respective enrollees, and each MA plan submits the codes it has compiled to CMS as the plan's "risk adjustment data." *See* 42 C.F.R. § 422.310(b). CMS uses these data and the actual expenditures for its own beneficiaries to create a "risk score" for every Medicare Advantage enrollee relative to the average CMS beneficiary. *See generally* Paulette C. Morgan, Congressional Research Service, *Medicare Advantage Risk Adjustment and Risk Adjustments Data Validation Audits* (March 5, 2012). CMS then adjusts the monthly payment to the MA plan for that enrollee accordingly: Payments to an MA plan for an enrollee whose annual individual expenditures within the traditional Medicare program would be expected to be 20% higher than the average traditional Medicare beneficiary's expenditures, for example, would be increased by 20%.

DOJ's core allegation in this case is that United has been overpaid because it knows that some of the risk adjustment data it submits to CMS is not adequately documented in the underlying medical charts of the healthcare professionals who

provided the care, and yet has failed to take certain steps that could identify and delete those insufficiently documented diagnosis codes. *See* Compl. ¶ 5. DOJ also claims that United's certifications that its risk adjustment *data* are accurate to the best of its knowledge were false because United does not delete certain diagnosis codes that it allegedly knows are unsupported by medical records. *See* Compl. ¶¶ 230-33.

In the APA case pending in the District of Columbia, meanwhile, United is challenging as unlawful precisely this same interpretation of the Act. United's argument in the APA case is that it is unlawful for CMS to require plans to delete codes they have identified as unsupported by medical charts when CMS itself has not undertaken any such efforts with regard to its *own* data, even though it has acknowledged that those data also contain many codes that are similarly unsupported by medical charts. *See* United Opp. to Mot. to Dismiss at 8 n.3, *UnitedHealthcare Ins. Co. v. Price*, No. 16-cv-157 (D.D.C. June 30, 2016), ECF No. 14 (describing government estimates of undocumented codes). In both the APA case and this case, United's position is that subjecting a plan's data to stricter validation standards than CMS imposes on its own data makes CMS's beneficiaries appear *artificially sicker* than identical MA plan beneficiaries, and thus leads MA plans to be underpaid in violation of the controlling statute's "actuarial equivalence" requirement.

PROCEDURAL HISTORY

A. This Case's Late Arrival In This District.

In 2011, Relator Benjamin Poehling filed this lawsuit in the Western District of New York. In his 100-page complaint, Poehling made only a single reference to this District, identifying it as the headquarters of Health Net, Inc., an unrelated defendant that is no longer a party in the case. *See* First Am. Compl. ¶ 25, ECF No. 8 (W.D.N.Y. Oct. 27. 2011). Poehling's suit was filed under seal, and remained pending in New York for more than five years while DOJ conducted its

investigation. Neither Poehling nor DOJ ever suggested the case was connected to the Central District of California until after, in August 2016, the Ninth Circuit issued a decision in a different False Claims Act case against United involving risk adjustment. *See United States ex rel. Swoben v. United Healthcare Insurance Co.*, 832 F.3d 1084 (9th Cir.), *amended on rehearing*, 848 F.3d 1161 (9th Cir. 2016). That decision reversed the dismissal of a separate relator's claims, and in the course of so doing discussed the obligations of MA plans with respect to risk adjustment data. *See* 848 F.3d at 1178.

DOJ knew about *Swoben* in 2009, and intervened partially in the case (as to other defendants) in 2012. Yet despite its knowledge of and activities in that case, including actively participating as an *amicus* in the Ninth Circuit since February, 2016, DOJ waited until November 2016—three months after the Ninth Circuit announced its decision—to seek transfer of this case to this District. *See* U.S. Unopposed Mot. to Transfer Venue, ECF No. 48. There thus can be no real doubt but that DOJ's motion to transfer was a direct response to (and an attempt to take advantage of) the Ninth Circuit's decision.

DOJ was strategic about not only *when* it sought to have the case moved, but also *how* it did so. If DOJ had waited until after it intervened here to seek transfer, the case would have been unsealed and United would have had an opportunity to respond. *See* 31 U.S.C. § 3730(b)(3). In a procedural maneuver that enabled DOJ to avoid that result, though, DOJ filed an *ex parte* motion under seal with the Western District of New York, asking it for a transfer to this District before DOJ had even intervened as a party. DOJ misleadingly captioned the motion "Unopposed," despite providing United no opportunity to oppose it. *See* ECF No. 48.

DOJ's stated reason for transfer was that "[t]he transfer will enable the United States to relate or consolidate this matter with another *qui tam* action that was filed in the Central District of California"—i.e., *Swoben*—which DOJ claimed

"contains related or overlapping allegations against three of the same defendants named." U.S. Mem. In Support of Unopposed Mot. to Transfer Venue 1, ECF No. 49. By contrast, as to the APA suit pending in the District of Columbia, which the government has since noted presents not just "related or overlapping," *id.*, but "*identical* arguments,"[1] the government's motion said absolutely nothing. Instead, it presented the Western District of New York with an "either/or" choice between New York or California. Because the motion was filed *ex parte*, United had no opportunity to suggest that a different forum might be more convenient, or to inform the court of the crucial facts DOJ had omitted. On November 8, 2016, the day after it was filed, the Western District of New York summarily granted DOJ's "unopposed" motion. *See* ECF No. 50.

