IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 21-cv-00573-RBJ

UNITED STATES ex rel. FIORISCE LLC,

Plaintiff,

v.

PERDOCEO EDUCATION CORPORATION,
COLORADO TECHNICAL UNIVERSITY, INC.,
AMERICAN INTERCONTINENTAL UNIVERSITY, INC.,

Defendants.

DEFENDANTS' MOTION TO DISMISS PURSUANT TO RULES 12(B)(6) AND 9(B)

Relator's Amended Complaint recycles allegations of a supposed fraudulent scheme that the Government has been investigating on an industrywide basis for years, and that the Government and media outlets have previously linked to Defendants. These allegations have thus been publicly disclosed for the purposes of the False Claims Act's "public disclosure bar." 31 U.S.C. § 3730(e)(4). Further, because of Relator's corporate status, and because Relator's allegations fail to materially add to the existing public disclosures, Relator cannot avoid the public disclosure bar as an original source of the publicly disclosed information. The Court must therefore dismiss the Amended Complaint under 31 U.S.C. § 3730(e)(4). Moreover, Relator's allegations are legally insufficient as to American Intercontinental University, Inc. ("AIU") and Perdoceo Education Corporation ("Perdoceo"), and the Court should dismiss the claims against these two defendants because they are not properly pleaded with particularity under Federal Rule of Civil Procedure 9.

I. Background

Relator Fiorisce LLC is a corporate entity whose still unidentified principal allegedly worked for Defendant Colorado Technical University ("CTU"). Am. Compl. ¶ 9. Relator filed suit on February 25, 2021, just twenty-two days after Relator filed its formation papers in Delaware. Ex. A.[1] The Government declined to intervene on February 3, 2023 (Doc. 16), and Relator filed the Amended Complaint on May 19, 2023. Doc. 22.

Relator claims that CTU, AIU, and Perdoceo[2] violated the False Claims Act by seeking and receiving federal student aid funds under Title IV of the Higher Education Act of 1965 while knowingly failing to provide the required educational content—measured in credit hours—to qualify for such funds. Am. Compl. ¶ 2. Part of this supposed scheme, Relator claims, is Defendants' use of intellipath®, an online, adaptive learning platform that Relator alleges is used to deprive students of educational content. *Id.* ¶¶ 4-6, 17, 49-78. Relator alleges that, "[w]ith Intellipath, even if students complete every assignment in a course, they receive nowhere near the amount of educational content required for federal aid," and that students often did not complete every assignment because intellipath® "automatically skip[s] students through significant portions of course work by having them pass rudimentary diagnostic tests." *Id.* ¶¶ 4, 5.

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[1] Although Defendants are moving for dismissal under Rule 12(b)(6), the Court may and should take judicial notice of the documents attached to this motion. *See* Defs.' Request for Judicial Notice under Federal Rule of Evidence 201, filed contemporaneously herewith. *StreetMedia Grp., LLC v. Stockinger,* 2021 WL 5770231, at *2 n.1 (D. Colo. Dec. 6, 2021) (Jackson, J.) ("Although a court ruling on a Rule 12(b)(6) motion may generally consider only the contents of the complaint, courts may also consider matters of which they may take judicial notice.").

[2] Defendants CTU and AIU are for-profit universities that offer in-person and online degree programs. Am. Compl. ¶¶ 11-15. The Amended Complaint focuses on only the latter programs and vaguely accuses CTU and AIU's parent company, Perdoceo, of being involved in the alleged fraudulent scheme. *Id.* ¶¶ 10-11, 78.

II. Standard of Review

The FCA prohibits *qui tam* relators from bringing claims on behalf of the Government "if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed--(i) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party; (ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or (iii) from the news media, unless . . . the person bringing the action is an original source of the information." 31 U.S.C. § 3730(e)(4)(A).

