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

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

24 Plaintiffs,

25 v.

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

27 Defendants.

No. CV 16-08697 MWF (SSx)

PLAINTIFFS' REPLY MEMORANDUM
IN SUPPORT OF MOTION FOR LEAVE
TO FILE SUPPLEMENTAL BRIEFING
RE MOTION FOR SCHEDULING
ORDER MODIFYING EXTENT OF
DISCOVERY

DATE: March 18, 2019

TIME: 10:00 a.m.

COURT: 5A. Hon. Michael W. Fitzgerald

1 The Court should grant Plaintiffs' motion for leave because their proposed
2 supplemental brief provides new and helpful information, a more complete record, and
3 clarification of the pending issues. Defendants' opposition confirms that in the last six
4 months there is new information relevant to Plaintiffs' motion for issuance of a
5 scheduling and protective order; *i.e.*, Defendants' recent demands that the government
6 and its contractors produce a huge volume of documents and data relating to their legally
7 invalid statutory "actuarial equivalence" defense, and new discovery that Defendants
8 seek from the government and its contractor, RTI, relating to a rule that the Centers for
9 Medicare & Medicaid (CMS) just proposed on November 1, 2018, about its
10 administrative audits and a study it contemporaneously released supporting its decision
11 not to adopt a FFS adjuster as part of its audit methodology.¹

12 Plaintiffs' supplemental brief alerts the Court to Defendants' new discovery
13 requests and explains why they should not be allowed. These issues are closely related
14 to topics addressed in Plaintiffs' motion for a scheduling and protective order, as well as
15 in the government's pending motion for review of the Magistrate Judge's discovery
16 order (Dkt. 334). Granting leave to file Plaintiffs' supplemental brief will afford the
17 Court a more complete record for consideration of these closely related matters.

18 Defendants incorrectly contend that Plaintiffs' supplemental brief is not helpful in
19 clarifying the reasons why Defendants' actuarial equivalence defense is legally invalid,
20 and thus why the Court should preclude discovery on this defense. The brief, however,
21 clarifies Plaintiffs' argument. It highlights that this defense is a *de facto* claim for an
22 offset based on CMS' purported violation of the Medicare Statute and that Defendants
23 have no entitlement to an offset because their exclusive remedy for such a purported
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26 ¹ Specifically, Defendants' Fourth Set of Requests for Production was served on
27 the government on December 21, 2018 and their subpoena was served on RTI on
28 February 1, 2019. Although some of Defendants' prior document requests relate to their
"actuarial equivalence" defense, the later requests are much more extensive and show
how Defendants seek to improperly use this case to challenge the Medicare Advantage
payment system. Defendants have recently indicated their intent to move to compel
production of all of these records from both the government and RTI.

1 violation was an APA action challenging CMS' calculation of the payment coefficients,
2 which Defendants contend were "too low." It highlights that the Court has no
3 jurisdiction or legal authority to grant Defendants the relief they request.

4 Finally, there is no merit to Defendants' complaint that Plaintiffs' revised
5 proposed order improperly expands on the subject matters as to which discovery should
6 be limited. The proposed order was meant to help the Court by focusing on specific
7 issues (*e.g.*, actuarial equivalence, materiality, and scienter) rather than types of evidence
8 (*e.g.*, internal agency documents) and by more specifically delineating the scope and
9 limits of permissible discovery on matters discussed in Plaintiffs' pending request for a
10 scheduling and protective order.²

11 Because Plaintiffs' supplemental brief provides new information, a more complete
12 record, and clarification of the pending issues, this Court should grant Plaintiffs' motion
13 for leave to file it. In addition, because the issues raised in Plaintiffs' motion for a
14 scheduling and protective order overlap with those raised in the government's pending
15 motion for review of the Magistrate Judge's discovery order, both motions should be
16 decided together for efficiency purposes and in the interest of justice.

17 Respectfully submitted,
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27 ² To the extent that the revised proposed order contains additional categories of
28 discovery sought to be limited, it is a reflection of Defendants' ever expanding scope of
discovery in this case.

1 Dated: March 4, 2019

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Attestation

I hereby attest that the other signatory listed, on whose behalf the filing is submitted, concurs in the filing's content and has authorized the filing.

Dated: March 4, 2019

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