

ORIGINAL

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**



In the Matter of _____
ProMedica Health System, Inc. _____
a corporation. _____

Docket No. 9346
PUBLIC VERSION

**COMPLAINT COUNSEL’S UNOPPOSED MOTION FOR
IN CAMERA TREATMENT OF HEARING EXHIBITS**

I. Introduction

Complaint Counsel respectfully moves for *in camera* treatment of 22 of Complaint Counsel’s proposed exhibits, pursuant to Rule 3.45 of the Federal Trade Commission’s Rules of Practice.

Eight of the exhibits relate to Complaint Counsel’s economic expert Professor Robert Town: the expert reports and supporting materials that were submitted in the related federal district court proceeding and in this proceeding; Professor Town’s rebuttal report and supporting materials that will be submitted on Friday, May 6; and one excerpt of Professor Town’s previous deposition testimony. These materials rely on and discuss confidential business information, documents and testimony provided to Complaint Counsel by the Respondent, third-party hospitals, third-party payers and other sources. Complaint Counsel is filing the instant motion regarding these materials because the reports and testimony integrate the confidential business information of multiple parties; as such, those parties cannot readily review the expert reports for the purpose of seeking *in camera* treatment of their own information without learning the confidential business information of others.

The remaining fourteen exhibits are electronic data files produced to Complaint Counsel by third-party payers, hospitals and government entities.¹ *See attached* Declaration of Jeanne H. Liu. Professor Town analyzed this data in the course of forming his opinions in this matter. *See attached* Declaration of Dr. Keith Brand. The claims and admissions data – which list admissions, discharges patient zip codes, DRGs, billed charges and revenues, among other things – is competitively sensitive. The data files also include sensitive personal information relating to medical treatment. In keeping with the obligations of Commission staff to protect sensitive health information to the fullest extent possible, and in keeping with the Commission’s rules and protocols, Complaint Counsel moves for *in camera* treatment of each of these data files. Because the large electronic files cannot readily be submitted for review, and in light of the sensitivity of the data, Complaint Counsel has not provided the databases with this motion. However, Exhibit 1 to the attached Declaration of Jeanne H. Liu reflects the categories of data provided by the third-party payers and hospitals in the electronic data files.²

II. Discussion

A. Expert Reports and Related Exhibits

Under Rule 3.45(b) of the Commission’s Rules of Practice, the Court may grant *in*

¹ Complaint Counsel’s understanding is that most, if not all, of the third-parties will be separately moving to accord *in camera* treatment to their respective data files. Moreover, it is unlikely that Complaint Counsel will directly use the raw data in the course of the hearing. Nonetheless, Complaint Counsel has included the data files in this motion out of an abundance of caution in light of the sensitive information contained therein.

² Complaint Counsel will promptly provide the data files for the Court’s review, if deemed necessary to decide the motion. For the Court’s convenience, the affidavits submitted to date in separate motions by third parties regarding their respective data files are also attached. *See* Attachment A. As described in their motions, the Ohio Hospital Association and Michigan Hospital Association supplied a subset of the data outlined in Exhibit 1 to the Liu Declaration, but also included patient-level admissions data and other sensitive health information.

camera treatment to material after finding that “its public disclosure will likely result in a clearly defined, serious injury to the person, partnership, or corporation whose records are involved.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961). That showing can be made by establishing that the document is “sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury.” *In re General Goods Corp.* 95 F.T.C. 352, 355 (1980).

The expert reports and supporting materials and the testimony excerpt contain the same types of information that have been accorded *in camera* treatment in previous matters involving the health care industry. See *In re Evanston Northwestern Healthcare Corporation*, Docket No. 9315 (Order on Parties’ Motions for *In Camera* Treatment February 9, 2005; Third Order on Non-Parties’ Motion for *In Camera* Treatment for Documents Listed on Parties’ Exhibit Lists March 16, 2005) (available at <http://www.ftc.gov/os/adjpro/d9315/index.shtm>). These documents include discussions of the business strategies of competing providers in Lucas County, rate negotiations with payers, contracts, and internal efficiencies analyses. Professor Town’s conclusions also rely on claims data files and other sensitive and confidential information that are summarized in tables and other exhibits.