Following Congress' 2010 amendments to the FCA, the federal courts of appeals have "unanimously held" that the public disclosure bar is an affirmative defense. *U.S. ex rel. Reed v. KeyPoint Gov. Sols.*, 923 F.3d 729, 737 n.1. (10th Cir. 2019). Thus, most courts now hold that the public disclosure bar is properly raised under Rule 12(b)(6). *E.g.*, *U.S. ex rel. Winkelman v. CVS Caremark Corp.*, 827 F.3d 201, 207-8 (1st Cir. 2016) (affirming 12(b)(6) dismissal where elements of public disclosure bar were evident from the pleadings and judicially noticed documents). Further, as the Court is aware, claims under the FCA must meet the heightened pleading standard of Rule 9(b) and show "the specifics of a fraudulent scheme and provide an adequate basis for a reasonable inference that false claims were submitted as part of that scheme." *U.S. ex rel. Polukoff v. St. Mark's Hosp.*, 895 F.3d 730, 745 (10th Cir. 2018) (internal quotation marks and citations omitted).

III. Argument

A. The allegations in Relator's Amended Complaint were publicly disclosed.

The "publicly disclosed" prong of the public disclosure bar is not overly rigorous. This prong "does not require '*complete* identity of allegations.'" *Reed*, 923 F.3d at 752 (quoting *U.S.*

ex rel. Boothe v. Sun Healthcare Grp., Inc., 496 F.3d 1169, 1174 (10th Cir. 2007)) (emphasis in *Reed*). "Rather, it is enough if the relator's complaint is at least in part substantially the same as the publicly disclosed information." *Id.* (cleaned up).

In determining whether "substantially the same" allegations have already been publicly disclosed, "the operative question is whether the public disclosures were sufficient to set the government 'on the trail of the alleged fraud without [the relator's] assistance.'" *Id.* at 744-45 (quoting *U.S. ex rel. Fine v. Sandia Corp.*, 70 F.3d 568, 571 (10th Cir. 1995)). "[I]t is enough if the essence of the relator's allegations was derived from a prior public disclosure." *Id.* at 745 (internal quotation marks and citations omitted).

1. The Government established the "credit hour" definition in direct response to its prior investigations into Defendants' credit ascription practices.

The gravamen of Relator's claim is that the content of Defendants' online courses does not meet Title IV's "credit hour" requirement, as that term is defined by the Department of Education. Am. Compl. ¶¶ 3, 29-32, 38, 94-95. The Department of Education, Relator observes, "established this federal definition to curb 'abuse' and inconsistent treatment of federal funds spent on Title IV programs." *Id.* ¶ 31.

To be more precise, the Department of Education established this definition after it investigated Defendants' accreditor *for this same issue* concerning Defendants' credit ascription practices. In 2009, the Department of Education-Office of Inspector General released a memorandum questioning the Higher Learning Commission's ("HLC") decision to accredit AIU.[3] Ex. B. Specifically, OIG "found issues related to AIU's assignment of credit hours to certain

[3] HLC is also CTU's accreditor. Am. Compl. ¶ 60.

undergraduate and graduate programs," including alleged "inflated" credit hour assignments as it related to Title IV funding. *Id.* at 1.

The 2009 memo reportedly "sent shock waves through the for-profit higher-education sector." Ex. C at 3. Although media reports indicated this was "not the first time the Office of Inspector General ha[d] challenged a regional accreditor over the credit-hour issue," they reported that the memo would have "far-reaching ramifications, particularly for those trying to develop creative new models for higher education." Ex. D at 1, 4. And shortly thereafter, the Department of Education went on to adopt the very "credit hour" definition Relator cites in its Amended Complaint and accuses Defendants of violating. Ex. E at 1;[4] *cf.* Am. Compl. ¶¶ 30-32.

The "essence" of Relator's allegations was already publicly disclosed, probed, investigated, and acted upon by the Government. *Reed*, 923 F.3d at 745 (quoting *Boothe*, 496 F.3d at 1174). OIG investigated Defendants' accreditor for this issue as it related to one of the named Defendants, and the Department of Education created a regulatory scheme in response to that investigation. Ex. E at 1 ("Significantly, these regulations were developed only after the Department's Inspector General conducted reviews at three of the seven regional accrediting agencies and found the oversight of institutional assignment of credit hours insufficient at all three agencies."). The Government then continued to investigate and monitor Defendants' accreditor on this same issue for another decade. *See* Sec. III.A.3, *infra*. The Government is thus intimately familiar with Defendants' historical credit ascription practices, "removing this from a situation where the government would need to comb through myriad transactions performed by various

[4] In addition to being subject to judicial notice, the Court may consider Exhibit E because it is quoted in Paragraph 32 of the Amended Complaint. *Potter Voice Tech. LLC v. Google, Inc.*, 2016 WL 9725291, at *1 (D. Colo. Sept. 28, 2016).

types of entities in search of potential fraud." *In re Nat. Gas Royalties*, 562 F.3d 1032, 1042 (10th Cir. 2009).

