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WESTERN DISTRICT OF WASHINGTON

09-CV-01791-CMP

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

No.

C09-1791 RAJ

COMPLAINT FOR WRONGFUL
TERMINATION AND VIOLATIONS
OF THE FALSE CLAIM ACT

DEMAND FOR JURY TRIAL

**FILED UNDER SEAL PURSUANT
TO 31 U.S.C. § 3730(b)(2)**

**DO NOT PLACE IN PRESS BOX
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UNITED STATES OF AMERICA *ex*
rel. RYAN SIMS, an individual,

Plaintiff,

vs.

LIFEWATCH, SERVICES, INC., a US corporate
subsidiary to a foreign corporation,

Defendant.

COMES NOW Ryan Sims, by and through his undersigned attorneys of record, Mark Walters of the Walters Law Firm PLLC, and Daniel DeLue of Ferring DeLue, LLP, and for his causes of action against defendant, LifeWatch Services, Inc., to state and alleges as follows:

I. PARTIES

1. Plaintiff Ryan Sims ("Sims") is a single man.
2. Mr. Sims is a resident of the state of Washington.

COMPLAINT - 1

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3. Defendant LifeWatch Services, Inc. ("LifeWatch Services") is a United States corporation and subsidiary of a foreign corporation LifeWatch AG. LifeWatch Technologies, Inc. is the US-based manufacturer for LifeWatch Services. LifeWatch Services is organized under the laws of Delaware.

4. The Registered Agent for LifeWatch Services is Corporation Service Company, 6500 Harbour Heights Parkway, Suite 400, Mukilteo, WA 98275.

II. JURISDICTION AND VENUE

5. The United States District Court has subject matter jurisdiction over the causes of action alleged herein pursuant to 28 U.S.C. §1332 as Mr. Sims is a resident of the state of Washington and LifeWatch Services is incorporated under the laws of the state of Delaware and does not have its principal place of business in Washington, but does business in Washington.

6. Mr. Sims' claims exceed \$75,000.00.

7. The United States District Court has subject matter jurisdiction over the causes of action alleged herein pursuant to 28 U.S.C. §1331 as Mr. Sims' claims arise under 31 U.S.C. § 3730(h).

8. The United States District Court has supplemental jurisdiction over the causes of action arising under state law alleged herein pursuant to 28 U.S.C. §1367 as they are so related to claims in the action within the Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.

9. Venue is proper in the United States District Court for the Western District of Washington at Seattle pursuant to 28 U.S.C. §1391(b) and (c). A substantial part of the events or omissions giving rise the plaintiff's claims occurred in this District and LifeWatch Services conducts business in this District.

10. Venue is proper in the United States District Court for the Western District of Washington at Seattle pursuant to 31 U.S.C. §3732(a). LifeWatch Services transacts business in this District and acts proscribed by 31 U.S.C. §3729 occurred in this District.

III. FACTS

11. LifeWatch Services is an ambulatory health monitoring solutions company which provides cardiac monitoring services. According to LifeWatch Services' website, "LifeWatch Services is a participating provider with most insurance companies, including Medicare."

12. LifeWatch Services advertises that it distributes a comprehensive platform of technologies and services that help physicians and patients detect and analyze health issues related to the heart, including arrhythmias.

13. Heart monitors enable physicians to establish stronger connections with at-risk patients.

14. LifeWatch Services' monitoring devices are promoted as being able to detect significant health events and transmit data to its Patient Monitoring Centers, where the data is analyzed by certified clinicians and technicians who prepare thorough diagnostic reports and communicate with prescribing physicians. This is promoted as enabling continuous remote oversight of patients.

15. LifeWatch Services provides three main types of cardiac monitoring services—Holter, Event, and ACT. Each monitor is authorized to be used for limited purposes and at different reimbursable rates from Medicare and insurance companies. The relevant cardiac monitoring services in this Complaint are:

a. **Cardiac Event Monitoring ("CEM" or "Event Monitor") services.** According to LifeWatch Services' website, "A looping monitor continuously records the patient's ECG. When an event is manually or automatically recorded, the monitor automatically goes into a loop-mode to save the

1 selected pre-symptom portion of the ECG rhythm, while continuing to record a post-symptom portion of
 2 the ECG. Patients are monitored with looping or non-looping cardiac event monitors for up to 30 days.
 3 Each patient is provided with a LifeWatch cardiac monitor, which is utilized when symptoms occur. An
 4 ECG is recorded when symptoms occur, and the data is transmitted to the LifeWatch cardiac monitoring
 5 center. Upon receipt, the ECG is immediately reviewed and acted upon by nurses and certified cardiac
 6 technicians according to the enrolling physician's orders."

