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

21 UNITED STATES OF AMERICA *ex*
22 *rel.* JAMES M. SWOBEN,

23 Plaintiffs,

24 v.

25 SECURE HORIZONS, a business entity,
26 form unknown, *et al.*,

27 Defendants.
28

No. CV 09-5013 JFW (JEMx)

~~PROPOED~~ STIPULATED
PROTECTIVE ORDER GOVERNING
THE TREATMENT OF PROTECTED
INFORMATION

1 Discovery in this action is likely to involve production of Personally Identifiable
2 Information, Protected Health Information, and certain other Confidential Information
3 for which special protection from public disclosure and from use for any purpose other
4 than prosecuting this litigation may be warranted. Accordingly, the parties hereby
5 stipulate to and petition the Court to enter the following Stipulated Protective Order.
6 The parties acknowledge that this Order does not confer blanket protections on all
7 disclosures or responses to discovery and that the protection it affords from public
8 disclosure and use extends only to the limited information or items that are entitled to
9 confidential treatment under the applicable legal principles. The parties further
10 acknowledge that this Stipulated Protective Order does not entitle them to file
11 confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that
12 must be followed and the standards that will be applied when a party seeks permission
13 from the court to file material under seal.

14 **Definitions and Preliminary Matters**

15 1. “Document” means and includes all items listed in Federal Rules of Civil
16 Procedure 34(a)(1)(A) and (B), including but not limited to deposition testimony,
17 discovery responses and other materials, oral or written, including all copies and
18 excerpts thereof. “Discovery Material” includes answers and responses to
19 interrogatories, answers and responses to requests for production or admissions,
20 deposition transcripts or videos, and materials previously provided to the United States
21 in any investigation underlying this action.

22 2. “Personally Identifiable Information” or “PII” means Social Security
23 numbers, tax identification numbers, birth dates, and financial account numbers for
24 which redacted filings are permitted by Rule 5.2 of the Federal Rules of Civil Procedure.

25 3. “Protected Health Information” or “PHI” means certain individually
26 identifiable health information (defined as health information that is connected to a
27 patient's name, address, Social Security number or other identifying number, including
28 HIC number) that may be subject to the Privacy Act, 5 U.S.C. § 552a, to the provisions

1 of 45 C.F.R. §§ 164.102–164.534, to the provisions of 42 U.S.C. § 1306, or for which
2 there may be no waiver by the patient to disclose the information to a person who or
3 entity which is not a Party to the above-captioned action.

4 a. The Court finds that this Order is a “qualified protective order”
5 within the meaning of 45 C.F.R. § 164.512(e)(1)(v).

6 b. The Parties may produce PHI in accordance with this Protective
7 Order pursuant to their obligations to make disclosures under Federal Rule of Civil
8 Procedure 26(a) and in response to discovery requests in this litigation. All individually
9 identifiable health information shall be designated “CONFIDENTIAL” and may be used
10 and/or disclosed in accordance with the terms of this Protective Order and 45 C.F.R. §
11 164.512(e)(1)(v).

12 4. “Covered Entity or Entities” means “covered entity” as defined in 45 C.F.R.
13 § 160.103.

14 5. “Proprietary Information” means information not already publically
15 available that constitutes: (i) any information subject to protection under the Privacy Act,
16 5 U.S.C. § 552a or the Trade Secrets Act, 18 U.S.C. § 1905, (ii) trade secret or other
17 confidential research, development, or commercial information entitled to protection
18 under Fed. R. Civ. P. 26(c)(1)(G), or (iii) any other information entitled to be filed under
19 seal in the above-captioned action pursuant to Paragraph 9 of the Court’s February 8,
20 2017 Amended Standing Order (“Amended Standing Order”) because the producing
21 party can demonstrate “compelling reasons supported by specific facts or legal
22 justification that the document or type of information should be protected.”

23 6. “Litigation” includes all appellate proceedings or the expiration of time to
24 commence such appellate proceedings related to this action.

