

1 UNITED STATES DISTRICT COURT
 2 NORTHERN DISTRICT OF CALIFORNIA
 3 OAKLAND DIVISION

4 CHRISTOPHER CORCORAN, et al.,

No. 15-CV-03504-YGR

5 Plaintiffs,

6 v.

**[PROPOSED] ORDER GRANTING
 DEFENDANT'S ADMINISTRATIVE
 MOTION TO FILE UNDER SEAL RE:
 SUMMARY JUDGMENT BRIEFING**

7 CVS PHARMACY, INC.,

8 Defendant.

Dkt. Nos. 281, 321

AS MODIFIED BY THE COURT

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 11 CVS Pharmacy, Inc. ("CVS") filed an Administrative Motion to File Under Seal re:
 12 Summary Judgment Briefing ("Motion to Seal") in the above-captioned action on June 6, 2017
 13 pursuant to Local Rules 7-11 and 79-5. CVS also inadvertently filed another Exhibit, DX 456
 14 (Dkt. No. 301-32), in the public docket, which contained Plaintiffs' private medical information.
 15 CVS has now requested the Court lock that Exhibit and re-filed it under seal. Dkt. No. 321.
 16 Plaintiffs filed a declaration in support of filing their private health information under seal, but
 17 otherwise took no position as to CVS's other requests. *See* Sweeney Decl. (filed July 12, 2017).
 18 For good cause appearing, the Court **GRANTS** CVS's request. The Clerk shall **PERMANENTLY**
 19 **LOCK** Docket Number 301-32.

20 The Court, having considered CVS's Motion to Seal, all papers and evidence submitted
 21 in support, the pertinent pleadings, and the applicable law, and finding compelling reasons and
 22 good cause therefore, hereby **GRANTS IN PART** the Motion to Seal. It is **ORDERED** that the
 23 following materials are to be filed under seal pursuant to Civil Local Rule 79-5(b) and (e):

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28 **[PROPOSED] ORDER GRANTING
 ADMINISTRATIVE MOTION TO FILE UNDER
 SEAL, NO. 15-CV-03504-YGR**

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Document or Portion of Document Sought to Be Sealed	Evidence Offered in Support of Sealing	Order
DX-006 (Plaintiff Carolyn Caine’s Amended Responses and Objections to Defendant’s Interrogatories (July 22, 2016)) at page 3 line 20; page 7 line 22; and page 8 lines 12-13.	Moffatt Declaration ¶¶ 5, 5.a; Sweeney Decl. ¶¶ 5-6	GRANT
DX-028 (Plaintiff Robert Jenks’ Amended Responses and Objections to Defendant’s Interrogatories (July 22, 2016)) at page 3 lines 20-23; page 8 lines 2-3, 16-17, 21-22, and 26; and page 9 lines 8-9	Moffatt Declaration ¶¶ 5, 5.b; Sweeney Decl. ¶¶ 5-6	GRANT
DX-083 (Plaintiff Walter Wulff’s Amended Responses and Objections to Defendant’s Interrogatories (Aug. 1, 2016)) at page 3 lines 18-19; page 7 lines 17-18; and page 8 lines 10, 15, and 18-19.	Moffatt Declaration ¶¶ 5, 5.c; Sweeney Decl. ¶¶ 5-6	GRANT
DX-092 (Plaintiff Zachary Hagert’s Amended Responses and Objections to Defendant’s Interrogatories (Aug. 5, 2016)) at page 3 lines 20-25; page 8 lines 2 and 14-15.	Moffatt Declaration ¶¶ 5, 5.d; Sweeney Decl. ¶¶ 5-6	GRANT
DX-102 (Plaintiff Toni Odorisio’s	Moffatt Declaration ¶¶ 5, 5.e;	GRANT

