IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA *ex rel.* ROBERT A. CUTLER, Plaintiff, v. CIGNA CORP. *et al.*, Defendants.	No. 7:17 Civ. 07515 (KMK) Hon. Kenneth M. Karas

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO TRANSFER THE CASE TO THE MIDDLE DISTRICT OF TENNESSEE

Eamon P. Joyce
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, New York 10019
Telephone: (212) 839-5300

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
Telephone: (202) 736-8195

Attorneys for Defendants

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Relator fails to rebut Cigna's showing that the Court should transfer this case to the Middle District of Tennessee. His insistence that each Cigna entity—or, indeed, any of them—must show minimum contacts with Tennessee contradicts settled law and his own pleadings. The Second and Sixth Circuits agree that, where a federal statute authorizes nationwide service of process—as Relator concedes the FCA does—personal jurisdiction exists nationwide. Relator's contrary claims ignore controlling cases and misstate the facts and holdings of irrelevant authorities. Unfortunately, Relator's misstatements regarding applicable precedent fit into a pattern. *See Tex. Health Mgmt. LLC v. HealthSpring Life & Health Ins. Co., Inc.*, 380 F. Supp. 3d 580, 588, 589 n.8 (E.D. Tex. 2019) (finding that Relator had "deliberately misquote[d]" Judge Marrero of this Court and finding that it could not "rely on [Relator's] citations as fair and accurate representations of the cited material.").

Relator's factual arguments do nothing to rebut Defendants' showings that Tennessee is the center of gravity for this litigation, let alone to show that New York has any connection with it. His arguments instead confirm that this case is yet another attempt to relitigate a contract dispute between his company and Cigna. But an arbitration panel and the courts have repeatedly rejected Relator's irrelevant claims and his company's related violations of court orders and increasingly outrageous allegations. Relator tries the same tactics here, accusing Cigna of bribing an arbitrator in New York—a baseless fabrication. The arbitration is, in any event, irrelevant to Relator's claims here. Nor does or can Relator identify relevant facts or witnesses in New York. His efforts pointing to a handful of irrelevant "witnesses" only underscore the lack of any connection between New York and his FCA claims. At bottom, settled law provides that the Tennessee district court can hear this case, and the actual facts show that Tennessee is the center of gravity of this litigation. Transfer is proper.

I. Relator misstates the standard for personal jurisdiction.

Relator's opposition is largely based on a mischaracterization of the standard for personal jurisdiction under the FCA. When a federal statute provides for nationwide service of process, as the FCA does, the defendants must merely have minimum contacts with *the United States*—not with any single state. Dkt. 72 at 9–13. Relator himself conceded this very point in his Amended Complaint, alleging that this Court has jurisdiction because 31 U.S.C. § 3732(a) "authorizes nationwide service of process and because Defendants have at least minimum contacts with the United States." Dkt. 12 ("Comp.") ¶ 20. Despite that admission, he now claims that the Second Circuit and the Middle District of Tennessee "ha[ve] not adopted this view." Dkt. 77 at 11–13. But that is false.

The Second Circuit long ago held that a federal statute with a nationwide service-of-process provision triggers a *national* minimum-contacts analysis. *See Mariash v. Morrill*, 496 F.2d 1138, 1143 (2d. Cir. 1974) (under the Exchange Act, if "the defendants reside within the territorial boundaries of the United States, the 'minimal contacts' required to justify the federal government's exercise of power over them, are present"); *see also Tex. Trading & Milling Corp. v. Fed. Republic of Nigeria*, 647 F.2d 300, 314 (2d Cir. 1981) ("Since service was made under [the FSIA], the relevant area in delineating contacts is the entire United States, not merely New York."), *rev'd in part on other grounds*, *Frontera Res. Azerbaijan Corp. v. State Oil Co.*, 582 F.3d 393, 398 (2d Cir. 2009). That is why, over two decades ago, another member of this Court applied that principle to the FCA: "Where, as here, there is a federal statute that permits worldwide service of process, the relevant inquiry is whether the defendants have minimum contacts with the United States as a whole." *U.S. ex rel. Thistlethwaite v. Dowty Woodville Polymer, Ltd.*, 976 F. Supp. 207, 210 (S.D.N.Y. 1997).

