

UNITED STATES OF AMERICA
BEFORE THE FEDERAL TRADE COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGES



In the Matter of

**OSF Healthcare System
a corporation, and**

**Rockford Health System
a corporation,
Respondents.**

PUBLIC

Docket No. 9349

Hon. Judge Chappell

MOTION FOR *IN CAMERA* TREATMENT OF PROPOSED EVIDENCE

Non-party Coventry Health Care of Illinois, Inc. (“Coventry”), by and through its attorneys, respectfully submits this motion seeking *in camera* treatment for the Coventry documents and the deposition testimony excerpts listed below. On March 13, 2012, Complaint Counsel and Respondents’ Counsel identified for possible introduction into evidence in the administrative trial in this matter Coventry documents and deposition testimony that have been designated by Coventry as Confidential pursuant to the protective orders in place in this proceeding and the federal litigation pending in the Northern District of Illinois (Case No. 3:11-cv-50344) (“federal litigation”). Pursuant to the December 20, 2011 Scheduling Order, Coventry hereby seeks *in camera* treatment for the following documents and deposition testimony:

- Exhibit B: Petersen Dep. Ex. 10; CVTY-HC-0000001-14.
- Exhibit C: Petersen Dep. Ex. 12; CVTY-HC-0001428-1496.
- Exhibit D: Petersen Dep. Ex. 13.
- Exhibit E: Petersen Dep. Ex. 14.
- Exhibit F: Petersen Dep. Ex. 15; CHC-CIDPROD00004255-265.
- Exhibit G: Petersen Dep. Ex. 16.
- Exhibit H: Petersen Dep. Ex. 17; CVTY-HC-0001194-1201.

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- Exhibit I: Petersen Dep. Ex. 18; CVH0004338-4382.
- Exhibit J: Petersen Dep. Ex. 24; CVTY0000236-0260; CHC-CIDPROD00005751; CHC-CIDPROD00005747-5749; CHC-CIDPROD00003926-3933.
- Exhibit K: Petersen Dep. Ex. 25; CVTY-C-0002475-2480.
- Exhibit L: Petersen Dep. Ex. 26.
- Exhibit M: Petersen Dep. Ex. 27; CVH0020912.
- Exhibit N: Petersen Dep. Ex. 28.
- Exhibit O: Petersen Dep. Ex. 29.
- Exhibit P: Petersen Dep. Ex. 30.
- Exhibit Q: PX1101; CHC-CIDPROD00000027.
- Exhibit R: PX1102; CHC-CIDPROD00000032-33.
- Exhibit S: PX1103; CHC-CIDPROD00000149.
- Exhibit T: PX1104; CHC-CIDPROD00003573.
- Exhibit U: CVH0016396.
- Exhibit V: PX0256.
- Exhibit W: PX0287.
- Exhibit X: Deposition of Todd Petersen, dated January 23 & 31, 2012: 106:11-16; 110:22-25; 117:10-119:8; 119:23-120:14; 131:20-132:1; 132:8-12; 132:16-133:4; 133:23-134:3; 134:7-11; 135:17-136:7; 136:14-137:7; 137:17-22; 138:7-14; 140:5-15; 146:16-147:6; 154:25-155:17; 157:21-158:7; 158:16-20; 159:3-160:16; 176:20-178:2; 180:6-12; 217:13-218:12; 236:9-237:6; 244:25-246:9; 259:9-22.
- Exhibit Y: Deposition of Todd Petersen, dated February 24, 2012: 22:5-14; 24:6-19; 52:8-20; 54:6-20; 69:25-70:17; 74:7-77:1; 94:23-97:9; 97:19-99:21; 101:23-102:17; 102:25-103:8; 112:19-113:25.

Coventry considers the information contained in Exhibits B through Y (collectively, “Confidential Documents” or “Documents”) to be competitively sensitive and highly confidential. As such, Coventry holds this information in strict confidence. Public access to Coventry’s Confidential Documents is likely to cause Coventry direct and significant competitive injury. Therefore, pursuant to 16 C.F.R. § 3.45(b), Coventry respectfully moves for

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in camera treatment of the documents identified as Exhibits B through Y and described in the Declaration of Todd Petersen (“Decl.”), which is itself attached to this motion as Exhibit A.

I. COVENTRY’S CONFIDENTIAL DOCUMENTS QUALIFY FOR *IN CAMERA* TREATMENT PURSUANT TO THE FEDERAL TRADE COMMISSION’S RULES OF PRACTICE.

The Confidential Documents listed above warrant *in camera* treatment as provided by 16 C.F.R. § 3.45(b). According to that provision, requests for *in camera* treatment should be granted if public disclosure of the materials at issue “will result in a clearly defined, serious injury to the [entity] requesting *in camera* treatment.” *Id.* A party can make that showing by establishing that a given document is “sufficiently secret and sufficiently material to the applicant’s business that disclosure would result in serious competitive injury.” *In re Dura Lube Corp.*, 1999 F.T.C. LEXIS 255, at *6 (Dec. 23, 1999). Where parties have made such a showing, “the courts have generally attempted to protect confidential business information from unnecessary airing.” *H.P. Hood & Sons, Inc.*, 58 F.T.C. 1184, 1188 (1961).

To determine whether documents and information are sufficiently material and sufficiently secret that disclosure would lead to serious competitive injury, the FTC considers the following six factors:

- (1) the extent to which the information is known outside of the applicant’s business;
- (2) the extent to which the information is known by employees and others involved in the applicant’s business;
- (3) the extent of measures taken by the applicant to guard the secrecy of the information;
- (4) the value of the information to the applicant and its competitors;
- (5) the amount of effort and money expended by the applicant in developing the information; and
- (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

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Dura Lube, 1999 F.T.C. LEXIS 255, at *6-7.

A. Public Disclosure Of Coventry's Confidential Documents Would Cause Coventry Direct and Significant Competitive Injury.

Coventry's Confidential Documents, which have been identified by Complaint Counsel and Respondents' Counsel for possible introduction into evidence in the administrative trial in this matter, contain highly confidential and commercially sensitive information. Such information includes details about contractual provisions relating to pricing, reimbursement arrangements, and exclusivity, as well as proprietary financial data and strategic plans. If placed in the public domain, these confidential materials would become available to Coventry's competitors and the providers and customer groups with which Coventry contracts. By undermining Coventry's ability to negotiate effectively with entities in Rockford, Illinois and elsewhere, such disclosure would seriously erode Coventry's competitive position.