7 (<http://www.lifewatch.com/siteFiles/1/284/5007.asp>)

8 b. **Ambulatory Cardiac Telemetry ("ACT", "LifeStar ACT" or "ACT Monitor")**
 9 **monitoring services.** According to LifeWatch Services' website, "ACT (Ambulatory Cardiac
 10 Telemetry) is an automatically activated system that requires no patient intervention to either capture or
 11 transmit an arrhythmia when it occurs. Upon arrhythmia detection, the system automatically utilizes the
 12 integrated Cellular Phone Monitor to transmit the ECG waveform to LifeWatch, where the ECG is
 13 analyzed. The patient's physician is notified of the arrhythmia based on pre-determined notification
 14 criteria prescribed by the patient's physician. LifeStar ACT provides critical ECG information by
 15 capturing the onset and termination/escape of an arrhythmia to assist in correctly identifying and treating
 16 the patient. Patients are monitored for up to 30 days and all the data is available at the request of the
 17 physician during the service period and for 7 days following the end of service."
 18 (<http://www.lifewatch.com/siteFiles/1/282/5005.asp>).

19 **The Relationship Between LifeWatch Services & Highmark Medicare Services**

20 16. The LifeWatch ACT Monitoring Facility is located in Philadelphia, Pennsylvania.

21 17. All ACT "Technical" Services are billed through Highmark Medicare Services
 22 ("Highmark") of Pennsylvania.

23 18. Highmark is a Part A Medicare Administrative Contractor for Delaware (DE), New
 24 Jersey (NJ), Pennsylvania (PA), Maryland (MD) and the District of Columbia (DC).

19. Highmark is the Part B Medicare Administrative Contractor for Pennsylvania (PA), New Jersey (NJ), Maryland (MD), Delaware (DE) and the District of Columbia Metropolitan Area (DCMA).

20. Highmark's proposed rates are applicable to Medicare patients and impact roughly one-third of LifeWatch's LifeStar ACT enrollees. (<http://production.investis.com/lifewatch/financial-publications/media-releases/2009/2009-07-28/2009-07-28.pdf>)

**The Relevant Medicare Current Procedural Terminology (CPT) Codes
and Diagnosis (ICD-9-CM) Codes:**

21. The Current Procedural Terminology ("CPT") codes are used to describe medical and surgical services performed by healthcare providers.

22. The International Classification of Diseases, 9th Revision, Clinical Modification ("ICD-9-CM") codes are used throughout the healthcare industry to describe diseases, injuries, symptoms, and conditions.

23. CPT codes and ICD-9-CM codes are inherently related, as the diagnosis (ICD-9-CM code) must support the procedure (CPT code).

24. All Medicaid and Medicare claims require a valid ICD-9-CM diagnosis code and a valid CPT code to be lawfully reimbursed by Medicare.

25. There are primarily three CPT codes billed to the patient, the patient's insurer, or Medicare, for the usage of **Event Monitors**:

a. **"Hookup"**: a fee paid to LifeWatch Services or the physician for the connection, recording, and disconnection of the heart monitor.

(https://www.codemap.com/cpt.cfm?state=00952&locality=16&cpt_code=93270&id=240)

b. **"Technical"**: a fee paid to LifeWatch Services for monitoring, receipt of transmissions, and analysis. (https://www.codemap.com/cpt.cfm?cpt_code=93271)

c. **"Interpretation"**: a fee paid to the physician for physician review and interpretation. (https://www.codemap.com/cpt.cfm?cpt_code=93272)

26. There are primarily two CPT components billed to the patient, the patient's insurer, or Medicare for the usage of **ACT Monitors**:

a. **"Technical"**: a fee paid to LifeWatch Services for "technical support for connection and patient instructions for use, attended surveillance, analysis and physician prescribed transmission of daily and emergent data reports."

(https://www.codemap.com/cpt.cfm?state=12502&locality=01&cpt_code=93229&id=240)

b. **"Interpretation"**: a fee paid to the physician for physician review and interpretation. (https://www.codemap.com/cpt.cfm?cpt_code=93228)

27. Prior to January 1, 2009, LifeWatch Services billed Highmark with the CPT code 93799-TC for ACT monitoring services.

28. After January 1, 2009, LifeWatch Services billed Highmark with the CPT code 93229 for ACT monitoring services.

ICD-9-CM Diagnosis 426.9 - Conduction disorder, unspecified

29. The 2007 ICD-9-CM Diagnosis code 426.9 is a specific code that can be used to specify a conduction disorder, unspecified diagnosis on a Medicaid or Medicare reimbursement claim.

30. The 2007 ICD-9-CM Diagnosis code 426.9 was in effect when Mr. Sims worked for LifeWatch Services, and until October 1, 2008.

31. The 2009 ICD-9-CM Diagnosis code 426.9 is a specific code that can be used to specify a diagnosis on a Medicaid or Medicare reimbursement claim which became effective on October 1, 2008.