Relator ignores these cases. He points instead to dicta in *Gucci America, Inc. v. Weixing Li*, 768 F.3d 122, 145 n.21 (2d. Cir. 2014). *See* Dkt. 77 at 11. But that footnote in turn relies on dicta in another Second Circuit case, which makes clear that the court of appeals was discussing a wholly different question: whether the national minimum contacts analysis applies when a federal statute creates a substantive right but *does not* provide for nationwide service of process, so "service was effected pursuant to the law of the [forum] state." *Chew v. Dietrich*, 143 F.3d 24, 27 n.3 (2d Cir. 1998). Because the FCA *does* authorize nationwide service, the question discussed in *Gucci* and *Chew* is irrelevant.[1]

The Sixth Circuit has likewise held that "when a federal court exercises jurisdiction pursuant to a national service of process provision," what matters is "whether the individual over which the court is exercising jurisdiction has sufficient minimum contacts with the United States." *Med. Mut. of Ohio v. deSoto*, 245 F.3d 561, 567–68 (6th Cir. 2001) (interpreting ERISA). Consistent with this precedent, the Middle District of Tennessee has said the same: "When service of process can be made nationally . . . the question becomes whether the party has sufficient contacts with the United States and not any particular state." *A+ Network, Inc. v. Shapiro*, 960 F. Supp. 123, 125 (M.D. Tenn. 1997) (interpreting the Exchange Act). Relator ignores these cases, too.

Instead, relying on an unpublished district court opinion, he argues that the Middle District of Tennessee has refused to apply nationwide minimum contacts to the FCA to establish personal jurisdiction. Dkt. 77 at 13 (citing *U.S. ex rel. Polukoff v. St. Mark's Hosp.*, No. 3:12-cv-01277, 2016 WL 1449219 (M.D. Tenn. Apr. 13, 2016)). But, again, Relator has mischaracterized the

[1] Relator relatedly mischaracterizes the issue in *United States ex rel. Thistlethwaite v. Dowty Woodville Polymer, Ltd.*, 110 F.3d 861, 865 (2d Cir. 1997). *See* Dkt. 77 at 12. *Dowty* discussed only *subject-matter* jurisdiction, which is irrelevant here, not personal jurisdiction, as he incorrectly states. *See* 110 F.3d at 865.

precedent he cites. *Polukoff* discussed only whether venue is proper, and did not address the personal jurisdiction standards of § 3732(a).[2] Nor does *United States ex rel. Taxpayers Against Fraud v. General Electric Co.* help Relator; the footnote he cites merely noted that venue was proper in Ohio because the defendant was headquartered there. 41 F.3d 1032, 1050 n.6 (6th Cir. 1994). *See* Dkt. 77 at 13. The court did not address personal jurisdiction.

In short, it is settled in the Second and Sixth Circuits (and elsewhere too) that personal jurisdiction exists in the Middle District of Tennessee so long as there are minimum contacts with the United States as a whole. Even if this were an open question here, Relator fails to explain how *this Court* could exercise personal jurisdiction here. As Cigna explained, only "truly 'exceptional'" circumstances could establish general jurisdiction. Dkt. 72 at 14 (citing *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 627 (2d. Cir. 2016)). Relator does not come close to meeting that standard.

II. Relator fails to establish that Nashville is not the center of gravity for this litigation or that New York is even relevant.

Relator's allegations focus on the design and implementation of Cigna's 360 Exam—as he puts it, the "key decisions" about "the 360 Program." Dkt. 77 at 16. Cigna thus showed that those key decisions were made in in the Middle District of Tennessee, by witnesses located there. *See* McKeon Declaration (Dkt. 73). Relator fails to respond to any of this. Instead, he offers a blizzard of irrelevant arguments that identify no material connection to New York.

[2] The venue issue presented in *Polukoff* is not present here, as venue would clearly be proper in the Middle District of Tennessee. Venue is proper wherever "*any one* defendant can be found, resides, transacts business" or where "any act proscribed by [the FCA] occurred." 31 U.S.C. § 3732(a) (emphasis added). It is undisputed that some of the Cigna defendants (including HealthSpring, Inc., the entity responsible for the development and administration of the 360 Exam) can be found within the Middle District of Tennessee. *See* Comp. ¶¶ 11, 13. By contrast, no defendant can be found in this district.

A. Relator fails to address Cigna's evidence showing that Tennessee is the locus of this case.

Tennessee is where the 360 Program was designed and implemented, and is thus the "center of gravity" of this case. *See Indian Harbor Ins. Co. v. Factory Mut. Ins. Co*., 419 F. Supp. 2d 395, 402 (S.D.N.Y. 2005). As Relator writes, the "most significant" aspect of this case concerns the "key decisions that were made with respect to the 360 Program," including "the decision to implement the program, including its goals, objectives, and performance expectations, as well as specific approvals granted as to code submissions, program design, management structure and the protocols and procedures for performing the 360 visits." Dkt. 77 at 16. Cigna thus provided the sworn declaration of Casey McKeon, who explained that all those key decisions were made in Nashville. Dkt. 73 ¶ 7. McKeon also identified the witnesses who know about the "most significant" aspects of this case: people based in Nashville who (1) designed the 360 Exam program; (2) managed the day-to-day oversight of the program, including vendor relationships; (3) designed the trainings provided to in-home practitioners; and (4) supervised coding activities related to the program. *See id.* ¶¶ 9–13.

