UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. **CV 16-8697 MWF (SSx)** Date: May 31, 2019

Title **United States of America v. United Health Group, Inc., et al.**

Present: The Honorable: MICHAEL W. FITZGERALD, United States District Judge

Rita Sanchez	Not Reported
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs: Not Present	Attorneys Present for Defendants: Not Present

Proceedings: (IN CHAMBERS) ORDER RE: DISQUALIFICATION

The Court has determined that its disqualification is required pursuant to 28 U.S.C. § 455(b)(4). The Court's spouse owned six shares of United Health Group, Inc., (UnitedHealth Grp Inc./UNH) from September 28, 2018, to May 20, 2019. The ownership of the shares was unknown to both the Court and the Court's spouse; upon discovery of the ownership, the shares were sold.

Disqualification or recusal is governed by 28 U.S.C. § 455. The statute is incorporated into the Code of Conduct for United States Judges through Canon 3C. The Committee on Codes of Conduct has given public guidance on Canon 3C in Advisory Opinion No. 20 (Disqualification Based on Stockholdings by Household Family Member) and No. 69 (Removal of Disqualification by Disposal of Interest).

Disqualification is required if a judge "knowingly" has "a financial interest in the subject matter in controversy…." 28 U.S.C. § 455(b)(4). The holdings of the judge's spouse are imputed to the judge. *Id.* A "financial interest" is defined as "ownership of a legal or equitable interest, however small…." 28 U.S.C. § 455(d)(4). Disqualification because of a financial interest is mandatory and cannot be remitted by the parties. 28 U.S.C. § 455(e).

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Because the shares were sold upon discovery of the ownership, disqualification would in most cases not be necessary, pursuant to 28 U.S.C. § 455(f). Section 455(f) provides that disqualification is not mandatory if the judge or judge's spouse divests himself or herself of the financial interest giving rise to disqualification. However, avoidance of disqualification is not available if "the interest could be substantially affected by the outcome" of the case. *Id.* Moreover, the divestment could also give rise to an appearance of impropriety under § 455(a). Advisory Opinion No. 69.

Advisory Opinion No. 69 further clarifies that the "[t]he key inquiry is not the size of the interest, but the size of the impact on the interest." In other words, the sale of the six shares does not prevent disqualification because the Court would have to be certain that the outcome of this *qui tam* action could never affect the price of UNH by even a penny.

Accordingly, the Court disqualifies itself from this action. The action is returned to the Clerk's Office for random reassignment, pursuant to General Order 19-03.

IT IS SO ORDERED.

Initials of Preparer: RS/sjm