

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

UNITED STATES OF AMERICA; and
THE STATE OF CALIFORNIA *ex rel.*
Richard Boudreau and Janine
Boudreau,

Relators-Plaintiffs

v.

CYRUS SORAT, HEALTH CARE
PHARMACY an unknown type of
business entity, VICIS CAPITAL,
LLC, MEDICAL SOLUTIONS
MANAGEMENT, INC., DEUTSCHE
MEDICAL SERVICES an unknown
type of business entity, and MD
WERKS, INC.,

Defendants.

FILED IN CAMERA & UNDER SEAL

JURY TRIAL DEMANDED

CIVIL ACTION NO. 08-cv-416

COMPLAINT FOR VIOLATIONS OF THE
FEDERAL FALSE CLAIMS ACT [31 U.S.C.
§3729 *et seq.*]; CALIFORNIA FALSE CLAIMS
ACT [Cal. Gov. Code §12650 *et seq.*].

COMPLAINT

Relators-Plaintiffs Richard and Janine Boudreau (“Relators-Plaintiffs”), through their undersigned attorneys, on behalf of the United States of America (the “United States”) and the State of California, for their Complaint against Defendant Cyrus Sorat, Health Care Pharmacy (“HCP”), Vicis Capital, LLC, Medical Solutions Management, Inc. (“MSMI”), Deutsche Medical Services (“DSS”) and MD Werks, Inc. (“MDW”) (collectively, “Defendants”), allege as follows:

I. INTRODUCTION

1. This is an action, by and through Relators-Plaintiffs, to recover treble damages and civil penalties on behalf of the United States and California arising from false and/or fraudulent records, statements and claims made, used and/or caused to be made, used or presented by Defendants and/or their agents, and employees in violation of the Federal False

Claims Act, 31 U.S.C. § 3729 *et seq.* and the California False Claims Act, Cal. Gov. Code §12650 *et seq.*

2. This matter involves fraudulent billing practices in connection with certain topical analgesic compounds (the “Compounds”) used to treat pain for injured workers receiving workers compensation benefits administered through federal, California and numerous private programs.

3. On information and belief, for approximately five or more years, Defendants have been engaged in an illegal scheme for, among other things, the purpose of fraudulently billing federal and California workers compensation programs and numerous other private programs their insurers for unfilled orders of the Compounds. Although at this time it is not possible to estimate the total losses sustained by the federal and state governments under the state and federal workers compensation programs, on information and belief, the dollar amount of these fraudulent billings is in the tens of millions of dollars.

II. PARTIES

4. The United States of America is a plaintiff for whom recovery is sought for false and fraudulent workers’ compensation claims submitted to the Office of Workers Compensation Programs (“OWCP”) and the United States Department of Labor (“DOL”), pursuant to the Federal Employee Compensation Act (“FECA”) (5 U.S.C. § 8101, *et seq.*). The United States Department of Labor is, in effect, the federal insurance carrier for worker compensation claims made by federal workers. Pursuant to the FECA, the federal government pays its workers’ compensation obligations for its own employees through regular appropriations. Claims are generally submitted to the OWCP, which makes FECA eligibility determinations under the authority of the Secretary of the DOL.

5. The State of California is a plaintiff for whom recovery is sought for false and fraudulent workers' compensation claims submitted to the California State Compensation Insurance Fund ("SCIF"), pursuant to the California False Claims Act, Cal. Gov. Code §12650 *et seq.* The State of California is, in effect, the state insurance carrier for worker compensation claims made by workers employed in California.

6. Relators-Plaintiffs are principals of Global Healthcare Recovery, LLC ("Global Healthcare") a collection agent that was engaged by Defendants to collect receivables owed to Defendants in connection with the Compounds. Because of this position, Relators-Plaintiffs have gained knowledge of Defendants' fraudulent activities. Relators-Plaintiffs are citizens and residents of the State of New Hampshire. They bring this action on their own behalf and on behalf of the United States pursuant to 31 U.S.C. § 3730(b)(1) and the California False Claims Act.