32. The 2007 ICD-9-CM Diagnosis code 426.9 is defined as "Conduction disorder, unspecified: Impairment of conduction in heart excitation," often applied specifically to atrioventricular heart block, and is also known as "Heart block NOS" and "Stokes-Adams Syndrome."

33. The 2009 ICD-9-CM Diagnosis code 426.9 is defined as "Conduction disorder, unspecified: Impairment of conduction in heart excitation," often applied specifically to atrioventricular heart block, and is also known as "Heart block NOS" and "Stokes-Adams Syndrome."

ICD-9-CM Diagnosis 785.1 - Palpitations

34. The 2007 ICD-9-CM Diagnosis code 785.1 is a specific code that can be used to specify a palpitations diagnosis on a Medicaid or Medicare reimbursement claim.

35. 2007 ICD-9-CM Diagnosis code 785.1 was in effect when Mr. Sims worked for LifeWatch Services, and until October 1, 2008.

36. The 2009 ICD-9-CM Diagnosis code 785.1 is a specific code that can be used to specify a diagnosis on a Medicaid or Medicare reimbursement claim, which became effective on October 1, 2008.

37. The 2007 ICD-9-CM Diagnosis code 785.1 is defined as, "Palpitations, an unpleasant sensation of irregular and/or forceful beating of the heart," and also known as "awareness of one's heartbeat."

38. The 2009 ICD-9-CM Diagnosis code 785.1 is defined as is defined as, "Palpitations, an unpleasant sensation of irregular and/or forceful beating of the heart," and also known as "awareness of one's heartbeat."

39. Palpitations is a different diagnosis than conduction disorder, unspecified.

**Diagnosis Should Dictate Monitor
LifeWatch Promoted Monitors to Dictate Diagnosis to Make More Money**

40. Medicare has approved the use of an Event Monitor for solely a palpitations diagnosis.

41. Medicare has not approved the use of an ACT Monitor for solely a palpitations diagnosis.

42. In 2009, Medicare paid LifeWatch Services \$239.29 to monitor a patient's use of an Event Monitor for up to 30 days. The 2008 rate was \$250.51.

43. Medicare paid LifeWatch Services \$1,123.07 to monitor a patient's use of an ACT Monitor for up to 30 days. The rate was lowered to \$754, effective September 1, 2009.

LifeWatch Services Limits Monitor Choice to Increase Revenue

44. LifeWatch Services has engaged in a deliberate scheme to phase out the use of the Event Monitors and force physicians and patients to use ACT Monitors because ACT Monitor "Technical" services are billed to Medicare and other providers at a significantly higher rate than Event Monitor "Technical" services. Lifewatch Services has implemented this scheme by directing its sales representatives to remove Event Monitors from physicians' offices throughout the United States. Lifewatch Services' scheme to remove Event Monitors from physicians' offices throughout the United States causes a Medicare billing issue for patients with solely a palpitation diagnosis because Medicare has not approved the use of ACT Monitor for palpitation diagnosis. At all relevant times, Lifewatch Services has known about this Medicare billing issue. To circumvent this Medicare billing issue, when a patient suffers from solely palpitations, and after LifeWatch Services has (a) removed Event Monitors from physicians' inventories; and (b) directed that physicians' use "conduction disorder, unspecified" as a secondary diagnosis or as a primary diagnosis during a patient-physician encounter where a patient is suspected of suffering from solely palpitations. By removing the Event Monitors, and promoting the use of inappropriate diagnosis codes, LifeWatch Services has designed and implemented a false billing scheme to bill the United States government for the ACT Monitor (\$1,123.07) versus the Event Monitor (\$239.29).

45. Some patients in this District for whom LifeWatch Services has provided ACT monitoring services have been diagnosed originally with palpitations. The "conduction disorder, unspecified" was added after the patient-physician encounter to present the higher charge to the U.S. government.

Mr. Sims

46. Mr. Sims was hired by LifeWatch Services, Inc. in September 2008.

47. Mr. Sims worked as a Client Executive for LifeWatch Services, Inc.

1 48. Mr. Sims was terminated by LifeWatch Services on June 2, 2009.

2 **LifeWatch Services' Scheme to Remove Less Costly Event Monitors**
3 **to Expand the Use of the More Costly ACT Monitors**

4 49. LifeWatch Services hired Mr. Sims as part of a national effort to increase the usage of
5 ACT Monitors in the United States and to limit and obviate the usage of Event Monitors.

6 50. While employed by LifeWatch Services, Mr. Sims attended an initial three and a half day
7 training session from October 6 through October 9, 2008 at LifeWatch Services' offices in Rosemont,
8 Illinois.

9 51. During this October 2008 training session, LifeWatch Services' Vice President of Sales,
10 Brent Atwood, made a presentation to employees and said, "ACT is the prom, and the Event Monitor is
11 the corsage... ACT is everything!"