Complaint Counsel requests that these materials be accorded *in camera* treatment for a period of five years, consistent with previous orders in other matters concerning healthcare-related information. See *In re Evanston Northwestern Healthcare Corporation*, Docket No. 9315 (Order on Non-Parties’ Motion for *in Camera* Treatment of Documents Listed on Parties’ Exhibits Lists January 9, 2005) (available at <http://www.ftc.gov/os/adjpro/d9315/index.shtm>).

The expert reports, supporting materials and testimony for which *in camera* treatment is requested are summarized here:

Exhibit Number	Name of Exhibit	Expiration Date Requested
PX1923 at 318:10-319:21	Dr. Robert J. Town PI Deposition Transcript Designations	May 5, 2016
PX2124	Declaration of Dr. Robert J. Town (Filed Under Seal)	May 5, 2016
PX2125	Exhibits for Declaration of Dr. Robert J. Town (Filed Under Seal)	May 5, 2016
PX2138	Supplemental Declaration of Dr. Robert J. Town (Filed Under Seal)	May 5, 2016
PX2139	Exhibits for Supplemental Declaration of Dr. Robert J. Town (Filed Under Seal)	May 5, 2016
PX2148	Dr. Robert J. Town Part III Report	May 5, 2016
PX1850	Dr. Robert J. Town Part III Rebuttal Report (due May 6, 2011)	May 5, 2016
PX1851	Dr. Robert J. Town Part III Rebuttal Report Exhibits (due May 6, 2011)	May 5, 2016

B. *Electronic Data Files*

Rule 3.45(b) requires that material constituting sensitive personal information be given permanent *in camera* treatment. The rule notes that “sensitive personal information” includes sensitive health information identifiable by individual, such as an individual’s medical records. Although patient names were required to be redacted from the electronic data files, patient zip codes and dates of birth are included, along with treatment codes and locations of treatment, and other patient-level data. As such, the information constitutes sensitive health information. These files also contain information that is likely to be competitively sensitive, including referral sources, billed charges and payer information.

The fourteen electronic data files are summarized here:

Exhibit Number	Name of Exhibit	Expiration Date Requested
PX1800	Aetna Data	Permanent
PX1801	Anthem/Wellpoint Data	Permanent
PX1802	Cigna Data	Permanent
PX1803	FrontPath/MedAssets Data	Permanent
PX1804	Humana Data	Permanent
PX1805	Medical Mutual of Ohio Data	Permanent
PX1806	United Healthcare Data	Permanent
PX1807	Blue Cross Blue Shield of Michigan Data	Permanent
PX1809	Michigan Health & Hospital Association Service Corporation Data	Permanent
PX1810	Ohio Hospital Association Data	Permanent
PX1813	Mercy Health Partners Data	Permanent
PX1814	University of Toledo Medical Center Data	Permanent
PX1815	Fulton County Health Center Data	Permanent
PX1816	Wood County Hospital Data	Permanent

III. Conclusion

Disclosure of the information contained in Professor Town's expert reports and testimony and the data files will likely result in serious competitive injury or will result in the disclosure of sensitive health information. Disclosure would not materially promote the resolution of this matter nor assist the public's understanding of the litigation, particularly in light of the copious other evidence and testimony likely to be available to the public. *In camera* treatment is therefore appropriate.

* * *

For the foregoing reasons, Complaint Counsel requests that the identified exhibits receive *in camera* treatment.

Dated: May 5, 2011

Respectfully submitted,

/s Matthew J. Reilly

Matthew J. Reilly

Jeffrey H. Perry

Sara Y. Razi

Janelle L. Filson

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**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of)
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ProMedica Health System, Inc.)
a corporation.)
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Docket No. 9346

ORDER

Upon consideration of Complaint Counsel’s Motion for In Camera Treatment of Hearing Exhibits, it is hereby ORDERED that Complaint Counsel’s motion is GRANTED for the following exhibits for the specified period of time:

Exhibit Number	Name of Exhibit	Expiration of In Camera Status
PX1923 at 318:10-319:21	Dr. Robert J. Town PI Deposition Transcript Designations	May 5, 2016
PX2124	Declaration of Dr. Robert J. Town (Filed Under Seal)	May 5, 2016
PX2125	Exhibits for Declaration of Dr. Robert J. Town (Filed Under Seal)	May 5, 2016
PX2138	Supplemental Declaration of Dr. Robert J. Town (Filed Under Seal)	May 5, 2016
PX2139	Exhibits for Supplemental Declaration of Dr. Robert J. Town (Filed Under Seal)	May 5, 2016
PX2148	Dr. Robert J. Town Part III Report	May 5, 2016
PX1850	Dr. Robert J. Town Part III Rebuttal Report	May 5, 2016
PX1851	Dr. Robert J. Town Part III Rebuttal Report Exhibits	May 5, 2016