McKeon's declaration tracks Relator's own allegations. Relator alleges that Tennessee-based HealthSpring, Inc, is "the parent company of all the entities that collectively comprise the business known as 'HealthSpring' or 'Cigna-HealthSpring,'" Comp. ¶ 11. "HealthSpring" is the business that Relator accuses of wrongdoing throughout his Complaint. What's more, two of the four witnesses that McKeon described as examples of Tennessee-based witnesses were already named in the Complaint. That includes Dr. Michael Fessenden, whom Relator repeatedly describes as leading trainings and educational seminars for vendors, *id*. ¶ 72, requesting improvement plans from THM that related to 360 Exam diagnoses, *id.* ¶ 82, and imposing "directives" about the diagnoses of certain conditions on 360 Exams, *id.* ¶ 88. Dr. Fessenden, like all the significant

witnesses in this case, is based in Tennessee. Indeed, in Nashville there are dozens of personnel directly involved with the 360 Program, its design, and its implementation.

Relator cannot rebut this evidence. Nor does he try. Instead, he devotes several pages to the bizarre claim that Cigna has "fabricated" a Tennessee-based business named "Cigna Medicare" "in order to manufacture a center of gravity in Tennessee." *See* Dkt. 77 at 1–3. If Relator means that "Cigna Medicare" is not the name of a separate corporate entity, that is true—and both irrelevant and disingenuous. "Cigna Medicare" is an internal term for Cigna's Medicare Advantage business, which is mainly run through HealthSpring, Inc.—the precise entity Relator himself identified as the parent company of the entities at the heart of his allegations. Fessenden Decl. ¶ 1; Wales Decl. ¶ 1; Jean Decl. ¶ 1. Likewise, Relator concedes that three of the named defendants transact business in Tennessee and that 1,200 Cigna employees work there. *See id.* at 3 n.6, 11.[3]

Relator also tries to discount the significance of the key witnesses Cigna identified. He argues that, even though Cigna described their roles, expertise, and relevance to the case, it did not carry its burden because it did not describe the specific contents of their testimony. *Id.* at 14–15. But that is neither true, nor the law. Rather, Cigna did convey that the witnesses would be able to address both the design and implementation of the program and, in any event, all that is required is that the moving party "make a general statement of what [the witnesses'] testimony will cover." *Beckerman v. Heiman*, No. 05 Civ. 5234(BSJ)(GWG), 2006 WL 1663034, at *5 (S.D.N.Y. June 16, 2006) (quoting *Factors Etc., Inc. v. Pro Arts, Inc.,* 579 F.2d 215, 218 (2d Cir. 1978)); *accord Larew v. Larew*, No. 11 Civ. 5771(BSJ)(GWG), 2012 WL 87616, at *4–5 (S.D.N.Y. Jan. 10,

[3] A simple Internet search confirms the continued centrality of Nashville to Cigna's Medicare Advantage operations. *See, e.g.*, https://www.cigna.com/medicare/enrollment-and-eligibility/medicare-advantage (last visited Jan. 26, 2021) (instructing potential customers interested in enrolling in a Medicare Advantage plan to write to "Member Administrative Services, Cigna," at an address in Nashville); https://www.cigna.com/contact-us/ (last visited Jan. 26, 2021) (instructing members with customer services questions about Medicare Advantage plans to write to "Cigna, Attn: Customer Service," at an address in Nashville).

2012). This standard may be satisfied by "a *very general* indication of [the witnesses'] role in the transaction at issue, and thus by implication, of their testimony." *Beckerman*, 2006 WL 1663034, at *5 (emphasis added). Cigna's description of the roles of these individuals more than satisfies this requirement. The declarations of Dr. Dirk Wales, Dr. Michael Fessenden, and Dr. Jason Jean describe each of their respective roles in the decision to implement the program, including its goals, objectives, and performance expectations, as well as their roles in the program design, management structure, and the protocols and procedures for performing the 360 visits, and how each of those decisions was centered in Nashville. If called to testify, each would discuss these topics. *See* Wales Decl. ¶¶ 4–6, Fessenden Decl. ¶¶ 5–9, Jean Decl. ¶¶ 6–8. Again, dozens of other witnesses as to the design and implementation of the program are located in Tennessee. In sum, Cigna showed that the facts and witnesses relevant to Relator's own claims are centered in Nashville. Relator fails to rebut that showing.