12 52. LifeWatch Services' Director of Payor Relations, April Kline, held a meeting with six
13 new salespeople, including Mr. Sims, at Harry Caray's Restaurant in Rosemont, Illinois on October 8,
14 2008. Ms. Kline educated the group on CPT codes, ICD-9-CM diagnosis codes and stated that
15 "palpitations" diagnoses can be substituted with "conduction disorder, unspecified" diagnoses in order to
16 get Medicare approval for ACT enrollments.

17 53. Mr. Sims' first manager, Steve Barone, told Mr. Sims that it was possible to have
18 physicians' offices use a "conduction disorder, unspecified" diagnosis in place of a palpitations diagnosis
19 because "conduction disorder, unspecified" is a "vague" code.

20 54. Mr. Barone also told Mr. Sims that physicians' offices could add "conduction disorder,
21 unspecified" as "a secondary diagnosis" because Medicare has approved the use of ACT Monitors for the
22 "conduction disorder, unspecified" diagnosis.

23 55. An e-mail from April Kline, LifeWatch Services' Director of Payor Relations, dated
24 October 22, 2008, states:
25

1 “An acceptable diagnosis code . . . may be either primary or secondary. An
2 enrollment will be accepted either way. Your accounts may find it easier to add a
3 secondary diagnosis when needed, rather than change to a primary diagnosis.
4 For example, palpitations as a primary diagnosis and conduction disorder
unspecified as a secondary diagnosis is acceptable for a Medicare patient.”

5 56. On or about November 8, 2008, Mr. Sims and his manager, Mr. Barone, met with J.
6 Randall Farrar Cardiology in Richland, Washington.

7 57. During this November 8, 2008 meeting, the staff at J. Randall Farrar Cardiology noticed
8 that the Event Monitors were not approved for palpitations and Mr. Barone stated that the office could use
9 “conduction disorder, unspecified” since it was an “unspecified” billing code.

10 58. The Head Nurse at J. Randall Farrar Cardiology, Clark Gustafson, refused the ACT
11 Monitor because it could not be approved with a primary diagnosis of solely palpitations.

12 59. After the meeting with J. Randall Farrar Cardiology, Mr. Barone complained to Mr. Sims
13 and stated that most doctor offices are not as “nit-picky.”

14 60. In December of 2008, Mr. Sims learned that LifeWatch Services was engaging in the
15 practice of contacting physician accounts for “alternate” diagnosis codes when the physician account had
16 rendered a primary diagnosis not approved by Medicare.

17 61. In an e-mail dated December 3, 2008, LifeWatch Customer Service Representative, Paula
18 McNutt, asked nurse, Trish Sanford, North Cascade Cardiology, for an alternative diagnosis: “Can you
19 provide alternative diagnosis codes for these four Medicare patients?”

20 62. During the first week of January, 2009, it was announced that Rahman Sayeed would
21 become the new manager of the PNW region (Washington, Alaska, Montana, Idaho, Oregon, and
22 Northern California). From this point forward, Mr. Sims reported to Mr. Sayeed as his supervising
23 manager.

24 63. Mr. Sims attended a LifeWatch Services National Sales Meeting on January 12 – 14,
25 2009 in Rosemont, Illinois.

1 64. Mr. Sims remained in Rosemont, Illinois, until the afternoon of January 15, 2009, for
2 additional sales training.

3 65. During the January 2009 National Sales Meeting, LifeWatch Services National Sales
4 Manager, Mike Fiorito, introduced himself to a newly expanded LifeWatch Sales force of approximately
5 80 sales representatives, or "Client Executives."

6 66. On January 12, 2009, and as part of the LifeWatch Services National Sales Meeting,
7 LifeWatch Services' National Payor Relations Manager, April Kline, informed the group that the
8 conduction disorder, unspecified could be used in the place of, or in conjunction with, a palpitations
9 diagnosis to overcome the limited Medicare approved diagnoses available for ACT monitors.

10 67. On January 13, 2009, and as part of the LifeWatch Services National Sales Meeting,
11 LifeWatch Services' Vice President of Core Services, Craig Foley, presented a detailed analysis that
12 explained how ACT monitors are much more profitable compared to the Event Monitors.

13 68. Also on January 13, 2009, the 2009 compensation plan for Client Executives was
14 presented to the LifeWatch Services' sales force by Mike Fiorito. It was communicated that Lifewatch
15 Services would pay Client Executives commission payments for reaching a designated number of ACT
16 Monitor enrollments (referred to as "ACT Quota"), but not for reaching a designated number of Event
17 Monitor enrollments. This was the same premise as the 2008 compensation plan for Client Executives.

18 69. On the afternoon of January 15, 2009, Mr. Fiorito outlined a preliminary plan to have all
19 LifeWatch Services' Sales representatives remove Event Monitors from physician accounts, trying to
20 limit their choices and force them to either use ACT Monitors or find a another heart monitor vendor.

