UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

UNITED STATES ex rel. FIORISCE LLC, Plaintiff, v. PERDOCEO EDUCATION CORPORATION; COLORADO TECHNICAL UNIVERSITY, INC.; AMERICAN INTERCONTINENTAL UNIVERSITY, INC., Defendants.	Civil Action No. 1:21-cv-00573-RBJ

RELATOR'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

Fiorisce LLC, the Relator in this False Claims Act ("FCA") matter, respectfully submits this opposition to Defendants' motion to dismiss ("MTD"). Defendants' public disclosure argument is based on documents that predate the credit hour regulations at issue and all of the misconduct described in the Complaint, or are otherwise irrelevant to the fraud alleged. Defendants' original source argument is equally inapt as it is based on a statutory requirement that no longer exists. And their Rule 9(b) arguments fail because the Complaint provides detailed allegations of both Perdoceo's and AIU's active participation in the alleged fraud.[1]

STATEMENT OF FACTS

Perdoceo wholly owns and operates Colorado Technical University ("CTU") and American Intercontinental University ("AIU"). Am. Compl., ECF No. 22 ("Complaint" or "Compl."), ¶ 11. Virtually all CTU and AIU students are enrolled in online programs delivered through Intellipath, Perdoceo's proprietary software. *Id.* ¶¶ 17, 49. Through Intellipath and other

[1] If the Court disagrees, Relator seeks leave to amend the Complaint to cure any deficiencies.

methods, Defendants have failed to provide students with anywhere near the educational content -- measured in quantifiable "credit hours" -- that student aid programs under Title IV of the Higher Education Act have required since 2011. *Id.* ¶¶ 2, 29. For years, Defendants knowingly ascribed credit hours far exceeding the educational content Defendants actually provided to students. *Id.* ¶ 53. Defendants concealed their inflated credit hours from their accreditor, the Higher Learning Commission ("HLC"), the Government, and even their own employees. *Id.* ¶¶ 6, 60, 79-92, 108-12. Defendants then use these fabricated credit hours to submit false claims for payment to the Government. *Id.* ¶¶ 46-48, 99-103. Put simply, Relator's case is about credit hour fraud, not easy grading, improper recruiting, or any of the other irrelevant subjects raised in Defendant's motion and exhibits to try to force this case into the public disclosure rubric.

ARGUMENT

I. THE PUBLIC DISCLOSURE BAR DOES NOT APPLY

A. The Bar Applies Only to Disclosures of "Substantially the Same" Allegations

The public disclosure bar aims to find "the golden mean between adequate incentives for whistle-blowing insiders . . . and discouragement of opportunistic plaintiffs who have no significant information . . . ." *U.S. ex rel. Maxwell v. Kerr-McGee Oil & Gas Corp.*, 540 F.3d 1180, 1184 (10th Cir. 2008). The bar applies only where "substantially the same" allegations as those in the complaint have already been publicly disclosed. 31 U.S.C. § 3730(e)(4)(A).

The "operative question" is "whether the public disclosures were sufficient to set the government on the trail of the alleged fraud without [relator's] assistance." *U.S. ex rel. Reed v. KeyPoint Gov't Sols.*, 923 F.3d 729, 744 (10th Cir. 2019) (cleaned up). In applying this standard, courts should not construe purported disclosures at a "high level of generality" to broadly preclude future cases. *Id.* at 748 n.12; *U.S. ex rel. Mateski v. Raytheon Co.*, 816 F.3d 565, 577

(9th Cir. 2016) ("Allowing a public document describing 'problems' -- or even some generalized fraud . . . to bar all FCA suits identifying specific instances of fraud . . . would deprive the Government of information that could lead to recovery of misspent Government funds and prevention of further fraud."). Rather, a disclosure that triggers the bar must provide "specific details about the fraudulent scheme," alleviating the "need to comb through myriad transactions performed by various types of entities in search of potential fraud." *In re Nat. Gas Royalties,* 562 F.3d 1032, 1042 (10th Cir. 2009). Thus, the bar does not apply to a case alleging "a distinct fraudulent scheme" that is "based upon conduct occurring after the period of time covered" in prior disclosures. *Maxwell*, 540 F.3d at 1187. Further, any prior disclosures must expose genuine fraud, not merely "problems" or noncompliance. *See Mateski*, 816 F.3d at 577.