PX1800	Aetna Data	Permanent
PX1801	Anthem/Wellpoint Data	Permanent
PX1802	Cigna Data	Permanent
PX1803	FrontPath/MedAssets Data	Permanent
PX1804	Humana Data	Permanent
PX1805	Medical Mutual of Ohio Data	Permanent
PX1806	United Healthcare Data	Permanent
PX1807	Blue Cross Blue Shield of Michigan Data	Permanent
PX1809	Michigan Health & Hospital Association Service Corporation Data	Permanent
PX1810	Ohio Hospital Association Data	Permanent
PX1813	Mercy Health Partners Data	Permanent
PX1814	University of Toledo Medical Center Data	Permanent
PX1815	Fulton County Health Center Data	Permanent
PX1816	Wood County Hospital Data	Permanent

ORDERED:

D. Michael Chappell
Chief Administrative Law Judge

Dated:

CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2011, I caused copies of the Complaint Counsel's Motion for *In Camera* Treatment of Hearing Exhibits, Declarations of Jeanne H. Liu and Keith Brand, Proposed Order, and Attachment A to be served on the following:

One electronic copy via the FTC E-Filing system to:

Donald S. Clark, Secretary
Federal Trade Commission
600 Pennsylvania Ave., N.W., Room H-159
Washington, DC 20580

One paper copy via hand delivery and one electronic copy via email to:

The Honorable D. Michael Chappell
Chief Administrative Law Judge
600 Pennsylvania Ave., N.W., Room H-106
Washington, DC 20580
Email: oalj@ftc.gov

One electronic copy via email to:

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**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

_____)
In the Matter of)

ProMedica Health System, Inc.)
a corporation.)
_____)

Docket No. 9346

DECLARATION OF JEANNE H. LIU

I, Jeanne H. Liu, declare as follows:

1. I am an Attorney in the Bureau of Competition of the Federal Trade Commission. I serve as Complaint Counsel in this matter. The statements made in this declaration are made based upon my personal knowledge.
2. I submit this declaration in support of Complaint Counsel's Motion for In Camera Treatment of the expert reports and supporting materials of Professor Robert Town, an excerpt of his deposition testimony, and data files provided to Complaint Counsel by third parties.
3. PX2124, PX2125, PX2138 and PX2139 are Professor Town's expert reports and supporting materials which were originally submitted in connection with the related federal district court proceeding. PX2148 is Professor Town's expert report submitted in connection with this proceeding. PX1850 and PX1851 are reserved for the rebuttal report and supporting materials that will be submitted in this proceeding on May 6, 2011. I have reviewed these reports and have found that they contain likely confidential business information of numerous third parties and the Respondent, including discussions of business strategies, contract

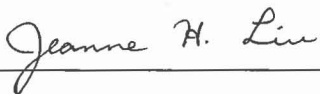
terms and negotiations, pricing information, and other competitively-sensitive material.

4. PX1923 at 318:10-319:21 is the testimony of Professor Town taken during a deposition for the related federal district court proceeding. I have reviewed this testimony and have found that it contains confidential business information concerning the future business plans of a third-party hospital.
5. PX1800-PX1807 are electronic files of claims data obtained by the Federal Trade Commission from third-party payers who have significant managed care business in Lucas County.
6. PX1813-PX1816 are electronic files of admissions data obtained by the Federal Trade Commission from third-party hospitals in and around Lucas County.
7. PX1809-PX1810 are electronic files of admissions data obtained by the Federal Trade Commission from the Ohio Hospital Association and the Michigan Health & Hospital Association, respectively.
8. The attached Exhibit 1 provides representative data requests that were sent to third-party payers and third-party hospitals. To the best of my knowledge, the data contained in the electronic files PX1800-PX1807 and PX1813-PX1816 are responsive to these requests. To the best of my knowledge, the data contained in the electronic files PX1809-10 are responsive to a subset of these requests, but still include patient-level sensitive health information.
9. It has been my experience at the Federal Trade Commission that third parties who provide information and data of the type included here consider such information to be competitively sensitive and highly confidential. Further, when the third parties produced this information and data to the Commission, they requested that it be treated as confidential and not publicly disclosed. I would expect that any

third party would want the information reflected in these exhibits to be given *in camera* treatment if used during the hearing. Finally, the data contains sensitive health information that, in my experience, the Commission has an interest and obligation in safeguarding from public disclosure.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge.

