



SIDLEY AUSTIN LLP
787 SEVENTH AVENUE
NEW YORK, NY 10019
+1 212 839 5300
+1 212 839 5599 FAX

AMERICA • ASIA PACIFIC • EUROPE

+1 212 839 8555
EJOYCE@SIDLEY.COM

January 13, 2021

The Honorable Kenneth M. Karas
The Hon. Charles L. Brieant Federal Building
and United States Courthouse
300 Quarropas Street
White Plains, NY 10601-4150

Re: *United States ex rel. Cutler v. Cigna Corp. et al.*, No. 7:17-cv-7515 (KMK)

Dear Judge Karas:

We write on behalf of the Defendants in the above-captioned case to request a pre-motion conference regarding a motion to unseal the original Complaint as to Defendants, or, alternatively, that the court simply so-order the unsealing of the original Complaint. Relator has indicated that he would not oppose a motion to unseal.

On February 25, 2020, the Court entered an order (“the Unsealing Order”) directing that the Amended Complaint, the Government’s Notice, and the Unsealing Order were to be unsealed on April 10, 2020. *See* Dkt. 11. The Unsealing Order also stated that all other prior filings “shall remain under seal and not be made public or served upon the defendant.” Implementation of the Unsealing Order proved complicated. Despite the April 10 deadline, the entire case remained under seal until approximately Wednesday, August 5, 2020. When the case did become public, the original Complaint was inadvertently unsealed, instead of the Amended Complaint. Although the issue was addressed promptly, the original Complaint was obtained by at least one news outlet and remains publicly available on that outlet’s website.¹ As a result, the original Complaint is public as a practical matter, but remains legally under seal.

Defendants respectfully request that the original Complaint be unsealed as to them, so that they may use the original Complaint as appropriate. The False Claims Act (“FCA”) plainly authorizes this modest relief. *See, e.g., U.S. ex rel. Love v. Teach for America, Inc.*, No. 17-2062, 2018 WL 1156103 (S.D.N.Y. Feb. 21, 2018) (in a case where the relator declined to litigate, unsealing the complaint is required absent a showing of “‘extraordinary circumstances or compelling need’” to maintain secrecy).

Finally, we note the possibility that the original Complaint and its attachment(s) may contain protected health information (“PHI”). To the extent that the court directs the original Complaint to be publicly docketed, we believe the relator should be directed to make appropriate redactions to prevent disclosure of PHI.

¹ The link is here: <https://www.law360.com/articles/1298781/attachments/0>.

Respectfully submitted,

/s/ Eamon P. Joyce

Eamon P. Joyce
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, New York 10019
Telephone: (212) 839-5555
ejoyce@sidley.com

Robert D. Keeling *pro hac vice*
Sean C. Griffin *pro hac vice*
Amy L. DeLine *pro hac vice*
SIDLEY AUSTIN LLP
1501 K Street NW
Washington, DC 20005
(202) 736-8000