7. On information and belief, Defendant Sorat is a resident of California.

8. On information and belief, Defendant Health Care Pharmacy ("HCP") is an entity operating as a pharmacy, with a principal place of business in Tustin, California. On information and belief, Defendant Sorat owns an interest in HCP.

9. On information and belief, Defendant Vicis Capital, LLC ("Vicis") is a New York-based hedge fund and major shareholder in two entities involved in the fraudulent billing practices.

10. On information and belief, Medical Solutions Management, Inc. ("MSMI") is an entity with a corporate form and principal place of business that are not presently known.

11. On information and belief, Deutsche Medical Services ("DMS") is an entity with a corporate form and principal place of business that are not presently known.

12. On information and belief, MD Werks, Inc. (“MDW”) is an entity with a corporate form and principal place of business that are not presently known.

13. All of the Defendants have transacted business in New Hampshire with New Hampshire-based Relators-Plaintiffs and Global Healthcare.

III. FACTUAL ALLEGATIONS

14. In or about May 2007, a Robert Coffill (“Coffill”) contacted Relator-Plaintiff Richard Boudreau. Coffill stated that he worked for Medical Solutions Management, Inc. (“MSMI”) and wanted Global Healthcare’s assistance in collecting problem healthcare receivables.

15. The receivables at issue involved workers compensation claims for use of the Compounds, which comprise 13 different analgesic compounds listed in **Exhibit A**. Coffill described that numerous physicians in California and elsewhere are paid to consider prescribing one or more of the Compounds to patients needing topical analgesics in connection with workers compensation injuries. Such physicians are also provided with 10 mg vials of the Compounds to distribute to patients following their examination and prior to the mail order full prescription of the Compounds. These physicians are also provided with a checklist on which they may choose to prescribe the additional mail order quantities of such Compounds for ongoing treatment to the same patients. State and federal workers compensation providers are thereafter billed for such Compounds.

16. Later in or about May 2007, Coffill traveled to Salem, New Hampshire, to meet with Global Healthcare to further discuss the collection issues.

17. On or about June 11, 2007, MSMI and Global Healthcare entered a contract by which Global Healthcare would assist MSMI in collecting the receivables at issue.

18. In or about June 2007, Coffill informed Global Healthcare that MSMI was purchasing healthcare receivables at a discount from Deutsche Medical Services (“DMS”). In or about that same month, Global Healthcare began working with representatives of DMS to streamline the claim entry processes.

19. In or about July 2007, Coffill introduced Relators-Plaintiffs to representatives from MD Werks, Inc. (“MDW”) for the assumed purpose of determining whether MDW could be of any assistance in the collection of the problem receivables. MDW claimed to have developed a software package that can determine if a healthcare claim will be payable, and that can assist healthcare providers in obtaining preferential borrowing rates on such claims.

20. In or about July 2007, Coffill informed Global Healthcare and Relators-Plaintiffs that Vicis is a major shareholder in both MSMI and MDW. For the first time, Coffill also informed Relators-Plaintiffs that he was also a Vicis representative.

21. In or about the summer of 2007, Coffill arranged a meeting between Relator-Plaintiff Richard Boudreau and Shad Stasney (“Stansey”), a manager at Vicis to discuss Global Healthcare’s success in healthcare-related collections and the possibility of having Global Healthcare assist with the development of MDW’s software package.

22. On or about August 6, 2007, MDW representatives travelled to Salem, New Hampshire to meet with Global Healthcare and to discuss MDW’s software package. Over time, it became apparent that MDW did not have a fully functioning process.

23. On or about November 27, 2007 Sorat commenced making payments to Global Healthcare for the collection of his and/or HCP’s receivables.

24. In or about February 2008, Howard Katz (“Katz”) of MDW began negotiating with Sorat to take over MSMI contract to purchase the receivables.

