IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

OPTUM, Plaintiff, v. TENNESSEE STATE INSURANCE COMMITTEE, LAURIE LEE, in her official capacity as Executive Director of Benefits Administration for the Tennessee Department of Finance and Administration, and MARTIN DANIEL, Defendants.	Case No. _____

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S UNOPPOSED APPLICATION FOR RESTRAINING ORDER

Plaintiff Optum respectfully submits this Memorandum of Law in Support of its Application for a Temporary Restraining Order.

INTRODUCTION

Optum seeks a temporary restraining order to prevent the imminent disclosure of its confidential, proprietary, and sensitive claims data and pricing methodology. The State Insurance Committee (the "State"), through Executive Director of Benefits Administration Laurie Lee, has announced its intention to produce this data on Monday, December 16, 2019, in response to a Tennessee Public Records Act request made by Representative Martin Daniel. Optum has objected to the request and informed the State that disclosure will violate several laws, including the Tennessee Uniform Trade Secrets Act. The State has nonetheless decided to go forward with producing the data, necessitating Optum's request for declaratory and injunctive relief to preserve the data's confidentiality and prevent irreparable damage to Optum's business interests.

Given the imminent risk of irreparable harm, Optum requests that this Court enter a temporary restraining order preventing Laurie Lee and the Tennessee State Insurance Committee (the "State Defendants") from complying with Representative Daniel's public records request. Counsel for the State Defendants do not oppose this request to temporarily maintain the status quo until this Court can evaluate and decide Optum's request for injunctive relief.

FACTUAL BACKGROUND

Optum provides benefit management, analytics, consulting, and other services to healthcare providers, health plans, government entities, and life sciences companies. Verified Compl. ¶ 1. Optum currently administers the Employee Assistance Program ("EAP") and Behavioral Health Organization ("BHO") services for the State of Tennessee's Public Sector Health Plans, which provide health insurance benefits to State employees. *Id.* ¶ 7. It administers these services pursuant to a contract with the State, the State Insurance Committee, the Local Education Insurance Committee, and the Local Government Insurance Committee (the "EAP/BHO Contract"). *Id.*; *see* Ex. 1 to Verified Compl.

For the limited purpose of administering the scope of services provided, including behavioral health, the Employee Assistance Program, and work/life services, and as required by the Contract, Optum has provided the State with claims data. Declaration of Vanessa Clark ("Clark Dec.;" attached hereto as **Exhibit A**) ¶ 6; *see, e.g.*, Ex. 1 to Verified Compl. § A.21(i). This information includes data relating to the claims for payment that providers submit to Optum and the amounts that Optum pays those providers. Clark Dec. ¶ 4. Due to the highly confidential, sensitive, and proprietary nature of this data, Optum does not disclose it to other parties and goes to great lengths to prevent its disclosure. *Id.* ¶ 8. The data is entered into an automated file system which collects and compiles this field data to send to the State of Tennessee. *Id.* This automated

system ensures that only a very small group of employees at Optum can access the data. *Id.* It is also customary within the industry to carefully protect data of the type provided to the State here. *Id.* ¶ 7. The EAP/BHO Contract reflects this industry custom, indicating that "proprietary pricing and discount information" should be "redacted" from historical claims data belonging to the incumbent EAP/BHO Contractor. Ex. 1 to Verified Compl. § A.21.n. The Contract also requires compliance with all HIPAA requirements. *Id.* § A.22. Optum has therefore always understood and expected that the State would treat Optum's claims data as confidential. Verified Compl. ¶ 10. The State has until recently done so, in accordance with Optum's understanding and expectation. *Id.*