<p>1 Amended Responses and Objections 2 to Defendant's Interrogatories (Aug. 3 1, 2016)) at page 3 line 21; page 7 4 lines 17-19; page 8 lines 9, 14-15, 5 and 19-20; and page 9 lines 1-2, 6-7, 6 and 12.</p>	<p>Sweeney Decl. ¶¶ 5-6</p>	
<p>7 DX-118 (Plaintiff Onnolee 8 Samuelson's Third Amended 9 Responses and Objections to 10 Defendant's Interrogatories (Aug. 11 17, 2016)) at page 3 lines 18-19; 12 page 7 lines 20-21; page 8 lines 10, 13 14-15, 18-19, and 23; page 9 lines 1, 14 5-6, 10, 15, 20, and 25; page 10 lines 15 2-3, 7, 12, 17, 22-23; and page 11 16 lines 1-2 and 7.</p>	<p>Moffatt Declaration ¶¶ 5, 5.f; Sweeney Decl. ¶¶ 5-6</p>	<p>GRANT</p>
<p>17 DX-165 (Plaintiff Vincent 18 Gargiulo's Second Amended 19 Responses and Objections to 20 Defendant's Interrogatories Aug. 27, 21 2016)) at page 3 lines 20-21; and 22 page 8 lines 6-7, 21, and 25-26.</p>	<p>Moffatt Declaration ¶¶ 5, 5.g; Sweeney Decl. ¶¶ 5-6</p>	<p>GRANT</p>
<p>23 DX-185 (Plaintiff Carl Washington's 24 Amended Responses and Objections 25 to Defendant's Interrogatories (Aug. 26 23, 2016)) at page 3 lines 18-21; 27 page 7 line 27; and page 8 lines 15, 28</p>	<p>Moffatt Declaration ¶¶ 5, 5.h; Sweeney Decl. ¶¶ 5-6</p>	<p>GRANT</p>

1	20, and 24-25.		
2	DX-193 (Plaintiff Amanda Gilbert's Amended Responses and Objections to Defendant's Interrogatories (Aug. 25, 2016)) at page 3 lines 19-22; page 8 at lines 10-13, 23; page 9 lines 4, 11-12, 17, and 21-22; and page 10 lines 1-2, 5-6, and 10-11.	Moffatt Declaration ¶¶ 5, 5.i; Sweeney Decl. ¶¶ 5-6	GRANT
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10	DX-201 (Plaintiff Zulema Avis's Amended Responses and Objections to Defendant's Interrogatories (Aug. 1, 2016)) at page 3 line 18; page 7 lines 17-18; page 8 lines 6-7, 10-11; and page 9 line 7.	Moffatt Declaration ¶¶ 5, 5.j; Sweeney Decl. ¶¶ 5-6	GRANT
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18	DX-217 (Plaintiff Debbie Barrett's Second Amended Responses and Objections to Defendant's Interrogatories (Sept. 13, 2016)) at page 3 lines 18-20; page 7 lines 25-26; page 8 lines 13-14, 17-18, 21-22, 25-26; page 9 lines 2-3, 6-7, 10-11, 18-19, 22-23, 26; page 10 lines 1, 4-5, 8-9, 12-13, 16-17, 20-21, 24-25; page 11 lines 2-3, 6-7, 10-11, 18-19, 22-23, 26; and page 12 lines 1, 4-5, 8-9.	Moffatt Declaration ¶¶ 5, 5.k; ; Sweeney Decl. ¶¶ 5-6	GRANT
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28	DX-218 (Plaintiff Robert Garber's	Moffatt Declaration ¶¶ 5, 5.l;	GRANT

