

In The United States District Court For
The Western District of Virginia

United States of America

ex rel Sandra J. Clarke

Plaintiffs

v.

Diabetes Self Care
and
Matria Corporation

Defendants

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Filed In Camera and Filed Under Seal

Civil Action No.

Jury Trial Demanded

COMPLAINT
False Claims Act

This action filed pursuant to the Qui Tam provisions of the False Claims Act (31 U.S.C., Sections 3729 et. seq.) and principles of common law, is based on a scheme by the Defendants, Diabetes Self Care (hereinafter referred to as "DSC"), Matria Corporation (hereinafter referred to as "Matria") its officers and directors, to defraud the United States, the Federal Medicare Program and the American taxpayers of millions of dollars through fraud, waste, abuse, mismanagement and gross negligence while Defendant acted as a Medicare carrier and Federal Program contractor, responsible for the administration of and provision of healthcare supplies and equipment and did receive reimbursement of Medicare claims for the healthcare supplies and equipment provided to Medicare beneficiaries.

Plaintiff, Sandra J. Clarke, by and through the undersigned counsel, and acting on behalf of and in the name of, The United States of America, allege as follows.

Parties

- 1. Plaintiff, Sandra J. Clarke, is a citizen of the United States of America and a resident of the

State of Virginia. The Relator is suing on her own behalf and on behalf of, and in the name of, The United States Government, pursuant to 31 U.S.C., Section 3730(b). The Relator was employed by the Defendant, DSC, from August 1996 through April 2002.

2. The United States administers the Federal Medicare Program through its agency, The Department of Health and Human Services (DHHS), and the Center for Medicare and Medicaid Services (CMS). CMS is authorized to enter into and administer contracts on behalf of DHHS and the United States. Inclusive in CMS's contracting authority is the responsibility for administering the Federal Medicare Program and the payment and reimbursement of Medicare claims processed by Medicare contractors.

3. That the Defendant DSC is a Virginia corporation with its principle office in Roanoke, Virginia, in the Western District of Virginia. DSC is in the business of providing medical supplies for a vast array of patients, but primarily dealing in the area of diabetic supplies. DSC services patients throughout the Western District of Virginia and throughout the United States.

4. That the Defendant, Matria is a Georgia corporation with its principal office in Marietta, Georgia. Matria is the parent corporation for DSC. Matria is also in the business of providing and shipping medical supplies for obstetric and gynecologic patients as well as the provision of general pharmaceutical supplies to patients.

5. That DSC engaged in a number of activities which would be violative of the Federal False Claims Act and the requirements and constraints imposed by DHHS and CMS.

DSC would process orders without the appropriate documentation, such as, authorizations of benefits or certificates of medical necessity. There is one occurrence for which there is significant documentation, wherein 1,800 customers were receiving shipments without authorizations of benefit (AOB) or certificates of medical necessity (CMN) and the billings for these shipments were sent to Medicare. These billings totaled approximately \$750,000.00. This error was made aware to the management and officers of DSC. The staff, including the Relator, was instructed not to mention this to anyone and were ordered to create the appropriate

documentation to support same, before Medicare could discover that the payments were made and that the monies were never refunded.

The Relator is aware of another significant occurrence during the fall and winter of 2001, wherein DSC developed a revenue forecast set at \$5.1 Million dollars. In order to meet that forecast it was necessary to enroll new customers, but DSC was unable to obtain the authorizations of benefit, which they were required to have pursuant to Medicare guidelines. DSC enrolled approximately 1,200 new customers with no AOB's and pursuant to DSC's management, were given specific orders to send out all shipments and to bill Medicare so that the revenue forecast could be met for that final quarter.

DSC ships supplies to thousands of patients nationwide. These shipments result in a significant number of returns of supplies, materials and equipment to DSC. However, even though these supplies, material and equipment would be returned, either due to insufficiency of the order or more commonly because the supplies were sent out without the customer ever ordering same, DSC would not issue a credit to Medicare and would retain the payment for the supply, as well as, retaining the supply which was returned. In fact DSC maintained a regular practice of sending orders out to customers without ever having customer contact. DSC employees would maintain a practice of writing notes indicating that a customer had called and advised DSC to send the order, but there would never be an AOB in the file because the customer never in fact ordered the supplies. This can be further demonstrated through the fact that there were countless numbers of DSC shipments to individuals who were deceased when the order was purportedly placed. Even for these deceased individuals, the orders would be charged to Medicare and the funds received by Medicare would not be returned by DSC.