On October 25, 2019, Representative Martin Daniel, a member of the Tennessee House of Representatives, sent an email to Laurie Lee, the Executive Director of Benefits Administration for the Tennessee Department of Finance and Administration. *Id.* ¶¶ 3–4, 12. Representative Daniel's email requested production of approximately 60 data fields identified in an attached Excel spreadsheet. Ex. 2 to Verified Compl. The request indicated that Ralph Weber, the CEO of Medibid, a potential Optum competitor, created and sent the data-field spreadsheet to Representative Daniel. *See id.*; Verified Compl. ¶ 12. In response to Representative Daniel's request, the State produced data relating to billed charges. Verified Compl. ¶ 13. The State, however, did not produce any data relating to paid charges. *Id.*

On or about November 25, 2019, Representative Daniel made a formal request pursuant to the Tennessee Public Records Act for all of the data listed in the data-field spreadsheet. *See* Ex. 2 to Verified Compl. For example, in addition to state employees' personal health data, the request also seeks various claims data including but not limited to: (1) the amount that health care providers are charging employees ("pricing method"), (2) whether the provider was in or out of network

("network status"), (3) the amount that the provider submitted to Optum ("line charged amount"), (4) the amount that that the provider is entitled to receive pursuant to contractual agreements with Optum ("line allowed"), and (5) the amount that Optum actually paid to providers ("line insurance paid"). Clark Dec. ¶ 5. With this information, a competitor could reverse-engineer Optum's network rates with little difficulty. Declaration of Kimberley Cox ("Cox Dec.;" attached hereto as **Exhibit B**) ¶¶ 4–5.

Optum keeps its network rates in the strictest confidence and does not disclose them except when required by law. *Id.* ¶ 6. If competitors or providers were able to obtain information about Optum's rates and pricing methodology, the results could be extremely and irreparably damaging. For instance, the competitor would be able to determine whether its pricing is above or below Optum's pricing and use that information to target Optum's current or prospective clients. *Id.* ¶ 7. Further, if a provider discovers Optum's rates, it could use those rates as leverage in future contract negotiations, either with Optum or with Optum's competitors. *Id.*

Optum's concerns about competitors accessing its proprietary data are not hypothetical. As noted above, it appears that the CEO of Medibid actually created the data-field spreadsheet that Representative Daniel has submitted to the State. Verified Compl. ¶ 12. Medibid has also been soliciting the Tennessee legislature to use Medibid for services that Optum currently provides. *Id.* ¶ 16. Based on this information, Optum believes that Representative Daniel made the Public Records Act request on Medibid's behalf and intends to provide Optum's confidential, proprietary, and sensitive data to Medibid, enabling Medibid to gain an unfair competitive advantage. *See id.*

After the State Insurance Committee notified Optum of Representative Daniel's Public Records Act request, Optum objected, informing the State that the request encompassed confidential, proprietary, and sensitive data protected from disclosure by a variety of state and

federal laws. *Id.* ¶ 18. On December 12, 2019, Optum submitted a petition to Laurie Lee asking that the State refrain from producing any claims data to Representative Daniel. *Id.* ¶ 19; *see also* Ex. 3 to Verified Compl. In its petition, Optum advised the State that producing the data would violate state and federal law. *See id.* Optum also emphasized that disclosure would jeopardize Optum's business interests as well as members' personal health information ("PHI"). *See id.* By letter dated December 13, 2019, Laurie Lee responded to Optum's petition and stated that the Committee intended to comply with Representative Daniel's request and provide the requested information on Monday, December 16, by no later than 1:00 p.m. *See* Ex. 4 to Verified Compl.

ARGUMENT

To obtain a temporary restraining order, the applicant must show that "immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party can be heard in opposition." Tenn. R. Civ. P. 65.03. Courts review four factors in assessing whether temporary injunctive relief should be granted: (1) the threat of irreparable harm to the movant; (2) the balance between the irreparable harm to the movant and the harm to the non-movant; (3) the probability of success on the merits; and (4) the public interest. *Moody v. Hutchison*, 247 S.W.3d 187, 199–200 (Tenn. Ct. App. 2007). Each of these factors weighs in favor of issuing Optum's requested temporary restraining order to prevent the State's imminent release of Optum's confidential and proprietary claims data.