B. Judge Walter's Denial of Related Case Status and Consolidation.

The case then was transferred to the Central District, and DOJ filed a "Notice of Pendency of Other Action" requesting assignment to Judge Walter, the presiding judge in the *Swoben* remand. *See* ECF No. 58. Although DOJ's primary justification for its *ex parte* transfer motion was the case's alleged similarity to *Swoben*, Judge Walter decided that the cases were *not* related, "conclud[ing] that none of the three prongs of GO 14-03 are met." ECF No. 59. Thus, Judge Walter found that this case did not "arise from the same or a closely related transaction, happening, or event" as *Swoben*, did not "call for determination of the same or substantially related or similar questions of law and fact" as *Swoben*, and would not "entail substantial duplication of labor if heard by" a "different judge[]" than *Swoben*. General Order 14-03, Sec. II.I.1.b (C.D. Cal. June 2, 2014).

Undaunted, DOJ filed another motion in April 2017 asking Judge Walter to consolidate *Poehling* and *Swoben*. *See Swoben*, U.S. Mot. For Order Consolidating Actions, ECF No. 271. Judge Walter denied that motion, as well,

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[1] *Price*, Mot. to Stay 1, ECF No. 28 (emphasis added).

for two primary reasons. *First*, he noted that based on what DOJ had said to date about the two cases, "it appears that the complaints might have far less in common than they have differences." *Swoben* Consolidation Decision 6. *Second*, he explained that this Court might ultimately decide that *this* case (*Poehling*) belongs somewhere other than this District. *See id.* at 8-9 (describing the potential benefits of transfer but noting that "[w]hether to grant a transfer is a question properly left to the sound discretion of Judge Fitzgerald"). In so doing, he emphasized that at the time DOJ moved to transfer this case from the Western District of New York, United's APA case in the District of Columbia already presented many of the same central legal questions posed here. *See id.* at 3-5. Judge Walter explained that transferring this case to the District of Columbia would allow it to be "consolidated with the pending APA action," in which the "court *will soon be hearing* UnitedHealth's challenge to the legal underpinnings of the Government's arguments in this case—namely, that UnitedHealth was required to review and analyze the accuracy of codes submitted by providers under a 'due diligence' standard that the Government allegedly does not undertake itself." *Id.* at 9, 4-5 (emphasis added).

C. This Case's Strong Connection To The APA Action Pending In The District Of Columbia, And The Government's Efforts To Sideline That Case.

The government does not deny the overlap between this case and the APA case. On the contrary, it has argued affirmatively that the cases share "identical arguments" and that those arguments will "play[] a central role" in both cases. *See Price*, Mot. to Stay 1-2, ECF No. 28 ("UnitedHealth's 'actuarial equivalence' theory plays a central role in this case, too."). Yet, DOJ has done everything it can to avoid and delay United's regulatory challenge.

Its first attempt to avoid that challenge came in May 2016, when DOJ moved to dismiss the APA suit on the grounds, among others, that United could

not demonstrate an "'imminent threat' of prosecution." *Price*, U.S. Reply in Supp. Mot. to Dismiss 8, ECF No. 17 (citation omitted). That assertion was remarkable given DOJ's lengthy ongoing investigation and its forthcoming decision to intervene here. On March 31, 2017, shortly after DOJ announced its decision to intervene in this case, the U.S. District Court of the District of Columbia denied DOJ's motion. *See Price*, Mem. Op., 13, ECF No. 25. The reasoned that the regulatory requirement that MA plans exercise "reasonable diligence" to identify and delete unsupported diagnostic codes "imposes (for good reason or not) *new obligations*" that did not exist in any other regulation or statute prior to 2014. *See Price*, Mem. Op., 13, ECF No. 25 (emphasis added). That holding stands in sharp contrast to DOJ's theory in this case, which seeks to hold United liable for failing to undertake validation efforts going back more than a decade—long before the regulation was in place.

DOJ then tried a second time to delay resolution of United's claims and sideline the District of Columbia court. This time, it filed a motion to stay further proceedings in that case, arguing that *because* the APA case and the False Claims Act cases raise "identical arguments" that are "central" to both cases, the Court should stay the APA case until a decision is reached here.[2] *Price*, Mot. to Stay 1-2, ECF No. 28. The district court again denied DOJ's request, noting (among other things) the "industry-wide implications" of the rule's validity that had been highlighted in an amicus brief submitted by a trade association of insurance plans. *Price*, Mem. Op. and Order 5, (D.D.C. June 14, 2017), ECF No. 38. Following that order, DOJ answered United's APA complaint, and the parties will now commence summary judgment briefing based on the administrative record. Thus,

[2] United opposed that motion because, while the cases involve identical legal questions, the APA case seeks relief—including setting aside the Overpayment Rule—that would not be available in the False Claims Act cases. *See Price*, United's Opp. to Mot. to Stay 7-8, ECF No. 31.

the APA court "will soon be hearing" the merits of United's challenge. *Swoben* Consolidation Decision 4.

ARGUMENT

I. The Court Should Transfer This Case To The U.S. District Court For The District of Columbia, Which Is A Far More Convenient Venue And Will Allow This Case To Be Coordinated With The APA Suit.