B. Relator fails to show any connection of this case to New York.

Having failed to rebut Cigna's evidence showing that Nashville is the hub of its Medicare Advantage business and the 360 Program, Relator suggests that perhaps the "center of events" is Philadelphia (based on the volume of 360 Exams conducted in the surrounding market area) or Bloomfield, Connecticut (because "Cigna identifies its corporate headquarters as being located in Bloomfield"). Dkt. 77 at 21. Of course, neither of these places is New York. More importantly, Relator's claims are not about where the 360 Exams were conducted, but the "key decisions that were made with respect to the 360 Program," including its design, implementation, and goals. *Id.* at 16. Desperate to offer a counter argument where he has no evidence, Relator engages in speculation that such "key decisions" "*would* only have been made by the highest decisionmakers within Cigna," who "*[p]resumably . . . would be* based in Cigna's principal offices in Bloomfield and/or Philadelphia." *Id.* (emphasis added). But there is no need to engage in such unsupported

speculation. Each of Cigna's declarants has confirmed that, in fact, those decisions were made in Nashville. Dkt. 73. ¶¶ 7–13; Wales Decl. ¶ 6, Fessenden Decl. ¶ 9, Harris Decl. ¶ 5. That evidence is unrebutted.

Relator's speculation is not evidence. A "conclusory statement, unsupported by any evidence" cannot contradict "defendants' sworn affidavit." *Sierra Club v. Flowers*, 276 F. Supp. 2d 62, 68 n.3 (D.D.C. 2003) (granting motion to transfer where the defendants presented affidavits as to the location of the key events, and plaintiffs challenged the affidavits, without evidence, as "strain[ing] all credulity"); *see also Shesol v. I.V. House, Inc.*, No. 06-cv-02551-JLK, 2008 WL 410587, at *2–3 (D. Colo. Feb. 13, 2008) (holding that argument by plaintiff challenging assertions in defendants' affidavits about the location of witnesses "[was] not evidence" and granting the motion to transfer).

Relator next argues that Cigna committed a series of imagined misdeeds, including bribery, in connection with arbitration hearings in New York. *See* Dkt. 77 at 5–10. These assertions are pure fabrication—not just false but baseless. Indeed, multiple courts have rejected Relator's claims about the arbitration. *See Tex. Health Mgmt., LLC v. Healthspring Life & Health Ins. Co., Inc.*, No. 05-18-01036-CV, 2020 WL 3071729, at *4 (Tex. Ct. App. June 10, 2020) (rejecting THM's argument that "the trial court erred by confirming the arbitration award because the Tribunal committed numerous acts of misconduct," including arbitrator Albert M. Appel's alleged partiality to HealthSpring); *Tex. Health Mgmt. LLC v. HealthSpring Life & Health Ins. Co., Inc.*, 380 F. Supp. 3d at 585 (recounting procedural history of THM's challenges to the arbitration award).

But these claims are also irrelevant. According to Relator's own complaint, this case is about the alleged *per se* impropriety of submitting diagnosis codes from the "data gathering" 360 Exams. The legal merit of that theory has nothing to do with the arbitration's imagined flaws. That

is, how Cigna "obtained" the "electronic forms" underlying the codes at issue, Dkt. 77 at 5, does not affect whether those codes were validly assigned. So, even if Relator could prove his meritless allegations about the arbitration, that would not advance his FCA claims by a single inch. The question here is whether the codes were validly applied to the clinical visits as documented by the practitioners providing those exams. The arbitration allegations are thus irrelevant to the center of gravity of this FCA litigation. Rather, Relator's FCA allegations address the design and implementation of the 360 Program writ large—in Nashville.

Finally, Relator identifies four supposed "key witnesses" in New York. In truth, none have any real connection to this case. The first two, Dr. Julian Harris and Dr. Alan Muney, are former high-level Cigna officials who were not involved in the design or oversight of the 360 Exam program. Dr. Harris was the former President of CareAllies, which is a management service company supporting physician groups, and did not have any substantive involvement in the 360 Program, let alone the "key decisions" Relator describes. Harris Decl. ¶¶ 1–6; Fessenden Decl. ¶ 12; Wales Decl. ¶ 8. Nor was he involved (contrary to Relator's claims) in "using analytics" in connection with 360 Exams.[4] Harris Decl. ¶ 6. Rather, witnesses Cigna identified—and who were and are located in Tennessee—are familiar with the Predilytics software. Similarly, Dr. Muney, Cigna's former Chief Medical Officer, was not involved in the design or implementation of the 360 Program, contrary to Relator's unsupported claim.[5] Dkt. 77 at 18; *see* Muney Decl. ¶ 3. Dr.

[4] In purported support of the statement, "Dr. Harris and others within Gulfquest developed a method for using analytics . . . to ensure that conditions would be diagnosed during the in-home visit," Relator cites a presentation by Dr. Harris. *See* Dkt. 77 at 17. But that presentation references a "home-based services" model that has no connection to the 360 Exam; it is talking about home-based services that are entirely distinct from those offered in the 360 Program. *See id.* Ex. O. In support of the statement that "Dr. Harris will testify that Gulfquest worked with outside vendors using a software tool known as Predilytics to data-mine the health records of plan members," (*id.* at 17) Relator cites testimony by Dr. Fessenden mentioning the existence of the Predilytics tool used to identify the members who are most important to be seen. No mention of Dr. Harris, Gulfquest, or CareAllies is made there. *See* Dkt. 79 Ex. 5. at 1364:7-1371:1.

