UNITED STATES DISTRICT COURT NORTHERN DISTRICT OF OHIO	
	 :
THE UNITED STATES OF AMERICA	:
<i>ex rel</i> . DONALD GALE	:
Plaintiff,	: :
V.	:
OMNICARE, INC.,	:
Defendant.	:
	:

CASE NO. 1:10-CV-00127

OPINION & ORDER

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

On October 13, 2013, this Court issued two orders resolving some of Omnicare's claims of privilege for documents withheld during discovery.^{1/} The Court has finished its review of the October 2, 2013, privilege log and documents. Omnicare has also submitted documents in compliance with this Court's October 6, 2013, order.^{2/} The Court has reviewed these documents as well. The Court now makes the following rulings.

I. October 2, 2013 Privilege Log Spreadsheets

The Court overrules Omnicare's claim of privilege for two phrases that appear in the spreadsheets produced in native form. Both phrases contain legal advice or requests for legal advice, but they also contain unprivileged statements.

The first phrase appears in Documents 163, 164, 167, 168 174, 175, 176, 184, 185, 186, 187, 188, 193, 194, 234, 235, 236, 237, 248, 250, 269, 273, 275, 276, 281, 282, 288, 289, 291, 296, 297, 298, 299, 301, 302, 323, 325, 329, 330, 331, 332, 333, 482, 699, 700, 761, 762, 773, 774, 778, and 779. Omnicare may redact this phrase to read, "CAP, Next rate increase October 2010 to \$20 PPD -

 $[\]frac{1}{Docs. 160}, 162.$

 $[\]frac{2}{2}$ Doc. <u>140</u>.

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REDACTED."

The second phrase appears in Documents 182, 217, 218, 219, 272, 277, 280, 283, 284, 285, 292, 300, 335, 595, and 596. Omnicare may redact this phrase to read, "Sam Enloe to deliver message and REDACTED."

II. Keefe/Germunder Documents

The Court overrules Omnicare's claim of privilege for Documents 11 and 13. These documents synthesizes legal advice and business decisions. Although any notation of what the legal advice of counsel actually was or the fact that advice was sought may be redacted, the remainder of this document must be disclosed.

The Court overrules Omnicare's claim of privilege for Document 12. Although the e-mail does contain the legal advice of counsel, the underlying attachment summarizes and excerpts the provisions of unprivileged contracts. This is not privileged. It is also not protected by the attorney work product protection because there is no indication it was prepared in anticipation of any litigation.

The Court overrules the claim of privilege for Documents 17 and 18. The legal advice in these documents was disclosed to independent third parties.

The Court also overrules the claim of privilege for Document 19. This document contains privileged legal advice. But it also contains legal advice which was disclosed to third parties. The advice is no longer protected.

By noon on October 16, 2013, Omnicare must provide the documents described above.

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The Court sustains Omnicare's other assertions of privilege that the Court has not previously

overruled.

IT IS SO ORDERED

Dated: October 15, 2013

<u>s</u>/

JAMES S. GWIN UNITED STATES DISTRICT JUDGE