25 7. Information designated as “Confidential” pursuant to this Protective Order
26 (hereinafter “Confidential Information”) shall be information that contains PII, PHI or
27 Proprietary Information.

28 8. Information designated as “Attorneys’ Eyes Only” pursuant to this

1 Protective Order (hereinafter “Attorneys’ Eyes Only Information”) includes discovery
2 materials that (a) constitute Proprietary Information as defined in Paragraph 5 and (b) the
3 designating party believes in good faith to be extremely confidential and/or sensitive in
4 nature, and shall be treated in accordance with Paragraph 21 and other Paragraphs of this
5 Order.

6 **Designation of Confidential Information**

7 9. **Documents.** The parties shall not withhold documents from production
8 because they contain Confidential Information and/or Attorneys’ Eyes Only Information,
9 and shall not redact Confidential Information and/or Attorneys’ Eyes Only Information
10 contained in documents unless required to do so under the terms of this Protective Order
11 or by law, regulation, or a court order. The parties shall produce unredacted documents
12 containing Confidential Information to all other parties in this litigation and shall
13 produce unredacted documents containing Attorneys’ Eyes Only Information pursuant to
14 the terms of Paragraph 21 below. The parties shall designate documents containing
15 Confidential Information and/or Attorneys’ Eyes Only Information in the following
16 manner:

17 a. For documents produced in paper or an electronic form that allows
18 endorsements or similar designation on the image, the parties shall mark each page of the
19 documents asserted to contain Confidential Information and/or Attorneys’ Eyes Only
20 Information. The parties shall brand the image with the designation “CONFIDENTIAL”
21 for those documents that contain Confidential Information. The parties shall brand the
22 image with the designation “CONFIDENTIAL” and “ATTORNEYS’ EYES ONLY” for
23 those documents that contain Attorneys’ Eyes Only Information as defined in Paragraph
24 8.

25 b. For electronic information that is provided in native form or a format
26 that is not amenable to visible endorsement on the image, the designation of Confidential
27 Information shall be made by branding the slip-sheet for the document with
28 “CONFIDENTIAL,” and the designation of Attorneys’ Eyes Only Information shall be

1 made by branding the slip-sheet for the document with “CONFIDENTIAL” and
2 “ATTORNEYS’ EYES ONLY.” The metadata for the document shall also reflect its
3 confidential status, as set forth in the agreed-upon ESI specifications. The media on
4 which the Confidential Information and/or Attorneys’ Eyes Only Information is provided
5 (e.g., CD, DVD, external hard drive) also shall be and remain plainly labeled with
6 “CONFIDENTIAL” and, if appropriate, “ATTORNEYS’ EYES ONLY” (unless and
7 until the protection of the data within the media is removed). Any copying or
8 transferring of electronic files that are designated as Confidential Information and/or
9 Attorneys’ Eyes Only Information must be done in a manner that maintains the
10 protection for all copies, including, but not limited to, in the filename(s) and the location
11 where the copies are stored and where users access the material.

12 **10. Interrogatory Answers and Responses to Requests for Production or**
13 **Admission.** The parties shall designate Confidential Information contained in
14 interrogatory answers or responses to requests for production or admission by placing
15 before the answer or response: “The following response is ‘CONFIDENTIAL.’” The
16 parties shall designate Attorneys’ Eyes Only Information contained in interrogatory
17 answers or responses to requests for production or admission by placing before the
18 answer or response: “The following response is ‘CONFIDENTIAL’ and
19 ‘ATTORNEYS’ EYES ONLY.’” Only that part of the answer/response that is
20 Confidential Information and/or Attorneys’ Eyes Only Information shall be so
21 designated and the answering party shall highlight the Confidential Information and/or
22 Attorneys’ Eyes Only Information to show what specific information constitutes
23 Confidential Information and/or Attorneys’ Eyes Only Information.