Executed on May 5, 2011.



Jeanne H. Liu

Exhibit 1 to Liu Declaration
Data Specifications Provided to Third Parties

THIRD-PARTY PAYER DATA SPECIFICATIONS:

Submit, for each year from 2004 to the present, for each inpatient admission, or outpatient treatment episode, for any patient residing in the relevant area:

- a. the identity of the hospital, healthcare facility, or physician practice at which the patient was treated, including the owner of the hospital, healthcare facility, or physician practice, the address of the hospital, healthcare facility, or physician practice including ZIP code, and any hospital, healthcare facility, or physician practice identification number used for reimbursement purposes;
- b. a unique patient identifier, different from that for other patients and the same as that for different admissions, discharges, or other treatment episodes for the same patient (to protect patient privacy, the Company shall mask personal identifying information, such as the patient's name or Social Security number, by substituting a unique patient identifier);
- c. the patient's residence 5-digit ZIP code;
- d. the patient's age (in years), gender, and race;
- e. whether the treatment episode was inpatient or outpatient, if inpatient, the date of admission and date of discharge, and if outpatient, the date of treatment;
- f. the primary associated DRG and ICD9 diagnosis and procedure codes, and any secondary DRG and ICD9 diagnosis and procedure codes;
- g. whether the treatment provided was for an emergency;
- h. the source of the patient (such as by referral from another hospital, or by a physician who does not admit the patient);
- i. the specific name of the entity and type of health plan offered by the Company (such as HMO, POS, PPO, etc.) that was the principal source of payment;
- j. for each product listed in Specification 5(i), identify whether this product is offered through a managed care contract with Medicare, Medicaid, or other public health insurance program;
- k. whether the hospital, healthcare facility, or physician practice identified in response to Specification 5(a) was a participating provider under the patient's health plan and, if the patient's health plan had different tiers of participating

providers, which tier the hospital, healthcare facility, or physician practice was in;

- l. whether there was a capitation arrangement with a health plan, if any, covering the patient (identify the arrangement);
- m. the billed charges of the hospital, healthcare facility, or physician practice, allowed charges under the patient's health plan, the amount of charges actually paid by the health plan, whether the amount of charges actually paid by the health plan includes any adjustments under any stop-loss provisions, and any additional amounts paid by the patient;
- n. any breakdown of the hospital's, healthcare facility's, or physician practice's charges by any categories of hospital services rendered to the patient (such as medical/surgical, obstetrics, pediatrics, or ICU) for which the Company provides reimbursement to the hospital, healthcare facility, or physician practice at different per diem or other rates;
- o. the identity of the patient's admitting physician and, if different, the identity of the treating physician;
- p. the amount of any reimbursement by the Company to any physicians, separately from any reimbursement to the hospital, healthcare facility, or physician practice for any physician services associated with the admission or treatment, or for any services associated with covered treatments or diagnoses identified in Specification 5(m); and
- q. the patient's status (*e.g.*, normal discharge, deceased, transferred to another hospital, etc.) upon discharge.

THIRD-PARTY HOSPITAL DATA SPECIFICATIONS:

Submit, for each year from 2004 to the present, for any inpatient admission or discharge or outpatient treatment episode at any hospital operated by the Company in the relevant area:

- a. the identity of the hospital at which the patient was treated, the address of the hospital, including 5-digit ZIP code, and any hospital identification number used for reimbursement purposes;
- b. a unique patient identifier, different from that for other patients and the same as that for different admissions, discharges, or other treatment episodes for the same patient (to protect patient privacy, the Company shall mask personal identifying information, such as the patient's name or Social Security number, by substituting a unique patient identifier as specified in Instruction V); if the Company is providing data in multiple records for the inpatient admission or outpatient visit, a unique identifier for the admission or visit shall also be included in each record associated with the admission or visit;