B. No Public Disclosures Are "Substantially the Same" as Relator's Allegations

Defendants have not pointed to any public disclosures of "substantially the same" allegations. Nearly half their "disclosures" predate the 2011 implementation of the credit hour regulations at issue, the existence of Intellipath (in 2012), and *all* the misconduct the Complaint details. *See* Exs. B-E, L, M. The rest are equally far removed from Defendants' fraud, describing *other* types of educational misconduct such as deceptive advertising or coercive recruiting practices, Exs. F-G, or generalized concerns about proper industry oversight without any reference to Defendants or the misconduct at issue, Exs. H-K. Two of them are Defendants' own press releases misrepresenting Intellipath's supposed benefits while concealing its key role in the fraud. Exs. N-O. As shown immediately below, none of these so-called "public disclosures" discuss or even allude to the credit hour fraud at issue, let alone the detailed allegations of Defendants' specific scheme.

Ex.[2]	Date	NO DISCUSSION OF:					Predates Credit Hour Regs. and Conduct in Complaint
		Credit Hour Fraud	Defs.' Scheme to Inflate Credit Hours	Defs.' Scienter	Intellipath	Defs.	
B	12/17/09	✓	✓	✓	✓		✓
C	12/17/09	✓	✓	✓	✓		✓
D	1/3/10	✓	✓	✓	✓		✓
E	3/18/11	✓	✓	✓	✓	✓	✓
F	11/12/20	✓	✓	✓	✓		
G	6/15/20	✓	✓	✓			
H	3/18/19	✓	✓	✓	✓	✓	
I	1/18/18	✓	✓	✓	✓	✓	
J	9/30/15	✓	✓	✓	✓	✓	
K	3/1/18	✓	✓	✓	✓	✓	
L	6/15/10	✓	✓	✓	✓	✓	✓
M	6/30/12	✓	✓	✓	✓		✓
N	8/19/13	✓	✓	✓			
O	9/30/15	✓	✓	✓			

Exhibits that Predate Credit Hour Regulations and Misconduct at Issue (Exs. B-E, L, M):

Defendants concede the credit hour regulations at issue ***did not exist*** at the time of the 2009 OIG memo referencing AIU's credit shortcomings. MTD at 4-5; Ex. B. That is why the memo describes AIU's courses as "inflated in credit . . . relative to common practice in higher education," Ex. B at 1, rather than violating any federal requirements. DOE subsequently enacted the credit hour regulations to address this loophole. Defendants argue this sequence of events should have alerted the Government to Defendants' subsequent fraud in this yet-to-be established regulatory framework. The opposite is true. The purpose of the new regulations was to provide

[2] Ex. B: OIG Memo; Ex. C: article on OIG memo; Ex. D: article on OIG memo; Ex. E: DOE Guidance; Ex. F: blog post about predatory colleges; Ex. G: blog post discussing predatory recruiting; Ex. H: article on "regular and substantive interaction" for competency-based colleges; Ex. I: blog post on competency based education; Ex. J: OIG audit of HLC; Ex. K: OIG recommendations for Higher Education Act; Ex. L: article re: partial program integrity; Ex. M: Senate report (exclusively analyzing conduct from 2010 and earlier); Ex. N: AIU press release; Ex. O: CTU press release.

concrete credit hour standards for schools to follow, and there is no suggestion in these documents that Defendants would violate them going forward. The public disclosure bar was not designed to grant broad *post-hoc* immunity for future misconduct or future "violations" of yet-to-be-created regulations. *Cf. U.S. ex rel. Ibanez v. Bristol-Myers Squibb Co.*, 874 F.3d 905 (6th Cir. 2017) ("It cannot be assumed that the government is aware a fraudulent scheme continues (or was restarted) simply because it had uncovered and then resolved a similar scheme before.").

