

EXHIBIT B

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Subject: US v. UHG/Change - proposed PO and CMO
Date: Thursday, February 24, 2022 5:19:45 PM
Attachments: [2022.02.24 Draft UHG-Change Case Management Order.docx](#)
[2022.02.24 Draft UHG-Change Protective Order.docx](#)



Good evening,

Attached are proposed case management and protective orders. Let me know when you would like to discuss.

Best regards,

Jeremy

Jeremy C. Keeney

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

UNITED STATES OF AMERICA, *et al.*,

Plaintiffs,

v.

Civil Action No. 1:22-cv-0481 (CJN)

UNITEDHEALTH GROUP INCORPORATED
and
CHANGE HEALTHCARE INC.,

Defendants.

[PROPOSED] SCHEDULING AND CASE MANAGEMENT ORDER

(1) Case Schedule. Unless otherwise specified, days will be computed according to Federal Rule of Civil Procedure 6(a). The Court hereby adopts the following schedule:

Event	Date
Scheduling Order Entered and Fact Discovery Begins	Day 0
Answers to Complaint due	7
Deadline to amend pleadings or join parties	14
Parties exchange preliminary fact witness lists	21
Parties identify all expert witnesses who will submit Rule 26(a)(2) disclosures on issues or defenses on which the Party bears the burden (<i>e.g.</i> , economic, efficiency and/or synergy issues, and divestiture) and the subject(s) on which the expert will opine	110
Parties identify all opposition expert witnesses and the subject(s) on which the expert will opine	117
Parties exchange final fact witness lists	120
Close of fact discovery	120
Initial Expert Reports: Parties serve Rule 26(a)(2)(B) initial expert witness disclosures on issues or defenses on which the Party bears the burden (<i>e.g.</i> , economic, efficiency and/or synergy issues, and divestiture) that contain complete statements of all opinions the witness will express and the basis and reasons for those opinions	123
Deadline for the production of Backup Materials for Initial Expert Report(s)	124

Event	Date
Opposition Expert Reports: Parties serve Rule 26(a)(2)(D)(ii) expert witness disclosures that are intended solely to contradict or rebut evidence on the same subject matter identified by another Party under Rule 26(a)(2)(B) or supplemented by information discovered during depositions of any individual on the final fact witness lists that was not on the preliminary witness lists	141
Deadline for the production of Backup Materials for Opposition Expert Report(s)	142
Close of Supplemental Discovery	148
Parties exchange initial exhibit lists	152
Each Party informs each non-Party of all documents produced by that non-Party that are on the Party's exhibit list and all depositions of that non-Party that have been designated by any Party. Parties must inform non-Parties that they should provide notice to the Parties, pursuant to the Protective Order, of whether that non-Party objects to the potential public disclosure at trial of that non-Party's documents and depositions, explain the basis for any such objections, and propose redactions where possible.	153
Parties exchange opening deposition designations	154
Each side exchanges its objections to the other side's exhibits, including confidentiality objections	158
Parties meet and confer regarding disputes about confidentiality of Party documents on trial exhibit list	158
Each side exchanges its objections to the other side's opening deposition designations and its deposition counter-designations	160
Rebuttal Expert Reports: Parties serve reply expert reports limited to the issues raised in the Opposition Expert Reports	162
Each side exchanges its objections to the other side's deposition counter-designations and its counter-counter-designations	163
Non-Parties provide notice whether they object to the potential public disclosure at trial of any non-Party documents and depositions, explain the basis for any such objections, and propose redactions where possible	163
Deadline for the production of Backup materials for Rebuttal Expert Report(s)	163
Parties meet and confer regarding admissibility of trial exhibits and deposition designations	165
Motions <i>in limine</i> due	167
Parties and non-Parties meet and confer regarding confidentiality of non-Party documents on trial exhibit list and non-Party depositions	171
Parties exchange supplemental exhibit lists limited only to materials contained in Rebuttal Expert Report(s)	171
Joint submission regarding disputes about confidentiality of Party documents on trial exhibit list due	172

