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19 UNITED STATES DISTRICT COURT
20 FOR THE CENTRAL DISTRICT OF CALIFORNIA
21 WESTERN DIVISION

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

24 Plaintiffs,

25 v.

26 UNITEDHEALTH GROUP, INC., *et al.*,

27 Defendants.
28

No. CV 16-08697 MWF (SSx)

ORDER GRANTING STIPULATION
REGARDING EXPERT DISCOVERY

[Filed Concurrently with Joint Stipulation
Regarding Expert Discovery]

[Discovery Document: Referred to
Magistrate Judge Suzanne H. Segal]

1 Upon stipulation of the parties, and for good cause appearing, the Court hereby
2 orders as follows:

3 1. To facilitate expert discovery in this matter and to minimize the number of
4 potential discovery issues relating to experts, the parties have agreed to certain aspects
5 concerning the scope of expert-related discovery in this matter. The disclosures of
6 documents, data, and information required by paragraph 2 of this Stipulation are not
7 meant to be exclusive, however, and the parties reserve their rights to seek disclosure or
8 discovery of additional documents, data, and information relating to any disclosed
9 expert, consistent with the objectives of Rule 26(a)(2)(A) and Rule 26(b)(1) of the
10 Federal Rules of Civil Procedure. In addition, paragraphs 5 and 6 of this Stipulation are
11 not meant to prevent the parties from seeking disclosure or discovery of documents, data,
12 or information not otherwise protected from disclosure by those paragraphs.

13 2. For each expert witness required to be disclosed by Rule 26(a)(2)(A) of the
14 Federal Rules of Civil Procedure, the parties will make the following disclosures:

- 15 a. On the due dates set by the Court: All final initial and rebuttal
16 report(s) required for experts designated under Rule 26(a)(2)(B)
17 (complying with all six subparts) and all disclosures required for
18 experts designated under Rule 26(a)(2)(C) (complying with both
19 subparts).
- 20 b. Within three business days after the due dates set by the Court for
21 reports and disclosures under paragraph 2(a): A list by production
22 numbers or other sufficient description of all documents (including
23 all data) relied upon by the disclosed expert as a basis for an opinion
24 rendered in this litigation and, if not previously produced in discovery
25 and not readily available to the opposing party, copies of the
26 documents (including all data) relied upon by the disclosed expert as
27 a basis for an opinion rendered in this litigation.

1 c. Within three business days after the due dates set by the Court for
2 reports and disclosures under paragraph 2(a): Copies of expert
3 reports prepared by the expert in other cases, if the reports were
4 provided to the opposing parties in the other cases and the reports
5 directly relate to the subject matter(s) of any of the expert's opinions
6 in this action (unless the reports are protected from disclosure by
7 court order).

8 d. To the extent that any report or disclosure will include or reference
9 calculations, exhibits, information, or data processed or modeled by a
10 computer program and relied upon by the expert in forming his or her
11 opinions, the party providing the report or disclosure shall (i) produce
12 electronically readable copies of the final processed or modeled data,
13 and (ii) disclose complete formulas, computer programs, scripts,
14 technical instructions, and data fields sufficient to recreate the
15 calculations, exhibits, information, or data. The timing of the
16 production and disclosure required by this subsection shall be
17 determined by the parties and/or Court in a future stipulation entered
18 into by the parties and/or future order entered by the Court prior to
19 the commencement of expert discovery in this action.

20 3. All electronic data, together with instructions, field descriptions and work
21 product shall be hand-delivered, electronically transmitted, or shipped overnight to
22 opposing counsel or a person designated by opposing counsel.

23 4. For initial expert disclosures, to the extent the parties need to supplement
24 their disclosures because of developments occurring after their disclosures were made
25 pursuant to paragraph 2 above, they agree to do so for any given disclosed expert at least
26 10 business days prior to that expert's deposition. If developments occurring within the
27 10 business days prior to the expert's deposition require the supplementation of his or
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1 her disclosures, the party making the disclosures shall (i) immediately notify the
2 opposing party; (ii) provide the supplemental disclosures within 5 business days; and
3 (iii) at the opposing party's option, agree to reschedule the deposition to a date not more
4 than 10 business days from when it was initially scheduled. For the purpose of this
5 paragraph, developments that may justify supplementation include the production of new
6 documents or data, new fact witness testimony, or the discovery of new facts. In
7 addition to and notwithstanding the provisions in this paragraph, the parties must comply
8 with Federal Rule of Civil Procedure 26(e) relating to the supplementation of
9 disclosures.

10 5. The following categories of documents, information, or data do not need to
11 be disclosed by any party, and are outside the scope of permissible discovery (including
12 deposition questions):

- 13 a. Any form of oral or written communication or correspondence that is
14 not being relied upon by a disclosed expert in forming any opinions
15 in his or her final report(s), and that was exchanged or shared
16 between that expert (or any of his or her agents or employees) and:
- 17 i. Any person assisting that expert, including but not limited to
18 clerical or support staff;
- 19 ii. Counsel for any party offering that expert's testimony,
20 including counsel's agents or employees;
- 21 iii. Another testifying expert, including that expert's agents or
22 employees; and
- 23 iv. Any non-testifying expert, including that expert's agents or
24 employees.
- 25 b. Any work product, such as notes or recordings, created by a disclosed
26 expert (or any of his or her agents or employees) that relates to any
27 communication or correspondence described under subparagraph (a)
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1 and that is not being relied upon by a disclosed expert in forming any
2 opinions in his or her final report(s).

3 c. All draft reports and affidavits, draft studies, or draft work papers;
4 preliminary or intermediate calculations, computations, data
5 formulations, data runs, or database operations; and any other
6 preliminary, intermediate or draft materials prepared by, for, or at the
7 direction of a disclosed expert (or any of his or her agents or
8 employees).

9 6. In addition to the limitations on discovery set forth in paragraph 5 above,
10 the parties agree that any documents, information, or data that may have been considered
11 by a disclosed expert but ultimately were not relied upon by that expert in forming any
12 opinions in his or her final report(s) do not need to be disclosed or produced. Nothing in
13 paragraph 5 or this paragraph, however, shall be construed to prevent substantive
14 deposition questions with respect to any data or other non-privileged information that
15 may be relevant to the substance of a disclosed expert's opinions (including alternative
16 theories, methodologies, variables, or assumptions that the expert might or could have
17 considered in formulating his or her opinions or in preparing his or her report).

18 7. No subpoenas for deposition need to be served on any disclosed expert.
19 Instead, the party or parties offering that expert's testimony shall make the expert
20 available for deposition at a time and place mutually agreed to by the parties.

21 8. The parties agree to comply with this Stipulation pending the Court's
22 approval and entry of the accompanying proposed Order.

23 It is SO ORDERED.

24 Dated: 5/17/18

25
26 /S/ SUZANNE H. SEGAL
27 UNITED STATES MAGISTRATE JUDGE
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