A. Optum Will Suffer Irreparable Harm If Its Data Is Disclosed to Representative Daniel.

First, and most importantly, Optum will suffer "immediate and irreparable injury, loss, or damage" if the Court does not grant Optum's application for a temporary restraining order. *See* Tenn. R. Civ. P. 65.03. The State has informed Optum that, notwithstanding Optum's objections, it intends to disclose Optum's confidential, proprietary, and sensitive data on December 16, 2019.

Once this information is disclosed, it cannot be clawed back. *Cf. In re Professionals Direct Ins. Co.*, 578 F.3d 432, 438 (6th Cir. 2009) ("[A] court cannot restore confidentiality to documents after they are disclosed."). The data would lose much of its value if disclosed, the loss would be irreparable, and Optum could not be made whole by monetary damages.

Moreover, Representative Daniel's request suggests that he will immediately turn the requested data over to Medibid, a potential competitor of Optum. And because the data can easily be used to reverse-engineer Optum's network rates and pricing methodology, disclosure of the data is tantamount to disclosing these rates and pricing methodology. Cox Dec. ¶¶ 4–5. Information now travels at tremendous speeds, raising the very real concern that once Representative Daniel provides the data to Medibid, Optum's network rates will become widely available for competitors and providers alike to access. This would harm Optum significantly, both by enabling competitors to use the rate information to target Optum's present or potential clients and by allowing providers to use those rates as leverage in future contract negotiations. *Id.*

The Tennessee Uniform Trade Secret Act, one of several laws that prohibit the State from complying with Representative Daniel's request, recognizes the need for—and expressly authorizes—injunctive relief given the grave risk of irreparable harm associated with the disclosure confidential proprietary data. *See* Tenn. Code Ann. § 47-25-1703 ("Actual or threatened misappropriation may be enjoined."). Moreover, federal courts applying Fed. R. Civ. P. 65(c), "which is essentially identical to the Tennessee rule," *S. Cent. Tennessee R.R. Auth. v. Harakas*, 44 S.W.3d 912, 917 (Tenn. Ct. App. 2000), have held that threatened disclosure of trade secrets or confidential information presents a particularly high likelihood of irreparable injury because monetary damages are difficult—if not impossible—to calculate in such cases. *See Unif. Color Co. v. Langley*, No. 3:19-CV-00636, 2019 WL 4131101, at *2 (M.D. Tenn. Aug. 29, 2019)

("[Plaintiff] has established that it is likely to suffer irreparable harm if a preliminary injunction is not issued, given that the economic damages threatened by the use or dissemination of its trade secrets and confidential and proprietary information for the benefit of a direct competitor will be difficult, if not impossible, to calculate."); *Williams-Sonoma Direct, Inc. v. Arhaus, LLC*, 109 F. Supp. 3d 1009, 1020 (W.D. Tenn. 2015) (reasoning that disclosure of trade secrets can cause irreparable injury because "the nature of the plaintiff's loss" means that "damages in trade secrets cases are difficult to calculate" (internal quotations and alterations omitted)); *Henkel Corp. v. Cox*, 386 F. Supp. 2d 898, 904 (E.D. Mich. 2005) (noting that "competitive losses" are "inherently difficult to calculate and are sufficient to support an injunction").

If the State is permitted to disclose the requested data on December 16, Optum faces losses that in all likelihood cannot could not be remedied by money damages. The parties will be unable to withdraw the data once it is publicly disclosed. To prevent the irreparable harm that will result from this disclosure, Optum asks the Court to enter the requested temporary restraining order.