1. Coventry Has Preserved The Confidentiality Of The Documents Question.

Coventry has sought to keep the information in the Documents confidential by carefully limiting accessibility and dissemination of such information and taking all other reasonable steps to protect its confidentiality. (Decl. ¶ 3). Such information is disclosed only to select Coventry employees and is not known outside of Coventry except to the extent necessary to engage in contract negotiations. The confidential information contained in the Documents is extremely valuable to Coventry and was developed and collected over the course of years and countless employee hours. The information contained in the Documents would be extremely difficult for Coventry's competitors or other outside persons to access or duplicate.

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2. Disclosure Of Coventry's Confidential Documents Would Result In Significant Competitive Injury To Coventry.

Exhibit B is a Coventry presentation entitled, "Medicare Advantage Market Analysis Strategy." (Decl. ¶ 4). The presentation includes summaries of Coventry's position vis-à-vis competitors in Illinois and describes Coventry's marketing and sales strategies in various markets in Illinois. *Id.* This presentation contains highly confidential and competitively sensitive information, including details of Coventry's contractual relationships with employer groups and provider entities, as well as Coventry's strategic assessment of, and goals for, its business in Illinois. *Id.*

Exhibit C is a Coventry document entitled, "Strategic Plan for GHP and Personal Care." (Decl. ¶ 5). This strategic planning document contains comprehensive descriptions and analyses of Coventry's competitive environment in various markets and strategic position vis-à-vis competitors, provider entities, and customers. *Id.* In addition to Coventry's detailed assessment of its own strengths and weaknesses and those of its competitors, the document also includes information about the status of contractual relationships and ongoing negotiations, as well as regional broker commissions charged to Coventry. *Id.* Such information is highly confidential, the disclosure of which could be used by Coventry's competitors to anticipate and unfairly undercut Coventry's strategic goals. *Id.*

Exhibit D is a chart listing amounts charged by Coventry and received from Rockford, Illinois providers in 2005, 2006, and 2007. (Decl. ¶ 6). This document contains extensive data relating to the current status and recent history of Rockford's agreements with providers in the Rockford Area. *Id.* The document also contains the billing and discount rates paid by Coventry pursuant to its contracts with various providers. *Id.* These contract rates and terms are highly

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confidential and commercially sensitive, reflecting how Coventry negotiates and determines rates for health care services. *Id.*

Exhibit E is Coventry's analysis of its contract with Rockford Health System ("RHS") and is titled "NNM Contract Review Form, Level 2 Review, Rockford Memorial Hospital." (Decl. ¶ 7). This document reports the financial details and reimbursement terms in Coventry's contract with RHS and reflects on Coventry's competitive status in the Rockford Area. *Id.* In addition, Exhibit E discusses several of Coventry's strategic objectives for the negotiation of amendments to the contract with RHS. *Id.* Coventry's contract rates, terms, and strategic objectives are highly confidential and commercially sensitive, reflecting how Coventry negotiates and determines rates for health care services. *Id.*

Exhibit F is a two-page analytic summary of proposals presented to Coventry by RHS in the context of negotiating an amendment to their existing Participating Hospital Agreement ("PAR Agreement"). (Decl. ¶ 8). The document reflects several of the contract's financial provisions and reimbursement rates, as well as proposals for changes to such terms. *Id.* These contract rates and terms are highly confidential and commercially sensitive, reflecting how Coventry negotiates and determines rates for health care services. *Id.*

Exhibit G is Coventry's PAR Agreement with RHS. Its provisions govern the operation of the parties' reimbursement arrangements and provide detailed information on reimbursement rates and discounts. (Decl. ¶ 9). The PAR Agreement includes specific compensation schedules pursuant to which Coventry pays RHS for specified services. *Id.* Coventry's compensation schedules and other financial terms in its contracts with providers are highly confidential and commercially sensitive. *Id.* They also reflect how Coventry negotiates and determines rates for health care services. *Id.*

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Exhibit H, entitled “Market Analysis, Rockford,” contains financial details of Coventry’s contractual arrangements with providers in the Rockford area and other parts of Illinois, as well as analyses of how those arrangements inform Coventry’s strengths and weaknesses relative to competitors. (Decl. ¶ 10). This document is a detailed snapshot of Coventry’s assessment of its own competitive position, which Coventry’s competitors and counterparties could exploit to Coventry’s disadvantage. *Id.* The financial details and the strategic analysis contained in this document are, therefore, competitively sensitive and highly confidential.

Exhibit I is a presentation detailing Coventry’s financial forecast information and strategic initiatives in various markets. (Decl. ¶ 11). The presentation also analyzes Coventry’s competitive position in various markets within and beyond Illinois. *Id.* All of this information is highly confidential, commercially sensitive, and represents the fruits of Coventry’s significant, long-term efforts to gain a full understanding of and strong competitive position in the Illinois marketplace. *Id.*

Exhibit J is Coventry’s PAR Agreement with SwedishAmerican Health System (“SwedishAmerican”). (Decl. ¶ 12). Its provisions govern the operation of the parties’ reimbursement arrangements and contain detailed information about reimbursement rates and discounts. *Id.* The PAR Agreement includes specific compensation schedules pursuant to which Coventry pays SwedishAmerican for specified services. *Id.* Coventry’s compensation schedules and other financial terms in its contracts with providers are highly confidential and commercially sensitive. *Id.* They also reflect how Coventry negotiates and determines rates for health care services.