- c. the patient's residence 5-digit ZIP code;
- d. the patient's age (in years) and gender (if the patient age is 90 years or older the Company should so indicate, in lieu of providing the patient's age);
- e. whether the treatment episode was inpatient or outpatient; if inpatient, the date of admission and date of discharge, and if outpatient, the date of treatment;
- f. the primary associated DRG and ICD9 diagnosis and procedure codes, and any secondary DRG and ICD9 diagnosis and procedure codes;
- g. all UB92 revenue codes and revenue code units;
- h. whether the treatment provided was for an emergency;
- i. the source of the patient (such as by referral from another hospital, or by a physician who does not admit the patient);
- j. the specific name of the entity and type of health plan (such as HMO, POS, PPO, etc.) that was the principal source of payment;
- k. identify whether the type of health plan that was the principal source of payment was offered through the Medicare Advantage program;
- l. whether the Company was a participating provider under the patient's health plan and, if the patient's health plan had different tiers of participating providers, which tier the hospital was in;
- m. whether there was a capitation arrangement with a health plan covering the patient and, if so, identify the arrangement;
- n. charges of the hospital, allowed charges under the patient's health plan, the amount of charges actually paid by the health plan, whether the amount of charges actually paid by the health plan including any adjustments under any stop-loss provisions or any other contractual provision, and any additional amounts paid by the patient;
- o. any breakdown of the hospital's charges by any categories of hospital services rendered to the patient (such as medical/surgical, obstetrics, pediatrics, or ICU);
- p. the identity of the patient's admitting physician and, if different, the identity of the treating physician;
- q. the amount of any payment by the Company to any physicians, not including any payment received in connection with employment by the Company, for any physician services associated with admission or treatment at the Company's

hospitals; and

- r. the patient's status (*e.g.*, normal discharge, deceased, transferred to another hospital, etc.) upon discharge.

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

_____)
In the Matter of)

ProMedica Health System, Inc.)
a corporation.)
_____)

Docket No. 9346

DECLARATION OF KEITH BRAND

I, Keith Brand, declare as follows:

1. I am an Economist in the Bureau of Economics of the Federal Trade Commission. I am currently assigned to the Commission's case entitled *In the Matter of ProMedica Health System, Inc.*, Docket No. 9346. The statements made in this declaration are made based upon my personal knowledge.
2. I submit this declaration in support of Complaint Counsel's Motion for *In Camera* Treatment of the expert reports and exhibits of Professor Robert Town, certain excerpts of his deposition testimony, and data files provided to Complaint Counsel by third parties.
3. As the staff economist assigned to this matter, I assisted Professor Town with his quantitative analysis of data and other materials that form the basis of his expert opinions. The data files for which Complaint Counsel is seeking *in camera* treatment were used in this analysis. The data files contain the following:

Exhibit Number	Name of Exhibit	Description
PX1800	Aetna Data	Patient claims and payment data
PX1801	Anthem/Wellpoint Data	Patient claims and payment data
PX1802	Cigna Data	Patient claims and payment data


PX1803	FrontPath/MedAssets Data	Patient claims and payment data
PX1804	Humana Data	Patient claims and payment data
PX1805	Medical Mutual of Ohio Data	Patient claims and payment data
PX1806	United Healthcare Data	Patient claims and payment data
PX1807	Blue Cross Blue Shield of Michigan Data	Patient claims and payment data
PX1809	Michigan Health & Hospital Association Service Corporation Data	Patient admissions and payment data for multiple hospitals in Michigan and other states
PX1810	Ohio Hospital Association Data	Patient admissions and payment data for multiple hospitals in Ohio and other states
PX1813	Mercy Health Partners Data	Patient admissions and payment data
PX1814	University of Toledo Medical Center Data	Patient admissions and payment data
PX1815	Fulton County Health Center Data	Patient admissions and payment data
PX1816	Wood County Hospital Data	Patient admissions and payment data

4. Exhibit 1 to the Liu Declaration accurately accounts for the types of data contained in the data files provided by the third-party payers and hospitals.

5. It has been my experience at the Federal Trade Commission that third parties who provide information and data of the type included here consider such information to be competitively sensitive and highly confidential.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct, to the best of my knowledge.

Executed on May 5, 2011.



 Keith Brand

ATTACHMENT A

3. Exhibits 1 through 7 are contracts or portions of contracts that United has reached with providers in the Toledo area. The documents contain fee schedules and rates paid by United to various providers in the Toledo, Ohio area. United's fee schedules and rate information are highly confidential and competitively sensitive business information that is never publicly disclosed by United. Disclosure of this information would reveal how United values these providers and the services they offer, something that United has developed at great cost and through the expense of numerous person-hours. United's efforts in this regard have allowed it to better serve its members by obtaining the best possible provider network at the most competitive rates possible. If Exhibits 1 through 7 were disclosed, United could lose this competitive advantage.