DSC would take this practice a step further and would regularly ship and sell more on the order than the customer requested. A bill then would be generated to Medicare for the entire order even though the customer did not request everything within the order. If the customer would call to complain, the customer would be advised to keep the goods as there would be no charge to the customer for the overage and that the

customer would be not have to pay any deductible or co-pay relating to that portion of the order. If in fact the order was returned it would not be credited to Medicare and DSC would re-sell those supplies.

In 1999 DSC undertook a campaign developed by David Phillipps, then Vice President of Health Management Service as a promotional activity. DSC shipped free Blood Glucose Meters to all appropriate customers. After these glucose meters were shipped Mr. Phillipps instructed management to bill Medicare for the cost of all meters shipped and further instructed the staff that the customers were not to be told that Medicare was going to be billed. If a customer complained they were to be advised that these were complimentary meters and they did not have to pay anything for them. The customers were also advised that they would not have to pay any co-pay or deductible relating to this item.

DSC would not only over ship and bill, but would also under ship and bill. An example of this is that DSC would send out "sample kits" rather than sending a full supply to the customer. When the customer would call complaining that shipment was short filled, DSC would then send another shipment and would bill Medicare for both orders. If there was to be a second billing on that shipment, the customer would be advised that there would be no co-pay or deductible relating to that second billing. In fact, it was a regular practice by DSC to write off co-pays and deductibles. However, it was known as company policy that when non ordered items were shipped out a co-pay would never be collected and all persons were instructed never to request any co-pays or deductibles on the non ordered items. They were merely to accept the payment from Medicare.

Another practice regularly undertaken by DSC would be the changing of dates of service. Charts, order forms, and documentation would be changed, changing the dates of service, dates of shipment and dates of requests. This was requested by management in order to justify some of their fraudulent activities.

A last practice of DSC, relates to generating and maintaining signature logs. DSC has no signature logs relating to the shipment or goods and receipt and acceptance of the goods. Medicare requires that signature logs be utilized and maintained. That since DSC neither uses nor maintains signature logs, technically the applications for payment through Medicaid are improper and should not be paid.

Jurisdiction and Venue

6. This Court has jurisdiction in this matter under 31 U.S.C., Section 3732(a) and 28 U.S.C., Sections 1331 and 1345.

7. The Plaintiff has direct and independent knowledge within the meaning and definition of 31 U.S.C., Section 3730(e)(4)(B) derived through and from Plaintiff's employment with Defendant DSC, of all of the information on which the allegations set forth in the Complaint are based, and Plaintiff has voluntarily provided the information contained in the Complaint to the government. None of the allegations set forth in this Complaint are based on a public disclosure of allegations or transactions in a criminal, civil or administrative hearing, in a Congressional, administrative or general accounting office report, hearing, audit, investigation or from the news media.

8. Venue, in the Western District of Virginia is proper under 31 U.S.C., Section 3732(a) and 28 U.S.C., Sections 1391(b)(c).

Federal Medicare Program

9. DHHS, through CMS, provides health insurance to eligible aged and disabled Americans (Medicare beneficiaries) pursuant to the provisions of the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C., Sections 1395, et. seq. The Medicare Program provides health care services and benefits to certain eligible groups such as persons over age sixty five, disabled persons and qualifying homebound persons in need of medical/nursing care. The Medicare Program is administered under two distinct parts. Medicare Part A, "Hospital Insurance for the Aged and Disabled", covers health care services furnished by hospitals, home health agencies, hospices, and skilled nursing facilities. Medicare Part B, "Supplementary Medical Insurance for the Aged and Disabled", covers laboratory services, x-rays, physicians' services and other non-institutional services, such as medical supplies and durable medical equipment (DME), as well as some other services not reimbursed under Medicare Part A.