Under 28 U.S.C. § 1404(a), "[f]or the convenience of the parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which the parties have consented." In considering a motion for transfer, the Court should undertake a two-part analysis. *First*, the Court must decide whether an action could have been brought in the potential transferee court, which "includes demonstrating that subject matter jurisdiction, personal jurisdiction, and venue would have been proper if the plaintiff had filed the action in the district to which transfer is sought." *Metz v. U.S. Life Ins. Co. in City of New York*, 674 F. Supp. 2d 1141, 1145 (C.D. Cal. 2009). *Second*, if that threshold showing is made, the Court also "must consider the following three factors: (1) the convenience of the parties; (2) the convenience of the witnesses; and (3) the interests of justice." *Id.* The third category, "the interests of justice," in turn involves a number of additional factors, including:

> (1) the location where the relevant agreements were negotiated and executed, (2) the state that is most familiar with the governing law, (3) the plaintiffs choice of forum, (4) the respective parties' contacts with the forum, (5) the contacts relating to the plaintiff's cause of action in the chosen forum, (6) the differences in the costs of litigation in the two forums, (7) the availability of compulsory process to compel attendance of unwilling non-party witnesses, and (8) the ease of access to sources of proof.

Id.

A. The District of Columbia Is A Proper Venue For This Case

The first showing is readily made here. Under 31 U.S.C. § 3732(a), a False Claims Act action "may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred." United transacts business in the District of Columbia through, among other things, the operation of a Medicare Advantage plan. *See* Compl. ¶ 23. By contrast, under the narrower venue provision applicable to APA actions, United's APA suit could *not* have been brought in the Central District of California because the Secretary of Health and Human Services is not a "resident" of the Central District, the "events or omissions giving rise" to the APA claims did not occur here, and the Central District is not United's "principal place of business." 28 U.S.C. § 1391(b)(1) & (2); *id.* § (e)(1). Accordingly, the APA action could not be transferred to this District, and the only way for these two cases to be heard together is for this case to be transferred to the District of Columbia.

B. The District Of Columbia Is A More Convenient And Just Venue

The second prong of the transfer analysis points decisively toward the District of Columbia as well.

1. The Plaintiff's Choice Of Forum Is Irrelevant Here, Because All Agree The Western District Of New York Is Not A Convenient Venue For This Suit

The party moving for transfer ordinarily has the burden of overcoming the "great weight . . . accorded plaintiff's choice of forum." *Lou v. Belzberg*, 834 F.2d 730, 739 (9th Cir. 1987). In this case, however, the plaintiff's chosen forum was the Western District of New York—a venue *no one* believes is convenient for the resolution of this case. The case is in California only because the United States filed its motion to transfer *ex parte*, presenting the Western District of New York

with a one-sided account of the convenience factors, a binary choice between that District and this one, and no information whatsoever about the APA suit.

The possibility of such mischief is precisely why the Ninth Circuit has long recognized that "ex parte proceedings are anathema in our system of justice." *United States v. Thompson*, 827 F.2d 1254, 1258-59 (9th Cir. 1987); *see also Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Local No. 70*, 415 U.S. 423, 439 (1974) ("[O]ur entire jurisprudence runs counter to the notion of court action taken before reasonable notice and an opportunity to be heard has been granted both sides of a dispute."). This Court thus should afford absolutely no weight to DOJ's *ex parte* motion transferring the case here. To do otherwise would reward DOJ's strategic maneuvering, and cast a pall of procedural unfairness over these proceedings. Instead, this Court need only answer the straightforward question of whether the Central District of California or the District of Columbia is a better venue for this case.

2. Transfer Would Allow This Case To Be Coordinated With The APA Suit

DOJ has stated that "identical arguments" will "play[] a central role" in this case and the APA suit. *Price*, Mot. to Stay 1-2, ECF. No. 28. That statement is indisputably correct. Here, DOJ challenges United's alleged policy decision not to undertake certain efforts to identify and delete diagnosis codes unsupported by medical charts. At the same time, United alleges in its APA case that it is *unlawful* for CMS to require plans to delete diagnosis codes they have identified, or should have identified, as unsupported by medical charts, given the government's failure to undertake similar validation efforts itself. In both cases, a central legal question is whether the requirement to "ensure actuarial equivalence," 42 U.S.C. § 1395w-23(a)(1)(C)(i), is violated when the government treats its own risk adjustment data as "accurate" without regard to whether those data are adequately supported by underlying medical charts, but uses a *different definition* of "accurate" to evaluate

MA plans' data. To be sure, there are other, factual elements that DOJ also would have to prove in order to prevail in this case that are irrelevant to the legal questions in the APA case, including, among other elements, scienter and materiality, *see* 31 U.S.C. § 3729(a)(1). But a crucial component of the two cases is, as the government rightfully has acknowledged, the same.

The government also has recognized that when overlap of this sort is present, "having such issues unfold and resolved in the context of a consolidated proceeding would be much more efficient and lead to [more] consistent judicial results than having them determined independently in one proceeding with uncertain consequences in another related proceeding." *Swoben*, U.S. Mem. In Support of Mot. For Order Consolidating Actions 19, ECF No. 271-1.

The logical conclusion from those two government positions is obvious: This case should be coordinated with the APA case however possible. As already described, that result is only possible if this case is transferred to Washington D.C. The pendency of the APA suit in the District of Columbia thus is a "significant factor" weighing in favor of transfer. *A.J. Indus. v. U.S. Dist. Court*, 503 F.2d 384, 389 (9th Cir. 1974); *see also Avalon Glass and Mirror Co*, No. 2:16-cv-06444, 2016 WL 7217579, at *3 (C.D. Cal. Dec. 12, 2016) (noting that "in an effort to facilitate judicial economy and avoid multiplicity of litigation, 'many courts have transferred to a forum in which other actions arising from the same transaction or event, or which were otherwise related, were pending'" (quoting Alan Wright et al., 15 Fed. Prac. & Proc. Juris. § 3854, n.5 (4th ed.))).[3]