Exhibit K contains Coventry’s policy and guidelines that its medical management committee uses to make medical management decisions, as well as the policy and criteria used

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for making medical necessity determinations. (Decl. ¶ 13). These policies and procedures are proprietary and highly confidential information reflecting Coventry's long-term efforts to develop appropriate processes for providing high-quality, cost-effective health care to its members. *Id.*

Exhibit L is a handwritten document that Todd Petersen created during his February 24, 2012 deposition. (Decl. ¶ 14). He was asked to explain his analysis of contract rates for a provider network consisting only of SwedishAmerican; he did so by making handwritten calculations. *Id.* These calculations reflect his thoughts on the competitive implications of the proposed merger and the rate discount necessary to compensate for a single-provider network. *Id.* Such contract discount and rate information is highly confidential and commercially sensitive. *Id.*

Exhibit M is a spreadsheet entitled "Coventry Health Care of Illinois, Competitive Profile." (Decl. ¶ 15). This spreadsheet details and analyzes the specific amounts Coventry paid, by actual number and percentage, to various providers in 2010 and 2011. *Id.* The document also compares Coventry's performance to that of its competitors. *Id.* It contains detailed financial information, including average unit costs for various types of care, and also reflects the status of Coventry's business with numerous regional provider entities. *Id.*

Exhibit N is a Coventry document entitled "Personal Care v. The Competition." (Decl. ¶ 16). Exhibit N analyzes Coventry's own strengths and weaknesses as well as that of its major competitors in Illinois. *Id.* The comparative analysis contained in Exhibit N provides detail regarding various business relationships, points affecting reputation, plan features, and Coventry's views on various other competitive characteristics of Coventry's and competitors'

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plans. *Id.* Coventry's strategic analysis and opinion of the competitive landscape is highly confidential and proprietary. *Id.*

Exhibits O and P are the first tabs of a spreadsheet that list, respectively, the volume of physician services (O) and hospital services (P) billed to Coventry in 2008. (Decl. ¶ 17). They report the financial history in 2008 of Coventry's business relationships with physicians, physician groups, and hospitals in Illinois, and they reflect the reimbursement arrangements Coventry negotiated with providers, as well as the financial results of those arrangements. *Id.* Coventry's contracted-for reimbursement rates and its financial analyses of those rates are highly confidential and commercially sensitive information, reflecting how Coventry negotiates and determines rates for health care services. *Id.*

Exhibit Q is an internal Coventry email describing points for discussion in the context of Coventry's negotiation of a PAR Agreement with RHS. (Decl. ¶ 18). The email contains highly confidential and competitively sensitive information, including Coventry's negotiating position vis-à-vis its competitors and service offerings. *Id.* In particular, this email reveals proprietary information regarding how Coventry negotiates contractual provisions with the provider entities in its network. *Id.*

Exhibit R is an email chain exchanged among Coventry personnel who were involved in negotiating contracts with providers. (Decl. ¶ 19). It contains highly confidential and competitively sensitive information, including Coventry's contract terms with RHS and SwedishAmerican. *Id.* These contract rates and terms are highly confidential and commercially sensitive, reflecting how Coventry negotiates and determines rates for health care services. *Id.*

Exhibit S is an internal Coventry email describing research conducted on Northpointe Health and Wellness Center. (Decl. ¶ 20). The email contains highly confidential and

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competitively sensitive information, including historical details about contractual negotiations and relationships among Northpointe, Coventry, and others. *Id.* This confidential information reflects how Coventry negotiates contractual provisions with providers in its network, as well as how existing agreements affect Coventry's negotiating stance. *Id.*

Exhibit T is an internal Coventry email discussing discounts provided for medical services at RHS, SwedishAmerican, and Rochelle Community Hospital. (Decl. ¶ 21). The email contains highly confidential and competitively sensitive information, including specific compensation discounts provided at each of the hospitals and also information about Coventry's position in the market relative to its competitors. *Id.*

Exhibit U is an email between employees of Coventry and a Rockford-area broker. (Decl. ¶ 22). It discusses points made during a meeting regarding discounts to be offered relating to a physician group, as well as the results of a disruption analysis Coventry conducted to evaluate a competitive scenario discussed by the parties to the email. *Id.* The email also mentions Coventry's strategic objective relating to physician providers in the area and the then-ongoing negotiations. *Id.*

Exhibit V is the Declaration of Todd Petersen, Coventry's CEO, dated July 8, 2011; Exhibit W is Mr. Petersen's Supplemental Declaration, dated November 16, 2011 (collectively, "Declarations"). (Decl. ¶ 23). Mr. Petersen provided the Declarations to the FTC in connection with its investigation of Respondents' proposed merger. *Id.* The Declarations contain highly confidential and competitively sensitive information, including information about Coventry's competitive position in the relevant market, negotiating strategies with and among providers in the Rockford area, Coventry's annual spend with providers in the Rockford area, the proposed merger's potential competitive effects on Coventry if consummated, and the results of

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Coventry's proprietary market analysis including desired and/or optimal contract rates and discounts. *Id.*

Exhibit X includes page and line designations from my deposition, taken on January 23 and 31, 2012, in connection with the federal litigation. (Decl. ¶ 24). During that deposition, Coventry designated the transcript Confidential – Attorneys' Eyes Only under the Amended Protective Order entered by the District Court for the Northern District of Illinois on January 6, 2012. *Id.* Exhibit Y includes page and line designations from my deposition, taken on February 24, 2012, in connection with this administrative proceeding. *Id.* During that deposition, Coventry designated the transcript Confidential under the Protective Order Governing Discovery Material entered in this proceeding on November 18, 2011. *Id.* The cited designations from these depositions contain highly confidential and competitively sensitive information, including Coventry's contract negotiation strategy; specific provider contract terms, including rates and discounts; detail regarding premium rates and discounts provided to customers; network design features and relevant market share; strategic plans and market analyses; analyses regarding Coventry's position in the market relative to its competitors; and the potential competitive effects it anticipates from the proposed merger. *Id.*

The information contained in Exhibits B through Y is confidential and competitively sensitive. Disclosure of these Documents would reveal valuable information to Coventry's competitors and to the providers and customer groups with which Coventry negotiates its contracts. Coventry has gone to great expense and effort over the course of many years acquiring, analyzing, and maintaining this information so that it can compete effectively in the marketplace. Disclosure of this information would enable Coventry's competitors and the entities with which Coventry does business to anticipate and unfairly undercut Coventry's

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strategic goals. This would place Coventry at a serious competitive disadvantage undermining its ability to negotiate effectively and causing it significant injury. These foreseeable economic losses qualify as the “clearly defined, serious injury” required to demonstrate a need for *in camera* treatment. “The likely loss of business advantages is a good example of a ‘clearly defined serious injury.’” *Dura Lube*, 1999 F.T.C. LEXIS 255, at *7. To be sure, materials that “represent significant work product, compiled at great expense, disclosure of which would give other companies the benefit of [the applicant’s] labors” warrant *in camera* treatment. *In re General Foods*, 1980 F.T.C. LEXIS 99, at *7-8 (1980).