B. The State Defendants Will Suffer No Harm If the Court Grants Temporary Injunctive Relief.

While Optum will suffer significant irreparable harm if its confidential data is disclosed, issuance of the requested temporary restraining order pending a hearing on Optum's request for injunctive relief will not harm any of the State Defendants in the slightest—as reflected by the fact that the State Defendants *do not oppose* Optum's application for a restraining order. The State Defendants do not have any personal interest or stake in disclosing the information to Representative Daniel. Rather, the State is acting pursuant to its perceived legal obligations under the Tennessee Public Records Act. *See* Ex. 4 to Verified Compl. ("The Public Records Act does not allow Finance and Administration to delay compliance . . ."). In other words, the State intends to disclose Optum's data solely out of a misguided attempt to comply with the law—not because

its own interests will in any way be served by disclosure. In fact, the State's interests will be served by temporarily enjoining disclosure of Optum's claims data so the interested parties can fully brief, and this Court can resolve, the lawfulness of such disclosure. A temporary restraining order would further the State's interests by preventing it from prematurely disclosing confidential trade secrets and causing irreversible damage to Optum's business interests.

C. There Is a Substantial Probability of Success on the Merits of Optum's Claims.

Even if the Court were not already persuaded by to enter the temporary restraining order by the balance of hardships, Optum will also succeed on the merits of its claims. The temporary restraining order would accordingly only serve to protect and preserve Optum's legal rights. The Tennessee Public Records Act prohibits disclosure of public records if disclosure would violate "state law." Tenn. Code Ann. § 10-7-503(a)(2)(A). This "state law" exception to disclosure "incudes statutes, the Tennessee Constitution, the common law, rules of court, and administrative rules and regulations." *Tennessean v. Metro. Gov't of Nashville*, 485 S.W.3d 857, 865–66 (Tenn. 2016). Disclosure of Optum's claims data would violate state law and interfere with or violate Optum's legal rights and privileges in several ways.

1. Defendants' Threatened Misappropriation of Optum's Trade Secrets Violates The Tennessee Uniform Trade Secrets Act.

The Tennessee Uniform Trade Secrets Act ("TUTSA"), Tenn. Code Ann. § 47-25-1701 *et seq.*, broadly defines trade secrets to include information, including but not limited to financial data, that "[d]erives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use" and "[i]s the subject of efforts that are reasonable under the circumstances to maintain its secrecy." Tenn. Code Ann. § 47-25-1702(4). The requested claims data, which specifically includes "pricing method" data and data that can be used to reverse-

engineer Optum's network rates, falls squarely within this definition. *See* Cox Dec. ¶ 4. Optum's pricing methodology and network rates are kept highly confidential and are not disclosed except when disclosure is required by law. *Id.* ¶ 6. This information is customarily kept confidential within the industry and would be highly valuable to competitors. *See id.* ¶ 7; Clark Dec. ¶ 7. Optum disclosed the data to the State for the limited purpose of administering the scope of services provided pursuant to the EAP/BHO contract. Clark Dec. ¶ 6. Consistent with Optum's understanding that the data must be protected, it transmits it to the State via an automated file feed that minimizes the number of persons who come into contact with the data. *Id.* ¶ 8. Therefore, the data is not "generally known to, [or] readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use," and Optum has undertaken reasonable efforts to maintain its secrecy. Tenn. Code Ann. § 47-25-1702(4).

Moreover, Courts have recognized that proprietary pricing information should receive trade secret protection, both under TUTSA and in other contexts. *See Arhaus*, 109 F. Supp. 3d at 1012–13, 1019 (finding likelihood of success on the merits of a TUTSA action where alleged trade secrets included pricing information that could "provide a competing organization with a benchmark that can be leveraged in the negotiating process"); *ProductiveMD, LLC v. 4UMD, LLC*, 821 F. Supp. 2d 955, 961 (M.D. Tenn. 2011) (plaintiff stated viable TUTSA claim where alleged trade secrets included "proprietary information regarding pricing and billing records"); *cf. KM Enterprises, Inc. v. Glob. Traffic Techs., Inc.*, 725 F.3d 718, 734 (7th Cir. 2013) (granting a request to seal a document "to protect sensitive, confidential pricing and customer information"); *In re Dana Corp.*, 574 F.3d 129, 152 (2d Cir. 2009) ("Confidential proprietary data relating to pricing, costs, systems, and methods are protected by trade secret law."). Accordingly, Representative Daniel's request seeks a significant amount of information protected by TUTSA.