Event	Date
Joint submission regarding disputes about confidentiality of each non-Party's documents on trial exhibit lists and non-Party depositions due	172
Joint submission regarding disputes about admissibility of trial exhibits and deposition designations	172
Oppositions to motions <i>in limine</i> due	174
Pretrial briefs due	176
Replies in support of motions <i>in limine</i> due	177
Close of expert discovery; Parties exchange any further additions to exhibit lists, limited to materials contained in any expert report and used as exhibit(s) in any expert deposition	179
Final pretrial conference	181
Parties submit final trial exhibits to Court	181
Trial begins	186
Post-trial briefs and proposed findings of fact and conclusions of law due	Parties will propose timing at the final pretrial conference.

(2) Service of Complaint. Counsel for Defendants, acting on behalf of Defendants, have accepted service of the Complaint and have waived formal service of a summons.

(3) Jurisdiction and Venue. Defendants consent to personal jurisdiction and venue in this Court.

(4) Discovery Conference. The Parties' prior consultations and submission of this Order relieve the Parties of their duty under Federal Rule of Civil Procedure 26(f).

(5) Completion of Proposed Transaction. Defendants have agreed that they will not close, consummate, or otherwise complete UnitedHealth Group Incorporated's proposed acquisition of Change Healthcare Inc. any earlier than 12:01 a.m. on the tenth day following the entry of judgment by the Court and only if the Court enters an appealable order that does not prohibit consummation of the transaction.

(6) Dispositive Motions. Due to the compressed schedule before trial, the Parties agree that no motions to dismiss and no motions for summary judgment will be filed in this action.

(7) Discovery of Confidential Information. Discovery and production of confidential information shall be governed by any Protective Order entered by the Court in this action, and a copy of all such orders shall be included with any discovery requests, notices, or subpoenas directed to non-Parties.

(8) Definitions.

(a) The following definitions apply to this Order:

(i.) “Proposed Transaction” means UnitedHealth Group Incorporated’s proposed acquisition of Change Healthcare Inc.

(ii.) “Party” means any Plaintiff or any Defendant in this Action. “Parties” means collectively Plaintiffs and Defendants in this Action.

(iii.) “Plaintiffs” mean the United States of America and the Plaintiff States, and all of their employees, agents, and representatives.

(iv.) “Plaintiff States” include the State of Minnesota, the State of New York, and any other state that joins the above-captioned case.

(v.) “Relevant Materials” means (A) documents; (B) data; (C) correspondence; (D) transcripts of testimony; and (E) witness statements, including draft and final versions of declarations and affidavits, letters relating to draft and final versions of declarations and affidavits, and transcripts.

(9) Initial Disclosures. The Parties agree to waive the exchange of disclosures under Federal Rule of Civil Procedure 26(a)(1), as set forth in the Stipulated Protective Order.

(10) Statement Regarding Local Civil Rule 16.3(c)(3): Assignment to Magistrate Judge. The Parties do not believe at this time that this matter should be assigned to a magistrate judge for all purposes, including trial.

(11) Statement Regarding Local Civil Rules 16.3(c)(4) and (5): Settlement Possibilities and ADR. All Parties have engaged in good-faith settlement negotiations, but despite their efforts, have not been able to settle the matter. The Parties do not believe that this case would benefit from some form of alternative dispute resolution.

(12) Timely Service of Fact Discovery and Supplemental Discovery. All discovery, including discovery served on non-Parties, must be served in time to permit completion of responses by the close of fact discovery, except that Supplemental Discovery must be served in time to permit completion of responses by the close of Supplemental Discovery. For purposes of this Order, “Supplemental Discovery” means document and deposition discovery, including discovery served on non-Parties, related to any person identified on a Party’s final fact witness list who was not identified on that Party’s preliminary fact witness list (including document and deposition discovery related to entities related to any such person). Depositions that are part of Supplemental Discovery must be noticed within 7 days of exchanging the final fact witness lists.