21 70. Mr. Fiorito announced the plan to remove Event Monitors as a "game of chicken," where
22 physician offices would most likely use ACT Monitors rather than go through the trouble of finding
23 another vendor.

24 71. Event Monitors cost Medicare less to use than ACT Monitors.
25

72. Event Monitors cost Medicare patients less to use than ACT Monitors because their co-pays and deductibles are usually based on costs paid by Medicare.

73. LifeWatch Services' salespeople are paid commission if they reach a designated number of ACT Monitor enrollments.

74. LifeWatch Services' salespeople are not paid commission if they reach a designated number of Event Monitor enrollments.

Misleading and False Online Enrollment Forms

75. LifeWatch Services E-Reports online enrollment form states that patients will receive "24-hr attended monitoring per 30-day period."

76. The statement on Lifewatch Services E-Reports online enrollment form that ACT Monitor patients will receive "24-hr attended monitoring per 30-day period" is false and misleading.

77. LifeWatch Services' ACT monitoring period is set to default to 21 days of monitoring.

78. LifeWatch Services does not disclose to LifeWatch accounts using E-Reports that it provides only 21 days of monitoring.

79. Mr. Sims inquired to Melissa Petrucci, LifeWatch Services' Director of Clinical Strategy, about the misleading reference to the number of days LifeWatch Services monitors ACT Monitor patients. On February 25, 2009, Ms. Petrucci responded via email, "while the physician can choose to enroll in service for 30 days, we don't necessarily want this to be the amount of time they initially enroll for...operationally, we are still being paid the same money to add 9 days to service."

Changing ICD-9-CM Diagnosis Codes

80. On February 24, 2009, ACT Benefits Coordinator for LifeWatch Services, Lupe Sanchez, telephoned Mr. Sims and asked Mr. Sims to obtain different diagnosis codes for several patients from The Doctors Clinic in Bremerton, Washington. She followed up the conversation with an e-mail which summarized this phone conversation.

1 81. On February 25, 2009, Mr. Sims and his manager, Rahman Sayeed, went to The Doctors
2 Clinic in Bremerton, Washington, and met with nurse Rick Johnson to address the February 24, 2009,
3 ACT Benefits Coordinator, Lupe Sanchez's request for new diagnosis codes for certain ACT Monitor
4 patients. During this meeting, Mr. Sayeed instructed Mr. Johnson that his office should use the
5 "conduction disorder, unspecified" code because it was a "catch all" code for ACT Monitor patients that
6 The Doctors Clinic had diagnosed with palpitations. Mr. Sayeed also instructed Mr. Johnson that his
7 office should use the "conduction disorder, unspecified" diagnosis code for all ACT Monitor patients that
8 do not fall into the list of approved ICD-9 codes for ACT Monitors.

9 82. Immediately after the February 25, 2009 meeting at The Doctors Clinic, Mr. Sims
10 expressed to his manager, Mr. Sayeed, that it did not seem right for LifeWatch Services to instruct
11 physician accounts to code palpitation diagnoses as conduction disorder, unspecified.

12 83. On March 3, 2009, LifeWatch Services National Sales Manager, Mike Fiorito, sent an
13 Outlook e-mail invitation to the LifeWatch Services' sales force. This was the announcement of a
14 conference call scheduled for May 6, 2009, in which he discussed converting the Event Monitor business
15 to ACT Monitors.

16 84. The morning of March 6, 2009, Mr. Fiorito held a conference call with the LifeWatch
17 Services sales force instructing them to remove all Event Monitors from physician accounts and replace
18 them with ACT Monitors.

19 85. LifeWatch Services directed Mr. Sims and other Client Executives to remove all Event
20 Monitors from physicians' offices throughout this District and the United States.

21 86. LifeWatch Services directed Mr. Sims and other Client Executives to inform the
22 physician offices that they were removing the Event Monitors as part of an "upgrade" to ACT Monitors.

23 87. The direction from LifeWatch Services to inform physicians that LifeWatch was
24 removing Event Monitors as part of an "upgrade" to ACT Monitors was material (having a natural
25

1 tendency to influence, or capable of influencing, the payment or receipt of money) to LifeWatch Services
 2 being reimbursed from Medicare for providing the ACT Monitors and performing the heart monitoring
 3 services.

4 88. Also on March 6, 2009, Mr. Sayeed (Mr. Sims manager) sent an e-mail to his sales
 5 representatives stating:

6 "Team-

7 As most of you heard on the call with Mike Fiorito this morning, we are taking an
 8 aggressive approach (in a good way) to convert all CEM [Cardiac Event Monitor]
 9 customers to ACT starting immediately. In order to hit our quotas for each of your
 10 territories, the region and nationally – this is a necessary step in moving forward with
 11 the new technology. Here's the message to your customers: "LET'S TRANSITION
 12 YOU TO THE NEW TECHNOLOGY". Let's get the old CEM [Event Monitors] out of
 13 the office and setup AOS [ACT On the Shelf] with them immediately.