B. The Public Interest In Full Disclosure of Coventry’s Confidential Documents Is Outweighed By The Likely Serious Competitive Harm Coventry Faces.

As a non-party to this matter, Coventry’s request for *in camera* treatment of its confidential business information deserves “special solicitude.” *In the Matter of Kaiser Aluminum & Chem. Corp.*, 103 F.T.C. 500 (1984) (granting request for *in camera* treatment of non-parties’ five-year-old sales statistics). *In camera* treatment of information encourages non-parties to cooperate with future discovery requests in adjudicative proceedings. *Id.* Coventry has cooperated with the discovery demands made in this case. Furthermore, disclosing Coventry’s confidential information will not materially promote the resolution of this matter, nor will it aid “public understanding of this proceeding.” *Id.* In sum, the balance of interests favors *in camera* protection for Coventry’s Exhibits B through Y. *See In the Matter of Bristol-Myers Co.*, 90 F.T.C. 455, 456 (1977) (setting forth six-factor test of secrecy and materiality).

C. Protection For Exhibits B Through Y Should Last Indefinitely

Indefinite *in camera* treatment may be granted if the confidential and commercially sensitive nature of the information at issue will not diminish over time. *In re Coca Cola Co.*, 1990 F.T.C. LEXIS 364 (Oct. 17, 1990). The information in Exhibits B through Y includes

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financial details of Coventry's contracts with provider entities and reveals Coventry's strategies for negotiating contracts and determining reimbursement arrangements and rates. Unlike ordinary business records, such as marketing plans or sales documents, which might receive *in camera* treatment for short and finite durations, the information in Exhibits B through Y is – and will remain – at the core of Coventry's competitive and strategic position in the Rockford, Illinois market for health care services. For that reason, Coventry respectfully requests that Exhibits B through Y be afforded *in camera* treatment indefinitely.

II. CONCLUSION

The Federal Trade Commission's Rules of Practice and relevant FTC precedent warrant indefinite *in camera* treatment of the confidential materials in Exhibits B through Y. These Documents contain highly confidential and commercially sensitive information, including details about Coventry's contractual provisions relating to pricing, reimbursement arrangements, and exclusivity, as well as proprietary financial data and strategic plans. If placed in the public domain, these confidential materials would become available to Coventry's competitors and the providers and customer groups with which Coventry contracts. Such disclosure would seriously erode Coventry's competitive position in the marketplace causing it significant injury. Accordingly, Coventry respectfully requests that Exhibits B through Y be afforded indefinite *in camera* treatment.

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Dated: March 20, 2012

Respectfully submitted,

/s/ Kerry M. Mustico

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CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing Motion For *In Camera* Treatment Of Proposed Evidence (Public Version) electronically on the Federal Trade Commission's e-Filing System and served true and correct electronic and/or hard copies of the same as follows:

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By e-mail and hand-delivery

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Dated: March 21, 2012

/s/ Kerry M. Mustico

Kerry M. Mustico

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

In the Matter of

**OSF Healthcare System
a corporation, and**

**Rockford Health System
a corporation.
Respondents.**

Docket No. 9349

Hon. Judge Chappell

[PROPOSED] ORDER

On March 20, 2012, Non-Party Coventry Health Care of Illinois, Inc. (“Coventry”), filed a Motion for *In Camera* Treatment of Proposed Evidence containing confidential business information in various documents and deposition testimony that have been identified by the parties as potential trial exhibits.

IT IS HEREBY ORDERED that Coventry’s Motion is GRANTED. The following information designated by Coventry will be subject to *in camera* treatment under 16 C.F.R. § 3.45 and will be kept confidential and not placed on the public record of this proceeding for an indefinite duration:

- Exhibit B: Petersen Dep. Ex. 10; CVTY-HC-0000001 -14.
- Exhibit C: Petersen Dep. Ex. 12; CVTY-HC-0001428 -1496.
- Exhibit D: Petersen Dep. Ex. 13.
- Exhibit E: Petersen Dep. Ex. 14.
- Exhibit F: Petersen Dep. Ex. 15; CHC-CIDPROD00004255 -265.
- Exhibit G: Petersen Dep. Ex. 16.
- Exhibit H: Petersen Dep. Ex. 17; CVTY-HC-0001194 -1201.
- Exhibit I: Petersen Dep. Ex. 18; CVH0004338 -4382.

- Exhibit J: Petersen Dep. Ex. 24; CVTY0000236 -0260; CHC-CIDPROD00005751; CHC-CIDPROD00005747 -5749; CHC-CIDPROD00003926 -3933.
- Exhibit K: Petersen Dep. Ex. 25; CVTY-C-0002475 -2480.
- Exhibit L: Petersen Dep. Ex. 26.
- Exhibit M: Petersen Dep. Ex. 27; CVH0020912.
- Exhibit N: Petersen Dep. Ex. 28.
- Exhibit O: Petersen Dep. Ex. 29.
- Exhibit P: Petersen Dep. Ex. 30.
- Exhibit Q: PX1101; CHC-CIDPROD00000027.
- Exhibit R: PX1102; CHC-CIDPROD00000032 -33.
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- Exhibit T: PX1104; CHC-CIDPROD00003573.
- Exhibit U: CVH0016396.
- Exhibit V: PX0256.
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- Exhibit X: Deposition of Todd Petersen, dated January 23 & 31, 2012: 106:11-16; 110:22-25; 117:10-119:8; 119:23-120:14; 131:20-132:1; 132:8-12; 132:16-133:4; 133:23-134:3; 134:7-11; 135:17-136:7; 136:14-137:7; 137:17-22; 138:7-14; 140:5-15; 146:16-147:6; 154:25-155:17; 157:21-158:7; 158:16-20; 159:3-160:16; 176:20-178:2; 180:6-12; 217:13-218:12; 236:9-237:6; 244:25-246:9; 259:9-22.
- Exhibit Y: Deposition of Todd Petersen, dated February 24, 2012: 22:5-14; 24:6-19; 52:8-20; 54:6-20; 69:25-70:17; 74:7-77:1; 94:23-97:9; 97:19-99:21; 101:23-102:17; 102:25-103:8; 112:19-113:25.

