

*Lodged
Proposed
order*

2017 FEB 14 AM 11:01
CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES
BY: *[Signature]*

FILED

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18 UNITED STATES DISTRICT COURT
19 FOR THE CENTRAL DISTRICT OF CALIFORNIA
20 WESTERN DIVISION

21 UNITED STATES OF AMERICA *ex*
22 *rel.* [UNDER SEAL],
23 Plaintiff[s],
24 v.
25 [UNDER SEAL],
26 Defendant[s].

No. CV 16-08697 MWF (SSx)
NOTICE OF [UNDER SEAL]
**[FILED UNDER SEAL PURSUANT TO
THE FALSE CLAIMS ACT, 31 U.S.C.
§§ 3730(b)(2) AND (3)]**
[LODGED CONCURRENTLY
HEREWITH: [PROPOSED] ORDER]

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18 UNITED STATES DISTRICT COURT
19 FOR THE CENTRAL DISTRICT OF CALIFORNIA
20 WESTERN DIVISION

21 UNITED STATES OF AMERICA *ex*
22 *rel.* BENJAMIN POEHLING,

23 Plaintiffs,

24 v.

25 UNITEDHEALTH GROUP, INC, *et al.*,

26 Defendants.

No. CV 16-08697 MWF (SSx)

NOTICE OF ELECTION OF THE
UNITED STATES TO INTERVENE IN
PART AND DECLINE TO INTERVENE
IN PART AND STIPULATION RE
UNSEALING

[FILED UNDER SEAL PURSUANT TO
THE FALSE CLAIMS ACT, 31 U.S.C.
§§ 3730(b)(2) AND (3)]

[LODGED CONCURRENTLY
HEREWITH: [PROPOSED] ORDER]

1 Pursuant to the False Claims Act (“FCA”), 31 U.S.C. § 3730(b)(4), the United
2 States of America (“United States”) hereby notifies the Court of its decision to intervene
3 in part and decline to intervene in part in this *qui tam* action brought by Relator
4 Benjamin Poehling (“Relator”). The United States hereby intervenes in the Relator’s
5 action against UnitedHealth Group, Inc. (“United”) and WellMed Medical Management,
6 Inc., (“WellMed”) based on their submission or causing the submission of false or
7 fraudulent claims for and false statements relating to Risk Adjustment payments under
8 Parts C and D of the Medicare Program and with respect to their retention of
9 overpayments arising from those false or fraudulent claims and false statements. The
10 United States intervenes against United with respect to Relator’s claims and allegations
11 in his First Amended Complaint (FAC) relating to United’s Chart Review Program (e.g.,
12 FAC at ¶¶ 127-135), Claims Verification Program (e.g., FAC at ¶¶ 181-183), and Chart
13 Validation/Risk Adjustment Coding Compliance Review (RACCR) Program (e.g., FAC
14 at ¶¶ 173-179), and its submission of false Risk Adjustment Attestations (e.g., FAC at ¶
15 79). The United States intervenes against WellMed with respect to Relator’s claims and
16 allegations relating to the Chart Validation/RACCR Program and WellMed’s improper
17 diagnosis coding practices which caused the submission of false or fraudulent claims for
18 Risk Adjustment payments. The United States declines to intervene as to all remaining
19 allegations against United and WellMed. The United States will file its Complaint
20 against United and WellMed within the ninety-day time period following the filing of
21 this Notice and serve its Complaint on defendants contemporaneously with its filing.

22 In addition, the United States hereby declines to intervene against the other
23 defendants named by Relator in his First Amended Complaint. Although the United
24 States declines to intervene as to those defendants and as to a portion of Relator’s claims
25 and allegations against United, we respectfully refer the Court to 31 U.S.C. § 3730(b)(1),
26 which allows Relator to maintain this action in the name of the United States, provided,
27 however, that the “action may be dismissed only if the court and the Attorney General
28 give written consent to the dismissal and their reasons for consenting.” *Id.*

1 The United States Court of Appeals for the Ninth Circuit has held that,
2 notwithstanding this language, the United States has the right only to a hearing when it
3 objects to a settlement or dismissal of the action. *U.S. ex rel. Green v. Northrop Corp.*,
4 59 F.3d 953, 959 (9th Cir. 1995); *U.S. ex rel. Killingsworth v. Northrop Corp.*, 25 F.3d
5 715, 723-25 (9th Cir. 1994). Therefore, the United States requests that, should Relator
6 or the defendants propose that the portion of the action in which the United States has
7 declined to intervene be dismissed, settled, or otherwise discontinued, Relator and the
8 defendants will provide the United States with notice of the same and the Court will
9 provide the United States with an opportunity to be heard before the Court rules or grants
10 its approval.