[3] The existence of *Swoben* here does not change that conclusion. That action bears little similarity to this one. This case centers on chart reviews United itself performed nationally, a claims verification program it administered, and its so-called RACCR program, all of which will relate centrally to the actuarial equivalence arguments United has set forth in its APA case. Compl. ¶¶ 121-134, 153-197. *Swoben*, by contrast, involves allegations about United's alleged involvement in chart reviews performed by or on behalf of *one* provider group in

3. The Convenience Of Potential Witnesses Weighs Heavily In Favor Of A Transfer

More traditional transfer factors overwhelmingly favor the District of Columbia as a venue for this case, too. First, and most significantly, D.C. would be substantially more convenient than this District for party and non-party witnesses alike. *See Storm Mfg. Grp., Inc. v. Weather Tec Corp.*, No. CV 12-10849-CAS (FFMx), 2013 WL 12129620, at *5 (C.D. Cal. Apr. 15, 2013) (noting that of the convenience factors, "convenience of the witnesses is the most important factor when deciding a transfer motion").

United intends to present evidence here that it *told* senior CMS officials about its data validation efforts, and that those officials told United in response that it was not required to perform the "two-way looks" DOJ now claims are necessary. These communications are a core of United's factual defense. Many of those communications took place several years ago, so some of the relevant CMS officials no longer are employed by the government. Accordingly, by far the most consequential group of non-party witnesses in this case will be the CMS officials who met, exchanged phone calls, and corresponded with United employees about United's diagnostic code validation efforts. These witnesses include: (1) the former Administrator of CMS, Marilyn Tavenner, who currently works in the private sector in the District of Columbia; (2) the former Principal Deputy Administrator and Director of CMS, Jonathan Blum, who currently works in the private sector in nearby Baltimore, Maryland; and (3) Sean Cavanaugh, the former Deputy Administrator and Director of CMS, who on information and belief

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California, Healthcare Partners. *Swoben* does not contain allegations about United's own chart review program at all, let alone the Claims Verification or RACCR programs. As Judge Walter summed up, "it appears that the complaints might have far less in common than they have differences." *Swoben* Consolidation Decision 6.

remains based in Washington. *See* Declaration of Daniel Meron ("Meron Decl.") ¶ 2. Their testimony is so vital that United anticipates subpoenaing them to testify *wherever* the trial is held, *see* 31 U.S.C. § 3731(a), but it would prefer that that testimony be as minimally disruptive to them and their current employers as possible.

DOJ obviously recognizes the significance of those meetings and correspondence to its case, because it has taken the unusual step of anticipating a defense based on them in its Complaint. *See* Compl. ¶¶ 183-85. Its Complaint offers an incredibly one-sided account of those communications, *see id.* at ¶¶ 184-85, and takes the remarkable position that even if CMS leaders *did* tell United that it was not required to undertake additional review efforts, those senior leaders at CMS "responsible for operating the Medicare Advantage Program" "were not authorized to provide legal advice" about Medicare Advantage plans' legal obligations because they did not have a Department of Justice attorney present, *id.* at 183. The suggestion that the Department of Health and Human Services requires authorization from DOJ to issue advice about HHS's *own* programs is wholly without basis in the False Claims Act—or any other federal statute, regulation, or Executive Order. More to the point here, the fact that DOJ resorts to that position in the hopes of blunting the significance of those communications only highlights how important the testimony by these D.C.-based former government officials will be in this case.

Proceeding in Washington, D.C. also would be more convenient than California for a majority of the *party* witnesses who would be called to testify. Given the complexity and scope of the underlying regulatory framework, and the numerous changes that regulatory framework underwent over the course of the decade-long period DOJ has put at issue in this case, United anticipates that at least two dozen government witnesses would be called to testify in the event of a trial. This would likely include Cheri Rice, the Acting Deputy Director of the Center for

Medicare at CMS, who also discussed United's data validation efforts with United. *See* Compl. ¶ 182. Witnesses would also include the government officials who:

- Devised the Medicare Advantage risk adjustment methodology;
- Reviewed United's annual MA plan bids setting forth its proposed capitated payment amounts;
- Established CMS's average cost and risk calculations within specific geographic regions;
- Developed the methodology CMS uses for its own audits of MA plans (which, unlike DOJ's theory in this False Claims Act case, expressly takes account of the government *own* error rate);
- Set forth diagnosis coding and medical documentation criteria used by the government itself in auditing health plans; and
- Reviewed MA plans' certifications of data accuracy.

These witnesses would provide relevant testimony on, among other things, United's defenses that:

- Its interpretations of the applicable statutes and regulations were correct or, at the very least, shared by government officials and other MA plans (and thus presumptively *reasonable* rather than fraudulent);
- Any claimed falsity was not material to the government's decisions to pay (because the government knew about United's and other MA plans' approaches to risk adjustment data and nevertheless continued to pay those claims);
- United's submissions were accurate (because, among other things, United officials discussed its approach with CMS officials, and because United included express clarifications about that approach

when submitting the data accuracy certifications required under 42 C.F.R. § 422.504(*l*)); and

- United was not overpaid by failing to take the data validation efforts DOJ now insists are required.

United has not yet begun receiving discovery from the government in this matter (unlike DOJ, which has had years to investigate), so United does not know the specific identities of all of these government witnesses. But given that the relevant government operations are located in the District of Columbia and Baltimore, it is almost certain that all the government witnesses reside or work in or near the District of Columbia—as DOJ itself has acknowledged. *See* U.S. Mem. In Support of Unopposed Mot. to Transfer Venue 7 n.2, ECF No. 49 (acknowledging that the "potential government witnesses work in Maryland and the District of Columbia" but never suggesting the possibility of a transfer to the District of Columbia).