IT IS FURTHER ORDERED that only authorized Federal Trade Commission personnel and court personnel concerned with judicial review may have access to the above-referenced information, provided, however, that I, the Commission, and reviewing courts may disclose such *in camera* information to the extent necessary for the proper disposition of the proceeding.

SO ORDERED: _____

Judge Chappell
Administrative Law Judge

EXHIBIT A

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

In the Matter of

**OSF Healthcare System
a corporation, and**

**Rockford Health System
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Respondents.**

Docket No. 9349

Hon. Judge Chappell

**DECLARATION OF TODD PETERSEN IN SUPPORT OF
NON-PARTY COVENTRY HEALTH CARE OF ILLINOIS, INC.'S
MOTION FOR *IN CAMERA* TREATMENT OF PROPOSED EVIDENCE**

I, Todd Petersen, declare as follows:

1. I am the Chief Executive Officer of Coventry Health Care of Illinois, Inc. (f/k/a PersonalCare Insurance of Illinois, Inc.) (hereinafter “Coventry”). I have been employed at Coventry since 1996, have held my current position since 2003, and have been actively involved in the Rockford, Illinois area market since 2004. In my position at Coventry, I am ultimately responsible for managing our hospital and physician provider network in Rockford, which includes overseeing the group of professionals that negotiate contracts with hospitals and physicians, and being personally involved in those contract negotiations. Consequently, I am familiar with the highly confidential information that Coventry maintains in the course of entering into and administering these contractual relationships.

2. I am also familiar with the highly confidential and sensitive information contained in the documents and testimony for which Coventry seeks *in camera* treatment (“Documents”), attached hereto as Exhibits B through Y. The Documents include: 1) information produced to the FTC in response to a Civil Investigative Demand (“CID”); 2) two declarations I submitted to the FTC during the course of its investigation of Respondents’ proposed merger; 3) documents

produced pursuant to Respondents' subpoena *duces tecum* issued in the federal litigation pending in the Northern District of Illinois (Case No. 3:11-cv-50344) (the "federal litigation"); and 4) my deposition testimony in both the federal litigation and this administrative proceeding, including exhibits used during the course of such testimony. Based on my knowledge and familiarity with the Documents and Coventry's business practices designed to maintain the confidentiality of the information contained in the Documents, I believe that disclosure of the Documents to the public and to competitors of Coventry would cause serious economic and competitive injury to Coventry. This, in turn, would result in an increase in the overall reimbursement rates Coventry pays to Rockford area providers, and would result in increased premiums to Coventry's fully-insured customers as well as the administrative fees to its self-funded customers.

3. Coventry has sought to keep the information in the Documents confidential by carefully limiting accessibility and dissemination of such information and taking all other reasonable steps to protect its confidentiality. Such information is disclosed only to select Coventry employees and is not known outside of Coventry except to the extent necessary to engage in contract negotiations. The confidential information contained in the Documents is extremely valuable to Coventry and was developed and collected over the course of years and countless employee hours. The information contained in the Documents attached hereto as Exhibits B through Y would be extremely difficult for Coventry's competitors or other outside persons to access or duplicate. In the remaining paragraphs, I describe in detail the Documents for which Coventry requests *in camera* treatment and the highly confidential nature of this material that warrants protection from public disclosure.

4. Exhibit B: Exhibit B¹ is a Coventry presentation entitled, “Medicare Advantage Market Analysis Strategy.” The presentation includes summaries of Coventry’s position vis-à-vis competitors in Illinois and describes Coventry’s marketing and sales strategies in various markets in Illinois. This presentation contains highly confidential and competitively sensitive information, including details of Coventry’s contractual relationships with employer groups and provider entities, as well as Coventry’s strategic assessment of, and goals for, its business in Illinois. Coventry has spent countless employee hours and many years to collect and analyze this information so that it can effectively compete in the marketplace. Disclosure of the information contained in Exhibit B would reveal valuable information to Coventry’s competitors and the providers and customer groups with which Coventry negotiates its contracts. Such disclosure would erode Coventry’s competitive position in the marketplace causing it significant harm.

5. Exhibit C: Exhibit C² is a Coventry document entitled, “Strategic Plan for GHP and Personal Care.” This strategic planning document contains comprehensive descriptions and analyses of Coventry’s competitive environment in various markets and strategic position vis-à-vis competitors, provider entities, and customers. In addition to Coventry’s detailed assessment of its own strengths and weaknesses and those of its competitors, the document also includes information about the status of contractual relationships and ongoing negotiations, as well as regional broker commissions charged to Coventry. Disclosure of Exhibit C would reveal valuable information and enable Coventry’s competitors and the entities with which Coventry does business to anticipate and unfairly undercut Coventry’s strategic goals. Such disclosure would erode Coventry’s competitive position in the marketplace causing it significant harm.

¹ Exhibit B bears Bates numbers CVTY-HC-0000001-14 and is known to the parties as Petersen Dep. Ex. 10.

² Exhibit C bears Bates number CVTY-HC-0001428 and is known to the parties as Petersen Dep. Ex. 12. Respondent OSF Healthcare System’s letter to Coventry’s counsel, dated March 13, 2012, mistakenly identifies this document as bearing Bates number CVH0000456.

6. Exhibit D: Exhibit D³ is a chart listing amounts charged by Coventry and received from Rockford, Illinois providers in 2005, 2006, and 2007. This document contains extensive data relating to the current status and recent history of Rockford's agreements with providers in the Rockford Area. The document contains the billing and discount rates paid by Coventry pursuant to its contracts with various providers. These contract rates and terms are highly confidential and commercially sensitive, reflecting how Coventry negotiates and determines rates for health care services. Coventry has spent countless employee hours and many years to collect and analyze this information so that it can effectively compete in the marketplace. Disclosure of the information contained in Exhibit D would reveal valuable information to Coventry's competitors and the providers and customer groups with which Coventry negotiates its contracts. Such disclosure would erode Coventry's competitive position in the marketplace causing it significant harm.