10. That Defendants, DSC and Matria would apply to CMS and its predecessor, the Health Care Finance Administration (HCFA) for reimbursement under Medicare Part B for providing medical supplies and materials. All of these supplies and materials would be documented in such a fashion so as to purportedly justify and substantiate a basis to qualify for billing under Medicare and these charges would then be processed by DSC and Matria through CMS and its predecessor HCFA under Medicare B.

Factual Background

11. That the Relator incorporates by reference herein each and every allegation and statement contained in the paragraphs stated herein above and specifically incorporates those allegations as to fraud as delineated in paragraph number five above.

12. The Relator was employed at DSC from August 1996 through April 2002. When the Relator first started with DSC she was a Customer Service Representative for six months managing the Motorola account. The Relator was then promoted to Customer Service Supervisor as well as being promoted to a Team Leader, until her departure in April 2002. That as a result of the Relator's position with DSC, she has learned that there are numerous and abundant violations of the requirements imposed by Medicare and a failure of compliance with those regulations as conducted by DSC. There is the processing of orders without the appropriate documentation or certificates of medical necessity, the shipment of un-ordered medical supplies and equipment, duplicate ordering of medical supplies and equipment, under shipment of fully charged for medical supplies and equipment, misrepresentation in the cost or payment obligations for medical supplies in a shipment, the write-offs of co-pays and deductibles for medical supplies and equipment, the re-selling of returned supplies and equipment and the failure to reimburse Medicare for returned supplies and equipment.

13. That this information has been conveyed to the officers and directors of DSC and Matria, namely Parker (Peter) Petit, Chief Executive Officer; Jeff Koepsell, Chief Operating Officer; Yvonne Scoggins, Chief Financial Officer; Don Hicks, Vice President-Managed Health Care; Mike Kirkbride, Vice President of Operations; David Deane, Director of Documentation-New Customer Enrollment and TV

Campaign; Scott Swortzel, Director of Customer Service; and Tammy Bowdell, Director of Finance. In fact, many of the fraudulent programs and shipping schemes were not only condoned by some of the above management, but were developed by management.

14. That as a result of the complaints which the Relator and others had made, nothing has changed relating to the practice of the fraudulent shipping and billing other than Relator's job being threatened and the Relator being instructed to continue the practice as had been done in the past and to leave all matters as is. The Relator continued to express her concerns over these fraudulent practices and due to the pressure by DSC the Relator was eventually forced to resign her position with DSC.

15. That DSC has approximately 65,000 customers in its database. If you include the deceased individuals who have received shipments from DSC, this would increase their database to approximately 80,000 customers. Of DSC's total client base, approximately 75% are Medicare patients, 5% are Medicaid and 15% are commercial patients.

16. That the Relator would project that the average client billing is approximately \$10,000.00 per year for a diabetic customer. DSC's average billings have increased to \$5.5 Million per month with the business office setting an initiative and directive for all staff to increase monthly billings to \$7.5 Million per month.

17. That DSC is a mail order company that not only fills the needs of diabetic healthcare patients through the supplies of equipment such as monitors, lancets, glucose strips, batteries, urine strips, etc, but also has a pharmacy that ships all forms of precriptive medication and goods to its clients. DSC also has an asthma program, which supplies nebulizers, inhalers, and corresponding supplies and equipment.

18. The parent company, Matria, which has a facility in Marietta, Georgia, ships obstetric equipment, such as, external fetal monitors and supplies relating to same. Relator is aware that there is an automatic shipping policy in effect with Matria's obstetric care unit to ship supplies and materials every twelve weeks to the patients regardless of the placement of orders.

19. Relator would project that approximately 40% of all DSC's monthly shipments are fraudulent and violate the Federal False Claims Act. This would equate to approximately \$2 Million per month. In fact, Relator has learned from a co-worker, who was asked to perform a review and audit that there is a projection, within the company, that during the 2000-2001, fiscal year, approximately \$15 Million in fraudulent billings were made to Medicare. This information was conveyed to Mr. Petit, the CEO of Matira, in Marietta, Georgia.

