

**In the Supreme Court of Nevada**

UNITED HEALTHCARE INSURANCE COMPANY; UNITED  
HEALTH CARE SERVICES, INC.; UMR, INC.; SIERRA  
HEALTH AND LIFE INSURANCE COMPANY, INC.; and  
HEALTH PLAN OF NEVADA, INC.,

Appellants,

*vs.*

FREMONT EMERGENCY SERVICES (MANDAVIA), LTD.;  
TEAM PHYSICIANS OF NEVADA-MANDAVIA, P.C.; and  
CRUM STEFANKO AND JONES, LTD.,

Respondents.

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**MOTION TO EXTEND STAY OF DISTRICT COURT’S ORDER  
UNSEALING CERTAIN TRIAL EXHIBITS AND TRANSCRIPTS**

After the trial between appellants (the defendants, “United”) and respondents (the plaintiffs, “TeamHealth”), the district court resolved to unseal some of United’s most commercially sensitive documents and excerpts from the transcripts discussing them. Those documents include confidential plans for future business strategies and products, financial projections that could move markets, and other information involving third-party business relationships and highly sensitive strategic decision-making. The vast majority of the content of these documents is irrelevant to the underlying lawsuit. United was required to turn those documents over during discovery, but did so under the terms of a

protective order. United's interest in keeping this sensitive information under seal outweighs any public interest in that information's disclosure by TeamHealth, especially considering that almost none of the information was presented to the jury at trial.

The district court stayed its unsealing orders for 30 days, through November 14, 2022. The court did not find that a longer stay would be inappropriate, but instead ruled only appellants would need to seek further stay relief from this Court. (*See* 1 App. 165; 1 App. 152.)

United asks this Court to extend the district court's stay pending appeal. Absent an extension on or before November 14, 2022, United's highly-sensitive information will be released to the public and the object of United's appeal—protecting that confidential information from disclosure to United's competitors—will be defeated.

### **LEGAL ARGUMENT**

United requests a stay of the unsealing orders under NRAP 8(a). The district court entered a 30-day stay of its unsealing orders, but declined to enter a longer stay pending appeal, instead deferring the issue to this Court. *See* NRAP 8(a)(2)(A)(i)-(ii). Because each of the NRAP 8(c) factors weighs in favor of a stay, this Court should extend

the stay pending a final resolution of this appeal.

**A. A Stay is Necessary to Achieve the Purpose of the Appeal**

The first factor in considering a stay is whether denying the stay would defeat the object of the appeal. *See* NRAP 8(c). The object of United’s appeal is to protect certain highly sensitive commercial sensitive information from disclosure to the public, including United’s competitors. United’s appeal from the district court’s decision to allow disclosure of that information would become instantly moot if that very information is disclosed before United’s appeal is resolved. Because granting a stay is the only way to preserve appellate review of United’s sealing request, this factor weighs heavily in favor of extending the stay. *See Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 251-52, 89 P.3d 36, 38 (2004) (recognizing that “absent a strong showing that the appeal lacks merit or that irreparable harm will result if a stay is granted, a stay should issue to avoid defeating the object of the appeal”).

**B. United Will Suffer Irreparable Injury if the Trial Exhibits and Transcripts are Unsealed**

The second factor in considering a stay is whether denial of the stay would cause the appellant irreparable or serious injury. NRAP 8(c).

That factor cannot seriously be disputed here. United disclosed its proprietary information under a protective order to do just that: protect it. If TeamHealth is permitted to publish that information to the public, including to United's competitors, it will put United at a disadvantage in a competitive marketplace. And that harm will be irreparable: once United's most commercially sensitive information is publicly disclosed and available to United's competitors, there will be no way to claw it back and undo the damage.

Disclosure of United's confidential business information not only will harm United, but also may harm its business partners and other third parties. Such real-world harms were already demonstrated during the trial when TeamHealth published to its website 18 documents that had been designated attorneys' eyes only. One of the documents revealed that some at United may have previously considered terminating Multiplan, Inc., a third-party United vendor. This disclosure caused Multiplan bonds to tumble by 6.3 points. Barclays, relying on the leaked documents, reported that "[b]ased on the [United] strategy document, the plan from [United] may be to exit the [Multiplan] contract" and "the potential loss of [United] as a customer

would be a major negative for [Multiplan.]” (3 App. 380.) The leaked document actually resulted in Barclays lowering its estimated value of Multiplan’s stock price. (3 App. 380; *see also* 3 App. 392 (showing a steep decline in Multiplan’s stock price around the date TeamHealth disclosed United’s protected AEO documents).)