Proceeding in Washington, D.C. also would be more convenient than California for the large number of likely witnesses in this case who live in Minnesota. During its investigation, nearly half of the individuals DOJ deposed were based at United's headquarters in Hennepin County, Minnesota. *See* Meron Decl. ¶ 3. That is no coincidence. The crux of DOJ's Complaint is that United's MA plans adopted a policy of using so-called "one-way-looks" in reviewing medical charts, then submitted attestations to CMS that were false as a result of those policies. *See* Compl. §§ 121-134. As the Complaint admits, the "groups which had some management or oversight over [United's] MA organizations and MA plans . . . were located within defendant UnitedHealthcare, Inc," not its affiliate, Optum, Inc. (which is also a named defendant in the suit). Compl. ¶ 30. And *not one* of the UnitedHealthcare, Inc. ("UHC"), employees identified in the Complaint or deposed by DOJ in its investigation is located in California—instead,

nearly all are in Minnesota or locations even closer to Washington, D.C. *See* Declaration of Karen Erickson ("Erickson Decl.") ¶¶ 5-6.

In a transparent attempt to create some connection to this District, the Complaint emphasizes that some of the "actual data and claim submission and program work" was performed by two affiliated defendants, Optum, Inc., and OptumInsight, Inc., which have operations in this District. Compl. ¶ 30. But even lumping the two Optum entities together with UHC, 19 of the employees identified by name in the core allegations of the Complaint (¶¶ 121-233) are located in Minnesota, while only 4 are in California. Meron Decl. ¶ 5; Erickson Decl. ¶ 5.

For witnesses in Minnesota, a trial in Washington, D.C. would impose shorter travel times and less inconvenience than a trial in Los Angeles. It is more than 60 percent farther from Hennepin County (where UnitedHealth is headquartered) to Los Angeles than from Hennepin County to the District of Columbia—1,513 miles compared to 945 miles. Flight times from Minneapolis to Los Angeles are likewise significantly longer than they are to the District of Columbia, with a direct flight taking approximately 2 hours and 25 minutes to the District of Columbia compared to more than 4 hours to Los Angeles. "When the distance between an existing venue for trial of a matter and a proposed venue under § 1404(a) is more than 100 miles, the factor of inconvenience to witnesses increases in direct relationship to the additional distance to be traveled." *In re Volkwagen AG*, 371 F.3d 201, 204-05 (5th Cir. 2004); *see also In re TS Tech USA Corp.*, 551 F.3d 1315, 1320 (Fed. Cir. 2008) (noting relevance of fact that "witnesses would need to travel approximately 900 more miles to attend trial in Texas than in Ohio").

In its *ex parte* motion to transfer filed in the Western District of New York, DOJ ignored all of these conveniences of a trial in the District of Columbia by essentially ignoring the District of Columbia itself. Instead, it observed that it had interviewed "five witnesses who work in the Central District of California" during

its investigation, and none from the Western District, making the Central District comparatively convenient. U.S. Mem. In Support of Unopposed Mot. to Transfer Venue 6, ECF No. 49. But when making comparisons, comparators matter. And weighed against the District of Columbia, as it should have been (and should be now), the Central District is far less convenient than D.C. for a significant majority of the likely witnesses.

To be sure, the Complaint contains gratuitous references to the business United conducts in this District. *See, e.g.*, Compl. ¶ 6 ("[I]n March 2017, approximately 229,000 Medicare beneficiaries in the Central District of California were enrolled in United's MA Plans . . . ."). Those references are a flimsy effort to defend its *ex parte* transfer, added in the Complaint only after United informed DOJ that it planned to seek transfer. As a point of comparison, Poehling's First Amended Complaint contained just a *single* reference to the Central District (concerning an unrelated defendant that is no longer a party). And, of course, United has employees and conducts business nationwide, so these facts hardly show that this District is convenient for anyone.

Far more telling than references in a complaint that was drafted in anticipation of United's intended transfer motion are the actions DOJ took while investigating this case: of the 20 United-related employees DOJ deposed during its investigation in this case, only 4 live in the Central District (all employees of Optum, not UHC or its subsidiaries). *See* Meron Decl. ¶ 4. Because DOJ admits that it is UHC employees, and not Optum employees, who manage and oversee the MA plans, Compl. ¶ 30, not one of those Central District-based employees is identified in DOJ's Complaint as having made any of the policy decisions DOJ challenges—and, indeed, only two are even named in DOJ's Complaint at all.[4] *See*

[4] The Government also deposed an expert coder, Melissa Ferron, who lives in the Central District and who is mentioned in the Complaint. *See* Compl. ¶ 117.