11 The United States also reserves the right to seek the dismissal of the Relator's
12 action or claim on any appropriate grounds, including under 31 U.S.C. §§ 3730(b)(5) and
13 (e)(4).

14 Furthermore, pursuant to the Stipulation re Unsealing set forth below, the United
15 States and the Relator request that the Relator's First Amended Complaint, this Notice,
16 and the attached proposed Order be unsealed. All papers on file relating to the United
17 States' motions for extensions of the intervention deadline and seal in this action,
18 however, should remain under seal because, in discussing the content and extent of the
19 United States' investigation, such papers were provided by law to the Court alone for the
20 sole purpose of evaluating whether the seal and time for making an election to intervene
21 should be extended.

22 Pursuant to 31 U.S.C. § 3730(c)(3), the United States also requests that, as to the
23 part of the action in which the United States has declined to intervene, all pleadings filed
24 in this action be served upon the United States and that all orders issued by the Court in
25 this action be sent to counsel for the United States. The United States reserves its right
26 to order any deposition transcripts. The United States also requests that it be served with
27 all notices of appeal in this action.

28 A proposed order accompanies this notice.

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Dated: February 13, 2017

Respectfully submitted,

CHAD A. READLER
Acting Assistant Attorney General, Civil Division
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United States Attorney
DOROTHY A. SCHOUTEN
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JOHN E. LEE
Assistant United States Attorney

Attorneys for the United States of America

STIPULATION RE UNSEALING

The United States and the Relator hereby stipulate as follows:

1. The Relator’s First Amended Complaint, the United States’ Notice of Election of Intervention, and this Order may be unsealed.
2. All other papers or orders on file in this matter should remain under seal.
3. The seal may be lifted on all matters occurring in this action after the date of this Order.

Respectfully submitted,

Dated: February 13, 2017

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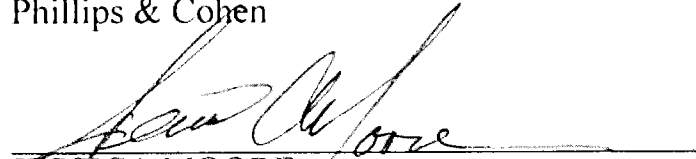
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Dated: February 13, 2017

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MARY INMAN
JESSICA MOORE
HARRY LITMAN
Constantine Cannon LLP

TIM McCORMACK
Constantine Cannon LLP

STEVE HASEGAWA
Phillips & Cohen


A handwritten signature in cursive script, appearing to read "Jessica Moore", is written over a horizontal line. The signature is positioned above the printed name "JESSICA MOORE".

JESSICA MOORE

Attorneys for Plaintiff-Relator
Benjamin Poehling

PROOF OF SERVICE BY E-MAIL

I am over the age of 18 and not a party to the above-captioned action. I am employed by the Office of United States Attorney, Central District of California. My business address is 300 North Los Angeles Street, Suite 7516, Los Angeles, California 90012.

On February 14, 2017, I served the NOTICE OF ELECTION OF THE UNITED STATES TO INTERVENE IN PART AND DECLINE TO INTERVENE IN PART AND STIPULATION RE UNSEALING on each person or entity named below by e-mail, pursuant to written consent under Federal Rule of Civil Procedure 5(b)(2)(E).

Date of e-mailing: February 14, 2017. Place of e-mailing: Los Angeles, California.

Person(s) and/or Entity(s) to whom e-mailed:

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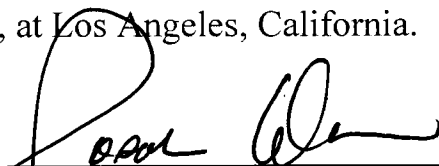
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I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 14, 2017, at Los Angeles, California.



ROSALIN DAVIS