24 **11. Confidential Information in Depositions.** Subject to the requirements of
25 Paragraphs 20 and 21 below, during a deposition, the parties may show deponents
26 documents or other discovery material that has been designated as Confidential
27 Information and/or Attorneys’ Eyes Only Information. Testimony at a deposition may
28 be designated by any party as Confidential Information and/or Attorneys’ Eyes Only

1 Information by indicating on the record at the deposition that the testimony is
2 confidential and subject to the provisions of this Protective Order and the reasons for the
3 assertion. Additionally and alternatively, any party may also designate information
4 disclosed at a deposition as Confidential Information and/or Attorneys' Eyes Only
5 Information by notifying all counsel in writing within thirty (30) calendar days of receipt
6 of the official deposition transcript or copy thereof (or written notification that the
7 transcript is available), listing the specific pages and lines of the transcript and/or any
8 exhibits that should be treated as Confidential Information and/or Attorneys' Eyes Only
9 Information. After a party designates a portion of a deposition transcript as Confidential
10 Information, the front of the original and each copy of the deposition transcript shall be
11 marked "This deposition transcript includes "CONFIDENTIAL INFORMATION
12 SUBJECT TO PROTECTIVE ORDER." After a party designates a portion of a
13 deposition transcript as Attorneys' Eyes Only Information, the front of the original and
14 each copy of the deposition transcript shall be marked "This deposition transcript
15 includes CONFIDENTIAL INFORMATION AND ATTORNEYS' EYES ONLY
16 INFORMATION SUBJECT TO PROTECTIVE ORDER." If such deposition was
17 videotaped, both the recording storage medium (i.e., CD or DVD) and its container shall
18 also be labeled: "This deposition transcript includes "CONFIDENTIAL
19 INFORMATION SUBJECT TO PROTECTIVE ORDER" or, if appropriate, "This
20 deposition transcript includes CONFIDENTIAL INFORMATION AND ATTORNEYS'
21 EYES ONLY INFORMATION SUBJECT TO PROTECTIVE ORDER." Only those
22 portions of the deposition transcript that are designated as containing Confidential
23 Information and/or Attorneys' Eyes Only Information shall be governed by this Order.

24 **12. Documents or Information Obtained From Third Parties.** Documents
25 or information produced by a non-party or testimony provided by a third party may be
26 designated by the non-party as Confidential Information and/or Attorneys' Eyes Only
27 Information in accordance with all of the terms and conditions of this Order.

28 **13. No Waiver.** The failure to designate any documents or other discovery

1 materials as Confidential Information and/or Attorneys' Eyes Only Information in
2 accordance with the terms of this Order shall not constitute a waiver of a party's
3 assertion that the materials are Confidential Information and/or Attorneys' Eyes Only
4 Information. In the event that documents or discovery materials are or have been
5 produced without being marked "CONFIDENTIAL" or, if appropriate, "ATTORNEYS'
6 EYES ONLY," the producing party may notify the receiving party of the appropriate
7 confidentiality designation and produce new hard copy, images, or slip-sheets as
8 applicable (see Paragraph 9 above) reflecting the appropriate confidentiality designation.
9 Upon receipt of any such reproductions, the receiving party shall thereafter preserve such
10 reproduced documents or discovery materials in accordance with this Protective Order.

11 **14. Proprietary Information.** For Documents containing Proprietary
12 Information designated as Confidential and/or Attorneys' Eyes Only, a Party's or a non-
13 party's production of the documents in this case shall not be construed as waiving or
14 diminishing the Party's or the non-party's interests in and rights to the confidentiality of
15 Proprietary Information.