The relevant test is not whether the Government is "familiar with Defendants' historical credit ascription practices," MTD at 5, especially when they did not involve either the misconduct or regulations at issue or even violate any laws. Instead, it is whether the Government had notice of Defendants' existing ***fraud*** under current law. Thus, even if the OIG memo, or the related exhibits (Exs. B-E, L, M), ***had*** addressed 2011 federal credit hour regulations, they still would not bar Relator's case because they do not disclose or even hint at any fraud by any Defendant. *U.S. ex rel. Holloway v. Heartland Hospice, Inc*., 960 F.3d 836 (6th Cir. 2020) (finding an OIG report that did not imply fraud or wrongdoing was not a disclosure).

Further, even if the exhibits concerned the federal credit hour regulations ***and*** suggested fraud, the bar still would not apply because Relator details a new scheme involving Defendants' Intellipath system and their misrepresentations to HLC and the Government with no overlap between the fraud alleged (2012 and later) and the conduct discussed in these exhibits (2010 and earlier). Compl. ¶¶ 50-52, 60, 80, 105-06; *see Maxwell*, 540 F.3d at 1187 (public disclosure bar not applicable where complaint alleges conduct "after the period of time covered" in purported disclosures and "a distinct fraudulent scheme."); *U.S. ex rel. Kester v. Novartis Pharms. Corp.*, 43 F. Supp. 3d 332, 353 (S.D.N.Y. 2014) ("I cannot accept the proposition that information about a conspiracy . . . constituted 'public disclosure' of facts on the ground several years later.").

Exhibits that Do Not Relate to the Regulations or Misconduct at Issue (Exs. F-K): None of the remaining exhibits concern credit hour fraud either. They discuss other misconduct or irrelevant topics in the for-profit education industry generally. For example, Defendants point to two blog posts that focus on Perdoceo's recruiting practices and generally refer to Perdoceo's easy classes. Exs. F, G. Relator's Complaint is about Defendants falsely billing the Government for learning hours they never delivered, not about grading scales or recruitment. There is nothing in these posts that could have led the Government to discover the distinct and novel credit hour fraud the Complaint alleges and about which these posts say nothing.

Likewise, the 2015 OIG audit of HLC does not address or even hint at any credit hour fraud, let alone the specific fraud the Complaint explicitly details. Ex. J. It does not even reference Defendants. It addressed HLC's evaluation of "competency-based" or "direct-assessment" programs, which are different programs subject to different regulations than those at issue. The audit criticized HLC's timing and documentation when assessing credit hour "equivalencies" for direct-assessment programs. Ex. J at 14-15. These administrative shortcomings in an unrelated area targeting HLC are far removed from Defendants' credit hour fraud. Indeed, the OIG audit does not describe any fraud by any university at all.

This again highlights the critical shortcoming in Defendants' motion. Invoking *Reed*, Defendants argue that prior public disclosures have identified "pervasive fraud" in this area, precluding Relator's case. MTD at 7. Yet Defendants fail to identify any disclosure relating to credit hour fraud at ***any*** university. This is far different than *Reed*, which the relator's case followed enforcement actions against the three major industry players, including the defendant, for the same misconduct. As the *Reed* court made clear, the prior disclosures "identified three main players (including Keypoint), and generally unearthed the type of fraud . . . the government

needed to look for." 923 F.3d at 751. Not only have there been no disclosures of Defendants' credit hour fraud, thousands of schools participate in Title IV programs. HLC alone accredits more than a thousand of them. *See* Ex. J at 6. Given the vast breadth of higher education, even among for-profit and online programs, Defendants would need to identify dozens of credit hour fraudsters to support their industry-wide claims. They have identified none.