(13) Subpoenas. A Party may serve a subpoena of the type described in Federal Rule of Civil Procedure 45(a)(4) at any time after serving on the other Parties a notice and a copy of the subpoena.

(14) Written Discovery on Parties.

(a) Document Requests. There is no limit on the number of requests for the production of documents that may be served by the Parties. The Parties must serve any objections to requests for productions of documents within 7 business days after the requests are served. Within 3 business days of service of any objections, the Parties must meet and confer to resolve in good faith any objections and to agree on custodians to be searched. The parties must make good-faith efforts to make rolling productions of responsive documents (to the extent not subject to any

objections or custodian issues that have not been resolved), including any portion(s) of responsive productions that are not subject to any objections or custodian issues beginning no later than 21 days after service of the request for production. The Parties must make good-faith efforts to substantially complete responsive productions no later than 28 days after service of the request for production. Should any objections or custodian issues remain unresolved for 14 days or more after service of the request for production, the Parties must make good-faith efforts to complete such remaining responsive productions no later than 14 days after resolution of such objections or custodian issues. Notwithstanding any other part of this paragraph, in responding to requests for production of documents that are part of Supplemental Discovery, the Parties must (i) serve any objections to such requests for production of documents within 3 business days after the requests are served; (ii) make responsive productions (subject to any objections or custodian issues that have not been resolved) on a rolling basis; (iii) begin such productions no later than 7 days after the requests are served; and (iv) complete such productions no later than 7 days after resolution of objections and custodian issues.

(b) Data Requests. In response to any requests where data or data compilations are responsive, the Parties will meet and confer in good faith regarding the requests and will make employees knowledgeable about the content, storage, and production of data available for informal consultations during the meet-and-confer process. Throughout the meet-and-confer process, the Parties will work in good faith to complete production of data or data compilations, but must comply with the requests for production no later than 28 days after service of the requests for production, unless otherwise extended by agreement between the Parties.

(c) Interrogatories. Interrogatories are limited to 20 (including discrete subparts) by Plaintiffs to each Defendant and to 20 (including discrete subparts) by Defendants

collectively to the Plaintiffs collectively. The Parties must serve any objections to interrogatories within 7 business days after the interrogatories are served. Within 3 business days of service of any objections, the Parties must meet and confer to attempt to resolve the objections. The Parties must make good-faith efforts to provide complete answers to interrogatories no later than 28 days after service of the interrogatories.

(d) Requests for Admission. Requests for admission are limited to 5 by Plaintiffs to Defendants collectively and to 5 by Defendants collectively to Plaintiffs collectively. The Parties must serve any objections to requests for admission within 7 business days after the requests for admission are served. Within 3 business days of service of any objections, the Parties must meet and confer to attempt to resolve the objections. The Parties must make good-faith efforts to provide complete responses to requests for admission no later than 28 days after service of the requests for admission.

(15) Written Discovery on Non-Parties. The Parties will in good faith cooperate with each other with regard to any discovery to non-Parties in an effort to minimize the burden on non-Parties. Each Party must serve a copy of any subpoena to a non-Party on the other Parties at the same time as the subpoena is served on the non-Party. Every subpoena to a non-Party shall include a cover letter requesting that (a) the non-Party Bates-stamp each document with a production number and any applicable confidentiality designation prior to producing it; and (b) the non-Party provide to the other Parties copies of all productions at the same time as they are produced to the requesting Party. If a non-Party fails to provide copies of productions to the other Parties, the requesting Party shall provide such copies to the other Parties, in the format the productions were received by the requesting Party, within 3 business days of the requesting Party receiving such materials from the non-Party. In addition, if a non-Party produces documents or electronically

stored information that are not Bates-stamped, the Party receiving those materials shall request that the non-Party Bates-stamp all documents or electronically stored information and produce such Bates-stamped copies to all Parties simultaneously. Each Party must provide the other Parties with (i) a copy of any written communication (including email) with any non-Party concerning the non-Party's response to or compliance with any subpoena, including any extensions or postponements, within 36 hours of the communication; and (ii) a written record of any oral or written modifications to the subpoena, within 36 hours of the modification.