16 **Challenges to Designations Under this Protective Order**

17 **15.** Any party may object to a designation of a document or other discovery
18 materials as Confidential Information and/or Attorneys' Eyes Only Information at any
19 time by giving written notice (including by email) to counsel for the designating party,
20 identifying the document or other discovery materials, or portions thereof, to which the
21 objection is directed, and specifying in reasonable detail the reason or reasons for the
22 objection. Within ten (10) calendar days of the receipt of such written notice, the parties
23 shall meet and confer in a good faith effort to resolve the dispute as required by Local
24 Rule 37-1. If the disagreement cannot be resolved, the party asserting the Confidential
25 Information and/or Attorneys' Eyes Only Information designation may apply to the
26 Court within fourteen (14) calendar days of the meet-and-confer for a protective order
27 affirming the Confidential Information and/or Attorneys' Eyes Only Information
28 designation. The application for a protective order shall comply with Local Civil Rules

1 37-2 and 37-3. While any such application is pending, the Confidential Information
2 and/or Attorneys' Eyes Only Information subject to the application will be treated as
3 Confidential Information and/or Attorneys' Eyes Only Information until the Court
4 otherwise rules. The party asserting the Confidential Information and/or Attorneys'
5 Eyes Only Information designation shall bear the burden and expense of seeking
6 protection of its designated Confidential Information and/or Attorneys' Eyes Only
7 Information. If the party asserting the Confidential Information and/or Attorneys' Eyes
8 Only Information designation does not apply for a protective order within fourteen (14)
9 calendar days of the meet-and-confer, then the designation of the document or discovery
10 materials as Confidential Information and/or Attorneys' Eyes Only Information shall
11 cease to be effective.

12 16. If the Court rules that the document or other discovery materials should no
13 longer be designated as Confidential Information and/or Attorneys' Eyes Only
14 Information or if the designating party at any time withdraws the designation (or if the
15 designating party fails to apply for a protective order pursuant to the preceding
16 Paragraph), the designating party shall promptly provide all other parties in the litigation
17 with replacement documents, files, or information free from any markings or
18 designations as Confidential Information and/or Attorneys' Eyes Only Information. The
19 replacement versions shall be provided in the same format as the information that is to be
20 replaced, unless otherwise agreed to by the parties. The presumptive time for providing
21 the replacement information shall be ten (10) calendar days of the Court ruling or the
22 designating party's withdrawal or failure, but the designating party must in good faith
23 provide the information in a reasonable time, considering any agreements of the parties,
24 the volume of information to be re-produced, and the nature or format of the
25 information.

26 17. If a party or a third party produces a document or other discovery material
27 that another party reasonably believes contains its Confidential Information and/or
28 Attorneys' Eyes Only Information but is not so designated, the parties shall promptly

1 meet and confer regarding whether the produced document should be clawed back and
2 replaced with a document designated as Confidential Information and/or Attorneys' Eyes
3 Only Information. If there is disagreement regarding the designation of the material
4 following the meet and confer, the procedures outlined in Paragraphs 15 and 16 apply.

5 **Disclosure, Use, and Handling of Confidential Information**

6 18. The parties shall disclose Confidential Information only in accordance with
7 the terms of this Protective Order.

8 19. The parties and their counsel are responsible for employing reasonable
9 measures, consistent with this Protective Order, to control access to and secure
10 distribution of Confidential Information.

11 20. **Disclosure of Confidential Information.** Except as otherwise provided in
12 this Protective Order, documents and other discovery materials designated as
13 Confidential Information shall only be disclosed to the following persons:

14 a. Counsel of record for the parties in this litigation and associated
15 personnel assisting counsel in this action, such as paralegals, litigation support,
16 information technology, information or records management, investigative, secretarial,
17 or clerical personnel, and in the case of the United States, officials, attorneys, and
18 employees of their executive agencies and departments, provided that each is first
19 advised of the terms of this Protective Order and his or her obligation under this Order to
20 keep the Confidential Information confidential;

21 b. The parties and their officers or employees, including in-house
22 counsel, whose assistance is reasonably necessary to assist counsel in this action,
23 provided that each is first advised of the terms of this Protective Order and his or her
24 obligation under this Order to keep the Confidential Information confidential;