[5] Relator cites no sources for his assertions about Dr. Muney's connection to the 360 Exam Program other than a presentation by Dr. Muney that mentioned the existence of 360 Exams in the very limited in-office (LivingWell) context, which has nothing to do with the in-home exams at issue here. *See* Dkt. 77 at 18 n.22 (citing *id.* Ex. I at 6);

Muney supervised an entirely different sector of Cigna's medical activities and no one within the teams responsible for managing the 360 Exam program reported to Dr. Muney. Wales Decl. ¶ 9. Relator's assertions about Mark Blackburn, the former CEO of a 360 Exam vendor, fall equally flat. For his claims about Mr. Blackburn's testimony, Relator cites only to his Amended Complaint—which does not mention Mr. Blackburn or his company. And Mr. Blackburn was not involved in the implementation or design of the 360 Exam program. Wales Decl. ¶ 10; Fessenden Decl. ¶ 14. Importantly, no vendor ever performed a 360 Exam in New York. Wales Decl. ¶ 10; Fessenden Decl. ¶ 15. Finally, for the reasons described above, the imagined testimony of Mr. Appel and the other two arbitrators is irrelevant.[6]

Relator thus fails to show that this case has any real connection to New York. The real reason this case was filed in New York is Relator's convenience. Relator sued here not because this case relates to New York, but because he is a member of the New York bar. Because Relator is (in his own words) acting "as an attorney-at-law representing the United States' interest,"[7] Dkt. 52 at 3, his convenience—like that of any other lawyer—"is not an appropriate factor" in the transfer analysis. *See Fuji Photo Film Co., Ltd. v. Lexar Media, Inc.*, 415 F. Supp. 2d 370, 373 (S.D.N.Y. 2006).

CONCLUSION

For these reasons, the Court should transfer this case to the Middle District of Tennessee.

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see also https://www.cigna.com/medicare/resources/livingwell-centers (last visited Jan. 26, 201) (describing office-based clinical centers that offer preventive care services).

[6] Relator also names people in neither New York nor Tennessee as potential witnesses. But the "convenience of witnesses who reside in neither the current nor the transferee forum is irrelevant." *Herbert Ltd. P'ship v. Elec. Arts Inc.*, 325 F. Supp. 2d 282, 288 (S.D.N.Y. 2004). In any event, their roles were more limited and secondary to Tennessee-based personnel that Cigna has already identified. *See, e.g.*, Fessenden Decl. ¶ 16.

[7] Relator can proceed as a *qui tam* relator without other counsel only because he is "licensed as an attorney." *U.S. ex rel Mergent Servs. v. Flaherty*, 540 F.3d 89, 92 (2d Cir. 2008).

Date: January 28, 2021

Respectfully submitted,

/s/ Eamon P. Joyce
Eamon P. Joyce
SIDLEY AUSTIN LLP
787 Seventh Avenue
New York, New York 10019
Telephone: (212) 839-5300
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
Telephone: (202) 736-8195
rkeeling@sidley.com
sgriffin@sidley.com
adeline@sidley.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on January 28, 2021, I electronically filed the foregoing document with the Clerk of Court using this Court's CM/ECF system, which will send a Notice of Electronic Filing to all counsel of record.

/s/ Eamon P. Joyce

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA *ex rel*. ROBERT A. CUTLER, Plaintiff, v. CIGNA CORP. *et al*., Defendants.	No. 7:17 Civ. 07515 (KMK) Hon. Kenneth M. Karas

DECLARATION OF DR. MICHAEL FESSENDEN IN SUPPORT OF CIGNA'S MOTION TO TRANSFER UNDER 28 U.S.C. § 1404(a)

I, Dr. Michael Fessenden, declare as follows:

1. I currently work as the Chief Medical Officer of Cigna Corporation's Living Well Clinics. From November 2015 to June 2020, I served as Director of the Medicare Data Quality Operations ("MDQO"), a department within HealthSpring, Inc., a wholly-owned subsidiary of Cigna Corporation. From July 2013 to June 2020, I served as Senior Medical Director of the Chronic Care Quality Initiative ("CCQI"), a unit within MDQO. HealthSpring, Inc., along with its subsidiaries and affiliates, is known internally at Cigna as "Cigna Medicare."

1a. I live in the Nashville, Tennessee area, and have lived in the Nashville area since 2013.

2. I am authorized to make the statements in this Declaration, which are true based on my personal knowledge, or upon information and belief.

3. I understand that Relator's allegations pertain to Cigna's Medicare Advantage ("MA") business and, more specifically, the "360 Exams" provided to Cigna's Medicare Advantage beneficiaries in a home setting.

4. I have also reviewed the Declaration of Casey McKeon in Support of Cigna's Motion to Transfer Under 28 U.S.C. § 1404(a) (Dkt. 73). The Declaration is accurate to the best of my knowledge.