14 Attached is a list of accounts with little to no ACT business in the last 6 months but
 15 they enrolled CEM with us more than 25 times in the same 6 month period. This is the
 16 first wave of conversions.

17 Good selling and email me when you have converted accounts to ACT!!"

18 89. LifeWatch Services' deceptive marketing campaign to remove Event Monitors from
 19 LifeWatch Services' physician accounts and replace them with ACT Monitors is further revealed by these
 20 actions.

21 90. On March 9, 2009, Mike Fiorito forwarded an e-mail from manager Steve Barone to the
 22 LifeWatch Services' sales force. Mr. Fiorito congratulated Mr. Barone and representative Brooke
 23 Albright on the getting the sixth conversion since the conversion campaign started. The e-mail stated:

24 "Hi Leigh Ann and Mike,
 25

1 Brooke Albright was one step ahead of the game with Loma Linda University (Pediatric
2 and Adult) Cardiology in converting ALL CEM business to ACT!!! Brooke presented
3 ACT last week as the best and ONLY choice for their patients' monitoring needs and has
4 successfully removed ALL event monitors from the pediatric and adult cardiology
5 departments. BOTTOM LINE, about 110 CEM enrollments in the last 6 months WILL
6 BE ACT from now on."

7 91. On March 24, 2009, Mr. Sims expressed concern to his manager, Mr. Sayeed, about the
8 credibility of the conversion campaign. Mr. Sims explained that he felt the conversion campaign limited
9 treatment options for physicians and forced patients and Medicare to pay additional money for cardiac
10 monitoring by forcing the use of more costly ACT Monitors over the Event Monitors. Mr. Sims also
11 expressed his concern to Mr. Sayeed about the ethics and legality of instructing physician accounts to use
12 the "conduction disorder, unspecified" code for palpitation patients. Mr. Sayeed responded, "[o]ur goals
13 are really high this year and we just need to push."

14 92. On April 14, 2009, LifeWatch Services put Mr. Sims on a Performance Improvement
15 Plan (PIP)..

16 93. The first sentence of the April 14, 2009 PIP states, "[i]mprove the results of the territory
17 through productive communication with both internal LifeWatch personnel and external customers."

18 94. The reference to "productive communication" refers to Mr. Sims' comments regarding:
19 (a) the credibility of the conversion campaign because it limited treatment options and caused patients and
20 Medicare to pay additional money for cardiac monitoring by forcing patients to use the more costly ACT
21 Monitors over the Event Monitors; (b) the ethics and legality of instructing physician accounts to use a
22 conduction disorder, unspecified billing code for palpitation patients; and (c) the practice of providing
23 only 21 days of monitoring when the E-Reports online enrollment form promises 30 days of monitoring.
24
25

1 95. During the April 14, 2009 phone conference review of the PIP, Mr. Sayeed told Mr. Sims
2 that the PIP did not come from him.

3 96. Also during the April 14, 2009 phone conference review of the PIP, Mr. Sims expressed
4 to Mr. Sayeed that the performance goals on the PIP were above Mr. Sims' then existing sales quota by
5 over 40%. Mr. Sims asked if the terms of the PIP were negotiable and Mr. Sayeed said, "[n]o. It is non-
6 negotiable."

7 97. On April 22, 2009, Mr. Sims sent an e-mail to the Health & Human Services (HHS) Tips
8 Hotline explaining his concern about LifeWatch Services' practices.

9 98. On May 6, 2009, Mr. Sims worked with Mr. Sayeed in Washington State. During this
10 workday, Mr. Sayeed asked Mr. Sims, "[w]hy would you want to work for LifeWatch Services if you
11 think this is an unethical company?" During this conversation, Mr. Sims and Mr. Sayeed also discussed
12 the ICD-9 diagnosis code issue for palpitations patients using ACT Monitors. Mr. Sayeed stated that the
13 conduction disorder, unspecified code was a "catch all code" and that Cindy Pillar, the Director of
14 Regulatory Affairs for LifeWatch Services, had told Michael Maultz, Director of Human Resources, that
15 it was legal to use this code for palpitations patients.

16 99. LifeWatch Services made the business decision to promote the ACT Monitor over the
17 Event Monitor even though many patients were suffering from palpitations only.

18 100. On June 2, 2009, Mr. Sims' employment was terminated for contacting the Medicare
19 Fraud hotline. He informed his employer that he had made this report and LifeWatch Services terminated
20 him within 24 hours.

21 101. In taking actions to substantially assist the commission of the fraud, LifeWatch Services
22 acted with knowledge, deliberate indifference, or reckless disregard of the primary wrongdoing,
23 substantially assisted the accomplishment of that fraud, was aware of its overall purpose, and acted to aid
24 in achievement of the fraudulent scheme.