Instead, scrounging for parallels with prior public statements, Defendants rely on highly generalized industry critiques. For example, Defendants highlight one article stating, "There's an issue with online higher education that has yet to be resolved." Ex. H at 1; MTD at 7. Yet again, that article does not concern fraud of any kind. It is about an entirely separate subject -- the quality of student-teacher interactions -- which has nothing to do with this case. Treating such vague, sweeping statements as public disclosures to bar the very different subject matter of this case would effectively shield the entire industry from all *qui tam* cases going forward. This is exactly the kind of abstraction to a "high level of generality" that courts have flatly rejected. *Reed*, 923 F.3d at 748 n.12; *Mateski.*, 816 F.3d at 577 (same).

Perdoceo Press Releases (Exs. N, O): Defendants' press releases are not public disclosures either. Exs. N, O. They merely tout the supposed benefits of Intellipath through "a better learning experience" and "custom learning plan" (Ex. N), designed "to ensure students were better prepared for their futures." Ex. O. The Complaint tells a very different story of how Defendants have used Intellipath to defraud the Government. Defendants fail to explain how the Government could have divined Defendants' fraud from these misleading press releases, which say nothing about how Defendants calculate Intellipath time for credit ascription. *See U.S. ex rel. Heath v. Wis. Bell, Inc.*, 760 F.3d 688, 691 (7th Cir. 2014) (finding no public disclosure when a public contract "had to be supplemented with [additional] knowledge . . . to establish fraud").

At bottom, none of Defendants' outdated, irrelevant, and highly generalized exhibits could possibly have "set the government on the trail of the alleged fraud without [the relator's] assistance." *Reed*, 923 F.3d at 744. To the contrary, the Complaint was the first document to expose Defendants' fraud previously known only to a few of Defendants' senior employees.

C. Even if the Public Disclosure Bar Applied, Relator Is an Original Source

Even if there were disclosures "substantially the same" as Relator's allegations, Relator satisfies the "original source" exception under 31 U.S.C. § 3730(e)(4)(B). The 2010 amendments "radically changed" the FCA to "lower the bar for relators," especially as to what qualifies as an original source. *U.S. ex rel. Moore & Co., P.A. v. Majestic Blue Fisheries, LLC*, 812 F.3d 294, 298-99 (3d Cir. 2016). The "salient question is no longer whether the relator has 'direct and independent knowledge' of the information on which the allegations . . . are based . . . [but] whether the relator has 'knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions.'" *Id*. Defendants overlook this significant change in the law.

1. Relator's Allegations "Materially Add To" Any Public Disclosures

In *Reed*, the Tenth Circuit stressed that the materially adds test "is not meant to block out relators simply because there had been a qualifying public disclosure that contains similar allegations." 923 F.3d at 757. Instead, "a relator still qualifies as an original source if she brings something to the table that adds value." *Id.* at 757-58. And "the fewer questions the public disclosures answer, the more room there is for a relator's allegations to add material information." *Id.* The Court there found the relator satisfied the "materially adds" requirement by identifying a "new scheme" even within a well-known area of fraud. 923 F.3d at 760.

The original source exception is even more applicable here because Defendants' credit hour violations represent an entirely new area of fraud. And against that blank canvas, Relator

has detailed Defendants' novel and highly sophisticated scheme, including their efforts to conceal it, their use of Intellipath to further it, their falsification of credit hour documentation, and their scienter in maximizing Title IV funding at the expense of the students the Government pays them to educate. Relator's contributions far exceed the level of "additional" information provided in *Reed*, which the Court found sufficient even where -- unlike here -- the guts of the fraud had already been publicly disclosed. 923 F.3d at 756.

Further, Relator's scienter allegations alone qualify Relator as an original source. FCA cases "often turn on the issue of scienter" and "the government is never in a good position to have direct evidence of guilty knowledge." *Id.* at 760-61. As such, "when a relator brings forth knowledge of scienter that is not specifically contained in a qualifying public disclosure it ***should be presumed*** to materially add value." *Id.* at 760-61 (emphasis added).[3] Here, even more than in *Reed*, Relator provides critical scienter evidence showing how and why Defendants knowingly conceived, executed, and covered up the scheme. Compl. ¶¶ 79-87, 108-13.