4. Exhibits 8 through 21 are copies of e-mails created in the course of United's recent contract negotiations with various providers in the Toledo area. The e-mails contain highly confidential information that, if public, would reveal details about United's negotiating strategy and would provide other confidential information such as rates and other contract terms that United was negotiating with the provider. Such information is held in strict confidence within United and is not available to anyone who was not involved in, or does not have responsibility for, contract negotiations. If Exhibits 8 through 21 were disclosed, it would seriously damage United's ability to negotiate competitive contracts in the future.

5. Exhibits 22 through 26 contain information obtained through United's proprietary Hospital Comparison Program for specific hospitals in the Toledo area. The Hospital Comparison Program gathers comparative quality and cost information on hospitals for a number of inpatient conditions and procedures. The detailed quality and cost information for each hospital in Exhibits 22 through 26 is revealed only to United's members and is not publicly

available. The ability to provide this kind of comparative information to United's members gives United a competitive advantage. If the information in Exhibits 22 through 26 were disclosed, United would lose this competitive advantage and be seriously damaged as a result of that loss.

6. Exhibits 27 through 41 are documents that United used in its recent contract negotiations with ProMedica and St. Luke's. The documents lay out United's negotiating strategy with respect to both hospitals. The documents also contain information relating to United's costs, revenues and margins at the hospitals and show what impact proposed rate increases might have on those figures. This information is extremely sensitive and closely held within United. The disclosure of Exhibits 27 through 41 to ProMedica or St. Luke's employees, to other providers, or to United's competitors would cause serious damage to United's ability to negotiate competitive rates for its members.

7. Exhibit 42 is a presentation that summarizes UnitedHealthCare's competitive position across markets throughout the United States in 2009. It contains highly sensitive information regarding UnitedHealthCare's market shares, provider networks, members, and competitors in many of the markets in which UnitedHealthCare competes. Public disclosure of Exhibit 42 would be extremely damaging to United's competitive position in markets throughout the United States.

8. Exhibits 43 and 44 are collections of data regarding claims submitted by United's members. The data provided detailed information regarding United's spend rate at providers in the Toledo area. Disclosure of Exhibits 43 and 44 would provide precise information on United's market share in the Toledo area. Releasing the data would also reveal United's methodology for its rate structure – that is, how much it is willing to pay for various healthcare

services. Revealing such confidential information would be extremely damaging to United's competitive position in the Toledo area.

9. Exhibits 45 is a transcript of the investigational hearing of United employee Gina Sheridan on September 13, 2010. Exhibit 46 is a transcript of Ms. Sheridan's deposition by counsel for ProMedica and the Federal Trade Commission ("FTC") on April 5, 2011. In both instances, the testimony was taken pursuant to compulsory process. The parties have designated excerpts of the testimony in Exhibits 45 and 46 for use at the administrative trial of this matter. All of the information sought to be used from Exhibits 45 and 46 is confidential business or employment information. For example, Ms. Sheridan discusses United's business objectives and strategies in its overall negotiations with providers, United's contracting strategy with respect to specific providers, and United's contracts, contract negotiations, and reimbursement rates with various providers. This is highly sensitive information for which United takes great effort to maintain confidentiality. As another example, the testimony also discusses United's proprietary data and proprietary methodologies related to its networking and contracting strategies. This is information that United has expended time and resources to develop, and disclosure of this material to United's competitors would result in serious competitive injury to United. Disclosure of information from Exhibits 45 and 46 would cause serious harm to United.

10. Exhibit 47 is a sworn declaration provided to the FTC by United employee Gretchen Kline on December 17, 2010, at the FTC's request. The FTC has designated excerpts of the testimony in Exhibits 47 for use at the administrative trial of this matter. All of the relevant information contained in this document is highly confidential and discusses, for example, United member preferences, United confidential business concerns, United confidential negotiations with providers, and United's reimbursement rates with providers. This information

in Exhibit 48 relates to United's business strategy that United keeps confidential. Disclosure of the information in Exhibit 47 would severely disadvantage United's ability to negotiate competitive rates for its members.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 3rd day of May, 2011 in the State of Ohio.

Janette Russell Gee
Janette Russell Gee

SUBSCRIBED AND SWORN TO before me by the said JANETTE R. GEE on the 3 day of May, 2011.