20. That based upon Relators review of this information, the review of all memorandums and materials, through the discussions with co-workers at DSC, and Matira and based upon her review of the order forms and return sheets, and based upon her position with the Defendant, DSC, from 1996 through 2002, it is clear that there has been fraud relating to all of the above noted areas since 1996 in an amount of at least \$45 Million.

Count One - False Claims Act
(Presentation of False Claims)

21. That the allegations of Paragraph Nos. 1 through 20 are incorporated by reference herein as if each is fully set forth.

22. That Matira and its subdivision DSC, knowingly presented false or fraudulent claims for payment or caused false or fraudulent claims to be presented to officers or employees of the United States government in violation of 31 U.S.C., Section 3729(a)(1). As a result of Matira and DSC's conduct, the United States suffered actual damages.

Count Two - False Claims Act
(Presentation of False Statements)

23. That the allegations of Paragraph Nos. 1 through 22 are incorporated by reference herein as if each is fully set forth.

24. That Matira and its subdivision DSC knowingly made or used, or caused to be made or used, false records or statements in order to get the payment or approval of false or fraudulent claims, paid or approved by officials of the United States government in violation of 31 U.S.C., Section 3729(a)(2). As a

result of Matria and DSC's conduct, the United States suffered actual damages.

Count Three - False Claims Act
(Presentation of False Statements)

25. That the allegations of Paragraph Nos. 1 through 24 are incorporated by reference herein as if each is fully set forth.

26. That Matira and its subdivision DSC knowingly made or used, or caused to be made or used, false records or statements to conceal, avoid or decrease its obligation to pay, transmit, or return money or property, to the United States government in violation of 31 U.S.C., Section 3729(a)(7). As a result of Matria and DSC's conduct, the United States suffered actual damages.

Count Four - Payment by Mistake of Fact

27. That the allegations of Paragraph Nos. 1 through 26 are incorporated by reference herein as if each is fully set forth.

28. As a result and the consequence of the aforesaid conduct, the United States' Reimbursement of Medicare Part B Claims were not properly reimbursable and the United States paid Defendant Matira and its subdivision DSC for Medicare Part B claims for which Defendant was not entitled.

29. At the time, the United States made such payments, government officials were unaware of the wrongful conduct of Matira and its subdivision DSC. Had the United States known that Matira and its subdivision DSC was not entitled to receive reimbursement or payment under Medicare Part B for the medical supplies, the United States would not have approved the payment of such funds.

30. That as a result of the aforesaid acts, omissions and conduct, the United States is entitled to recover the funds paid to the Defendant by mistake.

Count Five - Breach of Contract

31. That the allegations of Paragraph Nos. 1 through 30 are incorporated by reference herein as if each is fully set forth.

32. That the employment and retention of the Plaintiff by the Defendant DSC, constitutes a contract of employment between Plaintiff and Defendant.

33. That Defendant breached its contract with the Plaintiff by disciplining her for reporting the improper billings and continuation of shipping supplies, either un-ordered by patients or to deceased patients which would not entitle the Defendant to reimbursement through Medicare and CMS standards, all of which were resulting in the presentation of false claims, unethical practices and financial misconduct.

34. That as a result of Defendant, DSC's breach of contract, Plaintiff was harassed, pressured and forced to leave her position with the Defendant, DSC, a position she held for nearly four years, and resulting in compensatory damages for lost wages, benefits and other losses.

Count Six - Retaliatory Discharge

35. That the allegations of Paragraph Nos. 1 through 34 are incorporated by reference herein as if each is fully set forth.

36. That Plaintiff alleges that the actions taken against her, which resulted in her constructive discharge and her resignation of her position with DSC was motivated, in a substantial part, by her having reported false claims, violation of CMS and Medicare billing procedures.

37. That the violations which Plaintiff reported included violation of the False Claims Act 31 U.S.C., Section 3729 et. seq. and Federal Regulations relating to the conduct and nature of procurement when Federal monies are being expended.