25 c. Experts or consultants retained by a party for the purposes of this
26 litigation, including both consulting and testifying experts and their staffs, provided that
27 each is first advised of the terms of this Protective Order and his or her obligation under
28 this Order to keep the Confidential Information confidential, and provided that each such

1 person has first executed Exhibit A attached to this Protective Order, stating that such
2 person has read the Protective Order and agrees to be bound by it;

3 d. The Court and court personnel in this action;

4 e. Court reporters, videographer services, translation service, photocopy
5 service, document management service, records management service, graphics service or
6 such other litigation assistance services retained by a party to this action after first being
7 advised of the terms of this Protective Order and their obligation under this Order to
8 keep the Confidential Information confidential;

9 f. Any private mediators and their employees used in this Action after
10 first being advised of the terms of this Protective Order and their obligation under this
11 Order to keep the Confidential Information confidential;

12 g. Any third-party witness (*i.e.*, a witness who is not an agent or
13 representative of or employed by a party to this action) who testifies at a deposition or
14 hearing in this litigation concerning documents or information designated as subject to
15 this Protective Order, and legal counsel retained by such third-party witness, provided
16 that such third-party witness is first advised of the terms of this Protective Order and his
17 or her obligation under this Order to keep the Confidential Information confidential and
18 executes Exhibit A attached to this Order, stating that such person has read the Protective
19 Order and agrees to be bound by it;

20 h. Any third-party individual interviewed by a Party's legal counsel in
21 connection with this action, provided that any such person is first advised of the terms of
22 this Protective Order and his or her obligation under this Order to keep the documents or
23 Confidential Information confidential and executes Exhibit A attached to this Order,
24 stating that such person has read the Protective Order and agrees to be bound by it.

25 **21. Disclosure of Attorneys' Eyes Only Information.** Except as otherwise
26 provided in this Protective Order, documents and other discovery materials designated as
27 Attorneys' Eyes Only Information shall only be disclosed to those persons described in
28 sub-paragraphs (a), (c), (d), (e), and (f) of Paragraph 20 of this Protective Order.

1 Further, Attorneys' Eyes Only Information may be disclosed to deponents under sub-
2 paragraph (g) of Paragraph 20, provided that such persons: (i) do not retain copies of the
3 materials designated "ATTORNEYS' EYES ONLY," (ii) are first advised of the terms
4 of this Protective Order and his or her obligation under this Order to keep the
5 "ATTORNEYS' EYES ONLY" documents confidential, and (iii) are presented with
6 Exhibit A to the Protective Order to Execute. Attorneys' Eyes Only Information shall
7 only be disclosed to those persons described in sub-paragraphs (b) of Paragraph 20 if (i)
8 the Material was produced by the persons or their current employer; (ii) the person
9 initially created, sent, or received such Material; or (iii) the Court orders such access. It
10 is the intent of the Parties that materials will not be designated as Attorney's Eyes Only
11 for tactical reasons in this case and that nothing be so designated without a good faith
12 belief that there is good cause why it should not be part of the public record in this case.
13 The procedures for Attorney's Eyes Only Information during any hearing or trial of this
14 matter shall be determined by the parties and the Court in advance of the hearing or trial
15 in accordance with Paragraph 24.

16 22. Persons receiving Confidential Information or Attorneys' Eyes Only
17 Information or to whom it is otherwise disclosed pursuant to the terms of this Protective
18 Order are prohibited from disclosing it to any other person except in conformance with
19 the terms of this Protective Order.