The reaction to the information about Multiplan shows that United’s concerns about misuse of its information are not just theoretical. The information contained in the trial exhibits and transcripts that the district court has threatened to unseal will cause immediate and irreparable damage to United and others. This factor therefore also weighs heavily in favor of granting a stay pending this appeal.

**C. TeamHealth’s Judgment Is Secured through a Supersedeas Bond; It Will Not Suffer Any Injury from a Stay**

The third factor is whether a stay will cause the respondent to suffer irreparable or serious injury. NRAP 8(c). This factor, too, cannot be seriously disputed. TeamHealth will not suffer any injury if the documents remain sealed pending appeal. Unlike United, whose appeal with respect to the sealing issues will be pointless if the exhibits and transcripts are released, and whose business will be irreparably harmed

by release of some of its most commercially sensitive information, a stay does not prejudice TeamHealth. TeamHealth’s case against United has already proceeded to a judgment, and United has bonded that judgment under NRCP 62(d) and NRS 20.037, entitling United to a stay as of right against “execution of the judgment during the pendency of any or all such appeals.” (*See* 1 App. 108–15.) Avoiding public disclosure of United’s information during appeal will have no effect on TeamHealth’s ability to litigate its position on appeal.

In fact, the sole pertinent countervailing interest is the *public’s* right to access court records. But even that relates only to *whether*—not *when*—the documents should ultimately be made public. Neither the district court nor TeamHealth has articulated any urgency to justify depriving United of the right to appellate review. Indeed, the district court believed that some of United’s sensitive information had become stale. While United disputes this conclusion, it undermines any purported need for immediate publication.

TeamHealth itself has no cognizable interest in or need for public disclosure of United’s business information. And to the extent it is eventually determined that the public has a right to disclosure of

United's business information, that right will be unaffected if the records remain sealed while the appeal is pending. Accordingly, this factor also weighs in favor of a stay.

**D. United is Likely to Prevail on Appeal**

The final factor is whether the appellant is likely to prevail on the merits in the appeal. NRAP 8(c). A probability of success on the merits is not always necessary under this factor; a party may obtain a stay pending appeal so long as it “present[s] a substantial case on the merits when a serious legal question is involved and show[s] that the balance of equities weighs heavily in favor of granting the stay.” *Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 659, 6 P.3d 982, 987 (2000).

United has strong arguments that the district court erred by failing to seal these documents as United requested. First, the district court failed to properly consider whether the records should be sealed in furtherance of the existing protective order. *See* SRCR 3(4)(b). United's documents were produced with the expectation that they would remain confidential under the protective order; the district court should have sealed those documents to enforce and further the protective order.

Second, the district court applied incorrect legal rules to determine whether information in trial exhibits and transcripts were trade secrets. In particular, the district court wrongly believed that information was necessarily stale based simply on the age of the document. The court further erred in holding that any material comprising a compilation of otherwise publicly available information cannot qualify as a protectible trade secret. *See Nev. Indep. v. Whitley*, 138 Nev., Adv. Op. 15, 506 P.3d 1037, 1045 (2022) (trade secret can be based on public information).

Finally, sealing is appropriate because TeamHealth has no legitimate need to disclose United's proprietary information. *See* SRCR 3(4)(h) ("The sealing or redaction is justified or required by another identified compelling circumstance."). Most of United's confidential information has been ordered unsealed merely because it was included in a document which contained some information that generally related to the issues discussed at trial; not because it is necessary to understand the jury's verdict. Indeed, the overwhelming majority of the information in the documents was not even shown to the jury or discussed at trial because it was not at all relevant. Rather than



furthering the public's interest in access to court records, TeamHealth instead seemingly seeks to improperly disclose this information to damage United and create leverage against it in other cases.

In sum, there are numerous errors in the district court's reasoning that are likely to lead to reversal in this case after full briefing. This factor therefore weighs in favor of granting a stay pending appeal. But even if TeamHealth disputes the merits of the appeal, the other three factors still weigh overwhelmingly in favor of a stay in this case. *See Hansen*, 116 Nev. at 659, 6 P.3d at 987.

### CONCLUSION

Each of the NRAP 8(c) factors weighs heavily in favor of a stay pending appeal in this matter. For the above reasons, United requests that this Court extend the district court's stay of the orders unsealing certain trial exhibits and transcripts.

Dated this 28th day of October, 2022.

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**CERTIFICATE OF SERVICE**

I certify that on October 28, 2022, I submitted the foregoing  
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