5. At all times relevant to this action, the management of the 360 Exam program, including its design and operations, was based in the Nashville area. Primary responsibility for the 360 Exam program rested in MDQO and CCQI.

6. As Director of MDQO and Senior Director of CCQI, I was responsible for the day-to-day supervision of the 360 Exam program and the Cigna employees with responsibilities related to the day-to-day operations of the program.

7. In my role, I had regular contact with the third-party vendors that conducted in-home 360 Exams, and took part in the management of Cigna's relationships with those vendors.

8. A small number of individuals that I supervised were involved in the 360 Exam program and did not live in Nashville, Tennessee. Those individuals included, in particular, Linda Small and Shelley Stevens. Neither Ms. Small nor Ms. Stevens is or was based in New York. The vast majority of individuals involved in the management of the 360 Exam program during the relevant time were based in Nashville, Tennessee.

9. At all times relevant to this action, the "key decisions that were made with respect to the 360 Program, including, among other things, the decision to implement the program, including its goals, objectives and performance expectations, as well as specific approvals granted as to code submissions, program design, management structure and the protocols and procedures for performing the 360 visits," were made in Nashville, Tennessee. Such decisions generally would have been made by or involved me and/or Dr. Wales. Casey McKeon as General Manager of National Health Services for HealthSpring, Inc, had high-level oversight of and responsibility for

MDQO, including the 360 Program. Glynn Creech, director of coding operations, oversees the coding review of the 360 Exams; Creech reported to McKeon during the relevant time period.

10. I am prepared to testify regarding my knowledge of the design and operations of the 360 Program, the management of vendor relationships, and the "key decisions" described above.

11. I understand that Relator has identified Dr. Julian Harris, Dr. Alan Muney, and Mark Blackburn as "key witnesses" with respect to the allegations this action. I am familiar with each of these individuals.

12. Dr. Julian Harris is the former President of CareAllies, Inc. He had no substantive involvement in the 360 Exam program or its day-to-day operation. He was not involved in the decision to implement the program, nor in setting its goals, objectives, or performance expectations. He also was not involved in specific approvals granted as to code submissions, program designs, or the protocols and procedures for performing the 360 Exams themselves.

13. Dr. Alan Muney is the former Chief Medical Officer of Cigna Corporation. At no time did CCQI or MDQO report to Dr. Muney. Accordingly, Dr. Muney had no supervisory role vis-à-vis the 360 Exam program, nor any substantive involvement in the 360 Exam program or its day-to-day operation. He was not involved in the decision to implement the program, nor in setting its goals, objectives, or performance expectations. He also was not involved in specific approvals granted as to code submissions, program designs, or the protocols and procedures for performing the 360 Exams themselves.

14. Mark Blackburn is the former CEO of Complex Care Solutions (CCS), a third-party vendor that contracted with Cigna to perform 360 Exams. As a vendor representative, he was not involved in decisions related to the design or operations of the 360 Exam program. Moreover, to

my recollection, Mr. Blackburn was not typically involved in regular communications between Cigna and CCS. CCS did not conduct 360 Exams in New York State.

15. To my knowledge, at no time were any 360 Exams conducted in New York State.

16. I also understand that Relator has named Jeff Cox as a potential witness. My understanding is that, at some point in time, Mr. Cox was based in the Philadelphia market and had responsibilities related to that geography, but Glynn Creech (and not Mr. Cox) is responsible for supervising overall coding operations, including coding related to the 360 Exam.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 26, 2021, at Franklin, Tennessee.

DocuSigned by:
Michael Fessenden, M.D., MBA
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA *ex rel*. ROBERT A. CUTLER, Plaintiff, v. CIGNA CORP. *et al*., Defendants.	No. 7:17 Civ. 07515 (KMK) Hon. Kenneth M. Karas

DECLARATION OF DR. JULIAN HARRIS IN SUPPORT OF CIGNA'S MOTION TO TRANSFER UNDER 28 U.S.C. § 1404(a)

I, Dr. Julian Harris, declare as follows:

1. I currently am a partner with the health care services and technology investment team at Deerfield Management Company. From 2016–2019, I served as President of CareAllies, Inc., which is a wholly-owned, indirect subsidiary of Cigna Corporation. Prior to my time at Cigna, I worked as the health care team lead in the White House Office of Management & Budget.

2. I am authorized to make the statements in this Declaration, which are true based on my personal knowledge, or upon information and belief.

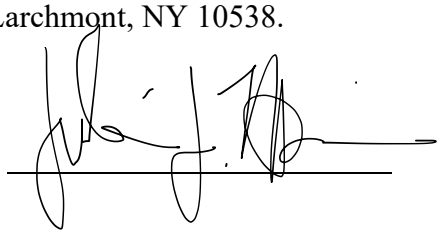
3. I understand that Relator's allegations pertain to Cigna's Medicare Advantage ("MA") business and, more specifically, the "360 Exams" provided to Cigna's Medicare Advantage beneficiaries in a home setting.