20 23. Persons receiving Confidential Information and/or Attorneys' Eyes Only
21 Information or to whom it is otherwise disclosed pursuant to the terms of this Protective
22 Order may use such information only for purposes of this litigation. However, nothing
23 in this agreement shall prohibit the producing party from identifying Confidential
24 Information and/or Attorney's Eyes Only Information as responsive and already in the
25 possession of the receiving party for purposes of responding to discovery in *United*
26 *States ex rel. Benjamin Poehling v. UnitedHealth Group, Inc., et al.*, C.D. Cal. Case No.
27 16-CV-8697-MWF (the "*Poehling* action"). Under those circumstances, the receiving
28 party may use the Confidential Information and/or Attorney's Eyes Only Information

1 produced in this action in the *Poehling* action without violating the terms of this
2 agreement, and its use in the *Poehling* action will be governed by a Protective Order
3 Governing the Treatment of Protected Information that the parties anticipate will be
4 entered by the Court in that matter. Nothing in this Paragraph will relieve a producing
5 party from any obligation to provide responsive documents to any party in the *Poehling*
6 action who is not a party in this litigation.

7 **24. Confidential Information and Attorneys' Eyes Only Information in**
8 **Court Filings and Open Court.** The sealing of Confidential Information and/or
9 Attorneys' Eyes Only Information in pleadings, motions, and other papers filed with the
10 Court or the sealing of any Confidential Information and/or Attorneys' Eyes Only
11 Information that are attachments to pleadings, motions and other papers shall comply
12 with Civil Local Rule 79-5 and Paragraph 9 of this Court's Amended Standing Order.
13 The procedures for use of Confidential Information and/or Attorneys' Eyes Only
14 Information during any hearing or the trial of this matter shall be determined by the
15 parties and the Court in advance of the hearing or trial.

16 **25. Confidential Information and/or Attorneys' Eyes Only Information shall not**
17 **be filed with or submitted to the Court or reproduced in any court filing unless the**
18 **document or filing is filed as a restricted document in accordance with Paragraph 9 of**
19 **this Court's Amended Standing Order.**

20 **26. Any production of discovery material in this action or in the *Poehling***
21 **action before this Protective Order was entered of documents with PHI, PII, or**
22 **Proprietary Information that were not designated in accordance with this Protective**
23 **Order does not violate this Protective Order. Parties shall produce for those documents a**
24 **metadata overlay that contains the designations specified in Paragraph 9.**

25 **27. Subpoenaed or Other Requested Production of Confidential**
26 **Information and/or Attorneys' Eyes Only Information.** If any party or person who
27 has received Confidential Information and/or Attorneys' Eyes Only Information is
28 requested or required to produce such information by a subpoena or other compulsory

1 process for purposes of use in a separate legal action, the party or person receiving such
2 a request shall promptly inform the designating party that such request has been made
3 and shall allow the designating party ten (10) days to seek appropriate relief or
4 protection from the proper court to prevent the production. The designating party shall
5 bear the burden and expense of seeking protection of its designated Confidential
6 Information and/or Attorneys' Eyes Only Information. Nothing in this Protective Order
7 should be construed as authorizing or encouraging a subpoenaed person to disobey a
8 lawful directive from this or another court.

9 **28. Disclosure to Agencies or Departments of the United States.** Nothing in
10 this Protective Order shall prevent or in any way limit or impair the right of the United
11 States to disclose to any of its agencies or departments, or any division or office of any
12 such agency or department, information or materials provided in this action, including
13 those designated as Confidential Information and/or Attorneys' Eyes Only Information
14 under this Order, that relate to a potential violation of law or regulation, or relating to
15 any matter within that agency's jurisdiction, nor shall anything contained in this Order
16 prevent or in any way limit or impair the use of any information provided in this action,
17 including Confidential Information and/or Attorneys' Eyes Only Information, by an
18 agency in any lawfully permitted proceeding relating to a potential violation of law or
19 regulation, or relating to any matter within that agency's jurisdiction; provided, however,
20 that the agency shall be advised of the terms of this Protective Order and maintain the
21 confidentiality of the Confidential Information and/or Attorneys' Eyes Only Information
22 in a manner consistent with the terms of this Order.