<p>1 Amended Responses and Objections 2 to Defendant's Interrogatories (Aug. 3 1, 2016)) at page 3 line 18; page 7 4 lines 15-18; page 8 lines 6-7, 10-11, 5 14-15, 19-20, 24-25; page 9 lines 1- 6 2, 6-7, 11, 15-16, 19-20, 24; page 10 7 lines 2-3, 8, 17, 21-22; and page 11 8 lines 1-2, 7, and 12.</p>	<p>Sweeney Decl. ¶¶ 5-6</p>	
<p>9 DX-239 (Plaintiff Gilbert Brown's 10 Amended Responses and 11 Objection's to Defendant's 12 Interrogatories (Oct. 5, 2016)) at 13 page 3 line 19; page 7 line 18; and 14 page 8 lines 1-2, 5-6, 10-11.</p>	<p>Moffatt Declaration ¶¶ 5, 5.m; Sweeney Decl. ¶¶ 5-6</p>	<p>GRANT</p>
<p>15 DX-258 (Plaintiff Tyler Clark's 16 Supplemental and Amended 17 Responses and Objections to 18 Defendant's Interrogatories (Oct. 7, 19 2016)) at page 3 line 18; page 7 line 20 24; and page 8 lines 11-12, 15-16.</p>	<p>Moffatt Declaration ¶¶ 5, 5.n; Sweeney Decl. ¶¶ 5-6</p>	<p>GRANT</p>
<p>21 DX-266 (Medco Pharmacy Services 22 Manual (2009/2010))</p>	<p>Moffatt Declaration ¶¶ 4, 4.a</p>	<p>GRANT IN PART, except as to sections relating to: 1) Usual & Customary definitions and provisions; and 2) Third-Party beneficiaries</p>
<p>25 DX-270 (Plaintiff Christopher 26 Corcoran's Supplemental and 27 Amended Responses and Objections 28</p>	<p>Moffatt Declaration 5, 5.o; Sweeney Decl. ¶¶ 5-6</p>	<p>GRANT</p>

<p>1 to Defendant's Interrogatories (Oct. 2 7, 2016)) at page 3 lines 18-19; page 3 7 lines 22-24; page 8 lines 14, 18-19, 4 24; page 9 lines 2-3, 8, 13, 18-19, 5 23; page 10 lines 3-4, 8, 12-13, 16- 6 17, 21; and page 11 lines 1-2, 6-7, 7 13-14, and 18.</p>		
<p>8 DX-300 (MedImpact Pharmacy 9 Network Agreement (Feb. 1, 2008))</p>	<p>Moffatt Declaration ¶¶ 4, 4b</p>	<p>GRANT IN PART, except as to sections relating to: 1) Usual & Customary definitions and provisions; and 2) Third-Party beneficiaries</p>
<p>12 DX-408 (Expert Report of Brett E. 13 Barlag (Dec. 9, 2016)) at page 8 ¶ 14 22; page 11 ¶ 27.c, Fig. 1, fn. 8; page 15 12 ¶ 29; page 13 ¶¶ 33-37; page 15 16 Fig. 4; page 17 Fig. 7; page 18 Fig. 17 9; page 19 ¶ 51; page 24 Fig. 12, ¶ 18 65; page 25 ¶¶ 66-68; page 26 ¶¶ 68- 19 71, Fig. 13, fn. 60; page 27 ¶ 72; 20 page 29 Fig. 16; page 38 ¶¶ 102-103; 21 page 39 ¶ 105, fns. 92-93; page 40 ¶ 22 106; page 42 ¶¶ (b), 116; page 43 ¶¶ 23 116-118, Fig. 20; page 44 Fig. 21; 24 page 47 ¶ 124, fn. 108; Appendix A; 25 Appendix D; and Appendix E</p>	<p>Moffatt Declaration ¶¶ 6, 6.a</p>	<p>GRANT IN PART, except as to paragraphs 72.</p>
<p>26 DX-409 (Rebuttal Report of Brett E. 27 Barlag (Jan. 27, 2017)) at page 3 fn.</p>	<p>Moffatt Declaration ¶¶ 6, 6.b</p>	<p>GRANT IN PART, except as to paragraphs 23 and 23.b</p>