4. In my role at Cigna, I was not involved in the decision to implement the 360 Exam program, nor in setting the program's overall goals, objectives or performance expectations. I was not involved in specific approvals granted as to code submissions or program designs.

5. CareAllies, Inc. is a management service company that supports physician groups, including independent physician associations. To the best of my knowledge, the 360 Program was managed through a different entity, HealthSpring, Inc., which is based in Nashville, TN, under the supervision of Dr. Dirk Wales and Dr. Michael Fessenden. Neither Dr. Wales nor Dr. Fessenden reported to me.

6. I did not "develop a method for using analytics in conjunction with the performance of the 360 visits to ensure that conditions would be diagnosed during the [360] in-home visit."

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on January 28, 2021, at 15 Beechtree Dr., Larchmont, NY 10538.



IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA *ex rel.* ROBERT A. CUTLER, Plaintiff, v. CIGNA CORP. *et al.*, Defendants.	No. 7:17 Civ. 07515 (KMK) Hon. Kenneth M. Karas

DECLARATION OF DR. JASON JEAN IN SUPPORT OF
CIGNA'S MOTION TO TRANSFER UNDER 28 U.S.C. § 1404(a)

I, Dr. Jason Jean, declare as follows:

1. I currently work as a clinical instructor of nursing at Vanderbilt University. From June 2014 until December 2018, I served as Chronic Care Quality Manager & Educator at HealthSpring, Inc., which is a wholly-owned subsidiary of Cigna Corporation. HealthSpring, Inc., along with its subsidiaries and affiliates, is known internally at Cigna as "Cigna Medicare."

2. From June 2014 through December 2020, I was employed by Cigna Corporation (through its subsidiaries). I have lived and worked in the area of Nashville, Tennessee since prior to starting work at Cigna Corporation.

3. I am authorized to make the statements in this Declaration, which are true based on my personal knowledge, or upon information and belief.

4. I have reviewed Relator's response brief opposing transfer (Dkt. 77). I understand that Relator's allegations pertain to Cigna's Medicare Advantage ("MA") business and, more specifically, the "360 Exams" provided to Cigna's Medicare Advantage beneficiaries in a home setting.

5. I have also reviewed the Declaration of Casey McKeon in Support of Cigna's Motion to Transfer Under 28 U.S.C. § 1404(a) (Dkt. 73). The Declaration is accurate to the best of my knowledge.

6. To my knowledge, at all times relevant to this action, the management of the 360 Exam program, including its design and operations, was based in the Nashville area. Primary responsibility for the 360 Exam program rested within the department known during the relevant time period as the Medicare Data Quality Operations ("MDQO") and a unit within MDQO, the Chronic Care Quality Initiative ("CCQI").

7. In my role as Cigna Medicare's Chronic Care Quality Manager & Educator, I worked within CCQI and reported to Dr. Michael Fessenden. As Chronic Care Quality Manager & Educator, I was responsible for developing training materials used to educate providers, including those performing 360 Exams. I was involved in meetings regarding 360 Exams with representatives of third-party vendors such as Relator's company, THM. I am prepared to testify regarding my knowledge of the 360 Program, Cigna's clinical training of providers who conduct 360 Exams in members' homes, and Cigna's communications with third-party vendors such as THM.

8. To my knowledge, during the time I served as Chronic Care Quality Manager & Educator, the "key decisions that were made with respect to the 360 Program, including, among other things, the decision to implement the program, including its goals, objectives and performance expectations, as well as specific approvals granted as to code submissions, program design, management structure and the protocols and procedures for performing the 360 visits," were made in Nashville, Tennessee. Such decisions generally would have been made by or involved Dr. Dirk Wales and/or Dr. Michael Fessenden. Casey McKeon as General Manager of

National Health Services for HealthSpring, Inc, had high-level oversight of and responsibility for MDQO, including the 360 Program.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 26, 2021, at [home - Fairview, Tennessee].

Jason Jean

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DECLARATION OF DR. DIRK WALES IN SUPPORT OF
CIGNA'S MOTION TO TRANSFER UNDER 28 U.S.C. § 1404(a)

I, Dr. Dirk Wales, declare as follows:

1. I currently am Chief Medical Officer at axialHealthcare in Nashville, Tennessee. From 2003 through January 2020, I served as Chief Medical Officer of HealthSpring, Inc., which has been a wholly-owned subsidiary of Cigna Corporation since 2012. HealthSpring, Inc., along with its subsidiaries and affiliates, is known internally at Cigna as "Cigna Medicare." I have lived and worked in the Nashville, Tennessee area since 2008.

1a. I am authorized to make the statements in this Declaration, which are true based on my personal knowledge, or upon information and belief.