7. Exhibit E: Exhibit E⁴ is Coventry's analysis of its contract with Rockford Health System ("RHS") and is titled "NNM Contract Review Form, Level 2 Review, Rockford Memorial Hospital." This document reports the financial details and reimbursement terms in Coventry's contract with RHS and reflects on Coventry's competitive status in the Rockford Area. In addition, Exhibit E discusses several of Coventry's strategic objectives for the negotiation of amendments to the contract with RHS. Coventry's contract rates, terms, and strategic objectives are highly confidential and commercially sensitive, reflecting how Coventry negotiates and determines rates for health care services. Coventry has spent countless employee hours and many years developing and negotiating its financial terms with providers so that it can effectively compete in the marketplace. Disclosure of the information contained in Exhibit E

³ Exhibit D is known to the parties as Petersen Dep. Ex. 13.

⁴ Exhibit E is known to the parties as Petersen Dep. Ex. 14.

would reveal valuable information to Coventry's competitors and the providers and customer groups with which Coventry negotiates its contracts. Such disclosure would erode Coventry's competitive position in the marketplace causing it significant harm.

8. Exhibit F: Exhibit F⁵ is a two-page analytic summary of proposals presented to Coventry by RHS in the context of negotiating an amendment to their existing Participating Hospital Agreement ("PAR Agreement"). The document reflects several of the contract's financial provisions and reimbursement rates, as well as proposals for changes to such terms. These contract rates and terms are highly confidential and commercially sensitive reflecting how Coventry negotiates and determines rates for health care services. Coventry has spent countless employee hours and many years developing and negotiating its financial terms with providers so that it can effectively compete in the marketplace. Disclosure of the information contained in Exhibit F would reveal valuable information to Coventry's competitors and the providers and customer groups with which Coventry negotiates its contracts. Such disclosure would erode Coventry's competitive position in the marketplace causing it significant harm.

9. Exhibit G: Exhibit G⁶ is Coventry's PAR Agreement with RHS. Its provisions govern the operation of the parties' reimbursement arrangements and provide detailed information on reimbursement rates and discounts. The PAR Agreement includes specific compensation schedules pursuant to which Coventry pays RHS for specified services. Coventry's compensation schedules and other financial terms in its contracts with providers are highly confidential and commercially sensitive. They also reflect how Coventry negotiates and determines rates for health care services. Coventry has spent countless employee hours and many years developing and negotiating its financial terms with providers so that it can

⁵ Exhibit F bears Bates numbers CHC-CIDPROD00004255-265 and is known to the parties as Petersen Dep. Ex. 15.

⁶ Exhibit G is known to the parties as Petersen Dep. Ex. 16.

effectively compete in the marketplace. Disclosure of the information contained in Exhibit G would reveal valuable information to Coventry's competitors and the providers and customer groups with which Coventry negotiates its contracts. Such disclosure would erode Coventry's competitive position in the marketplace causing it significant harm.

10. Exhibit H: Exhibit H,⁷ entitled "Market Analysis, Rockford," contains financial details of Coventry's contractual arrangements with providers in the Rockford area and other parts of Illinois, as well as analyses of how those arrangements inform Coventry's strengths and weaknesses relative to competitors. This document is a detailed snapshot of Coventry's assessment of its own competitive position, which Coventry's competitors and counterparties could exploit to Coventry's disadvantage. The financial details and the strategic analysis contained in this document are, therefore, competitively sensitive and highly confidential. Coventry has spent countless employee hours and many years to collect and analyze this information so that it can effectively compete in the marketplace. Disclosure of the information contained in Exhibit H would reveal valuable information to Coventry's competitors and the providers and customer groups with which Coventry negotiates its contracts. Such disclosure would erode Coventry's competitive position in the marketplace causing it significant harm.

11. Exhibit I: Exhibit I⁸ is a presentation detailing Coventry's financial forecast information and strategic initiatives in various markets. The presentation also analyzes Coventry's competitive position in various markets within and beyond Illinois. All of this information is highly confidential, commercially sensitive, and represents the fruits of Coventry's significant, long-term efforts to gain a full understanding of and strong competitive position in the Illinois marketplace. Disclosure of the information contained in Exhibit I would

⁷ Exhibit H bears Bates numbers CVTY-HC-0001194 -1201 and is known to the parties as Petersen Dep. Ex. 17.

⁸ Exhibit I bears Bates numbers CVH0004338 -4382 and is known to the parties as Petersen Dep. Ex. 18.

reveal valuable information to Coventry's competitors and the providers and customer groups with which Coventry negotiates its contracts. Such disclosure would erode Coventry's competitive position in the marketplace causing it significant harm.

12. Exhibit J: Exhibit J⁹ is Coventry's PAR Agreement with SwedishAmerican Hospital. Its provisions govern the operation of the parties' reimbursement arrangements and contain detailed information about reimbursement rates and discounts. The PAR Agreement includes specific compensation schedules pursuant to which Coventry pays SwedishAmerican for specified services. Coventry's compensation schedules and other financial terms in its contracts with providers are highly confidential and commercially sensitive. They also reflect how Coventry negotiates and determines rates for health care services. Coventry has spent countless employee hours and many years developing and negotiating its financial terms with providers so that it can effectively compete in the marketplace. Disclosure of the information contained in Exhibit J would reveal valuable information to Coventry's competitors and the providers and customer groups with which Coventry negotiates its contracts. Such disclosure would erode Coventry's competitive position in the marketplace causing it significant harm.

13. Exhibit K: Exhibit K¹⁰ contains Coventry's policy and guidelines that its medical management committee uses to make medical management decisions, as well as the policy and criteria used for making a medical necessity determination. These policies and procedures are proprietary and highly confidential information reflecting Coventry's long-term efforts to develop appropriate processes for providing high-quality, cost-effective health care to its members. Disclosure of the information contained in Exhibit K would reveal valuable and commercially sensitive information to Coventry's competitors and the provider entities and

⁹ Exhibit J bears Bates numbers CVTY0000236 -0260, CHC-CIDPROD00005751, CHC-CIDPROD00005747 -5749, and CHC-CIDPROD00003926 -3933, and is known to the parties as Petersen Dep. Ex. 24.

