

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES—GENERAL

Case No. CV 16-8697-MWF (SSx)

Date: March 18, 2019

Title: United States ex rel. Benjamin Poehling v. UnitedHealth Group, Inc. et al.

Present: The Honorable MICHAEL W. FITZGERALD, U.S. District Judge

Deputy Clerk:
Rita Sanchez

Court Reporter:
Not Reported

Attorneys Present for Plaintiff:
None Present

Attorneys Present for Defendant:
None Present

Proceedings (In Chambers):

ORDER RE: MOTION FOR LEAVE TO FILE
SUPPLEMENTAL BRIEFING RE: MOTION
FOR SCHEDULING ORDER MODIFYING
EXTENT OF DISCOVERY [336]

Before the Court is Plaintiff United States and *Qui Tam* Plaintiff Benjamin Poehling's (collectively, the "Government") Motion for Leave to File Supplemental Briefing Re: Motion for Scheduling Order Modifying Extent of Discovery (the "Motion"), filed on February 15, 2019. (Docket No. 336). Defendants UnitedHealth Group, Inc., et al. (collectively, "United") filed an Opposition on February 25, 2019. (Docket No. 337). The Government filed a Reply on March 4, 2019. (Docket No. 339).

The Motion was noticed to be heard on March 18, 2019. The Court read and considered the papers on the Motion and deemed the matter appropriate for decision without oral argument. See Fed. R. Civ. P. 78(b); Local Rule 7-15. The hearing was therefore **VACATED** and removed from the Court's calendar.

The Motion is **GRANTED**. The Court exercises its broad discretion to order supplemental briefing.

By its Motion, the Government requests leave from the Court to file a supplemental brief in support of its Motion Pursuant to Rule 16(b)(3) for Issuance of a Scheduling Order filed on August 6, 2018. (See Docket No. 261). The Government contends that, among other things, United has continued to "improperly and

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exponentially broaden the scope of this case by shifting the focus of discovery away from legitimate claims and defenses.” (Mot. at 2). Specifically, the Government argues that United has expanded its “actuarial equivalence” argument from a defense to its legal obligation to delete invalid payment data to “an affirmative attempt to redefine what constitutes an overpayment and damages in this False Claims Act (‘FCA’) case.” (*Id.*). The Government argues that the Court should grant leave for the filing of a supplemental brief so that the Court has a complete record so that it can make an informed decision regarding the proper scope of discovery in this case. (*Id.* at 3).

United primarily argues in Opposition that it has been consistent in its argument throughout the litigation that the discovery it seeks is relevant to, among other things, showing that “United did not receive any overpayment (and would be underpaid if DOJ’s theory were to prevail) and to damages.” (Opp. at 2).

The Court agrees with the Government and exercises its “broad discretion” to allow supplemental briefing. *Flores v. City of Lakewood*, No. C15-5013 BHS-JRC, 2016 WL 4193866, at *3 (W.D. Wash. Aug. 9, 2016) (“[The court retains] broad discretion in allowing supplemental briefing[.]”); see *Mulato v. Wells Fargo Bank, N.A.*, 76 F. Supp. 3d 929, 941 (N.D. Cal. 2014) (“For the purposes of the pending motions, however, the Court will consider the supplemental briefs for completeness[.]”). At the very least, supplemental briefing will help clarify the Government’s argument that United’s actuarial equivalence argument is a “de facto claim for an offset based on CMS’ purported violation of the Medicare Statute[.]” (Reply at 2). Such briefing is not unfair where United will have an opportunity to respond to the Government’s arguments.

For the foregoing reasons, the Motion is **GRANTED**. The Government shall file its proposed Supplemental Brief by no later than **March 20, 2019**. United may file a Reply no later than seven days (7) after the Government files its Supplemental Brief.

IT IS SO ORDERED.