2. News media have encouraged the Government to continue investigating Defendants, specifically their use of intellipath®.

While Defendants firmly deny its accuracy and validity, there is no question that they have remained the subject of public criticism even after the Government established its "credit hour" definition. In 2020 (before this suit was filed), media reports implored the Government to once again investigate Defendants, particularly their online learning programs. One website article from November 12, 2020, entitled *Biden Must Cut Off Taxpayer Billions to Predatory Colleges That Ruin Students' Lives*, detailed how "classes at Perdoceo schools . . . are poor quality, rudimentary, low on instructor involvement, and ***almost impossible to flunk, because the company wants to keep students enrolled until they graduate or run out of financial aid***." Ex. F at 4 (emphasis added). The article then called for more vigorous regulation of Defendants, "including stepped-up . . . False Claims Act enforcement at the Justice Department." *Id.* at 8.

Relator's allegations closely track these disclosures, particularly as they relate to Defendants' supposed desire to minimize educational content in order to "keep students enrolled" and continue receiving Title IV funds. *See* Am. Compl. ¶ 2 ("Defendants provide only a fraction of the required content so they can maximize student retention and keep financial aid money flowing into their coffers."); *see also id.* ¶ 52. Like the November 12, 2020 article, Relator alleges that Defendants' coursework was "overly simplistic so students could readily pass them," and that "[t]his is all to encourage students to remain enrolled by making coursework virtually effortless." *Id.* ¶¶ 50, 54.

Another article from June 15, 2020 explicitly noted that "AIU and CTU programs are not

terribly difficult to get through, ***because many of the exams are multiple choice, using the schools' 'intellipath' system***, and students have opportunities to correct their answers." Ex. G at 5 (emphasis added); *cf.* Am. Compl. ¶ 60 (describing instances where students "made multiple attempts at the same course (which Intellipath treats as cumulative)"). The June 15 article closed by urging that "state attorneys general should re-examine Perdoceo's compliance with its promises to reform, and so should state oversight agencies, the FTC, and a future U.S. Department of Education." Ex. G at 7.

These disclosures do far more than simply put the Government "on the trail" of the alleged fraud. They spell out the specific nature of the supposed fraud and urge the Government to investigate it.

3. The Government has been investigating alleged misuse of Title IV funds in distance learning for over a decade.

The November 12, 2020 and June 15, 2020 articles and 2009 OIG memo are part of a broader, industrywide focus on the potential misuse of Title IV funds. For over a decade, media, administrative agencies, and Congress have investigated claims that various educational institutions—particularly for-profit institutions like Defendants—have been overstating their programs' educational content in order to wrongfully obtain Title IV funds.

A prior public disclosure may bar a Relator's claims merely by "identif[ying] pervasive fraud in [a particular] industry." *Reed*, 923 F.3d at 752. In this case, media outlets have previously highlighted tensions between the requirements for Title IV funding and the content provided through online degree programs. One journalist declared that the use of Title IV funds for online higher education is "an issue . . . that has yet to be resolved." Ex. H at 1. Another stated more pointedly that "[w]hile today's online education programs . . . are seen by visionaries as a way to

expand college access, in the wrong hands they can also be a gateway for massive fraud." Ex. I at 2.

Much of this public attention has been focused on Defendants' accreditor, HLC—the same entity that was the subject of the 2009 OIG memo. For example, in 2015, OIG released an audit report on deficiencies in HLC's accreditation practices, particularly HLC's infrequent review of "whether a school's assignment of credit hours met the Federal definition," which OIG found was "inadequate for Title IV gatekeeping purposes." Ex. J at 3. OIG referenced this finding three years later in its recommendations to Congress regarding changes to the Higher Education Act, noting that it has "reported extensively on some accrediting agencies' deficient oversight of critical issues such as credit hours," including its "September 2015 audit on the Higher Learning Commission." Ex. K at 12.