Erickson Decl. ¶¶ 9-10; Compl. ¶¶ 86; 103; 174. By contrast, 10 of the 20 deponents live in Minnesota. *See* Meron Decl. ¶ 3. DOJ's belated attempt to bolster this case's Central District connections cannot change the fact that this fundamentally is a case about decisions and communications that took place in Minnesota and the Washington, D.C. area.[5]

4. The Ease Of Access To Sources Of Proof Weighs In Favor Of Transfer

An additional convenience of transferring this case to the District of Columbia is that it would provide easier access to the sources of proof relevant in this case—namely, records displaying the government's awareness about United's interpretations of the data accuracy and actuarial equivalence requirements, as well as the administrative records from related regulatory proceedings. *See Metz*, 674 F. Supp. 2d at 1145. In urging Judge Walter to consolidate this case with *Swoben* before this Court could consider United's transfer motion, DOJ argued that "in this day and age, documents, even paper, are produced electronically, making their location largely irrelevant for forum *non conveniens* issues." *See Swoben*, U.S. Reply Mem. In Support of Mot. for Order Consolidating Actions 8, ECF No. 282. But while "the location of relevant documents may be of less significance in light of modern copying and reproduction technologies, it nonetheless retains at least some relevance to the venue inquiry." *In re Yahoo! Inc.*, No. CV07-3125CAS(FMOX), 2008 WL 707405, at *9 (C.D. Cal. Mar. 10, 2008) (citation and

[5] Even as to the actual implementation of those policies, the operations in this District are generally limited to back-end support and processing functions that enable risk adjustment coding, deletions of codes submitted in other locations, and limited risk adjustment coding performed by one of United's many external contractors. *See* Erickson Decl. ¶¶ 7-10. The vast bulk of United's risk adjustment coding operations are performed elsewhere, as DOJ's Complaint itself acknowledges. *See* Compl. ¶ 127.

internal quotation marks omitted). That relevance points indisputably toward D.C. over California.

5. The Relevant Contacts With The District Of Columbia Weigh In Favor Of Transfer

The comparative contacts with the Central District of California and the District of Columbia also weigh in favor of transfer. *See, e.g.*, *id.* (granting motion to transfer where the "factual center of this case" was in the transferee district).

As discussed above, this case is about United decisions made in Minnesota and government policies and communications made in the D.C. area. *See supra* at 19-20. When United first mentioned the possibility of a transfer, though, DOJ accused United of seeking a "home turf" advantage in Minnesota. *Swoben*, U. S. Mot. For Order Consolidating Actions 17, ECF No. 271. To avoid any such suggestion, therefore, and to facilitate coordination with the pending APA case in the District of Columbia, United instead seeks transfer to the District of Columbia. As between the District of Columbia and the Central District of California, it is abundantly clear that the District of Columbia is closer to the "factual center of this case." *In re Yahoo! Inc.*, 2008 WL 707405, at *9.

That is true in part because of the April 29, 2014 meeting and associated communications, described in the Complaint, during which United executives discussed with senior CMS officials whether MA plans are required to undertake the "two-way looks" DOJ alleges are required. *See supra* at 14-15. Those interactions represent an important part of this case and took place in the D.C. area. But on a more basic level, too, the District of Columbia is a logical forum to resolve this legal dispute about the implications of the "actuarial equivalence" requirement for MA plans' data validation efforts. The plaintiff here is "the United States of America, suing on behalf of the United States Department of Health and Human Services," Compl. ¶ 26, and both the United States generally and the Department of Health and Human Services more specifically are headquartered in

the District of Columbia, with CMS—an operating division of HHS—located in nearby Baltimore.

Against that backdrop, DOJ hardly can complain persuasively about proceeding on its *own* "home turf." As the Eastern District of California recently noted, "litigation should proceed where the case finds its center of gravity." *Davis v. Social Service Coordinators, Inc.*, No. 1:10-CV-02372-LJO, 2013 WL 4483067, at *9 (E.D. Cal. Aug. 19, 2013) (citation and quotation marks omitted). In this case, gravity pulls east.

6. The Remaining Factors Are Neutral

The remaining factors are neutral with respect to transfer: setting aside the increased costs of travel to this District for witnesses residing elsewhere (which weigh in favor of transfer and have already been discussed), United does not anticipate that the cost of litigating this case in the District of Columbia would be materially different from litigating it here in the Central District; the federal courts in both jurisdictions are equally capable of considering the questions of federal law that the case presents; and under 31 U.S.C. § 3731(a), subpoenas for trial testimony in this suit "may be served at any place in the United States."

CONCLUSION

This case is in California only because of DOJ's strategically timed and executed *ex parte* motion, which failed to present the Western District of New York with all the information it needed to decide the most convenient forum for this case. Once all relevant information is taken into account, it is overwhelmingly apparent that this action would be better heard in the District of Columbia than in California. Transferring the case to D.C. is the best way to ensure that the "identical arguments" that "play[] a central role" in both cases are addressed in an efficient and consistent manner. *Price*, Mot. to Stay 1-2, ECF No. 28. The District of Columbia also is the forum that would be most convenient to the majority of witnesses, including not only the crucial non-party witnesses who live in the D.C.

area, but also the dozens of current government employees United anticipates would be called by one or the other party, as well as the Minnesota-based United employees who would find proceeding in the District of Columbia preferable to the Central District of California. Finally, as the seat of government and the headquarters of the Department of Health and Human Services, the District of Columbia is a natural locus for this dispute raising important questions about the operations of the Medicare Advantage program.

For all of these reasons, this case should be transferred to the District of Columbia, where it can be coordinated with *UnitedHealthcare Ins. Co. v. Price*, No. 16-cv-157.

Dated: July 17, 2017

LATHAM & WATKINS LLP

DAVID J. SCHINDLER
DANIEL MERON
ABID R. QURESHI

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

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

UNITEDHEALTH GROUP, INC. *et al.*,

Defendants.