25. In or about the late winter or early spring of 2008, Katz informed Global Healthcare that Vicis was funding the weekly purchases of claims and that payments from the government workers compensation carriers and other insurance companies should be going into a “lock box” controlled by MDW.

26. In or about April 2008, MDW commenced purchasing receivables from DMS.

27. In or about the fall of 2008, Global Healthcare began experiencing delays and other problems in connection with monies it was owed by Sorat and certain entities, on information and belief, he controls or in which he has an interest. As a result, Global Healthcare and Relators-Plaintiffs contacted a number of healthcare providers to determine whether they also had experienced any similar problems. During these inquiries, for the first time it came to the attention of Global Healthcare and Relators-Plaintiffs that, in fact, many of the logged transactions for which Global Healthcare had been collecting payment on behalf of Defendants were fraudulent and never took place.

28. Relators-Plaintiffs know, for instance, that the number of physicians who actually write prescriptions for the Compounds is vastly fewer than Defendants have represented to Global Healthcare and Relators-Plaintiffs and asked them to collect.

29. On information and belief, the dollar figure of the fraudulent billings runs into the tens of millions of dollars. For example, in connection with just one of several companies that, on information and belief, Defendant Sorat controls, some 75,000 prescriptions for the Compounds were issued, at an average prescription cost of approximately \$250, which represents billings of approximately \$19 million.

30. On information and belief, approximately 70 percent of the fraudulent billings were in connection with claims submitted to federal or state workers' compensation programs, such as those administered by the DOL and SCIF.

31. Relators-Plaintiffs, as a collection agent for Defendants and/or entities they control, have unique knowledge of the Defendants' fraudulent billing practices in connection with the compounds and the workers compensation claims.

32. The Federal False Claims Act, 31 U.S.C. §§ 3729-32, prohibits the making of false or fraudulent claims for payment or approval, or causing such false or fraudulent claims to be made to the United States in connection with any program, such as federal worker's compensation programs established pursuant to the FECA, which are funded, in whole or in part, by the United States.

33. The California False Claims Act, Cal. Gov. Code §12650 *et seq.*, prohibits the making of false or fraudulent claims for payment or approval, or causing such false or fraudulent claims to be made to the State of California in connection with any program, such as the SCIF, which is funded, in whole or in part, by the State of California.

34. On information and belief, Defendants, knew or had cause to know or participated in making or causing to be made, false claims concerning the Compounds.

35. In making, and causing to be made, claims for reimbursement under federal worker's compensation programs established pursuant to the FECA, Defendants submitted, or caused to be submitted, false and fraudulent claims in violation of the Federal False Claims Act.

36. In making, and causing to be made, claims for reimbursement under the SCIF, Defendants submitted, or caused to be submitted, false and fraudulent claims in violation of the California False Claims Act.

37. Upon information and belief, the Defendants' intentional violations of the Federal False Claims Act and the California False Claims Act related to the Compounds are ongoing.

COUNT I
Violations of Federal False Claims Act
31 U.S.C. § 3729

38. Relators-Plaintiffs incorporates by reference and re-alleges all above paragraphs as if fully set forth herein.

39. This Count is brought by Relators-Plaintiffs in the name of the United States against the Defendant under the *qui tam* provisions of 31 U.S.C. § 3730 for Defendant's violation of 31 U.S.C. § 3729(a)(1) and (a)(2). In violation of 31 U.S.C. § 3729(a)(1) and (a)(2), Defendant made and caused to be made, the false claims that have been set forth in the Complaint herein.

40. Plaintiff United States, unaware of the falsity of the claims and/or statements which Defendant caused to be submitted to the United States, and in reliance on the accuracy thereof, paid for claims that would otherwise not have been allowed.

41. The amounts of the false or fraudulent claims to the United States were material.

42. Plaintiff United States, being unaware of the falsity of the claims and/or statements made by Defendant, and in reliance on the accuracy thereof, paid and may continue to pay for services that otherwise should not have been paid under federal health care programs established pursuant to the FECA.