25

1 A. Mr. Sims Files a *Qui Tam* Action

2 102. Mr. Sims filed a *qui tam* action against LifeWatch Services in the United States District
3 Court for the Western District of Washington under seal on _____.

4 B. Mr. Sims Reveals LifeWatch Services' Fraud to the United States Government

5 103. In the course of discussing the role of the United States in the *qui tam* action Mr. Sims
6 revealed his knowledge of LifeWatch Services' fraudulent practices to representatives of the United
7 States Government.

8 IV. CAUSES OF ACTION

9 A. Count I-Violation of the False Claims Act – 31 U.S.C. §3730(h)

10 1. Plaintiff realleges all items set forth in the preceding paragraphs as though fully set forth
11 herein.

12 2. Mr. Sims was discharged, demoted, suspended, threatened, harassed, and discriminated
13 against in the terms and conditions of employment by his employer because of lawful acts he took to (a)
14 eradicate fraud and (b) make a preliminary investigation of those claims which matured into the *qui tam*
15 action captioned *United States ex rel. v. Lifewatch Services*, United States District Court Case Number
16 _____.

17 3. Mr. Sims was engaged in protected activity: *i.e.*, his actions were in furtherance of an
18 action under 31 U.S.C. §3730 for violations of 31 U.S.C. §3729.

19 4. On June 1, 2009, Mr. Sims informed Lifewatch Services that he engaged in protected
20 activity by an email to Michael Maultz. Lifewatch Services terminated Mr. Sims the very next day. Mr.
21 Maultz participated in the termination meeting.

22 5. The actions taken against Mr. Sims by LifeWatch Services were motivated by Mr. Sims'
23 engaging in protected activity.

24 6. Mr. Sims experienced emotional distress due to his dismissal.

1 7. As a result of LifeWatch Services' negative employment action taken in violation of the
2 False Claims Act, plaintiff has suffered damages to be proven at trial.

3 B. **Count II (For Violation of 31 U.S.C. § 3729(a)(1) and (2)) -- Knowingly Presenting a**
4 **False or Fraudulent Claim or Statement**

5 8. Plaintiff reasserts all prior paragraphs set forth herein.

6 9. For the purpose of obtaining or aiding in obtaining money, LifeWatch Services made or
7 presented or caused to be made or presented to the United States false or fraudulent claims, or made or
8 used a false statement to get a false or fraudulent claim paid or approved by the United States, to wit, the
9 above described claims dating from 2008 to present, knowing these claims and statements to be false or
10 fraudulent or acting in deliberate ignorance or reckless disregard thereof.

11 10. The United States, unaware of the foregoing circumstances and conduct of the LifeWatch
12 Services and in reliance on such false claims and statements, authorized the transfer of money to
13 LifeWatch Services and made such a transfer, and as a result has been damaged.

14 11. Such conduct in the part of the LifeWatch Services constitutes a violation of the False
15 Claims Act, 31 U.S.C. § 3729(a)(1) and (2).

16 C. **Count III (For Violation of 31 U.S.C. § 3729(a)(3))**

17 12. Plaintiff reasserts all prior paragraphs set forth herein.

18 13. For the purpose of obtaining or aiding in obtaining profits, LifeWatch Services conspired
19 to make or present or caused to be made or presented to the United States false or fraudulent claims, or to
20 make or use or cause to be made or used a false statement to get a false or fraudulent claim paid or
21 approved by the United States, to wit, the false and unlawful claims described above, knowing them to be
22 false claims and/or containing false or fraudulent statements, or acting in deliberate ignorance or reckless
23 disregard thereof.

1 14. The United States, unaware of the forgoing circumstances and conduct of LifeWatch
2 Services and in reliance on such false and fraudulent claims and statements, authorized the transfer of
3 money to LifeWatch Services and made such a transfer, and as a result has been damaged.

4 15. Such conduct on the part of LifeWatch Services constitutes a violation of the False
5 Claims Act, 31 U.S.C. § 3729(a)(3).

6 **D. Wrongful Discharge in Violation of Public Policy**

7 16. Plaintiff realleges all items set forth in the preceding paragraphs as though fully set forth
8 herein.

9 17. Mr. Sims was an employee of LifeWatch Services.

10 18. LifeWatch Services unlawfully directed its employees to engage in illegal acts, including
11 assisting LifeWatch Services in billing out Medicare fraudulently by limiting physician choices in cardiac
12 monitoring to increase LifeWatch Services' revenue and profits.

13 19. In an attempt to stop these illegal acts, Mr. Sims contacted LifeWatch Services and
14 brought the same to its attention.

15 20. Mr. Sims refused to commit the illegal acts in which LifeWatch Services had consistently
16 engaged.

17 21. Mr. Sims' termination contravened a clear mandate of public policy. LifeWatch Services
18 unlawfully terminated Mr. Sims for his efforts to bring the fraud to light, his refusal to participate in
19 LifeWatch Services' illegal conduct and his attempt to perform his public duty.