News outlets have similarly covered the Government's efforts to prevent Title IV abuse in the context of programs' educational content, including the credit hour definition the Government created after auditing HLC:

> The department argued that [a "credit hour" definition] was necessary because the absence of one "may be the basis for abuse by institutions in determining sufficient course content for a credit hour," raising questions about the quality of credits (and ultimately degrees) awarded by some institutions.

Ex. L at 5.

Then, in July 2012, the U.S. Senate released a comprehensive report on the various problems in for-profit education at the time. Ex. M. The report included a profile dedicated to Career Education Corporation, Perdoceo's old corporate name. *Id.* at 351. The report specifically called attention to the "questionable academic rigor and educational value" of for-profit programs and noted that "even where a student 'earned' a credit by the school's own grading standards, the

academic experience was far less rigorous than a student or potential employer might expect." *Id.* at 21, 104; *cf.* Am. Compl. ¶ 54 ("Defendants set a very low 'threshold' for passing Intellipath lessons (generally between 40 and 55 percent), allowing students to pass classes with what would be a failing grade anywhere else.").

4. Defendants advertised the mechanics of intellipath®.

Contrary to any fraudulent scheme to "hide" or "conceal" their conduct, Defendants publicly disclosed the way intellipath® worked, including the fact that it allowed students to skip certain course material. Ex. N at 1 (explaining that intellipath® "enables individual students to skip over what they already know and focus their time on what they need to learn"). Relator concedes as much in its Amended Complaint. Am. Compl. ¶ 50.[5] CTU's use of intellipath® even garnered recognition within the education industry for allowing students to skip over certain areas. Ex. O at 3 (specifically noting that intellipath® allows students to "quickly mov[e] over areas of existing competency"); *cf.* Am. Compl. ¶ 5 (alleging that intellipath® "automatically skip[s] students through significant portions of course work"); *see also id.* ¶¶ 53, 89.

In sum, Relator's allegations (1) concern a regulatory scheme that was created in direct response to Defendants' credit ascription practices; (2) identify characteristics of an online, adaptive learning platform that media outlets have already encouraged the Government to investigate; (3) take place in an industry that has been regulated and investigated on similar

[5] Relator alleges that, despite Defendants' marketing, "[i]n truth, Defendants have designed Intellipath to bypass most of the course material, meager as it is." Am. Compl. ¶ 50. This is a distinction without a difference: "skip" and "bypass" are synonyms. To the extent Relator is alleging that intellipath® was used to bypass *more* material than Defendants suggested, such an allegation is insufficient to overcome the public disclosure bar. *Reed*, 923 F.3d at 729 (allegations that "the problem was more pervasive . . . than the public disclosures hinted" does not constitute a material addition to existing public disclosures).

grounds; and (4) repeat statements from Defendants' own marketing materials. Even taken individually, these disclosures trigger the public disclosure bar. Taken together, they overwhelmingly do so. *See United States v. CSL Behring, L.L.C.*, 855 F.3d 935, 944 (8th Cir. 2017) ("In applying this standard, we consider 'public disclosures contained in different sources' as a whole to determine whether they collectively 'provide information that leads to a conclusion of fraud.'") (quoting *U.S. ex rel. Gilligan v. Medtronic, Inc.*, 403 F.3d 386, 390 (6th Cir. 2005)).

B. Relator is not an "original source."

Because Relator's allegations are substantially similar to prior public disclosures, Relator's Amended Complaint must be dismissed unless Relator qualifies as an "original source." 31 U.S.C. § 3730(e)(4)(A). "For purposes of [the public disclosure bar], 'original source' means an individual who either (i) prior to a public disclosure under subsection (e)(4)(a), has voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based, or (2) has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the Government before filing an action under this section." 31 U.S.C. § 3730(e)(4)(B). "The burden is on [Relator] to show that [it] is an original source." *U.S. ex rel. Bahrani v. Conagra, Inc.*, 465 F.3d 1189, 1207 (10th Cir. 2006).

1. The date of Relator's corporate formation precludes it from qualifying as an original source.

A relator cannot be an original source if its claim "was derived solely from second-hand knowledge." *U.S. ex rel. Kuriyan v. Health Care Servs. Corp.*, 2020 WL 8079811, at *11 (D.N.M. Sept. 9, 2020). Relator is an LLC formed years after the alleged relevant conduct and just weeks before filing suit; it could not possibly have gained independent knowledge of the alleged fraud.