43. The United States has been damaged by the payment of false or fraudulent claims.

WHEREFORE, Relators-Plaintiffs demand judgment against Defendants as follows:

a. That by reason of the aforementioned violations of the False Claims Act this Court enter judgment in Plaintiff's favor and against Defendants in an amount equal to three (3) times the amount of damages that the United States has sustained because of Defendants'

actions, plus a civil penalty not less than \$5,000 nor more than \$10,000 for each violation of 31 U.S.C. § 3729;

b. That Relators, as *Qui Tam* Plaintiffs, be awarded the maximum amount allowed pursuant to § 3730(d) of the False Claims Act and/or any other applicable provision of the law;

c. That Relators be awarded all costs and expenses of this action, including attorney's fees and court costs incurred in the prosecution of this suit; and

d. That Plaintiffs and Relators have such other and further relief that this Court deems just and proper.

COUNT II
California False Claims Act
Cal. Government Code §§ 12650-12655

44. Relators-Plaintiffs incorporate by reference and re-alleges all above paragraphs as if fully set forth herein.

45. This is a claim against Defendants for treble damages and penalties on behalf of the State of California under the California False Claims Act, California Government Code §§ 12650-12655.

46. By virtue of the above-described acts, among others, Defendant Defendants did knowingly and willfully violate the California False Claims Act.

47. By virtue of the above-described unlawful acts, Defendant knowingly made, used, or caused to be made or used false records and statements, and omitted material facts, to induce the California State Government to approve and pay such false and fraudulent claims under the SCIF program.

48. The California State Government, unaware of the falsity of the records, statements and claims made, used, presented or caused to be made, used or presented by

Defendants, paid and continues to pay the claims that would not be paid but for Defendants' illegal inducements and/or business practices.

49. By reason of Defendants' conspiracy and unlawful acts, the State of California has been damaged, and continues to be damaged, in substantial amounts to be determined at trial.

50. The State of California is entitled to the maximum penalty of \$10,000 for each and every false or fraudulent claim, record or statement made, used, presented or caused to be made, used or presented by Defendants.

WHEREFORE, Relators-Plaintiffs demand judgment against defendant Defendants as follows:

a. That by reason of the aforementioned violations of the California False Claims Act that this Court enter judgment in Plaintiff's favor and against Defendants in an amount equal to not less than two times and not more than three times the amount of damages that California has sustained because of Defendants' actions, plus a civil penalty of not more than \$10,000 for each violation of CAL. GOV. CODE §12651(a)(3);

b. That Relators, as *Qui Tam* Plaintiffs, be awarded the maximum amount allowed pursuant to CAL. GOV. CODE §12652(g)(2) and/or any other applicable provision of law;

c. That Relators be awarded all costs and expenses of this action, including attorney's fees and court costs incurred in the prosecution of this suit; and

d. That Plaintiffs and Relators have such other and further relief that this Court deems just and proper.

PRAYERS FOR RELIEF

WHEREFORE, Relators-Plaintiffs and plaintiffs United States and the State of California pray for judgment against Defendants as follows:

a. That Defendants be found to have violated and be enjoined from future violations of the Federal False Claims Act, 31 U.S.C. §3729 *et seq.*;

b. That this Court enter judgment against defendant Defendants in an amount equal to three times the amount of damages the United States Government has sustained because of Defendants' false or fraudulent claims, plus the maximum civil penalty for each violation of 31 U.S.C. §3729;

c. That this Court enter judgment against defendant Defendants in an amount equal to three times the amount of damages the State of California has sustained because of Defendants' actions, plus a civil penalty of not more than \$10,000 for each violation of CAL. GOV. CODE §12651(a)(3);

d. That Relators-Plaintiffs be awarded the maximum amount allowed pursuant to §3730(d) of the Federal False Claims Act, and the equivalent provisions of the state statutes set forth above;

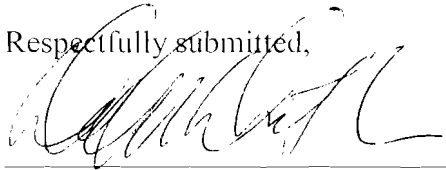
e. That Relators-Plaintiffs be awarded all costs of this action, including attorneys' fees and expenses; and

g. That Relators-Plaintiffs and the United States and the State of California recover such other relief as the Court deems just and proper or that is necessary to make Relators-Plaintiffs and the United States and the State of California whole.