¹⁰ Exhibit K bears Bates numbers CVTY-C-0002475 -2480 and is known to the parties as Petersen Dep. Ex. 25.

employer groups with which Coventry negotiates its contracts. Such disclosure could be used to Coventry's disadvantage and would erode Coventry's competitive position in the marketplace causing it significant harm.

14. Exhibit L: Exhibit L¹¹ is a handwritten document that I created during my February 24, 2012 deposition. I was asked to explain my analysis of the effect on contract rates of a provider network consisting only of SwedishAmerican Hospital if the proposed merger were consummated. I did so by making handwritten calculations. These calculations reflect my thoughts on the competitive implications of the proposed merger and the rate discount necessary to justify a single-provider network. Such contract discount and rate information is highly confidential and commercially sensitive. Disclosure of the information contained in Exhibit L would reveal valuable information to Coventry's competitors and the providers and customer groups with which Coventry negotiates its contracts. Such disclosure could erode Coventry's competitive position in the marketplace causing it significant harm.

15. Exhibit M: Exhibit M¹² is a spreadsheet entitled "Coventry Health Care of Illinois, Competitive Profile." This spreadsheet details and analyzes the specific amounts Coventry paid, by actual number and percentage, to various providers in 2010 and 2011. The document also compares Coventry's performance to that of its competitors. It contains detailed financial information, including average unit costs for various types of care, and also reflects the status of Coventry's business with numerous regional provider entities. All of this information is highly confidential and commercially sensitive. Coventry has spent countless employee hours and many years to collect and analyze this information so that it can effectively compete in the marketplace. Disclosure of the information contained in Exhibit M would reveal valuable

¹¹ Exhibit L is known to the parties as Petersen Dep. Ex. 26.

¹² Exhibit M bears Bates number CVH0020912 and is known to the parties as Petersen Dep. Ex. 27.

information to Coventry's competitors and the providers and customer groups with which Coventry negotiates its contracts. Such disclosure would erode Coventry's competitive position in the marketplace causing it significant harm.

16. Exhibit N: Exhibit N¹³ is a Coventry document entitled "Personal Care v. The Competition." Exhibit N analyzes Coventry's own strengths and weaknesses as well as that of its major competitors in Illinois. The comparative analysis contained in Exhibit N provides detail regarding various business relationships, points affecting reputation, plan features, and Coventry's views on various other competitive characteristics of Coventry's and competitor plans. Coventry's strategic analysis and opinion of the competitive landscape is highly confidential and proprietary. Disclosure of Exhibit N would reveal valuable information and enable Coventry's competitors and the entities with which Coventry does business to anticipate and unfairly undercut Coventry's strategic goals. Such disclosure would erode Coventry's competitive position in the marketplace causing it significant harm.

17. Exhibits O and P: Exhibits O and P¹⁴ are the first tabs of a spreadsheet that lists, respectively, the volume of physician services (O) and hospital services (P) billed to Coventry in 2008. They report the financial history for 2008 of Coventry's business relationships with physicians, physician groups, and hospitals in Illinois, and they reflect the reimbursement arrangements Coventry negotiated with providers, as well as the financial results of those arrangements. Coventry's contracted-for reimbursement rates and its financial analyses of those rates are highly confidential and commercially sensitive information, reflecting how Coventry negotiates and determines rates for health care services. Coventry has spent countless employee hours and many years developing and negotiating its financial terms with providers so that it can

¹³ Exhibit N is known to the parties as Petersen Dep. Ex. 28.

¹⁴ Exhibit O is known to the parties as Petersen Dep. Ex. 29; Exhibit P is known to the parties as Petersen Dep. Ex. 30.

effectively compete in the marketplace. Disclosure of the information contained in Exhibits O and P would reveal valuable information to Coventry's competitors and the providers and customer groups with which Coventry negotiates its contracts. Such disclosure would erode Coventry's competitive position in the marketplace causing it significant harm.

18. Exhibit Q: Exhibit Q¹⁵ is an internal Coventry email describing points for discussion in the context of Coventry's negotiation of a PAR Agreement with RHS. The email contains highly confidential and competitively sensitive information, including Coventry's negotiating position vis-à-vis its competitors and service offerings. In particular, this email reveals proprietary information regarding how Coventry negotiates contractual provisions with the provider entities in its network. Disclosure of such information could harm Coventry's relationship with RHS and other providers and erode Coventry's competitive position in the marketplace causing it significant harm.

19. Exhibit R: Exhibit R¹⁶ is an email chain, exchanged among Coventry personnel who were involved in negotiating contracts with providers. It contains highly confidential and competitively sensitive information, including Coventry's contract terms with RHS and SwedishAmerican Health System. These contract rates and terms are highly confidential and commercially sensitive, reflecting how Coventry negotiates and determines rates for health care services. Coventry has spent countless employee hours and many years developing and negotiating its financial terms with providers so that it can effectively compete in the marketplace. Disclosure of the information contained in Exhibit R would reveal valuable information to Coventry's competitors and the providers and customer groups with which

¹⁵ Exhibit Q has been identified by Complaint Counsel as PX1101 and bears Bates number CHC-CIDPROD00000027.

¹⁶ Exhibit R has been identified by Complaint Counsel as PX1102 and bears Bates numbers CHC-CIDPROD00000032 -033. Respondents have provided notice of its intent to use the identical document bearing Bates numbers CVH0018229-230.

Coventry negotiates its contracts. Such disclosure would erode Coventry's competitive position in the marketplace causing it significant harm.

20. Exhibit S: Exhibit S¹⁷ is an internal Coventry email describing research conducted on Northpointe Health and Wellness Center. The email contains highly confidential and competitively sensitive information, including historical details about contractual negotiations and relationships among Northpointe, Coventry, and others. This confidential information reflects how Coventry negotiates contractual provisions with providers in its network, as well as how existing agreements affect Coventry's negotiating stance. Coventry has spent countless employee hours and many years developing and negotiating its financial terms with providers so that it can effectively compete in the marketplace. Disclosure of the information contained in Exhibit S would reveal valuable information to Coventry's competitors and the providers and customer groups with which Coventry negotiates its contracts. Such disclosure would erode Coventry's competitive position in the marketplace causing it significant harm.

