

**THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA <i>ex rel.</i> ROBERT A. CUTLER, Plaintiff, v. CIGNA CORP. <i>et al.</i> , Defendants.	17 Civ. 7515 (KMK) PROPOSED UNSEALING ORDER
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Kmk

The United States (the “Government”) has filed a Notice (the “Notice”) advising this Court of its decision that it is declining intervention as to certain of the relator’s claims pursuant to the False Claims Act (the “FCA”), 31 U.S.C. § 3730(b)(4)(B), and not intervening at this time as to the remaining claims asserted in the amended complaint in the above-captioned *qui tam* action.

IT IS HEREBY ORDERED THAT:

1. The amended *qui tam* complaint shall be unsealed on April 10, 2020. In the event that the relator has not moved to dismiss the action, service upon the defendants by the relator is authorized as of that date.
2. If the relator voluntarily dismisses the complaint pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure on or before April 10, 2020, the relator may seek to modify this Order with the consent of the Government or by motion on notice to the Government.
3. The Notice shall be served by the relator upon defendants only after the service of the amended *qui tam* complaint.
4. Except for the relator’s amended *qui tam* complaint, this Order, and the Government’s Notice, all other contents of the Court’s file in this action as of the date of this Order shall remain under seal and not be made public or served upon the defendant.

5. Upon the unsealing of the relator's amended *qui tam* complaint, the seal shall be lifted as to all matters occurring in this action subsequent to the date of the unsealing.

6. The relator and defendants shall serve all pleadings and motions filed in this action, including all supporting memoranda, upon the Government; and the Government may order any transcripts of depositions.

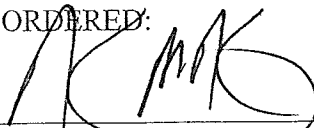
7. The Government may seek at any time to intervene with respect to the relator's *qui tam* claims for good cause pursuant to 31 U.S.C. § 3730(c)(3) or to seek dismissal of this action pursuant to 31 U.S.C. § 3730(e)(4).

8. All further orders of this Court in this action shall be sent to the Government by the relator.

9. Should the relator or defendants propose that this *qui tam* action be dismissed, settled, or otherwise discontinued, or that any of the defendants be dismissed from the case, the party (or parties) seeking such relief must solicit the written consent from the Government before applying for Court approval.

Dated: White Plains, New York
February 26, 2020

SO ORDERED:



HON. KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE

GEOFFREY S. BERMAN
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**THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

<p>UNITED STATES OF AMERICA <i>ex rel.</i> ROBERT A. CUTLER, Plaintiff, v. CIGNA CORP. <i>et al.</i>, Defendants.</p>	<p>17 Civ. 7515 (KMK) UNDER SEAL</p>
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**NOTICE OF THE UNITED STATES THAT IT IS DECLINING IN PART AND
NOT INTERVENING AS TO THE REMAINING CLAIMS AT THIS TIME**

By Order dated December 27, 2019, the Court extended the time for the United States (the “Government”) to notify the Court of its decision whether to intervene in the above-captioned action, or decline to do so, to February 25, 2020, and stated that “there will be no more extensions.” Based on this Order and the Government’s investigation conducted to date, the Government hereby notifies the Court that it has decided to decline as to certain of the claims and allegations in the *qui tam* relator’s amended complaint and not to intervene at this time as to the relator’s remaining allegations and claims.

Specifically, the Government has elected to decline as to the relator’s claims insofar as he asserts that when defendants submitted diagnosis codes based on so-called 360 “nurse

home visits” to CMS for risk-adjustment payment purposes under Medicare Part C, they committed *per se* violations of the False Claims Act (“FCA”) because the nurse home visits did not involve the provision of medical treatment.

Further, the Government has decided not to intervene at this time as to any of the other allegations and claims asserted by the relator in his amended complaint.

In addition, pursuant to 31 U.S.C. § 3730(c)(3), the Government requests that all pleadings and briefs filed in this action be served upon the Government. The Government further requests that the Court direct the relator’s counsel to serve on the Government any orders issued by the Court. The Government reserves its right to order any deposition transcripts, to intervene in this action, for good cause, at a later date, and to seek the dismissal of the relator’s action.

The Government also requests that it be served with any notices of appeal.

Dated: New York, NY
February 25, 2020

GEOFFREY S. BERMAN
United States Attorney

By: /s/ Li Yu
LI YU
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U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street, Third Floor
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February 25, 2020

CASE UNDER SEAL

BY HAND

Hon. Kenneth M. Karas
Charles L. Briant U.S. Courthouse
300 Quarropas Street
White Plains, NY 10601

Re: *U.S. ex rel. Cutler v. Cigna Corp. et al.*, 17 Civ. 7515 (KMK) (Under Seal)

Dear Judge Karas:

This Office represents the United States (the "Government") in the above-referenced *qui tam* action filed under seal pursuant to the False Claims Act (the "FCA"), 31 U.S.C. § 3729 *et seq.*

In accordance with the Court's December 27, 2019 Order, we respectfully submit a Notice stating that the Government is (a) declining to intervene as to certain of relator's claims and allegations and (b) not intervening at this time as to the remainder of relator's claims and allegations. Further, in light of the Government's decision, we also respectfully submit a proposed unsealing order for the Court's review.

We respectfully request that the Court (i) approve the unsealing order, and (ii) provide us with a copy of the order (and we are enclosing a self-addressed envelope for this purpose). We will then provide a copy of the order to relator's counsel.

We thank the Court for its consideration of this letter and the enclosed materials.

Respectfully,

GEOFFREY S. BERMAN
United States Attorney

By: _____

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Encls. (2)

cc: (by e-mail)

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