Demand for Jury Trial

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Relators-Plaintiffs hereby demand a trial by jury.

Respectfully submitted,



Daniel R. Deutsch (NH Bar Id. No. 2824)
DEUTSCH WILLIAMS BROOKS
DeRENSIS & HOLLAND, P.C.
99 Summer Street
Boston, MA 02110-1213
Tel: 617-951-2300

Attorneys for Relators-Plaintiffs

Date: October 7, 2008

DWLJBDB-227288.1 9808.00

Exhibit A

No. 2207 P. 1

NEW



WORKER'S COMPENSATION PATIENT COMPOUND RX ORDER FORM

Please fax this form with demographics to 866-665-0248

Date _____

Patient's Name _____ Phone # _____

D.O.B. _____ Allergies _____

Patient Address _____

Label Language: ☐ English ☒ SpanishICD-9 Code _____ Diagnosis _____ Body Part L Knee

RX - Transdermal Compounds

- ☐ **LidoGabaKeto-C-TD** 6/10/10/2% (lidocaine / gabapentin / ketoprofen / cyclobenzaprine)
Quantity: 70 gram jar Sig: Apply a thin layer to affected area twice daily as directed by physician
- ☒ **Capflex-MC-Mild-C-TD** (capsaicin 0.0375% / menthol / camphor / cyclobenzaprine 2%)
Quantity: 120 gram jar Sig: Apply thin layer to affected area 15 minutes before exercise and as needed
- ☐ **Capflex-MC-Hot-C-TD** (capsaicin 0.05% / menthol / camphor / cyclobenzaprine 2%)
Quantity: 120 gram jar Sig: Apply thin layer to affected area 15 minutes before exercise and as needed
- ☐ **Diclof 20-G-TD** 20/10% (diclofenac sodium / gabapentin)
Quantity: 70 gram jar Sig: Apply a thin layer to affected area twice daily as directed by physician
- ☐ **LidoGabaKeto-AC-TD** 6/10/10/2/2% (lidocaine / gabapentin / ketoprofen / amitriptyline / cyclobenzaprine)
Quantity: 70 gram jar Sig: Apply a thin layer to affected area twice daily as directed by physician
- ☐ **KetoGaba -10 / 10 -TD** 10% (ketoprofen) / 10% (gabapentin)
Quantity: 70 gram jar Sig: Apply a thin layer to affected area twice daily as directed by physician
- ☐ **KetoGaba-20 / 10-TD** 20% (ketoprofen) / 10% (gabapentin)
Quantity: 70 gram jar Sig: Apply a thin layer to affected area twice daily as directed by physician
- ☐ **Lido-Gaba-TD** 10/10% (lidocaine / gabapentin)
Quantity: 70 gram jar Sig: Apply a thin layer to affected area twice daily as directed by physician
- ☒ **LidoGabaKeto-TD** 6/10/10% (lidocaine / gabapentin / ketoprofen)
Quantity: 70 gram jar Sig: Apply a thin layer to affected area twice daily as directed by physician
- ☐ **Gaba 10-TD** 10% (gabapentin)
Quantity: _____ Sig: Apply a thin layer to affected area twice daily as directed by physician

RX - Capsule Compound

Dr. Initial

- ☐ **GabaB6400/25** (gabapentin pyridoxine HCl 400mg/25mg) Capsules
Quantity: 120 Capsules Sig: Take 1 capsule 4 Times per day



Patient has been instructed on correct body part to apply transdermal compound

(Must Complete This Section) TOTAL # OF RXs PRESCRIBED 2 AUTO REFILLS 2

Prescriber Name (Print) _____

Prescriber Signature _____

State License # _____ DEA # _____

Office Address _____

City/State/Zip _____

Phone # _____ Fax # _____

This form does not constitute a prescription. It is a request for a prescription. It is not to be used as a prescription. It is not to be used as a prescription.