2. Relator's Allegations Are "Independent" of Any Public Disclosures

Relator's allegations are also independent of any prior disclosures. Rather, they flow from Relator's firsthand exposure to the fraud and Relator's efforts to stop it. Compl. ¶¶ 108-13. They have no connection to the "public disclosures" Defendants have proffered, none of which address Defendants' fraud. Defendants try to sidestep this by arguing that as an LLC, Relator cannot be an original source. MTD at 10-11. Their argument, however, rests on the very language the 2010

[3] *See also Moore & Co.*, 812 F.3d at 294 (relator was an original source where she added details about how fraud was conceived and executed and who was involved); *U.S. ex rel. Kuriyan v. HCSC Ins. Servs. Co.*, 2021 WL 5238332, at *2 (D.N.M. 2021) (holding "'knowledge of scienter that is not specifically contained in a qualifying public disclosure' may have the effect of 'expanding the scope of the fraud'" and qualifying relator as an original source).

amendment removed. The FCA no longer requires an original source to have "direct" knowledge of the fraud. *Moore & Co.*, 812 F.3d at 298-99; *see Booth v. Churner*, 532 U.S. 731, 740 (2001) (when Congress removes "the very term" courts rely on to reach a conclusion, "the fair inference to be drawn is that Congress meant to preclude the [same] result"). Accordingly, Defendants' cases demanding firsthand knowledge have no bearing today. Relator's knowledge comes from its principal's work for Defendants and is entirely "independent of" any public disclosures.[4]

However, even if the law had not changed, Defendants' arguments would still fail because of the differences between Relator's LLC and the corporate relator in *U.S. ex rel. Precision Co. v. Koch Indus., Inc.*, 971 F.2d 548, 554 (10th Cir. 1992). The *Precision* relator was a corporation, which is legally distinct from its shareholders. But an LLC "has no legal status separate from its members." *Minn. Ass'n of Nurse Anesthetists v. Allina Health Sys. Corp.*, 276 F.3d 1032, 1049 (8th Cir. 2002). As such, an LLC's "knowledge is in no way parasitic of its members and is 'direct' within the meaning of the [old] original source clause." *Id.* at 1050 (noting that "[i]f Congress had harbored some hostility to organizational relators, it would have been odd to disqualify them only in the event that their claims were publicly disclosed . . . .").[5]

[4] The one post-amendment case cited by Defendants, *Kuriyan*, merely references the old "direct and independent" test without consideration of the 2010 amendments. 2020 WL 8079811, at *11 (D.N.M. 2020). Later, applying the correct standard, the same court found the same relator an original source by adding scienter allegations. *See Kuriyan*, 2021 WL 5238332, at *2.

[5] The date of Relator's formation has no relevance as long as the allegations are "independent of" any public disclosure. Even under the old standard, the relevant inquiry was when the principals (not the LLC) acquired the knowledge because an LLC is not legally distinct from its principals. *See Minn. Ass'n of Nurse Anesthetists*, 276 F.3d at 1048-49.

II. PERDOCEO CAUSED THE SUBMISSION OF FALSE CLAIMS

Perdoceo is liable for causing the false claims, statements, and records made by CTU and AIU. *See* 31 U.S.C. § 3729(a)(1)(A), (B). Generally, as to causation, a relator must merely allege that a defendant committed some "affirmative action" beyond "mere passive acquiescence" that caused or assisted the fraudulent scheme. *U.S. ex rel. Sikkenga v. Regence Bluecross Blueshield of Utah*, 472 F.3d 702, 714-15 (10th Cir. 2006), *abrogated on other grounds by Cochise Consultancy, Inc. v. U.S. ex rel. Hunt*, 139 S. Ct. 1507 (2019). However, when an owner and manager of a corporate entity knows it is defrauding the government, the owner's failure to halt this misconduct also creates liability. *U.S. ex rel. Schagrin v. LDR Indus., LLC*, 2018 WL 6064699, at *6 (N.D. Ill. 2018) ("[W]hen a person has the unfettered power, not simply to report, but to affirmatively stop fraudulent conduct, and instead affirmatively decides to allow to the fraud to continue, and furthermore, then enjoys the resulting corporate profits, such a person has proximately caused the fraud, and can be liable under the False Claims Act."); *U.S. ex rel. Martino-Fleming v. S. Bay Mental Health Ctr., Inc.*, 2018 WL 4539684, at *4 (D. Mass. 2018) (If a person knowingly participates in a scheme that, if successful, would ultimately result in the submission of a false claim to the government, he has caused those claims to be submitted.).