In the instant case, Optum is entitled to injunctive relief under TUTSA because Defendants have threatened to misappropriate its trade secrets. Under TUTSA, "misappropriation" can occur by "[d]isclosure or use of a trade secret of another without express or implied consent" by a person who, at the time of the disclosure or use, knew or should have known that the trade secret was "acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use" or "derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use." Tenn. Code Ann. § 47-25-1702(2). "Person[s]" subject to TUTSA include a "government" or "governmental subdivision or agency." *Id.* § 47-25-1702(3)

Here, Defendants have announced their intention to disclose or use Optum's trade secrets. *See* Ex. 4 to Verified Compl. Based on industry standards, the contract's reference to "proprietary pricing and discount information," and Optum's own emphasis on protecting the data's secrecy, the State knew or should have known that it had a duty to maintain the data's secrecy or limit its use at the time Optum disclosed the data. *See* Clark Dec. ¶¶ 7–8; Cox Dec. ¶ 6; Ex. 1 to Verified Compl. § A.21.n.

Likewise, Representative Daniel should be aware of the State's duty to maintain the data's secrecy or limit its use under the Public Records Act. Indeed, earlier this year Representative Daniel unsuccessfully attempted to persuade the General Assembly to amend the Act's state-law exception to remove protections for payments or fees made by the State to private entities. H.B. 370, 111th Leg. Sess. (Tenn. 2019). The proposed amendment, which failed in Subcommittee and is discussed further below, would have provided that such payments "must not be deemed to be a confidential trade secret or proprietary information, or otherwise deemed confidential business information, constituting an exception to § 10-7-503(a)(2)(A)" of the Public Records Act. *Id.* The language of Representative Daniel's proposed (and unsuccessful) amendment therefore recognizes

that as currently drafted, subsection (a)(2)(A)'s exception for disclosures violating "state law" protects the proprietary, confidential data that he is now seeking.

It is therefore likely that Optum will be able to show that TUTSA prohibits the State from disclosing Optum's trade secrets and confidential claims data to Representative Daniel.

2. The Threatened Disclosure Would Violate Other State Laws.

Disclosure of Optum's claims data would also violate other aspects of state and federal law. For example, the State owes Optum a common-law duty of confidence to preserve the confidentiality of the requested data, because the data was disclosed to the State under circumstances in which the State "knew or had reason to know that the disclosure was intended to be in confidence." *See* Restatement (Third) of Unfair Competition § 41. Optum was reasonable in inferring that the State consented to an obligation of confidentiality, especially since data pertaining to pricing methodology and network rates is customarily kept confidential within the industry. Clark Dec. ¶ 7.

Additionally, disclosure would run afoul of the common-law prohibition against intentional interference with business relations. Optum operates in a specialized field and frequently contracts to administer healthcare benefits for government entities. Verified Compl. ¶ 26(g). The State is aware of these current and prospective business relations and knows that damage to the relationships will occur if the requested data is made accessible to Optum's competitors. *Id.* The State's disclosure of Optum's confidential information over Optum's express objection would constitute interference by improper means, *i.e.*, misuse of Optum's confidential information, violation of the Tennessee Uniform Trade Secrets Act, and unfair competition. *Id.*

State constitutional concerns also prohibit the State from disclosing Optum's data. For example, the Tennessee Constitution forbids the State from taking property "without the consent

of its representatives, or without just compensation." Tenn. Const. Art. I, § 21. Optum has a property interest in the data that the State intends to disclose and has never consented to the data's disclosure. Disclosing the data over Optum's express objection would be an unconstitutional taking of Optum's property. The Tennessee Constitution further guarantees a right of privacy that is grounded in constitutional liberty protections. *See, e.g.*, Tenn. Const. Art. I, § 8. Here, Optum's right to privacy prevents the State from disclosing the requested information.

