

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

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

**UNITED STATES’ STATEMENT OF INTEREST REGARDING DEFENDANT’S
MOTION TO DISMISS RELATOR’S SECOND AMENDED COMPLAINT**

The United States, pursuant to 28 U.S.C. § 517, respectfully submits this Statement of Interest Regarding Defendant’s Motion to Dismiss Relator’s Second Amended Complaint. On August 26, 2013, Defendant Chattanooga-Hamilton County Hospital Authority d/b/a Erlanger Medical Center (“Erlanger”) filed a motion to dismiss Relator’s Second Amended Complaint on various grounds. *See* Doc. 68. Relator filed her Response in opposition [Doc. 71] on September 16, 2013, and Defendant filed its Reply [Doc. 73] on September 30, 2013. 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.

The United States previously filed a Statement of Interest [Doc. 42] in response to Defendant's original motion to dismiss [Doc. 36], and subsequently filed a second Statement of Interest [Doc. 57] adopting and incorporating by reference its previous Statement with respect to Defendant's motion to dismiss Relator's first amended complaint. Having now had the opportunity to review the briefing on Defendant's motion to dismiss the Second Amended Complaint, the United States submits that the authorities cited in its previously filed Statement of Interest remain instructive. Accordingly, the United States adopts and incorporates by reference the Statement of Interest previously filed on October 2, 2012 [Doc. 42], and respectfully requests that the Court consider it in evaluating Defendant's motion to dismiss Relator's Second Amended Complaint.

In addition, the United States notes that in its Reply, Defendant argues that Relator has not alleged that "the person who signed the [allegedly false Corporate Integrity Agreement] certifications had any knowledge that any physician contract had been signed after its effective date," characterizing such an omission as "fatal to a false certification claim." [Reply Memorandum, Doc. 73 at p. 13]. For purposes of evaluating potential False Claims Act liability, however, the relevant knowledge is Defendant's knowledge as a corporate entity, and a corporation may be held liable even if the certifying employee was unaware of the wrongful conduct of other employees. *See Grand Union Co. v. United States*, 696 F.2d. 888, 890-91 (11th Cir. 1983) (reversing grant of summary judgment in favor of grocery store in False Claims Act case on basis that evidence permitting inference that check-out cashiers knowingly permitted purchase of ineligible non-food items with food stamps precluded summary judgment, even in

absence of evidence that head cashier, who certified that stamps were not accepted for ineligible items, was aware of ineligible transactions). Accordingly, the Court should not grant Defendant's motion to dismiss simply because the allegations of the Complaint may not show that the certifying employee(s) had personal knowledge that certifications were false, but rather should separately determine whether the allegations are sufficient to support a conclusion that the Defendant, as an entity, acted with the requisite scienter.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of October, 2013, 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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