(16) Depositions. Plaintiffs collectively are entitled to 30 depositions of Party witnesses and 20 depositions of non-Party witnesses, and the Defendants collectively are entitled to 30 depositions of Party witnesses and 20 depositions of non-Party witnesses. Each deposition of a Party to be taken under Federal Rule of Civil Procedure 30(b)(6) counts as one party deposition, regardless of the number of witnesses produced to testify on the matters for examination in that deposition. The following depositions do not count against the deposition caps imposed by the preceding sentences: (a) depositions of any persons identified on a Party's final fact witness list who were not identified on that Party's preliminary fact witness list; (b) depositions of the Parties' designated expert witnesses; (c) depositions taken in response to Civil Investigative Demands; and (d) depositions taken for the sole purpose of establishing the location, authenticity, or admissibility of documents produced by any Party or non-Party, provided that such depositions may be noticed only after the Party taking the deposition has taken reasonable steps to establish location, authenticity, or admissibility through other means, and further provided that such depositions must be designated at the time that they are noticed as being taken for the sole purpose of establishing the location, authenticity, or admissibility of documents.

(a) Parties will make witnesses available for deposition upon 7 business days' notice. Depositions shall be conducted remotely in accordance with the Parties' November 10, 2021 remote deposition letter, unless the Parties agree otherwise.

(b) If a Party serves a non-Party a subpoena for the production of documents or electronically stored information and a subpoena commanding attendance at a deposition, the Party serving those subpoenas must schedule the deposition for a date at least 7 business days after the return date for the document subpoena, and if the Party serving those subpoenas agrees to extend the date of production for the document subpoena in a way that would result in fewer than 7 business days between the extended production date and the date scheduled for that non-Party's deposition, the date scheduled for the deposition must be postponed to be at least 7 business days following the extended production date, unless all other Parties consent to fewer than 7 business days.

(c) Depositions of fact witnesses are limited to no more than one (7-hour) day unless otherwise stipulated. During non-Party depositions, the non-noticing side will receive two hours examination time. If a non-Party deposition is noticed by both sides, then time will be divided equally between the sides, and the deposition of the non-Party will count as one deposition for both sides. Any time allotted to one side not used by that side in a non-Party deposition may not be used by the other side, unless the side that does not use all of its allotted time agrees to allow the other side to use the remaining time. Any objection made by any Party in a deposition preserves that objection for every Party. Notwithstanding any other provisions in this paragraph, if a Plaintiff notices the deposition of a non-Party (including an employee of a non-Party) to or with which a Defendant has made an offer, commitment, or agreement (including an agreement to divest or

license assets) to attempt to address a Plaintiff's concerns about the Proposed Transaction, then the Plaintiff will receive 7 hours of examination time for the deposition.

(d) Any Party may further depose any person whose deposition was taken pursuant to a Civil Investigative Demand, and the fact that such person's deposition was taken pursuant to a Civil Investigative Demand may not be used as a basis for any Party to object to that person's deposition. Depositions taken pursuant to Civil Investigative Demands may be used at trial in the same manner as depositions taken pursuant to the Federal Rules of Civil Procedure.

(17) Discovery from Executive-Branch Agencies. Defendants may not seek discovery from any executive-branch agency of the federal government (including any employee of any such agency), except for the Antitrust Division of the U.S. Department of Justice. From entry of this Order until the conclusion of trial, Defendants may not submit requests under the Freedom of Information Act to any executive-branch agency of the federal government and may not take any steps to obtain responses to previously submitted requests for purposes of using such information in evidence at trial.

(18) Evidence from a Foreign Country. Before any Party may offer documentary or testimonial evidence from an entity or person located in a foreign country, the other side must be afforded an opportunity by the entity or person (or both, when applicable) to obtain documentary and deposition discovery. For any non-Party witness who resides outside the United States and is included on the witness lists of any Party, any deposition of that witness may be conducted via remote means, as described in paragraph (16) of this Order, and any such deposition may be conducted under United States law. For any Party witness who resides outside the United States and is included on the witness lists of any Party, that witness will be produced by the Defendants for deposition in the United States, unless the Parties agree to conduct the deposition via remote

means, as described in Paragraph (16) of this Order, and under United States law. This paragraph does not apply to documents produced to the United States during its investigation of the Proposed Transaction before the Complaint was filed.