CASE NO. CV 16-08697 MWF (SSx)

Assigned to Hon. Michael W. Fitzgerald

DECLARATION OF DANIEL MERON IN SUPPORT OF UNITED'S MOTION TO TRANSFER

[*FILED CONCURRENTLY WITH NOTICE OF MOTION AND MOTION; MEMORANDUM OF POINTS AND AUTHORITIES; [PROPOSED] ORDER*]

Hearing Date: September 25, 2017
Hearing Time: 10:00 a.m.
Ctrm: 5A

I, Daniel Meron, declare and state as follows:

1. I am a partner at Latham & Watkins LLP. I represent United[1] in the above-captioned manner. I submit this declaration to provide background information relevant to United's Motion to Transfer.

2. Key non-party witnesses in this case live in or near the District of Columbia. Specifically, to the best of my knowledge, based on searches of publicly available information, the following non-party witnesses live in or near the District of Columbia (I am not certain of the precise current residence of Sean Cavanaugh, but believe he has remained either in the Washington, D.C. area or New York):

Likely Witness	State	Testimony or Documents
Marilyn Tavenner (non-party)	DC	Communication between United and the government regarding United's diagnostic code validation efforts
Jonathan Blum (non-party)	MD	Communication between United and the government regarding United's diagnostic code validation efforts
Sean Cavanaugh (non-party)	DC or NY	Communication between United and the government regarding United's diagnostic code validation efforts

3. To the best of my knowledge, based on personal knowledge or information obtained from searches of publicly available information, ten of the twenty United employees (or former employees) who gave oral testimony pursuant

[1] This Declaration utilizes the name "United" to refer to the following Defendants: UnitedHealth Group, Inc.; United Healthcare Services, Inc.; United Healthcare, Inc.; UnitedHealthcare Insurance Company; UHIC Holdings, Inc.; Ovations, Inc.; Optum, Inc.; OptumInsight, Inc.; and Defendant Medicare Advantage Organizations and Plans listed on Exhibit 1 to the United States' Complaint-In-Partial-Intervention and Demand for Jury Trial.

to a Civil Investigative Demand during the course of the government's multi-year investigation related to this case (the "Investigation") work and reside near United's headquarters in Hennepin County, Minnesota:

CID Deponent	State
Jeffrey Dumcum	MN
Karen Erickson	MN
Kimberly Halva (non-party)	MN
Mary Hammond (non-party)	MN
Scott Hughes	MN
Marybeth Meyer	MN
Steven Nelson	MN
Daniel Schumacher	MN
Scott Theisen	MN
Brian Thompson	MN

4. To the best of my knowledge, based on personal knowledge or information obtained from searches of publicly available information, only four of the twenty United employees (or former employees) who gave oral testimony pursuant to a Civil Investigative Demand during the course of the Investigation reside in California:

CID Deponent	State
Sanjeev Balsara (non-party)	CA
Jon Bird	CA
Patty Brennan	CA
Rebecca Martin	CA

5. To the best of my knowledge, based on personal knowledge or information obtained from searches of publicly available information, nineteen of

the United employees (or former employees) that the government identified by name in paragraphs 121 to 233 of its Complaint, reside in Minnesota:

Minnesota Individuals Named in Paragraphs 121-233 of Complaint	**State**
Marc Beckmann	MN
Jeffrey Dumcum	MN
Karen Erickson	MN
Kimberly Halva (non-party)	MN
Mary Hammond (non-party)	MN
Steve Hemsley	MN
Mike Jacobson	MN
Thad Johnson	MN
Marybeth Meyer	MN
Steven Nelson	MN
Thomas Paul (non-party)	MN
Benjamin Poehling	MN
Jeffrey Putnam	MN
Daniel Schumacher	MN
Matthew Shors	MN
Marianne Short	MN
Scott Theisen	MN
Brian Thompson	MN
Lee Valenta	MN

6. To the best of my knowledge, based on personal knowledge or information obtained from searches of publicly available information, four of the

individuals whom the government identified by name in paragraphs 121 to 233 of its Complaint reside in California:

California Individuals Named in Paragraphs 121-233 of Complaint	**State**
Jon Bird	CA
Patty Brennan	CA
Donald James	CA
Janice Redmond	CA

7. To the best of my knowledge, of the 40 individuals that the government identified by name anywhere in its Complaint-in-Intervention, 26 reside in Minnesota or other States even closer to the District of Columbia, 12 live in California or other States closer to Los Angeles, and two reside roughly equidistant from the two venues (in Texas). Specifically, to the best of my knowledge, the 40 individuals identified by name in the government's Complaint-in-Intervention reside in the following locations:

Individual Named in Complaint	**State**
Marc Beckmann	MN
Jon Bird	CA
Tracey Bradberry	TX
Patty Brennan	CA
Juliet Domb	MA
Jeffrey Dumcum	MN
Karen Erickson	MN
Melissa Ferron (non-party)	CA
Ronnie Grower (non-party)	NV
Kimberly Halva (non-party)	MN

Mary Hammond (non-party)	MN
Charles Hanson (non-party)	MN
Steve Hemsley	MN
Pam Holt (non-party)	CA
Mike Jacobson	MN
Donald James	CA
Thad Johnson	MN
Gerald Knutson (non-party)	FL
Pam Leal (non-party)	CA
Marybeth Meyer	MN
William Miller (non-party)	KS
Steven Nelson	MN
David Orbuch	MN
Thomas Paul (non-party)	MN
Benjamin Poehling	MN
Cynthia Polich	AZ
Jeffrey Putnam	MN
Patricia Rasmussen (non-party)	TX
Janice Redmond	CA
Larry Renfro	MA
Daniel Schumacher	MN
Melissa Sedor	PA
Matthew Shors	MN
Marianne Short	MN
Scott Theisen	MN
Brian Thompson	MN
Carol Thompson	CA

Lee Valenta	MN
Karen Wagor (non-party)	CA
Stephanie Will	AZ

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

Executed on July 17, 2017, in Washington, D.C.