Relator's allegations satisfy both standards. First, as set out in the Complaint, Perdoceo is not merely a passive investor in CTU and AIU -- it wholly owns and actively manages both universities. Compl. ¶ 11. For example, its Vice President of Educational Technology, Judith Komar, not only helped design Intellipath but also oversees its use at CTU and AIU on an ongoing basis. *Id.* ¶ 49. Through Ms. Komar, Perdoceo designed and implemented key Intellipath features central to the fraud, including "Determine Knowledge," which skips students

past much of the already insufficient course content, and "backfilling," which automatically gives students credit for lessons they never completed. *Id.* ¶¶ 17, 49-52, 75, 78.

Second, Perdoceo took deliberate, affirmative steps to aid the creation and use of false records -- the "CAWs" containing fraudulent Intellipath times -- that supported Defendants' submission of false claims. Specifically, in response to the 2017 HLC audit, Ms. Komar decided, along with CTU's senior leaders, to create falsified records rather than adding the required amount of content to CTU's courses. *Id.* ¶ 81. She then played an ongoing and critical role in the scheme by providing the data used to input fraudulent Intellipath times into the CAWs while knowing the data would be used for that improper purpose. *Id.* ¶ 87.

Because of Ms. Komar's deep and continuous involvement in the implementation of Intellipath and the creation of CAWs, Relator reached out directly to Ms. Komar (and Perdoceo's Vice Provost of Technology) in May 2019 after discovering that CAWs greatly overstated the student time in Intellipath. *Id.* ¶ 108. At the time, Ms. Komar and the Vice Provost were working to move all CAWs to a new database. *Id.* Shortly thereafter, the Vice Provost admitted they could not reproduce the Intellipath times on CAWs without "'manipulat[ing]' the data." *Id.* ¶ 110. Nevertheless, the Vice Provost and Ms. Komar continued to use these CAWs to justify CTU's blatantly false credit hours. *Id.* ¶ 108. And predictably, CTU continued to rely on these CAWs and its "manipulated" credit hours to defraud the Government. *Id.* ¶ 87.

Defendants' characterization of Perdoceo's acts as merely "ministerial" is inaccurate and irrelevant. MTD at 14. The question is not whether an act is "ministerial" or more substantive in nature but whether it "cause[s] or assist[s] the presentation of a fraudulent claim" or the creation of a false record in support of such a claim. *Sikkenga*, 472 F.3d at 715; *see also U.S. ex rel. Baker v. Cmty. Health Sys., Inc.*, 2014 WL 10212574, at *18 (D.N.M. 2014) ("The FCA does not

require that Defendants commit an act that is wrongful or illegal in itself, in order to constitute an affirmative act under the FCA"). By providing the data to create the false CAWs and using them to mislead HLC -- even after being confronted by Relator's principal -- Perdoceo substantially caused the creation of false records and the submission of false Title IV claims. *Id.* ¶¶ 79-92, 108-12. In any event, Perdoceo's acts far exceeded the ministerial. For years, Perdoceo designed and implemented the Intellipath systems at CTU and AIU despite knowing students received nowhere near the required educational content. Perdoceo thus was central to both the scheme and the coverup. Its continuous, affirmative conduct far exceeds "mere passive acquiescence."