(a) Each Party agrees that its litigation counsel in this action will accept service of a deposition notice on its behalf for any witness who is an executive of a Party, the Party's subsidiary, or an affiliate of the Party and who resides or is located outside the United States, without requiring additional or different procedures to be followed pursuant to the Hague Evidence Convention, or any other applicable convention, treaty, law, or rule. In addition, each Party agrees to make each such witness available for depositions in Washington, DC or another place in the United States determined by agreement of the Parties or via remote means, as described in paragraph (16) of this Order, and that any such deposition will be conducted under United States law.

(b) Each Party agrees that its litigation counsel in this action will accept service of a trial subpoena on its behalf for any witness who is an executive of a Party, the Party's subsidiary, or an affiliate of the Party and who resides or is located outside the United States, without requiring additional or different procedures to be followed pursuant to the Hague Evidence Convention, or any other applicable convention, treaty, law, or rule. In addition, each Party agrees to make each such witness available to testify at trial in Washington, DC.

(19) Privilege Logs. The Parties agree that the following privileged or otherwise protected communications may be excluded from privilege logs: (1) documents or communications sent solely between outside counsel for the Defendants (or persons employed by or acting on behalf of such counsel); (2) documents or communications sent solely between counsel for the United States (or persons employed by or acting on behalf of the United States);

(3) documents or communications sent solely between counsel for the United States (or persons employed by or acting on behalf of the United States) and counsel for any state (or persons employed by or acting on behalf of the office of the attorney general of any state); (4) documents or communications sent solely between counsel for any state (or persons employed by or acting on behalf of the office of the attorney general of any state); (5) documents or communications sent solely between outside counsel for either Defendant and inside counsel for that Defendant; (6) privileged draft contracts; (7) draft regulatory filings; and (8) non-responsive, privileged documents attached to responsive documents. When non-responsive, privileged documents that are attached to responsive documents are withheld from production, however, the producing Party will insert a placeholder to indicate a document has been withheld from that family. For each entry of the privilege log, all attorneys acting in a legal capacity with respect to that particular document or communication will be marked with the designation ESQ after their names (include a space before and after the “ESQ”).

(20) Inadvertent Production of Privileged or Work-Product Documents or Information. Pursuant to Federal Rule of Evidence 502(d), the production of a document or information subject to a claim of attorney-client privilege, work-product immunity, or any other privilege or immunity under relevant federal case law and rules does not waive any claim of privilege, work product, or any other ground for withholding production to which the Party producing the documents or information otherwise would be entitled, provided that (a) the production was inadvertent; (b) the Party producing the documents or information used reasonable efforts to prevent the disclosure of documents or information protected by the attorney-client privilege, work-product immunity, or any other privilege or immunity; and (c) the Party producing the documents or information

promptly took reasonable steps to rectify the error, including following Federal Rule of Civil Procedure 26(b)(5)(B).

(21) Presumptions of Authenticity. Documents produced by Parties and non-Parties from their own files will be presumed to be authentic within the meaning of Federal Rule of Evidence 901. Any good-faith objection to a document's authenticity must be provided with the exchange of other objections to intended trial exhibits. If the opposing side serves a specific good-faith written objection to the document's authenticity, the presumption of authenticity will no longer apply to that document and the Parties will promptly meet and confer to attempt to resolve any objection. The Parties further agree that documents produced by Parties and non-Parties from their own files will be presumed to be business records within the meaning of Federal Rule of Evidence 803. Any objections that are not resolved through this means or the discovery process will be resolved by the Court.

(22) Expert Witness Disclosures and Depositions. Expert disclosures, including each side's expert reports, must comply with the requirements of Federal Rule of Civil Procedure 26(a)(2) and 26(b)(4), except as modified by this paragraph.