23 **29. Disclosure to Congress.** Nothing contained in this Protective Order shall
24 prevent or in any way limit or impair the right of the United States to provide designated
25 Confidential Information and/or Attorneys' Eyes Only Information to a Congressional
26 entity; provided, however, that the United States shall notify the Congressional entity
27 requesting the documents that the Confidential Information and/or Attorneys' Eyes Only
28 Information has been produced pursuant to this Protective Order and shall, if there are no

1 objections interposed by the Congressional entity requesting the documents, use
2 reasonable efforts to notify the designating party or non-party of the Congressional
3 entity's request and the United States' response thereto.

4 **30. Use of Party's Own Confidential Information.** Nothing in this Protective
5 Order shall restrict the right of any party to use its own Confidential Information for any
6 purpose whatsoever, but if any such use results in a disclosure that causes the
7 Confidential Information to lose its designation as Confidential Information, then it shall
8 no longer be subject to any protection under this Protective Order. However, nothing in
9 this Protective Order affects the protections afforded to such Personally Identifiable
10 Information and/or Protected Health Information under applicable federal, state, or local
11 laws.

12 **31. Disclosure to Apparent Author or Recipient.** Nothing in this Protective
13 Order shall limit the ability of a party to disclose any Confidential Information and/or
14 Attorneys' Eyes Only Information to its author or to anyone identified on the face or in
15 the metadata of the document as a recipient.

16 **32. Inadvertent Disclosure of Confidential Information and/or Attorneys'**
17 **Eyes Only Information.** If a party in receipt of Confidential Information and/or
18 Attorneys' Eyes Only Information ("receiving party") discovers that it, or a person to
19 whom it has disclosed Confidential Information and/or Attorneys' Eyes Only
20 Information in accordance with this Protective Order, has inadvertently disclosed
21 Confidential Information and/or Attorneys' Eyes Only Information subject to this
22 Protective Order to any person not authorized under this Protective Order, the receiving
23 party must: (a) notify in writing the designating party of the inadvertent disclosure,
24 providing with such notice the identity of the person to whom the Confidential
25 Information and/or Attorneys' Eyes Only Information was disclosed and, upon request
26 of the designating party, details concerning the circumstances of the disclosure, (b) use
27 its best efforts to retrieve all copies of any Confidential Information and/or Attorneys'
28 Eyes Only Information, (c) inform the person to whom the inadvertent disclosure was

1 made that the documents or information are Confidential Information and/or Attorneys'
2 Eyes Only Information subject to this Protective Order and inform the person who
3 received the inadvertent disclosure that he or she is bound by the terms of this Protective
4 Order, and (d) cooperate in reasonable efforts to obtain the return of the Confidential
5 Information and/or Attorneys' Eyes Only Information.

6 **Disposition of Confidential Information and Attorneys' Eyes Only Information at**
7 **the Conclusion of This Litigation**

8 33. Except as provided in this Protective Order, within 90 days of the
9 conclusion of both this litigation and the *Poehling* action, including appeals, the parties
10 shall (a) destroy or delete all items designated as Confidential Information and/or
11 Attorneys' Eyes Only Information and certify in writing that the items have been
12 destroyed or deleted, or (b) return them to the designating party, depending upon the
13 designating party's stated reasonable preference, except materials that exist on back-up
14 tapes or similar systems. Materials that exist on back-up tapes, systems, or similar
15 storage need not be immediately deleted or destroyed, and, instead, such materials
16 should be overwritten and destroyed in the normal course of business. Until they are
17 overwritten in the normal course of business, the receiving party will take reasonable
18 steps to limit access, if any, to the persons necessary to conduct routine IT and
19 cybersecurity functions. In the course of disposing of information in its possession
20 under this Paragraph, the receiving party also will take reasonable steps to notify persons
21 to whom it distributed Confidential Information and/or Attorneys' Eyes Only
22 Information pursuant to this Order that such information should be returned to the
23 receiving party or destroyed by the person possessing the information with written
24 confirmation to receiving party.