Since the requested data includes PHI, state and federal law regarding confidentiality of medical records also prohibit the threatened disclosure. HIPAA privacy regulations limit disclosure of PHI. *See* 45 C.F.R. Part 164. Further, Tennessee and federal law strictly limit disclosure of information or data related to mental health and substance abuse treatment. *See* Tenn. Code Ann. § 33-3-103; 42 C.F.R. § 2.12. Because Optum administers plans that provide behavioral health services, the scope of the requested data also includes information about patients who have received mental health or substance abuse treatment. Finally, the Public Sector Plans for which Optum administers programs provide insurance benefits to State employees, and the Tennessee Public Records Act contains express protections against public disclosure of State employees' information. *See* Tenn. Code. Ann. §§ 10-7-504(a)(1)(A), 10-7-504(f)(1)(D)(i).

While Optum need only prove that disclosure would violate *one* state law, it has identified numerus state laws that would be violated if the State discloses the requested data. Under the facts presented, Optum will be able to show that the requested data is protected from disclosure. *See* Tenn. Code Ann. § 10-7-503(a)(2)(A).

D. The Public Interest Favors Entering Optum's Requested Temporary Restraining Order.

Finally, the public interest is best served by granting Optum's application for a temporary restraining order. The State is on the cusp of disclosing Optum's trade secrets and other

confidential data, which will then almost certainly be used by a potential Optum competitor to gain an unfair advantage. Courts have recognized that enjoining trade secret misappropriation serves the public interest by "discouraging unfair trade practices." *Arhaus*, 109 F. Supp. 3d at 1022; *see also Int'l Sec. Mgmt. Group, Inc. v. Sawyer*, No. 3:06-CV-0456, 2006 WL 1638537, at *10 (M.D. Tenn. 2006) ("Companies . . . have a legitimate public interest in keeping certain information confidential and in maintaining their clientele, and Tennessee has recognized that businesses have the right to protect their confidential and trade secret information as well as their business good will.").

Beyond the general public policy in favor of discouraging unfair competition, fulfilling Representative Daniel's request implicates specific policy concerns for the State of Tennessee's ability to recruit businesses to work with the State. If businesses know that all of their confidential, proprietary, and sensitive data is just one Public Records Act request away from disclosure to the public, they will be significantly less likely to work with the State. Such concern was expressed by multiple State Representatives during the Public Service & Employees Subcommittee's review and rejection of Representative Daniel's proposed legislation, discussed above, which would have amended the Public Records Act to remove protections for payments or fees made by the State to private entities. H.B. 370, 111th Leg. Sess. (Tenn. 2019). In full, Representative Daniel's proposed amendment provided:

> Notwithstanding any law to the contrary, the monetary value of any government payment, fee, or other form of financial benefit paid or bestowed, or agreed to be paid or bestowed, by a governmental entity to a private entity must not be deemed to be a confidential trade secret or proprietary information, or otherwise deemed confidential business information, constituting an exception to § 10-7-503(a)(2)(A), unless the transaction or proposed transaction falls under a specific exception as prescribed by state or federal law.