(a) Neither side must preserve or disclose, including in expert deposition testimony, the following documents or information:

(i.) any form of oral or written communications, correspondence, or work product not relied upon by the expert in forming any opinions in his or her final report shared:

1. between Plaintiffs or any Defendant's counsel and the Plaintiffs' or the Defendants' own testifying or non-testifying expert(s);

2. between any agent or employee of any Plaintiff's or Defendant's counsel and the Plaintiffs' or the Defendants' own testifying or non-testifying expert(s);
3. between testifying and non-testifying experts;
4. between non-testifying experts; or
5. between testifying experts;

(ii.) any form of oral or written communications, correspondence, or work product not relied upon by the expert in forming any opinions in his or her final report shared between experts and any persons assisting the expert;

(iii.) the expert's notes, except for notes of interviews participated in or conducted by the expert, if the expert relied upon such notes in forming any opinions in his or her final report;

(iv.) drafts of expert reports, affidavits, or declarations; and

(v.) data formulations, data runs, data analyses, or any database-related operations not relied upon by the expert in forming any opinions in his or her final report.

(b) The Parties agree that the following materials will be disclosed:

(i.) all final reports;

(ii.) a list by bates number of all documents relied upon by the testifying expert(s) in forming any opinions in his or her final reports;

(iii.) copies of any materials relied upon by the expert not previously produced that are not readily available publicly;

(iv.) a list of all publications authored by the expert in the previous 10 years and copies of all publications authored by the expert in the previous 10 years that are not readily available publicly;

(v.) a list of all other cases in which, during the previous 4 years, the expert testified at trial or by deposition, including tribunal and case number; and

(vi.) for all calculations appearing in the final reports, all data and programs underlying the calculations (including all programs and codes necessary to replicate the calculations from the initial (“raw”) data files and the intermediate working-data files that are generated from the raw data files and used in performing the calculations appearing in the final report) and a written explanation of why any observations in the raw data were either excluded from the calculations or modified when used in the calculations (“Backup Materials”).

(c) The Court’s schedule allows for Initial Expert Report(s), Opposition Expert Report(s), and Rebuttal Expert Report(s). Any additional supplemental report may not be served without leave of court.

(d) Each expert will be deposed for only one (7-hour) day, with all 7 hours reserved for the side noticing the expert’s deposition. Depositions of each side’s experts will be conducted only after disclosure of all expert reports and all of the materials identified in paragraph (22)(b) of this Order for all of that side’s experts.

(23) Witness Lists. Plaintiffs collectively are limited to 30 persons on its preliminary fact witness list, and the Defendants collectively are limited to 30 persons on their preliminary fact witness list. The preliminary witness lists must include the name, employer, address, and telephone number of each fact witness.

(a) Plaintiffs are limited to 25 persons on their final fact witness list, and Defendants collectively are limited to 25 persons on their final fact witness list. Each side's final fact witness list may identify no more than 5 witnesses that were not identified on that side's preliminary fact witness list. If any new witnesses are added to a final fact witness list that were not on that side's preliminary fact witness list, document discovery may be had with respect to such person(s), even if out of time, and a deposition(s) by the other side of such witness(es) will not count against that other side's total depositions. The final fact witness lists must include the name, employer, address, and telephone number of each fact witness.

(b) In preparing preliminary fact witness lists and final fact witness lists, the Parties must make good-faith attempts to identify the witnesses whom they expect that they may present as live witnesses at trial. No Party may call a person to testify as a live witness at trial unless (a) that person was identified on any Party's final fact witness list; (b) all Parties agree that that Party may call that person to testify; or (c) that Party demonstrates good cause for allowing it to call that person to testify, despite that Party's failure to identify that person sooner. Witnesses whose testimony will be offered into evidence at trial through designated portions of their deposition testimony need not be identified on preliminary or final fact witness lists, and those witnesses do not count against the limits on the numbers of persons who may be identified on those lists.