2. I have reviewed Relator's response brief opposing transfer (Dkt. 77). I understand that Relator's allegations pertain to Cigna's Medicare Advantage ("MA") business and, more specifically, the "360 Exams" provided to Cigna's Medicare Advantage beneficiaries in a home setting.

3. I have also reviewed the Declaration of Casey McKeon in Support of Cigna's Motion to Transfer Under 28 U.S.C. § 1404(a) (Dkt. 73). The Declaration is accurate to the best of my knowledge.

4. At all times relevant to this action, the management of the 360 Exam program, including its design and operations, was based in the Nashville area. Primary responsibility for the 360 Exam program rested within the department known during the relevant time period as the Medicare Data Quality Operations ("MDQO") and a unit within MDQO, the Chronic Care Quality Initiative ("CCQI").

5. I was primarily involved with the initial design and development of the 360 Exam, which occurred prior to HealthSpring, Inc.'s acquisition by Cigna Corporation. After the acquisition, I continued to supervise the 360 Exam program in a high-level supervisory role until my departure from Cigna in January 2020. As Chief Medical Officer, I worked closely with Dr. Michael Fessenden and his team of individuals within CCQI and MDQO responsible for managing the 360 Exam program, the vast majority of whom were and are based in Nashville, Tennessee. I am prepared to testify regarding my knowledge of the design, development, and operations of the 360 Program, including the practice of contracting with third-party vendors such as THM to conduct in-home 360 Exams.

6. At all times relevant to this action, the "key decisions that were made with respect to the 360 Program, including, among other things, the decision to implement the program, including its goals, objectives and performance expectations, as well as specific approvals granted as to code submissions, program design, management structure and the protocols and procedures for performing the 360 visits," were made in Nashville, Tennessee. Such day-to-day, operational and strategic decisions generally would have been made by or involved Dr. Michael Fessenden

and/or me. In addition to this core team responsible for the execution of the 360 Exam program, Glynn Creech serves as director of coding operations and oversees the coding review of all 360 Exams. Casey McKeon, as General Manager of National Health Services for HealthSpring, Inc., held a high-level supervisory role over the MDQO unit, including the 360 Exam program.

7. I understand that Relator has identified Dr. Julian Harris, Dr. Alan Muney, and Mark Blackburn as "key witnesses" with respect to the allegations this action. I am familiar with each of these individuals.

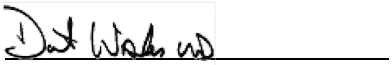
8. Dr. Julian Harris is the former President of CareAllies, Inc. He had no substantive involvement in the 360 Exam program or its day-to-day operation. He was not involved in the decision to implement the program, nor in setting its goals, objectives, or performance expectations. He also was not involved in specific approvals granted as to code submissions, program designs, or the protocols and procedures for performing the 360 Exams themselves.

9. Dr. Alan Muney was Chief Medical Officer of Cigna Corporation from before it acquired HealthSpring, Inc., until 2018. When Cigna Corporation acquired HealthSpring, Inc., I continued on as Chief Medical Officer of HealthSpring, Inc., and at no time did I report to Dr. Muney. Accordingly, Dr. Muney had no supervisory role vis-à-vis the 360 Exam program, nor any substantive involvement in the 360 Program or its day-to-day operation. To my knowledge, he was not involved in the decision to implement the program, nor in setting its goals, objectives, or performance expectations. To my knowledge, he also was not involved in specific approvals granted as to code submissions, program designs, or the protocols and procedures for performing the 360 Exams themselves.

10. Mark Blackburn is the former CEO of Complex Care Solutions (CCS), a third-party vendor that contracted with Cigna to perform 360 Exams in a home setting. As a vendor

representative, Mr. Blackburn was not involved in decisions related to the design or operations of the 360 Exam program. CCS did not conduct 360 Exams in New York state. To my knowledge, at no time were any 360 Exams conducted in New York State.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 26, 2021, at Dickson, Tennessee.



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DECLARATION OF DR. ALAN MUNEY IN SUPPORT OF CIGNA'S MOTION TO TRANSFER UNDER 28 U.S.C. § 1404(a)

I, Dr. Alan Muney, declare as follows:

1. From 2010 through 2018, I served as Chief Medical Officer of Cigna Corporation. I presently live in Connecticut.

2. I am authorized to make the statements in this Declaration, which are true based on my personal knowledge, or upon information and belief.

3. In my role at Cigna, I did not have any substantive involvement in the 360 Exam program or its day-to-day operation. I was not involved in the decision to implement the program, nor in setting its goals, objectives, or performance expectations. I was not involved in specific approvals granted as to code submissions, program designs, or the protocols and procedures for performing the 360 Exams themselves.

I declare under penalty of perjury that the foregoing is true and correct. Executed on January 26, 2021, at Darien, Connecticut.