U.S. ex rel. Precision Co. v. Koch Indus., Inc., 971 F.2d 548, 554 (10th Cir. 1992) (holding that corporate relator "c[ould not] seriously argue it qualifie[d] as an original source" for "information gathered . . . prior to its formation").

Relator tries to avoid this result by alleging that, "***[t]hrough its principal***, Relator Fiorisce LLC has firsthand knowledge of the fraud alleged herein." Am. Compl. ¶ 9 (emphasis added). That is not what "firsthand" means. *See U.S. ex rel. Smith v. Yale Univ.*, 415 F. Supp. 2d 58, 80 (D. Conn. 2006) (explaining that "firsthand" information must be obtained "through relator's own labor"). Regardless, the Tenth Circuit has rejected the notion that information gathered by a corporation's shareholders prior to formation can be imputed to the company. *Precision*, 971 F.2d at 554 ("Precision is the qui tam plaintiff in the present action, not William Koch or William Presley."). Relator is purely a conduit for litigation, not an original source of any allegations.

2. Even if Relator did have independent knowledge, its allegations do not materially add to the prior public disclosures.

Independent knowledge of the alleged fraud is not enough to avoid the public disclosure bar. The knowledge must be so specific and different that it "materially adds" to the prior public disclosures. 31 U.S.C. § 3730(e)(4)(B). "[A] relator who merely adds background information or details about a known fraudulent scheme typically will be found not to have materially added to the publicly disclosed information." *Reed*, 923 F.3d at 757.

That is all Relator offers here. To be sure, Relator names employees who allegedly knew about and helped perpetrate the purported fraud. *See* Am. Compl. ¶¶ 49, 55, 59-60, 79-87, 108-113. "But if identifying new employees engaged in fraud were enough, the original-source exception would burst from overbreadth." *Reed*, 923 F.3d at 760. Likewise, Relator's breakdowns of the purported average hours spent by students on intellipath® lessons does not allege any new

fraudulent scheme but simply illustrate in greater detail what was already publicly disclosed. *Winkelman*, 827 F.3d at 212 (explaining that giving "specific examples of" publicly known fraud "does not provide any significant new information").

Thus, Relator's allegations differ from those in *Reed*, where the relator "revealed a new scheme to defraud the government" in a "distinct context." 923 F.3d at 760 (cleaned up). There, the relator alleged details of a new fraudulent scheme of which "[n]one of the public disclosures accused [defendant]—or the industry generally." *Id.* at 762. This was significant because the "allegations of fraud in the public disclosures" were not "so detailed that there was no room for [the relator] to materially add to them with her allegations" of a "distinct [] fraud." *Id.* at 762-63.

In contrast, none of Relator's allegations relates to a new fraudulent scheme. Nor could they—the very regulations Relator accuses Defendants of violating were created precisely *because of* the Government's prior audits into Defendants' credit ascription practices. The purpose of the FCA "is not served by allowing *qui tam* plaintiffs to recover where, as here, the government has already identified the problem and has an easily identifiable group of probable offenders." *Fine*, 70 F.3d at 572.

C. Relator fails to sufficiently allege FCA claims against AIU or Perdoceo.

Even if Relator could overcome the public disclosure bar, it fails to plead the FCA claims against AIU or Perdoceo with particularity as required by Federal Rule of Civil Procedure 9(b). "Practically speaking, FCA claims comply with Rule 9(b) when they provid[e] factual allegations regarding the who, what, when, where and how of the alleged claims." *Polukoff*, 895 F.3d at 745 (internal quotation marks and citations omitted). "When plaintiff brings a claim against multiple defendants, Rule 9(b) obliges a plaintiff to specify the manner in which each defendant

participated." *Lynch v. Olympus Am., Inc.*, 2019 WL 2372841, at *4 (D. Colo. June 5, 2019).