Id. The bill failed in the Subcommittee, where members voiced concern that it would put Tennessee at a significant disadvantage in bringing industry to the State. *See House Public Service & Employees Subcommittee, Bill Review 09/19/19*, Tennessee General Assembly (March 19, 2019), http://tnga.granicus.com/MediaPlayer.php?view_id=487&clip_id=16846, at 00:49:54 (hereinafter, "Floor Debate"). For example, Representative David Hawk noted that "other states in the country are not doing this . . . and either putting information out there prior to, or even after the fact, when an industry comes to Tennessee, if other states are not doing the same things, it does create a disadvantage." *See* Floor Debate, at 01:04:19. The Chairman of the Subcommittee, Representative Bob Ramsey, commented that he was "getting communication from my Chambers of Commerce" that the amendment would "affect recruitment" of businesses from outside the State. *See* Floor Debate, at 01:03:38. As reflected in these legislators' concerns, the public interest is served by preventing disclosure of confidential and proprietary information when such disclosure would hamper the State's ability to attract new businesses and maintain its existing business relationships.

Lastly, the public interest also supports granting a temporary restraining order because several of the requested data fields would directly or indirectly identify personal health information, such as members' date of birth, gender, postal code, and payer number. *See* Ex. 2 to Verified Compl. "[M]edical records enjoy broad protection from public disclosure, and the courts of this state have long recognized the importance of keeping a patient's medical records confidential." *Doe by Doe v. Brentwood Acad. Inc.*, 578 S.W.3d 50, 54 (Tenn. Ct. App. 2018). HIPAA also embodies the public's strong interest in protecting health records. *See, e.g.*, *Wade v. Vabnick-Wener*, 922 F. Supp. 2d 679, 687 (W.D. Tenn. 2010) (noting that "HIPAA embodies Congress' recognition of the importance of protecting the privacy of health information").

Thus, the State's threatened disclosure of Optum's claims data implicates three important public policies: discouraging unfair competition, supporting the growth of business and industry in Tennessee, and preventing publication of private medical information. This fourth and final factor in the Rule 65 analysis also counsels in favor of entering a temporary restraining order.

CONCLUSION

For these reasons, Optum respectfully asks the Court to enter the unopposed temporary restraining order enjoining the State Defendants, their agents and attorneys, and all persons in active concert or participation with them, from complying with the public records request submitted by Representative Martin Daniel to Laurie Lee dated November 25, 2019.

Respectfully submitted,

BRADLEY ARANT BOULT CUMMINGS LLP

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Attorneys for Optum

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing, along with Optum's Verified Complaint and Unopposed Application for a Restraining Order, have been served on December 13, 2019 as follows:

Via private process server:

Herbert H. Slatery III
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Office of Tennessee Attorney General
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Nashville, TN 37202

Via email and private process server:

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With courtesy copy via email and hand delivery to:

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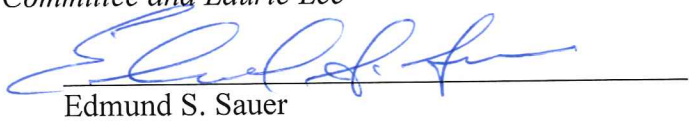
Attorney for the State Insurance Committee and Laurie Lee



Edmund S. Sauer

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

OPTUM, Plaintiff, v. STATE OF TENNESSEE, TENNESSEE STATE INSURANCE COMMITTEE, LAURIE LEE, individually and in her official capacity, and MARTIN DANIEL, Defendants.	Case No. _____

DECLARATION OF VANESSA CLARK

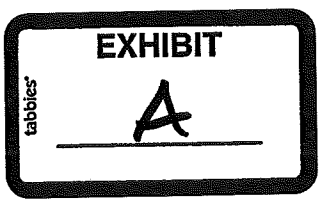
I, Vanessa Clark, am over the age of eighteen years and am competent to testify to the following herein under the penalty of perjury:

1. I am a Client Executive at Optum in charge of Optum's account with the State of Tennessee. Optum administers the Employee Assistance Program ("EAP") and Behavioral Health Organization ("BHO") services for the State of Tennessee's Public Sector Health Plans.

2. To facilitate administration of the services that Optum provides to the State, and as required by the contract, Optum provides the State with a variety of confidential and proprietary claims data. Optum also provides the State with claims data containing personal health information.