20 22. LifeWatch Services' conduct contravened the letter and purpose of a statutory and
21 regulatory provision or scheme, *i.e.*, the False Claims Act, 31 U.S.C. § 3729, *et seq.*

22 23. Discouraging the conduct in which Mr. Sims engaged would jeopardize this public
23 policy.

24 24. Mr. Sims was dismissed due to his public-policy-linked conduct.

1 25. LifeWatch Services cannot offer an overriding justification for the dismissal.

2 26. Mr. Sims experienced emotional distress due to his dismissal.

3 27. Mr. Sims has suffered damages in an amount to be proven at trial.

4 **E. Outrage**

5 28. Plaintiff realleges all items set forth in the preceding paragraphs as though fully set forth
6 herein.

7 29. LifeWatch Services' actions towards Mr. Sims constituted extreme and outrageous
8 conduct.

9 30. LifeWatch Services intentionally or recklessly inflicted emotional distress upon Mr.
10 Sims.

11 31. Mr. Sims suffered severe emotional distress.

12 32. Mr. Sims has suffered damages in an amount to be proven at trial.

13 **F. Violation of the Implied Covenant of Good Faith and Fair Dealing**

14 33. Plaintiff realleges all items set forth in the preceding paragraphs as though fully set forth
15 herein.

16 34. LifeWatch Services' termination of Mr. Sims' employment was motivated by bad faith
17 and to ensure that LifeWatch Services' fraudulent practices were not brought to light.

18 35. LifeWatch Services' conduct and wrongful termination hindered Mr. Sims in his
19 performance of his employment contract.

20 36. LifeWatch Services' conduct was egregious.

21 37. LifeWatch Services' pretextual rationale for terminating Mr. Sims' employment was not
22 honest in fact.

23 38. Mr. Sims has suffered damages in an amount to be proven at trial.

24 **G. Civil Conspiracy**

1 39. Plaintiff realleges all items set forth in the preceding paragraphs as though fully set forth
2 herein.

3 40. LifeWatch Services combined to accomplish an unlawful purpose or to accomplish some
4 purpose, not in itself unlawful, by unlawful means, *i.e.*: (1) to seek and obtain payment from the United
5 States in a manner violating the False Claims Act, (2) to retaliate against Mr. Sims and terminate his
6 employment in violation of the False Claims Act and a clear mandate of public policy, and (3) to
7 terminate Mr. Sims' employment (a lawful purpose) by unlawful means (retaliation and termination in
8 violation of the False Claims Act and a clear mandate of public policy).

9 41. LifeWatch Services entered into agreements to accomplish the object of the conspiracy.
10

11 42. Mr. Sims has suffered damages in an amount to be proven at trial.

12 **V. PRAYER FOR RELIEF**

13 WHEREFORE Plaintiff United States of America, through Relator Ryan Sims, demands
14 judgment against LifeWatch Services as follows:

15 A. Pursuant to 31 U.S.C. § 3729(a), treble its damages of at least \$150,000.00 and civil
16 penalties of \$10,000 for each of the false and fraudulent claims, in a number to be determined at trial,
17 submitted to the Postal Service or wire, plus costs, and such other relief as may be just and proper.

18 B. The United States also demands the costs of investigation and litigation and an award of
19 its attorneys' fees, or the ten percent surcharge authorized by 28 U.S.C § 3011, and the costs, expenses,
20 and attorneys' fees of Relator Ryan Sims.

21 C. For entry of judgment against LifeWatch Services to compensate plaintiff for damages in
22 the amount of two times the amount of back-pay, and interest on the back-pay, and compensation for any
23 special damages sustained as a result of the discrimination, including litigation costs and reasonable
24 attorneys' fees under the False Claims Act.
25

1 D. For an order requiring reinstatement or an award of front-pay.

2 E. For entry of judgment against LifeWatch Services to compensate plaintiff for damages
3 under the plaintiff's state law theories, including an award of exemplary damages pursuant to RCW Ch.
4 49.52.

5 F. For an award of damages for emotional distress.

6 G. For an award of prejudgment interest on the outstanding principal balance at the
7 appropriate statutory rate.

8 H. For an award of a sum to compensate the plaintiff for adverse tax consequences as a
9 result of any award.

10 I. For an award of attorneys' fees pursuant to all applicable statutory, contractual, equitable,
11 and common law remedies, theories, and doctrines.

12 J. For punitive damages as allowed under the applicable laws of the state of Washington
13 (pursuant to the doctrine of *lex loci delicti* and the principle of *depecage*) and the United States.

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

15 DATED this 16th day of December, 2009.

16 WALTERS LAW FIRM PLLC

17 

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Of Attorneys for Plaintiff

20 FERRING & DELUE LLP

21 

22 Daniel D. DeLue, WSBA #29357
Of Attorneys for Plaintiff