02D

Pharmacy
1 Newport Avenue
Tustin, CA 92780
(714) 669-4000 Fax (866) 665-0248

WORKER'S COMPENSATION PATIENT COMPOUND RX ORDER FORM

Please fax this form with demographics to 866-665-0248

Date 11/15/07

Patient's Name _____ Phone # _____

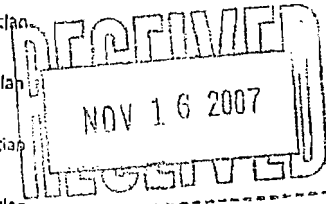
D.O.B. _____ Allergies _____

Patient Address _____

Label Language: ☒ English ☐ Spanish ICD-9 Code 7 Diagnosis Back Pain Body Part Back

RX - Transdermal Compounds

- ☐ LidoOnbaKeto-TD 10/6/10% (lidocaine / gabapentin / ketoprofen)
Quantity: 60 gram jar Sig: Apply a thin layer to affected area twice daily as directed by physician
- ☐ Capflex-MC-Mild-TD (capsaicin 0.0375% / menthol / camphor)
Quantity: 60 gram jar Sig: Apply thin layer to affected area 15 minutes before exercise and as needed
- ☐ Capflex-MC-Hot-TD (capsaicin 0.05% / menthol / camphor)
Quantity: 60 gram jar Sig: Apply thin layer to affected area 15 minutes before exercise and as needed
- ☐ Diclof 20-TD 20% (diclofenac sodium)
Quantity: 60 gram jar Sig: Apply a thin layer to affected area twice daily as directed by physician
- ☐ Indo 20-TD 20% (indomethacin)
Quantity: 50 gram jar Sig: Apply a thin layer to affected area twice daily as directed by physician
- ☐ Keto 10-TD 10% (ketoprofen)
Quantity: 50 gram jar Sig: Apply a thin layer to affected area twice daily as directed by physician
- ☐ Keto 20-TD 20% (ketoprofen)
Quantity: 60 gram jar Sig: Apply a thin layer to affected area twice daily as directed by physician
- ☒ Lido-Keto-TD 10/20% (lidocaine / ketoprofen)
Quantity: 60 gram jar Sig: Apply a thin layer to affected area twice daily as directed by physician
- ☐ Lido 5-TD 5% (lidocaine)
Quantity: 60 gram jar Sig: Apply a thin layer to affected area twice daily, dosed 6 hours apart, then withhold for 12 hours
- ☐ Lido 10-TD 10% (lidocaine)
Quantity: 60 gram jar Sig: Apply a thin layer to affected area twice daily, dosed 6 hours apart, then withhold for 12 hours
- ☐ Gaba 10-TD 10% (gabapentin)
Quantity: 60 gram jar Sig: Apply a thin layer to affected area twice daily as directed by physician



RX - Capsule Compound

- Dr. Initial ☐ GabaB 6400/25 (gabapentin / pyridoxine HCl 400mg/25mg) Capsules
Quantity: 120 Capsules Sig: Take 1 capsule 4 times per day

Patient has been instructed on correct body part to apply transdermal compound

(Must Complete This Section) TOTAL # OF RXs PRESCRIBED 1 AUTO REFILLS 8

Prescriber Name (Print) _____

Prescriber Signature _____

State License # _____

Office Address _____

City/State/Zip _____

Phone # _____ Fax # _____

3/1/07

The FDA does not approve compounds to cure, treat or mitigate disease. All compounds are prepared in accordance with state and federal regulations governing compounding and are available by prescription only.