1 2 3 4 5 6	3; page 11 ¶¶ 23, 23.b; page 12 ¶¶ 23.b, 26, fn. 28; page 13 ¶ 27; page 14 ¶¶ 28-29, Fig. 7; page 15 ¶¶ 29- 31, page 16 ¶ 32, Fig. 8; page 17 ¶¶ 36.a, 36.b, fn. 39; page 19 ¶ 38; and Appendix B;		
7 8 9 10 11	DX-425 (Declaration of Susan Colbert (Nov. 21, 2016)) at page 1 ¶¶ 3-4; page 2 ¶¶ 7-9; page 3 ¶¶ 9- 12; page 4 ¶¶ 13-14; page 5 ¶¶ 14-16; and page 6 ¶ 18.	Moffatt Omnibus Declaration ¶ 27(b)	GRANT IN PART , except as to paragraph 13. The specific Condor Codes referenced therein may remain sealed.
12 13 14 15	DX-446 (Express Scripts Provider Manual (2014))	Moffatt Declaration ¶¶ 4, 4.c	GRANT IN PART , except as to sections relating to: 1) Usual & Customary definitions and provisions; and 2) Third-Party beneficiaries
16 17 18 19	DX-447 (Seventh Amendment to Express Scripts, Inc. Pharmacy Provider Agreement (Feb. 11, 2013))	Moffatt Declaration ¶¶ 4, 4.d	GRANT IN PART , except as to sections relating to: 1) Usual & Customary definitions and provisions; and 2) Third-Party beneficiaries
20 21 22 23	DX-459 (Deposition Excerpts of Plaintiff Zulema Avis (Aug. 5, 2016)) at page 142 lines 7-14; and page 144 lines 8-14.	Moffatt Declaration ¶¶ 5, 5.p; Sweeney Decl. ¶¶ 5-6	GRANT
24 25 26 27 28	DX-464 (Deposition Excerpts of Plaintiff Christopher Corcoran (Nov. 2, 2016)) at page 84 lines 9-10; and page 85 lines 6-8, 19-20, 23-24.	Moffatt Declaration ¶¶ 5, 5.q; Sweeney Decl. ¶¶ 5-6	GRANT

1 2 3 4 5 6	DX-466 (Deposition Excerpts of Plaintiff Vincent Garguilo (Aug. 27, 2016)) at page 128 lines 22-23; page 130 lines 17-19, 21-24; page 132 lines 8-11; page 174 lines 19-22; and page 176 lines 15-21.	Moffatt Declaration ¶¶ 5, 5.r; Sweeney Decl. ¶¶ 5-6	GRANT
7 8 9 10 11	DX-467 (Deposition Excerpts of Plaintiff Amanda Gilbert (Sept. 7, 2016)) at page 82 lines 18-20; page 85 lines 18-24; page 148 lines 2-5; and page 149 lines 4-7.	Moffatt Declaration ¶¶ 5, 5.s; Sweeney Decl. ¶¶ 5-6	GRANT
12 13 14 15 16 17 18	DX-469 (Deposition Excerpts of Plaintiff Robert Jenks (July 28, 2016)) at page 138 lines 4, 16, 21; page 139 lines 2, 6, 16, 18, 19; page 140 lines 4, 11, 17, 26; page 207 line 18; page 208 lines 6, 17, 25; and page 209 line 13	Moffatt Declaration ¶¶ 5, 5.t; Sweeney Decl. ¶¶ 5-6	GRANT
19 20 21 22 23 24	DX-472 (Deposition Excerpts of Plaintiff Carl Washington (Aug. 30, 2016)) at page 190 lines 3-4; page 101 lines 8, 20; page 192 lines 5; page 269 lines 3; and page 306 lines 2-3, 8.	Moffatt Declaration ¶¶ 5, 5.u; Sweeney Decl. ¶¶ 5-6	GRANT
25 26 27 28	DX-473 (Deposition Excerpts of Plaintiff Walter Wulff (Aug. 9, 2016)) at page 72 line 21; and page	Moffatt Declaration ¶¶ 5, 5.v; Sweeney Decl. ¶¶ 5-6	GRANT