3. As Client Executive, I am familiar with the data that Optum provides to the State.

4. The information that Optum provides to the State includes proprietary and confidential business information. This information includes data relating to the claims for payment that providers submit to Optum and the amounts that Optum pays those providers.



5. Representative Daniel's public records request seeks disclosure of a variety of this confidential and proprietary information. For example, in addition to state employees' personal health data, the request also seeks various claims data including but not limited to: (1) the amount that health care providers are charging employees ("pricing method"), (2) whether the provider was in or out of network ("network status"), (3) the amount that the provider submitted to Optum ("line charged amount"), (4) the amount that that the provider is entitled to receive pursuant to contractual agreements with Optum ("line allowed"), and (5) the amount that Optum actually paid to providers ("line insurance paid").

6. The claims data is provided to the State of Tennessee for the limited purpose of administering the scope of services provided, including behavioral health, the Employee Assistance Program, and work/life services. It is not disclosed for any other purpose.

7. It is customary within the industry to keep claims data of the type provided to the State of Tennessee confidential, such that the State knew or should have known that Optum's disclosure was intended to be kept in confidence.

8. Due to the highly confidential, sensitive, and proprietary nature of this data, Optum does not disclose it to other parties and goes to great lengths to prevent its disclosure. The data is entered into an automated file system which collects and compiles this field data to send to the State of Tennessee. This automated system ensures that only a very small group of employees at Optum can access the data.

Pursuant to Tenn. R. Civ. P. 72, I declare under penalty of perjury that the foregoing is true and correct.

Executed on this the 13 day of December, 2019.

Vanessa Clark

Vanessa Clark

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

OPTUM, Plaintiff, v. TENNESSEE STATE INSURANCE COMMITTEE, LAURIE LEE, in her official capacity as Executive Director of Benefits Administration for the Tennessee Department of Finance and Administration, and MARTIN DANIEL, Defendants.	Case No. _____

DECLARATION OF KIMBERLEY COX

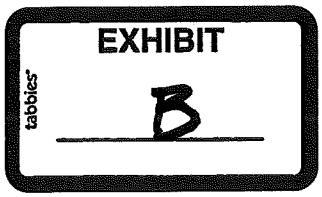
The undersigned, Kimberley Cox, being first duly sworn, deposes and states as follows:

1. I am over eighteen years of age. The statements in this declaration are true and correct and made on the basis of my personal knowledge.

2. I am a Vice President of Provider Network at Optum. As Vice President of Provider Network, I am familiar with Optum's network rates and the measures it takes to safeguard them.

3. I have reviewed the data fields in the spreadsheet submitted by Representative Daniel as part of his Tennessee Public Records Act request.

4. Based on my knowledge and experience, Representative Daniel's request seeks confidential and proprietary information that could easily be used to reverse-engineer Optum's pricing methodology and network rates. These data fields include the amount that health care providers are charging employees ("pricing method"), whether the provider was in or out of network ("network status"), the amount that the provider submitted to Optum for reimbursement



("line charged amount"), the amount that the provider is entitled to receive pursuant to contractual agreements with Optum ("line allowed"), and the amount that Optum actually paid to providers ("line insurance paid").

5. Release of this claims data would allow anyone, including Optum's competitors, to easily discover Optum's pricing methodology and network rates.

6. Optum's pricing methodology and network rates are proprietary, valuable, and highly confidential. Optum does not disclose them except when required by law.

7. Disclosure would cause Optum to suffer irreparable harm. Competitors could use Optum's pricing methodology and network rates to gain an unfair advantage over Optum. Competitors would be able to determine whether their pricing is above or below Optum's pricing and use that information to target Optum's current or prospective clients. Moreover, if a provider discovers Optum's rates, it could use those rates as leverage in future contract negotiations, either with Optum or with Optum's competitors.

Pursuant to Tenn. R. Civ. P. 72, I declare under penalty of perjury that the foregoing is true and correct.

Kimberley Cox

Kimberley Cox