UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE AT CHATTANOOGA

UNITED STATES OF AMERICA and THE STATE OF TENNESSEE, *ex rel.*, LISA K. STRATIENKO,	)	
Plaintiffs,	)	**Civil Action No. 1:10-CV-322**
v.	)	**Judge Collier/Carter**
CHATTANOOGA-HAMILTON COUNTY HOSPITAL AUTHORITY d/b/a ERLANGER MEDICAL CENTER,	)	
Defendant.	)	

UNITED STATES' STATEMENT OF INTEREST IN RESPONSE TO DEFENDANT'S MOTION TO DISMISS

Defendant Chattanooga-Hamilton County Hospital Authority d/b/a Erlanger Medical Center ("Erlanger") filed a motion to dismiss this False Claims Act lawsuit on various grounds. *See Doc. No. 36*. Although the United States has not intervened in this case and is not a formal party, it remains the real party in interest in this action. *United States ex rel. Eisenstein v. City of New York, New York*, 556 U.S. 928, 930 (2009). The False Claims Act (FCA), 31 U.S.C. § 3729 *et seq.*, is the United States government's primary tool used to redress fraud on the government. As such, the statute should be read broadly to reach all fraudulent attempts to cause the government to pay out sums of money. *United States v. Neifert-White*, 390 U.S. 228, 233 (1968). Thus, the United States has a keen interest in the development of the law in this area and in the correct application of the law in this, and similar, cases.

Accordingly, the United States respectfully submits this Statement of Interest, pursuant to 28 U.S.C. § 517, to provide assistance to the Court in interpreting and applying the FCA on the

issues of whether the United States or a relator must identify specific false claims submitted to the Government pursuant to an arrangement in violation of the Stark Law ("Stark"), 42 U.S.C. § 1395nn, to satisfy Fed. R. Civ. P. 9(b), and whether a relator has standing to bring an FCA action for a defendant's breach of a corporate integrity agreement ("CIA"). The United States takes no position on the merits of Relator's claims.

I. An FCA Complaint Based on a Stark Violation Need Not Identify Specific Claims for Reimbursement to Meet Rule 9(b), Particularly When the Claims Information is within Defendant's Control.

Defendant argues that Relator's Complaint must be dismissed because, among other reasons, Relator does not identify any specific false claims for reimbursement to the Government or identify how any particular claim was false or fraudulent. *See Doc. No. 36* at 24-28. Where, as here, Relator's FCA claim is based on specifically identified contracts that allegedly violate Stark and the claims information is solely within the Defendant's control, Relator need not identify specific claims for reimbursement to give Defendant enough information to file a responsive pleading.

Though the Sixth Circuit traditionally requires the pleading of an actual false claim with particularity under Rule 9(b), it has also stated that this rule may be relaxed under certain circumstances. *United States ex rel. Bledsoe v. Cmty. Health Sys., Inc.*, 501 F.3d at 493, 504 n.12 (6th Cir. 2007) (*"Bledsoe II"*). The purpose of Rule 9(b) "is not to reintroduce formalities to pleading, but is instead to provide defendants with a more specific form of notice as to the particulars of their alleged misconduct." *Id.* at 503. Thus, Rule 9(b) must be interpreted in harmony with Rule 8, which requires that a complaint provide "a short and plain statement of the claim" made by "simple, concise, and direct allegations." *Id.* (quoting Fed. R. Civ. P. 8(a)). Under Rule 8, a complaint need not allege an exhaustive roadmap of a plaintiff's claims, but

must be sufficient to "give the defendant fair notice of what the…claim is and the grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

Relators may bring FCA actions based on allegations of Stark violations, because it is well-established that compliance with Stark is a condition of payment under the Medicare and Medicaid programs and thus any claims submitted in violation of those provisions are "false." *See, e.g.,United States v. Rogan*, 517 F.3d 449, 452-53 (7th Cir. 2008). The Government is not required to pay for services tainted by arrangements in violation of Stark, because in such circumstances the Government has no assurance that the services were provided in the best interest of the patient rather than the financial interests of the health care provider. In FCA cases based on Stark violations, the falsity of each claim arises from the existence of the violative financial arrangement rather than any information on the face of the claim itself. For that reason, many courts have found that plaintiffs alleging FCA violations predicated on a violation of the Stark Law do not have to specifically identify the claims at issue in order to meet Rule 9(b). *See, e.g., United States ex rel. Thompson v. Columbia/HCA Healthcare Corp.*, 20 F. Supp. 2d 1017, 1049 (S.D. Tex. 1998); *United States ex rel. Villafane v. Solinger*, 457 F. Supp. 2d 743, 754-55 (W.D. Ky. 2006); *United States ex rel. Singh v. Bradford Reg. Med. Ctr, et al.*, No. 04-186 ERIE, 2006 WL 2642518 (Sept. 13, 2006 W.D. Penn.), at *7-8. Indeed, identifying details of the allegedly improper arrangements, even without identifying the date of particular claims, is enough to alert Defendant of the nature of the fraud and thus meet Rule 9(b). *See Solinger*, 457 F. Supp. 2d at 755 (holding that specific referrals and their dates are unnecessary to alert Defendants to the nature of the fraud when alleging a violation of Stark).

Further counseling against the requirement that Relator must identify particular false claims is that such information is presumably exclusively within Defendant's control. In such situations, courts have relaxed the requirement of identifying particular false claims and looked to whether the plaintiff has provided enough detail to permit the defendant to "fashion a responsive pleading addressing her claims." *United States ex rel. Lane v. Murfreesboro Dermatology Clinic, PLC,* No. 4:07-cv-4, 2010 WL 1926131, at *6-7 (E.D. Tenn. May 12, 2010); *Solinger,* 457 F. Supp. 2d at 755.

The Court should permit relaxation of the requirement to identify particular claims here, where the falsity of the claim does not turn on the face of the claim itself, but rather on the details of the allegedly violative arrangements, and where Relator does not have access to the information detailing specific claims because it is solely within Defendant's control.

II. Relator May State a Claim for Breach of the Corporate Integrity Agreement.

Defendant argues in its motion to dismiss that Relator may not state a claim for Defendant's alleged breach of its former Corporate Integrity Agreement ("CIA"), because it was not a party to the agreement and thus has no standing to assert a claim for its breach. *See Doc. No. 36* at 33-34. Relator makes this allegation as part of a *qui tam* Complaint on behalf of the United States, however, and thus it is irrelevant whether Relator was a party to the agreement or whether she was harmed by its alleged breach. *See* 31 U.S.C. § 3730 (b)(1) ("A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government…") (emphasis added). Indeed, courts have held that a relator may sufficiently allege a reverse false claim in violation of the FCA by showing that a defendant has submitted a false Certification of Compliance with a CIA. *See U.S. ex rel. Matheny v. Medco Health Sol., Inc.,* 671 F.3d 1217, 1229 (11th Cir. 2012).

Relator need not be a party to the CIA in order to bring on the United States' behalf an FCA claim based on the allegation that Defendant materially breached the CIA. Thus, the Court should not grant Defendant's motion to dismiss with respect to this allegation simply because Relator alleges a material breach of the CIA to which she was not a party, but should separately determine whether Relator's allegation meets the requirements of Rule 9(b).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of October, 2012, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electric filing system.

/s/ Robert C. McConkey, III
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