1. Relator fails to adequately plead any FCA claims against AIU.

Relator's allegations specific to AIU can be boiled down to two categories: (1) the conclusory allegation that Relator "knows" the same scheme to provide students with minimal course content through intellipath® is occurring at AIU; and (2) the allegation that, for credit ascription, AIU counts intellipath® time as "45 minutes per lesson for 100 level classes, 60 minutes per lesson for 200, 300, 400 and grad level courses." Am. Compl. ¶¶ 75, 91. Relator provides no particular student or course detail to support the suggestion that AIU's content was somehow deficient for any specific course. Nor does Relator identify a single person at AIU who had any involvement in AIU's alleged scheme. *See, e.g.*, *U.S. ex rel. Williams v. Martin–Baker Aircraft Co.*, 389 F.3d 1251, 1257 (D.C. Cir. 2004) (finding an FCA claim lacked particularity when the complaint failed to identify the employees involved in the fraud); *U.S. ex rel. DeCarlo v. Kiewit/AFC Enters., Inc.*, 937 F. Supp. 1039, 1050 (S.D.N.Y. 1996) (same). In short, Relator has not pled fraud with particularity as to AIU, much less produced any knowledge that materially adds to the prior publicly disclosures.

2. Relator does not allege that Perdoceo presented, or caused to be presented, any false claim or false record.

Relator's claims are largely based on five documents or submissions, none of which Relator alleges Perdoceo submitted or created. Am. Compl. ¶¶ 93-94, 97, 99, 100. Rather, Relator alleges that ***CTU and AIU*** submitted applications to participate in the federal student aid program (*id.* ¶¶ 93-94), entered into the PPAs (*id*. ¶¶ 97-98), made certifications in drawing down funds from the G5 system (*id*. ¶ 99), and made statements in submitting claims for payment through the COD system (*id*. ¶¶ 100-102). Relator also alleges that ***CTU*** created and used the CAWs that

somehow inflated course time spent in intellipath®. *See* Am. Compl. ¶¶ 83-88 (reflecting allegations against CTU, but not Perdoceo or AIU, regarding the creation and use of the CAWs). None of these allegations supports a claim against Perdoceo, whose relation to CTU and AIU is that of a parent-subsidiary. *U.S. ex rel. Fent v. L-3 Commc'ns Aero Tech LLC*, 2007 WL 3485395, at *3 (N.D. Okla. Nov. 8, 2007) ("A parent corporation cannot be liable merely because a plaintiff alleges that its subsidiary violated provisions of the FCA.").

Further, Relator does not plausibly, let alone particularly, allege that Perdoceo "caused to be presented" or "caused to be made" any false claim or record.[6] The "Claim for Relief" proclaims that Perdoceo "caused to be presented" false claims or "caused to be made or used" a false record. *Id.* ¶¶ 117, 118. The only factual allegations made specifically against Perdoceo relate to Judith Komar, Perdoceo's Vice President of Educational Technology, and a "Vice Provost of Technology." Relator alleges Ms. Komar "played a key role in designing Intellipath," "oversees its use at CTU and AIU," and, along with unidentified "other senior leadership" at Perdoceo, "[d]irected" CTU in the so-called scheme. *Id.* ¶¶ 49, 55. As to the unnamed Vice Provost, Relator alleges that the Vice Provost transferred CAWs to a new electronic database notwithstanding learning of a discrepancy in the number of intellipath® hours reported on two of them. *Id.* ¶¶ 108, 110. But Relator fails to tie these ministerial acts to any false claim. These vague and conclusory allegations are too tenuous to establish that Perdoceo "caused" any false claim to be made. *See In re Syngenta AG MIR 162 Corn Litig.*, 2016 WL 5851795, at *7 (D. Kan. Oct. 6, 2016) (dismissing claim that defendant "caused" a false claim to be presented because relator did not allege "any

[6] Indeed, even after reading the 40-page Amended Complaint, it is difficult to see any identifiable false claim made by *any* Defendant. This defect alone may form the basis for dismissing all or part of Relator's complaint.

affirmative acts . . . relating to the actual submission of the [false] claims."). Lacking from the Amended Complaint are any alleged "affirmative acts" taken by Ms. Komar, the Vice Provost, or anyone else at Perdoceo—*i.e.*, what did they actually do and when did they do it?—that caused the presentment of any false claim. *Id*.

IV. Conclusion

The Court should grant Defendants' Motion to Dismiss and dismiss the Amended Complaint with prejudice.

By: /s/ *Kyle P. Seelbach*

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 30th day of October 2023, a copy of the foregoing document was filed with the Clerk of the Court and served upon counsel of record via the Court's ECF system.

/s/ *Christine Herrmann*