(24) Demonstrative Exhibits. Unless otherwise agreed or ordered, the Parties must serve demonstrative exhibits on all counsel of record at least 24 hours before any such exhibit may be introduced (or otherwise used) at trial, except that (a) demonstrative exhibits to be introduced (or otherwise used) in connection with the rebuttal testimony of an expert witness for Plaintiffs may be served fewer than 24 hours before such exhibits may be introduced (or otherwise used) if such

rebuttal testimony begins fewer than 48 hours after Defendants rest their case; and (b) the following types of demonstrative exhibits need not be pre-disclosed to the opposing Party: (i) demonstrative exhibits used during opening statements or closing arguments; (ii) demonstrative exhibits used by experts that were disclosed in the experts' report, if the exhibit has not been materially changed; (iii) demonstrative exhibits used in cross examination of any witness or in direct examination of a hostile witness; (iv) demonstrative exhibits used at any hearing other than trial; and (v) demonstrative exhibits created in court during a witness's examination. Demonstrative exhibits representing data must rely only on data that has been produced to the opposing Party by the close of fact discovery or is readily available publicly.

(25) Service of Pleadings and Discovery on Other Parties. Service of all pleadings, discovery requests (including subpoenas for testimony or documents under Federal Rule of Civil Procedure 45), expert disclosures, and delivery of all correspondence in this matter must be made by ECF if required by applicable rule or otherwise by email, except when the volume of attachments requires overnight delivery of the attachments or personal delivery, to the following individuals designated by each Party:

For Plaintiff United States of America:

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New York, NY 10005
(212) 416-8066

For Defendant UnitedHealth Group Incorporated:

[INSERT]

For Defendant Change Healthcare Inc.:

[INSERT]

(a) For purposes of calculating discovery response times, electronic delivery at the time the email was received will be treated in the same manner as hand delivery at that time. However, for any service other than service of court filings, email service that is delivered after 5:00 p.m. Eastern Time will be treated as if it was served the following business day.

(26) Timely Production of Evidence Concerning Remedy. Evidence related to a Defendant's attempt to address the Plaintiffs' concerns about the Proposed Transaction, whether by agreeing to divest or license assets or by making any other agreement, offer, or commitment, will be excluded under Federal Rule of Evidence 403 as unfairly prejudicial to the Plaintiffs, unless Defendants provide a copy of the agreement, offer, term sheet, or commitment to the United States by 60 days before the close of fact discovery.

(a) Notwithstanding any other part of this Order, if, after the filing of this proposed case management order, Defendants decide to litigate the lawfulness of the Proposed Transaction with a proposed or actual remedy or modify any aspects of a proposed or actual

remedy, Plaintiffs will be entitled to additional commensurate discovery, including third-party discovery. Because the nature and amount of the additional discovery, including the need for additional time to conduct such additional discovery, is unknown at this time, the Parties agree to meet and confer in good faith at the time of a proposed remedy to present to the Court jointly proposed modifications to the limitations contained in this Order. If the Parties are unable to resolve any dispute related to such modification, they shall file a joint letter brief, providing a clear, concise description of the issues in dispute and proposing dates and times for a teleconference to discuss those issues.

(27) Nationwide Service of Trial Subpoenas. To assist the Parties in planning discovery, and in view of the geographic dispersion of potential witnesses in this action outside this District, the Parties are permitted, under 15 U.S.C. § 23, to issue trial subpoenas that may run into any other federal district requiring witnesses to attend this Court. The availability of nationwide service of process, however, does not make a witness who is otherwise “unavailable” for purposes of Federal Rule of Civil Procedure 32 and Federal Rule of Evidence 804 available under those rules or otherwise affect the admissibility at trial of a deposition of a witness.

(28) Modification of Scheduling and Case Management Order. Modifications of the rights and responsibilities of the Parties under this Order may be made by mutual agreement of the Parties, provided any such modification has no effect on the schedule for pretrial filings or trial dates. Otherwise, any Party may seek modification of this Order for good cause.

SO ORDERED.

Date: March ____, 2022

The Honorable Carl J. Nichols
United States District Judge