21. Exhibit T: Exhibit T¹⁸ is an internal Coventry email discussing discounts provided for medical services at RHS, SwedishAmerican Health System and Rochelle Community Hospital. The email contains highly confidential and competitively sensitive information, including specific compensation discounts provided at each of the hospitals and also information about Coventry's position relative to competitors. This email also contains information that Coventry's competitors could use to target Coventry's providers and thereby undermine Coventry's negotiating position. Coventry has spent countless employee hours and many years developing and negotiating its financial terms with providers so that it can

¹⁷ Exhibit S has been identified by Complaint Counsel as PX1103 and bears Bates number CHC-CIDPROD00000149.

¹⁸ Exhibit T has been identified by Complaint Counsel as PX1104 and bears Bates number CHC-CIDPROD00003573.

effectively compete in the marketplace. Disclosure of the information contained in Exhibit T would reveal valuable information to Coventry's competitors and the providers and customer groups with which Coventry negotiates its contracts. Such disclosure would erode Coventry's competitive position in the marketplace causing it significant harm.

22. Exhibit U: Exhibit U¹⁹ is an email between employees of Coventry and a Rockford area broker. It discusses points made during a meeting regarding discounts to be offered relating to a physician group, as well as the results of a disruption analysis Coventry conducted to evaluate a competitive scenario discussed by the parties to the email. The email also mentions Coventry's strategic objective relating to physician providers in the area and the then-ongoing negotiations. All of this is confidential and competitively sensitive information. Disclosure of the information contained in Exhibit U would reveal valuable information to Coventry's competitors and the providers and customer groups with which Coventry negotiates its contracts. Such disclosure would erode Coventry's competitive position in the marketplace causing it significant harm.

23. Exhibits V and W: Exhibit V²⁰ is my Declaration to the FTC, dated July 8, 2011; Exhibit W²¹ is my Supplemental Declaration to the FTC, dated November 16, 2011 (collectively, "Declarations"). As Coventry's CEO, I provided the Declarations to the FTC in connection with its investigation of Respondents' proposed merger. The Declarations contain highly confidential and competitively sensitive information, including information about Coventry's competitive position in the relevant market, negotiating strategies with and among providers in the Rockford area, Coventry's annual spend with providers in the Rockford area, the proposed merger's potential competitive effects on Coventry if consummated, and the results of Coventry's

¹⁹ Exhibit U bears Bates number CVH0016396.

²⁰ Exhibit V has been identified by Complaint Counsel as PX0256.

²¹ Exhibit W has been identified by Complaint Counsel as PX0287.

proprietary market analysis including desired and/or optimal contract rates and discounts.

Coventry treats the information contained in the Declarations as highly confidential and such information is not shared with anyone outside Coventry or agents acting on its behalf.

Disclosure of the information contained in the Declarations would reveal valuable information to Coventry's competitors and the providers and customer groups with which Coventry negotiates its contracts. Such disclosure would provide Coventry's competitors with information that could be used to place Coventry at a serious competitive disadvantage undermining its ability to negotiate effectively and causing it significant injury.

24. Exhibits X and Y: Exhibit X includes page and line designations from my deposition, taken on January 23 and 31, 2012, in connection with the federal litigation. During that deposition, Coventry designated the transcript Confidential – Attorneys' Eyes Only under the Amended Protective Order issued by the District Court for the Northern District of Illinois. Exhibit Y includes page and line designations from my deposition, taken on February 24, 2012, in connection with this administrative proceeding. During that deposition, Coventry designated the transcript Confidential under the Protective Order Governing Discovery Material entered in this proceeding on November 18, 2011. The cited designations from these depositions contain highly confidential and competitively sensitive information, including Coventry's contract negotiation strategy; specific provider contract terms, including rates and discounts; detail regarding premium rates and discounts provided to customers; network design features and relevant market share; strategic plans and market analyses; analyses regarding Coventry's position in the market relative to its competitors; and the potential competitive effects it anticipates from the proposed merger. Coventry treats the information contained in Exhibits X and Y as highly confidential and such information is not shared with anyone outside Coventry or agents acting on its behalf. Disclosure of the information contained in Exhibits X and Y would

reveal valuable information to Coventry's competitors and the providers and customer groups with which Coventry negotiates its contracts. Such disclosure would provide Coventry's competitors with information that could be used to place Coventry at a serious competitive disadvantage undermining its ability to negotiate effectively and causing it significant injury.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 19th day of March 2012

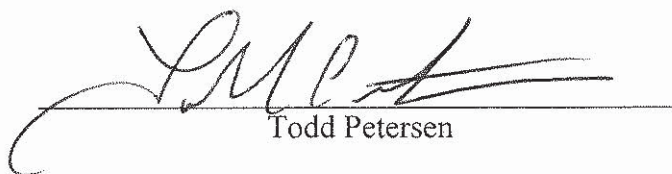

Todd Petersen

EXHIBIT B

(Redacted from public version)

EXHIBIT C

(Redacted from public version)

EXHIBIT D

(Redacted from public version)

EXHIBIT E

(Redacted from public version)

EXHIBIT F

(Redacted from public version)

EXHIBIT G

(Redacted from public version)

EXHIBIT H

(Redacted from public version)

EXHIBIT I

(Redacted from public version)

EXHIBIT J

(Redacted from public version)

EXHIBIT K

(Redacted from public version)

EXHIBIT L

(Redacted from public version)

EXHIBIT M

(Redacted from public version)

EXHIBIT N

(Redacted from public version)

EXHIBIT O

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EXHIBIT P

(Redacted from public version)

EXHIBIT Q

(Redacted from public version)

EXHIBIT R

(Redacted from public version)

EXHIBIT S

(Redacted from public version)

EXHIBIT T

(Redacted from public version)

EXHIBIT U

(Redacted from public version)

EXHIBIT V

(Redacted from public version)

EXHIBIT W

(Redacted from public version)

EXHIBIT X

(Redacted from public version)

EXHIBIT Y

(Redacted from public version)