III. THE COMPLAINT READILY SATISFIES RULE 9(b) AS TO AIU

The Complaint provides more than "fair notice" of Relator's claims against AIU and "the factual ground upon which [they] are based." *U.S. ex rel. Polukoff v. St. Mark's Hosp.*, 895 F.3d 730, 734 (10th Cir. 2018). The Complaint details a long-running credit hour fraud driven at the corporate level and running through both AIU and CTU. Compl. ¶¶ 1, 75. Both schools allocate most of their required minimum learning hours to Intellipath content for credit ascription purposes and then deliberately fail to provide anywhere near the number of learning hours required for student aid. *Id.* ¶¶ 53-54, 75-78.

CTU and AIU employ their credit hour fraud scheme in a virtually identical manner. *Id.* ¶¶ 49-50. Ms. Komar oversees the scheme at both AIU and CTU. *Id.* ¶¶ 75, 89. Like CTU, AIU provides minimal course content and uses Intellipath to administer most of its online courses. *Id.* ¶ 89. Ms. Komar directs the use of Intellipath in the same manner at both schools, including the use of the "Determine Knowledge" and "backfilling" functions that give students credit for content they never completed. *Id.* ¶¶ 49-53, 89. AIU and CTU have both marketed Intellipath as functioning in the same manner at both schools. *Id.* ¶ 50. To conceal the scheme, AIU inflates

the number of learning hours allocated to Intellipath in internal documents and to HLC. *Id.* ¶¶ 89-91. In doing so, AIU uses a mechanical approach to falsifying hours, counting Intellipath time as "45 minutes per lesson for 100 level classes, 60 minutes per lesson for 200, 300, 400 and grad level courses," despite knowing the actual time students spend is substantially shorter. *Id*. ¶ 91.

AIU then fraudulently bills the Government. In addition to falsely certifying compliance with credit hour requirements on its Application for Approval to Participate in the Federal Student Financial Aid Programs, *id.* ¶¶ 94-95, AIU also submits fraudulent claims when drawing down funds from the Government's "G5" system and submitting loan origination requests through the Common Origination and Disbursement System. *Id.* ¶ 99. These claims for payment imbed misrepresentations causing the Government to pay more than required under Title IV. *Id.*

Defendants argue that the allegations against AIU fail to satisfy Rule 9(b) because there is no "particular student or course detail." MTD at 13. But this is not necessary. Relator identified a fraudulent scheme that applies to *virtually all* of AIU's online courses, which encompasses 90 percent of its student base, and the mechanism through which AIU submits false claims to the Government. Compl. ¶¶ 17, 94-95, 99. The Complaint thus readily provides "enough information to describe a fraudulent scheme to support a plausible inference that false claims were submitted," and "fair notice" of which claims are at issue. *U.S. ex rel. Lemmon v. Envirocare of Utah, Inc.*, 614 F.3d 1163, 1173 (10th Cir. 2010); *Polukoff*, 895 F.3d at 745.

Defendants also argue that Relator did not name any individuals at AIU. MTD at 14. But this is not required by Rule 9(b), so long as the complaint provides each defendant notice of the fraudulent acts alleged. *See Lynch v. Olympus Am., Inc.*, 2019 WL 2372841, at *4 (D. Colo. 2019) (holding that identifying defendants by corporate, rather than individual, names met Rule 9(b) because defendants had the "minimum degree of detail necessary to begin a competent

defense") (citation omitted); *U.S. ex rel. Bahrani v. ConAgra, Inc*., 183 F. Supp. 2d 1272, 1279 (D. Colo. 2002) (finding Rule 9(b) satisfied where Relator did not name individuals because "each Defendant [had] notice of the fraudulent acts for which it is alleged to be responsible."). Given the detailed allegations in the Complaint relating to Defendants' fraudulent scheme and AIU's specific participation, AIU has all the information it needs to mount a competent defense. Defendants cannot reasonably argue otherwise.

CONCLUSION

For the reasons set forth herein, Relator respectfully requests that the Court deny Defendants' motion to dismiss in its entirety.

Dated: November 17, 2023

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 17th day of November, 2023, the foregoing document was filed with the Clerk of the Court and served upon counsel of record via ECF.

/s/ Marlene Koury