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July 20, 2022

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VIA ELECTRONIC DELIVERY & COURT FILING

The Honorable Andrew L. Carter, Jr.
Thurgood Marshall United States Courthouse
40 Foley Square
New York, New York 10007

Re: United States v. Anthem, Inc., 1:20-cv-02593-ALC

Dear Judge Carter:

We represent Anthem, Inc. (“Anthem”), the defendant in this case. Plaintiff’s July 19, 2022 letter (Dkt. 57) asserts that in *United States ex rel. Bassan v. Omnicare, Inc.*, 2022 WL 72300 (S.D.N.Y. Jan. 7, 2022), Judge McMahon denied a motion to transfer a False Claims Act case because “the alleged fraud at issue was a nationwide scheme and . . . relevant witnesses were dispersed geographically.” (Dkt. 57 at 2). Plaintiff misstates the *Bassan* court’s reasoning.

The “decisive” factor for denying transfer in *Bassan* was that doing so would be inefficient and not in the interests of justice because Judge McMahon had overseen the case for six years, discovery was “well under way,” and defendants waited years and “suffered a significant litigation defeat” before moving to transfer. 2022 WL 72300, at *4-*5 (“I am not at all inclined to give away a case into which I have invested so much time; I cannot take seriously a motion to transfer that was not made as soon as this case was unsealed.”). Here, Anthem sought leave to file a motion to transfer **less than three weeks** after Plaintiff filed its March 26, 2020 complaint, the Court has not ruled on any dispositive motions, and discovery has not started. (Anthem Ltr., Apr. 14, 2020, Dkt. 15).

Further, although Plaintiff asserts that the location of witnesses was the basis for Judge McMahon’s decision, *Bassan* found that convenience of witnesses was a neutral factor for transfer even though the *Bassan* plaintiff “identified 65 potential witnesses in New York” in comparison to “11 witnesses that work . . . in Ohio.” 2022 WL 72300, at *3. Judge McMahon reasoned that this imbalance did not weigh against transfer because of the “importance” of the Ohio witnesses. *Id.* Here, the witnesses central to the development, implementation, and operation of the chart review program at issue in this case are in Ohio or outside of New York.

Anthem would welcome the opportunity to address the relevance of the *Bassan* decision further in supplemental briefing if the Court would find it useful. We thank the Court for its consideration of this letter.



Dated: July 20, 2022

Respectfully submitted,

By: /s/ K. Lee Blalack, II

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