25 34. Notwithstanding the above provision, counsel for the parties are entitled to
26 retain an archival copy of all pleadings, affidavits, motion papers, trial transcripts, legal
27 memoranda, correspondence, deposition and trial exhibits, expert reports, briefs, other
28 papers filed with the Court, and any other parts of the trial record, as well as notes and

1 other documents constituting the work product of litigation counsel, even if these items
2 contain or reflect Confidential Information and/or Attorneys' Eyes Only Information, so
3 long as the these items remain clearly marked to reflect that the information contained
4 therein is Confidential Information and/or Attorneys' Eyes Only Information subject to
5 this Protective Order. In particular, attorneys for the United States may maintain copies
6 of any Confidential Information and/or Attorneys' Eyes Only Information in their case
7 file, as well as copies of any notes or summaries containing such Confidential
8 Information and/or Attorneys' Eyes Only Information subject to the Federal Records
9 Act, 44 U.S.C. § 3101, *et seq.*

10 **General Provisions**

11 35. This Protective Order does not constitute a ruling on the question of
12 whether any particular document or information is properly discoverable or admissible
13 and does not constitute any ruling on any potential objection to the discoverability of any
14 document or information.

15 36. For good cause shown, any party may seek to modify or supplement the
16 terms of this Protective Order by first attempting to obtain the consent of the other
17 parties. The parties shall attempt to resolve the issue of any such modification or
18 supplementation among themselves through good faith efforts before seeking judicial
19 intervention. If the parties are not able to reach an agreement, the party seeking the
20 modification or supplementation may file an appropriate motion with the Court upon
21 notice to the other parties.

22 37. Upon final termination of this litigation, whether by settlement, dismissal,
23 or other disposition, the provisions of this Protective Order shall continue to be binding
24 upon all persons or entities who are subject to the terms hereof (including former
25 employees of any party who received Confidential Information and/or Attorneys' Eyes
26 Only Information). The Court shall retain continuing jurisdiction in order to enforce the
27 terms of this Order.
28

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
2

3 Dated: August 11, 2017

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5 SANDRA R. BROWN
Acting United States Attorney
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17 By /s/ John E. Lee
18 John E. Lee
Attorneys for the United States of America
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Dated: August 11, 2017

THE HANAGAMI LAW FIRM
WILLIAM K. HANAGAMI
ABRAM ZINBERG

By /s/ William K. Hanagami
William K. Hanagami
Attorney for Relator

Dated: August 11, 2017

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By /s/ David J. Schindler
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UnitedHealthcare, Inc., and UHIC
Holdings, Inc.


Dated: August 11, 2017

HOGAN LOVELLS US LLP
MICHAEL THEIS
EMILY LYONS

By /s/ Michael Theis
Michael Theis
Attorneys for Defendants
HealthCare Partners, LLC and HealthCare
Partners Medical Group, Inc.

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

Dated: August 16, 2017



JOHN E. McDERMOTT
United States Magistrate Judge

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2 **EXHIBIT A**

3 The undersigned hereby acknowledges that he/she has been advised and informed
4 of the Protective Order dated _____, in the action entitled *United States of*
5 *America ex rel. Swoben v. Secure Horizons, et al.*, Case No. CV 09-5013 JFW (JEMx)
6 (hereinafter the “Protective Order”).

7 The undersigned acknowledges and agrees that he/she has been given a copy of
8 the Protective Order, has read the Protective Order, is familiar with the terms of the
9 Protective Order, and agrees to comply with and be bound by such terms. The
10 undersigned further agrees that any documents, materials, or information furnished to
11 him/her will be used by him/her only for the purposes of this litigation, including any
12 appeals, and for no other purpose, and will be returned by the undersigned to the person
13 who furnished the materials to him/her upon conclusion of this litigation.

14 The undersigned hereby consents to be subject to the personal jurisdiction of the
15 United States District Court for the Central District of California with respect to any
16 proceedings relative to the enforcement of this Protective Order, including any
17 proceeding relating to contempt of this Order.

18 DATED: _____ BY: _____
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