Edward V. McKay
Notary Public in and for the State of Ohio

Edward V. McKay
Printed Name



EDWARD V. MCKAY
Notary Public, State of Ohio
My Commission Expires 6-20-2015

**UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION**

In the Matter of)	
PROMEDICA HEALTH SYSTEM, INC.)	Docket No: 9346
a corporation.)	Chief Administrative Law Judge
)	D. Michael Chappell

AFFIDAVIT OF DAN PAOLETTI


After having been duly sworn, Dan Paoletti declares and states:

1. I am the Vice President of Data Services for the Ohio Hospital Association (“OHA”), which responded to a third-party subpoena *duces tecum* issued by Complaint Counsel in the above-referenced matter.
2. In response to this subpoena, the OHA provided to Complaint Counsel a document that contained information maintained by the OHA regarding all Ohio hospitals from January 1, 2004 to September 30, 2010. At the request of Complaint Counsel, the following patient-level health information was provided:
 - Hospital unique patient identifier;
 - Age;
 - Sex;
 - Zip code of residence;
 - County code;
 - Admission type;
 - Admission source;
 - DRG and MCD codes;

- Payer source;
 - Primary diagnosis;
 - Primary procedure;
 - Total charges;
 - Discharge status;
 - Patient class;
 - Admission date; and
 - Discharge date.
3. The information produced constituted a substantial portion of the database maintained by the OHA. This database is not public. Access to the database is restricted to member hospitals and such access is limited. The database is password protected. The OHA requires all member hospitals that access the database to sign a strict confidentiality provision as part of a data use agreement. The OHA also requires any vendor, contractor, consultant or employee who accesses the system to keep the information confidential.
 4. The information in the database was collected by the OHA from member hospitals. The member hospitals provided this proprietary and clinical information to the OHA with the understanding that the information would be kept confidential. The information in the database was never intended for public disclosure. It would severely harm the OHA's ability to collect necessary data in the future and to continue to serve its members if the information were disclosed and made public.
 5. The information in the produced document and the database from which it was drawn are valuable assets of the OHA. Maintaining and securing the database requires a substantial

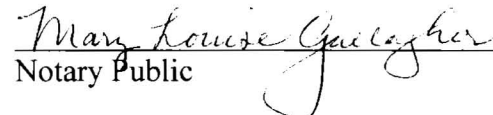
amount of time, effort and money by the OHA. It would be very difficult and expensive for another organization to replicate the data.

6. The OHA's policies and procedures provide that the information maintained in the database is to be kept confidential and safeguarded. Unauthorized uses, disclosures and reproductions are strictly prohibited by the OHA's policies and procedures.
7. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Dan Paoletti

SUBSCRIBED AND SWORN TO before me by the said Dan Paoletti on the 4th day of May, 2011.



Notary Public

MARY LOUISE GALLAGHER
NOTARY PUBLIC
My commission expires
Sept 2012

My Commission Expires:
N/A

**UNITED STATES OF AMERICA
FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES**

In the Matter of

ProMedica Health System, Inc.,

Respondent,

DOCKET NO. 9346

Chief Administrative Law Judge
D. Michael Chappell

DECLARATION OF KIM SORGET

After having been duly sworn, Kim Sorget declares as follows:

1. I am currently Vice President of Provider Contracting and Network Administration for Blue Cross Blue Shield of Michigan (“BCBSM”), which responded to a Civil Investigation Demand (“CID”) and third-party subpoena *duces tecum* issued by Complaint Counsel in the captioned case. In my role as Vice President of Provider Contracting and Network Administration, I manage BCBSM’s provider networks, including contractual relationships with participating hospitals throughout the State of Michigan. Consequently, I am familiar with the claims data and highly confidential information that BCBSM maintains in the course of administering these contractual relationships.

2. By virtue of my current position with BCBSM, I am also familiar with the type of highly confidential information contained in the documents at issue for which BCBSM seeks *in camera* treatment (“Documents”). Based on my knowledge and familiarity with the Documents and BCBSM’s business practices, designed to protect and maintain the integrity and confidentiality of the information contained in the Documents, I believe that disclosure of these documents to the public and to competitors of BCBSM would: (1) compromise the privacy of

BCBSM's clients by disclosing their sensitive and personal health information and (2) cause serious competitive injury to BCBSM.