1	73 at line 25		
2	PX-532 (Express Scripts, Inc.	Moffatt Declaration ¶¶ 4, 4.e	GRANT IN PART,
3	Pharmacy Provider Agreement (Jan.		except as to sections
4	18, 2008))		relating to: 1) Usual &
5			Customary definitions
6			and provisions; and 2)
7			Third-Party
8			beneficiaries
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10	PX-546 (PCS Health Systems, Inc.	Moffatt Declaration ¶¶ 4, 4.f	GRANT IN PART,
11	Provider Agreement (Mar. 31,		except as to sections
12	1997))		relating to: 1) Usual &
13			Customary definitions
14			and provisions; and 2)
15			Third-Party
16			beneficiaries
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18	PX-551 (Medco Pharmacy Services	Moffatt Declaration ¶¶ 4, 4.g	GRANT IN PART,
19	Manual (2009))		except as to sections
20			relating to: 1) Usual &
21			Customary definitions
22			and provisions; and 2)
23			Third-Party
24			beneficiaries
25			
26	PX-615 (Express Scripts Network	Moffatt Declaration ¶¶ 4, 4.h	GRANT IN PART,
27	Provider Manual (2010))		except as to sections
28			relating to: 1) Usual &
			Customary definitions
			and provisions; and 2)
			Third-Party
			beneficiaries
	PX-674 (OptumRx, Inc. Pharmacy	Moffatt Declaration ¶¶ 4, 4.i	GRANT IN PART,
	Network Agreement (Jan. 29, 2015))		except as to sections
			relating to: 1) Usual &
			Customary definitions
			and provisions; and 2)
			Third-Party
			beneficiaries
	PX-677 (Medco Health Solutions,	Moffatt Declaration ¶¶ 4, 4.j	GRANT IN PART,
	Inc. Retail Pharmacy Agreement		except as to sections
	(Jan. 1, 2005)		relating to: 1) Usual &
			Customary definitions
			and provisions; and 2)
			Third-Party
			beneficiaries
	PX-679 (Caremark Provider Manual	Moffatt Declaration ¶¶ 4, 4.k	GRANT IN PART,
	(2016))		except as to sections
			relating to: 1) Usual &

		Customary definitions and provisions; and 2) Third-Party beneficiaries
PX-695 (Prescription Solutions Prescription Drug Services Agreement (June 1, 1999))	Moffatt Declaration ¶¶ 4, 4l	GRANT IN PART , except as to sections relating to: 1) Usual & Customary definitions and provisions; and 2) Third-Party beneficiaries
PX-703 (Network Performance, Troubleshooting Set Price Generic Programs (Oct. 1, 2008))	Moffatt Declaration 7, 7.a	GRANT IN PART , except as to sections relating to: 1) Usual & Customary definitions and provisions; and 2) Third-Party beneficiaries
PX-785 (Aetna Health Management National Pharmacy Services Agreement (Jan. 15, 2009))	Moffatt Declaration 4, 4.m	GRANT IN PART , except as to sections relating to: 1) Usual & Customary definitions and provisions; and 2) Third-Party beneficiaries

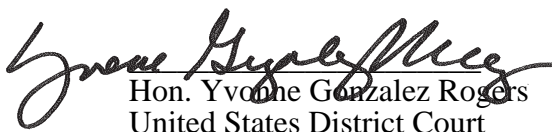
Additional document to be sealed in response to CVS Motion to Remove Incorrectly Filed Document (Dkt. No. 321):

Document or Portion of Document Sought to Be Sealed	Evidence Offered in Support of Sealing	Order
DX-456 – Plaintiffs’ prescription records	Sweeney Decl. ¶¶ 5-6	GRANT

This Order terminates Docket Numbers 281 and 321.

IT IS SO ORDERED.

Dated: September 5, 2017


Hon. Yvonne Gonzalez Rogers
United States District Court