By _____
Daniel Meron
Attorney for United Defendants

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

UNITEDHEALTH GROUP, *et al.*,

Defendants.

CASE NO. CV 16-08697 MWF (SSx)

DECLARATION OF KAREN ERICKSON IN SUPPORT OF DEFENDANTS' MOTION TO TRANSFER

Hon. Michael W. Fitzgerald
Courtroom: 5A

Hearing Date: September 25, 2017
Hearing Time: 10:00 a.m.

I, Karen Erickson, declare and state as follows:

1. I am an Executive Vice President at Optum. I have served in this role since 2011. I submit this declaration to provide background information relevant to the Defendants' Motion to Transfer. I have personal knowledge of the facts stated here and/or have verified facts using the best information available to Optum.

2. UnitedHealth Group, Inc. offers a broad spectrum of products and services through two distinct primary direct corporate subsidiaries (each of which has numerous direct and indirect subsidiaries of its own): (1) UnitedHealthcare, Inc. ("UHC"), a health benefits (*i.e.*, insurance) company, and (2) Optum, Inc. a health services company.

3. UHC is the UnitedHealth Group, Inc. business entity that owns, operates and offers health insurance plans to both governmental and commercial customers. Various UHC subsidiaries operate Medicare Advantage health benefit plans and provide health care benefits to millions of Medicare beneficiaries under Medicare Advantage. UHC is the UnitedHealth Group, Inc. subsidiary, which (through its subsidiaries) contracts with the government to bear the health costs and manage the care of Medicare beneficiaries, submits the associated annual risk adjustment data attestation, submits claims for payment to the Centers for Medicare & Medicaid Services ("CMS"), and receives payment from the CMS Medicare Advantage program.

4. Optum, Inc. is a health services company that, directly or through various direct and indirect corporate subsidiaries of its own, provides data, analytics and other support services to a wide array of healthcare companies, including private insurers. Optum, Inc. provides these services to UHC as well as to insurance companies not affiliated with UHC.

5. To the best of my knowledge, all of the individuals referenced in the government's complaint-in- intervention that reside in California are either current

or former Optum employees, or, in the case of Melissa Ferron, an Optum, coding vendor. Specifically, to the best of my knowledge, the following eight individuals are all current or former Optum employees:

- Jon Bird
- Patty Brennan
- Pam Holt
- Donald James
- Pam Leal
- Janice Redmond
- Carol Thompson
- Karen Wagor

6. To the best of my knowledge, all of the individuals that gave oral testimony pursuant to a Civil Investigative Demand during the course of the government's investigation related to this case (the "Investigation") who reside in California are either current or former Optum employees, or, in the case of Melissa Ferron, an Optum coding vendor. Specifically, to the best of my knowledge, the following four individuals are current or former Optum employees:

- Sanjeev Balsara
- Jon Bird
- Patty Brennan
- Rebecca Martin

7. Optum's risk adjustment coding operations are located in Hennepin County, Minnesota; Brentwood, Tennessee; Hyderabad, India; Bangalore, India; and Manila, Philippines. The chart review coding operations that were or are used in the Chart Review, Claims Verification and Risk Adjustment Coding Compliance Review ("RACCR") programs are overseen by managers located in Brentwood, Tennessee.

8. Optum's operations in its Santa Ana, California office are generally limited to back-end support and processing functions that enable risk adjustment coding, and deletions of codes submitted in other locations.

9. To the best of my knowledge, the senior managers at UHC and Optum who approved the submission of risk adjustment deletes are based in Hennepin County, Minnesota.

10. To the best of my knowledge, the senior managers at UHC and Optum who made the policy decisions regarding the scope and design of the Chart Review, Claims Verification, and RACCR programs are based in Hennepin County, Minnesota.

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

Executed on July 14, 2017, in Minnetonka, Minnesota.

By _____
Karen Erickson
Executive Vice President - Optum

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Attorneys for United Defendants

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

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

Plaintiffs,

v.

UNITEDHEALTH GROUP, INC. *et al.*,

Defendants.

CASE NO. CV 16-08697 MWF (SSx)

Assigned to Hon. Michael W. Fitzgerald

[PROPOSED] ORDER GRANTING UNITED'S MOTION TO TRANSFER

[*NOTICE OF MOTION AND MOTION, MEMORANDUM OF POINTS AND AUTHORITIES, AND DECLARATIONS OF DANIEL MERON AND KAREN ERICKSON FILED CONCURRENTLY HEREWITH*]

Hearing Date: September 25, 2017
Hearing Time: 10:00 a.m.
Ctrm: 5A

On July 17, 2017, Defendants UnitedHealth Group, Inc., United Healthcare Services, Inc., United Healthcare, 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, "United") moved this Court to Transfer Venue to the United States District Court for the District of Columbia pursuant to 28 U.S.C. § 1404(a) ("Motion to Transfer"). This Court has considered the Motion, the submissions of the parties, and the arguments of counsel for the parties, who appeared before this Court on September 25, 2017. After due deliberation and for good cause shown,

IT IS HEREBY ORDERED that United's Motion to Transfer is GRANTED, and this action is transferred to the United States District Court for the District of Columbia.

Dated: _____

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Honorable Michael W. Fitzgerald
United States District Judge