3. "Exhibit PX01807" contains a compilation of BCBSM and Blue Care Network ("BCN") claims data and health insurance product information drawn from a database maintained by BCBSM during the relevant time period from 2004 to the present. This data is responsive to the specific categories of information sought by Complaint Counsel in the CID and subpoena served on BCBSM. Among the data fields included in the electronic files produced for each inpatient admission or outpatient treatment episode are the unique patient identifiers, zip code, age, and gender of each patient. The data also details the nature of the services provided by the listed hospital, the amount charged, and the amount paid for the services performed. "Exhibit PX01807" contains patients' personal, private health information that is highly confidential and that BCBSM is otherwise prohibited from disclosing under applicable state and federal laws. Publically disseminating the information contained in "Exhibit PX01807" would compromise the sensitive personal health information of thousands of individual patients.

4. The data files produced by BCBSM contain information drawn from a substantial claims database maintained by BCBSM. The database and the information contained therein is not made available to the public in any way. It would be virtually impossible for BCBSM's competitors or other outside persons to access or recreate the information in the documents at issue. Even within BCBSM, the database is secured and access is highly restricted only to those employees whose job classification requires access to the database, and employee access is further limited to only that information in the database that is necessary to perform that employee's job function. BCBSM employees must specifically request and be granted access to information in the database that is relevant to their job classifications. Unauthorized access to

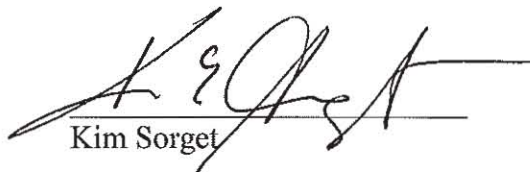
information in the database is strictly prohibited by BCBSM. Moreover, as a matter of both internal policy and its contractual obligation under its Participating Hospital Agreements, BCBSM does not make this database information or data regarding specific hospitals available to any other hospitals, entities, or individuals other than as required by law.

5. Making public these documents containing claims data information would disclose to BCBSM's competitors the financial details of BCBSM's highly confidential contractual relationships and reimbursement arrangements carefully negotiated with each participating hospital in its network, and would, in turn, result in serious and significant competitive injury and potential irreparable harm. Should other commercial or non-profit health carriers or health maintenance organizations become aware of BCBSM's reimbursement arrangements and methodologies with Michigan hospitals, the effect would be an erosion of BCBSM's competitiveness in the market place . This, in turn, would result in an increase in the overall hospital reimbursement payments by BCBSM to participating Michigan hospitals and would result in increased premiums to BCBSM's incurred customers as well as increased administrative fees to BCBSM's self-funded customers. It would also interfere with the ability of BCBSM to negotiate and offer quality, affordable health care as required under its statutory mandate.

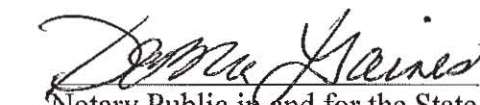
6. "Exhibit PX02080," is a signed declaration from the Director of Hospital Contracting and Policy for BCBSM and contains highly confidential and commercially sensitive business information regarding BCBSM's contractual relationship with Spectrum Health Systems. The declaration discloses highly confidential pricing and reimbursement rate information for Spectrum Health Systems relative to BCBSM and its present competitors.

Disclosure of such information would equip BCBSM's competitors with information regarding BCBSM's contractual relationship with Spectrum Health to BCBSM's competitive disadvantage.

7. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 4TH day of May, 2011, in Michigan.


Kim Sorget

SUBSCRIBED AND SWORN TO before me by the said _____ on the 4th day of May, 2011.


Notary Public in and for the State of Michigan
DEBRA GAINES
Printed Name

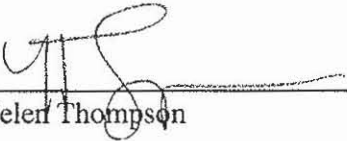
My Commission Expires:

Sept 14, 2012

Debra Faye Gaines, Notary Public
State of Michigan, County of Oakland
My Commission Expires 9/14/2012
Acting in the County of Oakland

I declare under penalty of perjury, pursuant 28 U.S.C. §1746 that the foregoing is true and correct.

Date: May 5, 2011


Helen Thompson

PX1923
(318:10-319:21)

[REDACTED]

PX2124

[REDACTED]

PX2125

[REDACTED]

PX2138

[REDACTED]

PX2139

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PX2148

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