38. That pursuant to 31 U.S.C. Section 3730(h), there is a specific cause of action for employees who are disciplined or discharged for their efforts at taking steps "in furtherance of action under this section". Plaintiff's conduct in reporting the violations within the administrative process of the Defendants' company as identified in the Statement of Facts, was clearly done in furtherance of an action within the meaning of this section.

39. That the on-site pressures and harassment received by the Plaintiff, which eventually resulted

in her constructive termination entitles her to relief specifically described in 31 U.S.C. Section 3730(h).

Prayer for Relief

WHEREFORE, the Plaintiff, Sandra J. Clarks (Relator), acting on behalf of and in the name of the United States of America, demands and pray that judgment be entered in favor of the United States and against Defendant Matira and Diabetes Self Care on Counts One through Seven of the Complaint as follows:

1. On Count One - False Claims Act (Presentation of False Claims) for treble the amount of damages suffered by the United States plus civil penalties of Ten Thousand (\$10,000.00) Dollars for each false claim.

2. On Count Two - False Claims Act (Presentation of False Claims) for treble the amount of damages suffered by the United States plus civil penalties of Ten Thousand (\$10,000.00) Dollars for each false statement or false record.

3. On Count Three - False Claims Act (Presentation of False Claims) for treble the amount of damages suffered by the United States plus civil penalties of Ten Thousand (\$10,000.00) Dollars for each false statement or false record.

4. On Count Four - Payment by Mistake of Fact for the return of all government funds paid by mistake or through the erroneous acts of the Defendant plus pre-judgment interest.

5. For all accrued interest, cost and attorneys fees.

6. For such other and further relief as the Court deems just and equitable.

MOREOVER, Relator, Sandra J. Clark, on her own behalf demands and prays that an award be made in her favor as follows:

a. For 25% of the proceeds collected by the United States, if the United States intervenes in and conducts this action, or, for 30% of the proceeds if the United States does not intervene;

b. As to Count Five - Breach of Contract for immediate reinstatement, reimbursement of all back pay and benefits;

c. As to Count Six - Retaliatory Discharge for Reinstatement of the Plaintiff and payment for two times the amount of back pay, interest on the back pay and compensation for special damages, including attorneys fees and costs;

d. For an amount for reasonable expenses necessarily incurred by the Relators in the prosecution of this action;

e. For all reasonable attorneys fees and costs incurred by the Relator in connection with these proceedings; and

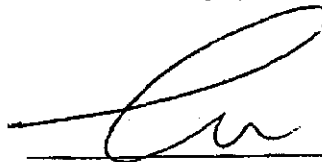
f. For such other and further relief to which the Relator may show that she is justly entitled.

Demand For Jury Trial

Plaintiff, Sandra J. Clarke, demands that this case be tried before a jury.



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Attorneys and Counsel for Plaintiffs

Date: _____

CERTIFICATION OF SERVICE

We hereby certify under the penalties of perjury that on this 31 day of Oct, 2002, we caused a copy of the foregoing Complaint for Money Damages and Civil Penalties under the False Claims Act and Common Law, and Relators Disclosure Statement of Material Evidence and Information, to be served by registered or certified mail to: **The Honorable John Ashcroft, Attorney General, United States Department of Justice, 10th & Constitution Avenue, N.W., Washington, D.C. 20006** and by delivery to: **John L. Brownlee, United States Attorney, Western District of Virginia, The Thomas B. Mason**

Building, 105 Franklin Road, S.W., Suite 1, Roanoke, Virginia, 24011-2305 and to Assistant United States Attorney, Julie C. Dudley, Civil Chief, United States Attorneys Office for the Western District of Virginia, The Thomas B. Mason Building, 105 Franklin Road, S.W., Suite 1, Roanoke, Virginia, 24011-2305.



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Pages: 14
Including this cover sheet

From: James L. Coursey, Jr.
Assistant U.S. Attorney

RE: United States of America ex rel. Sandra Clarke v. Diabetes Self Care and Matria Corporation

COMMENTS:

As requested, attached is a copy of the Complaint in the above referenced case.

SENSITIVE INFORMATION ENCLOSED

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